

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

March 18, 2011

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: **SOAH Docket No. 582-10-2368, TCEQ Docket No. 2009-2022-UCR, In Re:
Mauriceville Municipal Utility District**

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **April 7, 2011**. Any replies to exceptions or briefs must be filed in the same manner no later than **April 18, 2011**.

This matter has been designated **TCEQ Docket No. 2009-2022-UCR, SOAH Docket No. 582-10-2368**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

Kerrie Jo Qualtrough
Administrative Law Judge

KJQ/llg
Enclosures
cc: Mailing List

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STYLE/CASE: MAURICEVILLE MUNICIPAL UTILITY DISTRICT
SOAH DOCKET NUMBER: 582-10-2368
REFERRING AGENCY CASE: 2009-2022-UCR

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ KERRIE QUALTROUGH

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xc: Docket Clerk, State Office of Administrative Hearings

**SOAH DOCKET NO. 582-10-2368
TCEQ DOCKET NO. 2009-2022-UCR**

PETITION BY RATEPAYERS	§	BEFORE THE STATE OFFICE
APPEALING WATER RATES	§	
ESTABLISHED BY MAURICEVILLE	§	
MUNICIPAL UTILITY DISTRICT IN	§	OF
JASPER, NEWTON, AND ORANGE	§	
COUNTIES	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

A group of ratepayers (Ratepayers) of the Mauriceville Municipal Utility District (MMUD) appealed its decision to increase its water and sewer rates. Based on the evidentiary record, the Administrative Law Judge (ALJ) recommends that the Texas Commission on Environmental Quality (TCEQ or Commission), deny the Ratepayers' appeal, approve MMUD's new water and sewer rates, and allow MMUD to recover its rate case expenses as a surcharge.

I. PROCEDURAL HISTORY AND BACKGROUND

No person contested the sufficiency of the notice regarding this proceeding. The ALJ will address this issue in the proposed order.

MMUD provides retail water and sewer service to its ratepayers in Jasper, Newton, and Orange Counties. In 1998, MMUD served approximately 2,512 residential water customers and 1,187 residential wastewater customers. In 2010, MMUD was serving 3,136 water customers and 2,236 wastewater customers.

MMUD established new water and sewer rates for its customers, effective September 1, 2009. On November 29, 2009, the Ratepayers filed a petition with the TCEQ appealing those new rates and seeking Commission review. More than 10 percent of the affected ratepayers signed that petition.

The appeal was referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing. On April 19, 2010, a preliminary hearing was conducted in Austin, Texas and the following parties were designated: the Executive Director (ED), represented by James Aldredge; MMUD, represented by Jeff M. Holland; Office of Public Interest Counsel, represented by Garrett Arthur; and the Ratepayers, represented by Randy G. Hebert.

On October 29, 2010, ALJ Kerrie Jo Qualtrough convened a prehearing conference and the parties participated by telephone. After a continuance, an evidentiary hearing was held on January 25, 2011. MMUD, the ED, and OPIC participated in the evidentiary hearing. However, Mr. Hebert was not present in the hearing room or available by telephone. The ALJ made several attempts to contact Mr. Hebert at different phone numbers. The ALJ left voice mails with information that would enable Mr. Hebert to contact the ALJ in the hearing room. However, the ALJ was unsuccessful in reaching Mr. Hebert. The ALJ then proceeded with the evidentiary hearing without the participation of the Ratepayers.

The ALJ admitted the prefiled testimony submitted by MMUD and the ED. MMUD also presented live testimony regarding the expenses it incurred as a result of the Ratepayers' appeal. On January 31, 2011, MMUD submitted documentary evidence to justify its request for rate case expenses. The parties were given an opportunity to respond to MMUD's evidence and, on February 7, 2011, the ED filed a response to MMUD's request.¹ MMUD filed a reply and proposed findings of fact and conclusions of law on February 11, 2011. The evidentiary record closed on that day.

II. ISSUES

A. Ratepayers' Appeal

The Ratepayers requested that the TCEQ review MMUD's decision to raise its rates to determine if the new rates were just and reasonable. In their petition, the Ratepayers alleged that the

¹ No party stated any objections to MMUD's documents regarding its rate case expenses. Therefore, the ALJ admits MMUD's Exhibit A and B into the evidentiary record.

old base rates allowed for the use of up to 2,000 gallons per month before MMUD started assessing an additional charge for consumption. MMUD's new base rates for water and sewer service do not include a minimum amount of consumption. Under the new base rates, MMUD's ratepayers would have to pay a base rate and an extra charge for any water used or wastewater generated. The Ratepayers alleged that MMUD's new rates represented a 35 percent increase in their monthly utility bills, which is a "dramatic increase, especially for those on a fixed income."² However, the Ratepayers offered no evidence and presented no argument on the rate issue.

MMUD presented testimony supporting its new water and sewer rates, and explained how it set those new rates. The ED analyzed MMUD's rates and found that MMUD's revenue requirement justified rates higher than the new rates that MMUD adopted.³ Therefore, the ED concluded that MMUD's new water and sewer rates were just and reasonable.

The evidence in the record supports MMUD's new rates, and there is no contradictory evidence. Accordingly, the ALJ has proposed findings of facts and conclusions of law based on the evidentiary record. The ALJ concludes that MMUD met its burden of proof that its new rates are just and reasonable, and recommends that the Commission deny the Ratepayers' appeal and approve MMUD's new water and sewer rates.

B. Rate Case Expenses

At the evidentiary hearing, MMUD requested to recover the rate case expenses incurred as a result of responding to the Ratepayers' appeal. The appeal was brought pursuant to section 13.043(b) of the Texas Water Code. According to that section, the Commission may allow for the "recovery of reasonable expenses incurred by the retail public utility in the appeal proceeding."⁴

² ED A, Ratepayers' Petition, admitted as a jurisdictional exhibit.

³ ED Ex. KA-3, pg. 4.

⁴ TEX. WATER CODE § 13.043(e); *see also*, 30 TAC § 291.41(e)(2).

Mr. Holland testified on behalf of MMUD in support of its request for rate case expenses. He stated that due to the appeal, MMUD incurred attorney fees, travel, and other expenses. He estimated that as a result of the appeal, MMUD will have spent approximately \$16,000 in defending its rates.

On January 31, 2011, MMUD submitted a list of the expenses incurred as a result of responding to the Ratepayers' appeal. The total amount of expenses through January 24, 2011 was \$13,847.81, including expenses for attorney fees, travel and accommodations, labor, postage, and copies.⁵ Mr. Holland anticipates that MMUD will spend an additional \$2,321.36 for correspondence to all ratepayers and travel to Austin to attend the Commission's open meeting on this appeal. Mr. Holland also expects that MMUD will incur another \$1,050 in legal fees. Therefore, Mr. Holland expects the total known and anticipated rate case expense to be \$17,219.17.⁶

At the evidentiary hearing, Stephen Dillawn, MMUD's attorney, testified regarding his attorney fees. He stated that because of the Ratepayers' appeal, MMUD retained his services. He charged \$175 per hour, and Mr. Dillawn stated that his attorney fees were just and reasonable.

MMUD also submitted documentary evidence regarding Mr. Dillawn's attorney fees. Mr. Dillawn performed services on behalf of MMUD, including his attendance at conferences with his client, the examination of pleadings and client records, the drafting of legal documents, the preparation of written, prefiled testimony, preparation for hearings, and communications with opposing counsel. Mr. Dillawn included invoices showing attorney fees and expenses of \$6,623.87 through November 30, 2010.⁷ An additional \$1,225 in attorney fees was incurred by MMUD in December 2010 and January 2011, for a total of \$7,848.87 in attorney fees.⁸ Mr. Dillawn stated that his legal services were necessary and reasonable in the prosecution of MMUD's case.⁹

⁵ MMUD Jan. 31, 2011 Submission, Ex. A, Att. 1.

⁶ MMUD Jan. 31, 2011 Submission, Ex. A, ¶ 4.

⁷ MMUD Jan. 31, 2011 Submission, Ex. B, ¶ 3.

⁸ MMUD Jan. 31, 2011 Submission, Ex. B, ¶ 4.

⁹ MMUD Jan. 31, 2011 Submission, Ex. B, ¶ 5.

The ED was the only party to respond to MMUD's documentary evidence of its rate case expenses. The ED cited 30 TAC § 291.28(7) and concluded that, with minor exceptions, MMUD's expenses were reasonable, necessary, and in the public interest.¹⁰ However, the ED recommended the following adjustments to MMUD's rate case expenses shown in MMUD's Exhibit A, Attachment 1.

1. Lodging

The ED took issue with two entries for lodging in Austin, Texas: \$616.50 for three rooms on April 14, 2010; and \$347.69 for two rooms on January 24, 2011. The ED argued that the current per diem for the State of Texas should serve as the standard for what is considered a reasonable rate for lodging. The ED recommended that MMUD should recover \$125 per person per night as a reasonable rate. This rate includes the room rate of \$104 plus a reasonable amount for taxes and fees.

MMUD responded to the ED and asserted that to attend the two hearings at SOAH, MMUD personnel were required to travel to Austin, Texas. For both hearings, MMUD's representatives stayed at hotels close to SOAH's offices. MMUD included copies of the booking confirmation¹¹ and the hotel bill.¹²

The ALJ recommends that MMUD recover its actual expenses for the lodging in Austin, Texas to attend hearings in this case. MMUD personnel had to make a minimum of two trips to Austin to attend both a preliminary and an evidentiary hearing. These individuals stayed at hotels close to SOAH's offices, which seems reasonable. Had the MMUD personnel stayed farther away from SOAH's offices to obtain a lower room rate, the MMUD may have incurred additional expenses for mileage and parking fees. These expenses may have offset any savings attributable to the lower hotel rate. Therefore, the ALJ concludes that it was reasonable for MMUD personnel to

¹⁰ ED Feb. 7, 2011 Resp., pg. 1.

¹¹ MMUD Feb. 11, 2011 Reply to ED, Ex. A.

¹² MMUD Feb. 11, 2011 Reply to ED, Ex. B.

stay at hotels near SOAH's offices to participate in the hearings. It is the ALJ's conclusion that MMUD's lodging expenses incurred on April 14, 2010, and January 24, 2011, were reasonable expenses related to this rate case, and the ALJ recommends that MMUD recover what it actually paid in lodging expenses.

2. Files from Storage

The ED also had concerns with the \$289 expense of "Time Guys spent bring files fm stg. Bldg to Office & Return."¹³ The ED stated that it was unclear whether this was a contract service or one performed by MMUD employees.¹⁴ Because MMUD had not provided an explanation before the ED's response was due, the ED recommended that this \$289 expense be excluded.

MMUD responded that \$289 represented the expense of having four MMUD employees retrieve documents from a storage area over a three-day period. In order to review MMUD's rates as requested by the Ratepayers, the ED requested documentation from MMUD. MMUD stated that \$289 was the charge for the total time required for the four employees to search for and retrieve the files necessary to comply with the ED's document request.¹⁵

The ALJ recommends that MMUD recover its rate case expense of \$289 for document retrieval. MMUD incurred this expense as a result of the Ratepayers' appeal. The ED conducted a review of MMUD's rates to determine if the rates were just and reasonable, as requested by the Ratepayers. To conduct that review, the ED needed files from MMUD and asked MMUD to produce them, which MMUD did. Assuming four employees worked for three days, the \$289 expense equates to less than \$25 per employee, per day. The ALJ finds that this \$289 expense for four employees working three days searching and retrieving files is just and reasonable.

¹³ MMUD Jan. 31, 2011 Submission, Ex. A, Att. 1, pg. 2, 9/9/2010 entry.

¹⁴ ED Feb. 7, 2011 Resp., pg. 2.

¹⁵ MMUD Feb. 11, 2011 Reply to ED, pg. 2.

3. Copies

The ED objected to the September 9, 2010 entry for “500 sheets paper/ream x 10 reams (1 case) 500 x \$.10/per copy.”¹⁶ The ED stated that the amount of \$500 appears to be unreasonable or the result of a mathematical error because it is unclear whether the entry is for 500 or 5,000 copies. Again, since MMUD had not explained the discrepancy before the ED’s deadline to file his response, the ED recommended that this \$500 expense be excluded from the overall rate case expense.

MMUD responded that the September 9, 2010 expense for \$500 was for 5,000 copies of documents that the ED requested.¹⁷ MMUD also stated that the September 9, 2010 expense of \$114.51 for overnight delivery was for 40 pounds, evidencing that the shipment was for the 5,000 copies.

The ALJ concludes that the \$500 expense for 5,000 copies at \$.10 a copy is a reasonable and necessary expense. The expense was incurred on or about the time MMUD employees were making copies to respond to the ED’s document request. This expense is reasonable and incurred to respond to the Ratepayers’ appeal. The ALJ recommends that the Commission allow MMUD to recover this \$500 rate case expense for copies.

4. Summary

After reviewing the MMUD’s evidence and arguments, the ALJ is satisfied that MMUD incurred reasonable expenses related to the rate case. These expenses were necessary and incurred in the public interest. Therefore, the ALJ recommends that the Commission allow MMUD to recover the requested rate case expense of \$17,394.17 as a surcharge.

In order to determine the amount of the surcharge necessary to recover \$17,394.17 from MMUD’s ratepayers, the ALJ requests that the ED recommend a time period for amortization of these expenses to allow MMUD to collect the surcharge. The ALJ also requests that the ED

¹⁶ MMUD Jan. 31, 2011 Submission, Ex. A, Att. 1, pg. 2, 9/9/2010 entry.

¹⁷ MMUD Feb. 11, 2011 Reply to ED, pg. 2.

calculate the amount of the monthly surcharge based on his recommended amortization schedule. The ALJ recommends that the ED propose this surcharge amount and the time period for recovery in his Exceptions to this PFD. All parties would then have the opportunity to respond to the ED's recommendations in their Responses to Exceptions.

SIGNED March 18, 2011.



**KERRIE JO QUALTROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Denying the Appeal of the Ratepayers of the
Mauriceville Municipal Utility District;
TCEQ Docket No. 2009-2022-UCR;
SOAH Docket No. 582-10-2368**

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the appeal of an action by Mauriceville Municipal Utility District (MMUD) to increase rates for retail water and sewer utility service provided in Jasper, Newton, and Orange Counties, Texas. Administrative Law Judge (ALJ) Kerrie Jo Qualtrough, with the State Office of Administrative Hearings (SOAH), conducted an evidentiary hearing on January 25, 2011. The following were parties to the proceeding: MMUD, the Executive Director (ED), the Office of Public Interest Counsel (OPIC), and a group of MMUD ratepayers (Ratepayers). After considering the ALJ's proposal for decision and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Mauriceville Municipal Utility District (MMUD) is a municipal utility district subject to the jurisdiction of the Commission.
2. MMUD adopted retail water and sewer rates that went into effect on September 1, 2009.
3. On November 30, 2009, the Commission received a timely "Petition to Appeal Rates Established by the [MMUD]," signed by more than 10 percent of the affected ratepayers. In their appeal, the Ratepayers requested that the Commission review MMUD's decision and determine if the increased rates were just and reasonable.
4. The Commission referred the appeal to SOAH for a contested case hearing.
5. Notice of the contested case hearing was provided by mail to all affected ratepayers and other interested persons.

6. On April 19, 2010, a preliminary hearing was held in Austin, Texas. MMUD, the ED, OPIC, and the Ratepayers were named as parties.
7. On January 25, 2011, the ALJ convened an evidentiary hearing in Austin, Texas. MMUD, ED, and OPIC appeared and participated. The Ratepayers did not participate, nor did they present any evidence or argument.
8. In 1998, when Jeff M. Holland took over as General Manager of MMUD, MMUD was servicing 2,512 residential water system customers and 1,187 residential wastewater system customers.
9. In 1998, when Jeff M. Holland took over as General Manager of MMUD, MMUD had 18 employees.
10. As of September 22, 2010, MMUD was servicing 3,136 residential water system customers and 2,236 residential wastewater system customers.
11. As of the date of the hearing, MMUD had 12 employees. MMUD was able to reduce its staff by combining responsibilities for existing employees, eliminating redundancies in job requirements, and by using technology to increase both operational and administrative efficiencies.
12. According to the 2009 Annual Finance Report for MMUD, salaries and payroll expenses accounted for only 22.73 percent of MMUD's 2009 budget, representing a significant decrease from the 29.31 percent of the budget consumed by salaries and payroll expenses in 2005.
13. The amount paid by MMUD for consumable supplies and materials (including fuel, electricity, repair clamps and fittings, maintenance supplies, replacement parts, and minor office fixtures) was 6.31 percent of MMUD's total budget in 2009.
14. In 2009, the base rates charged by MMUD to its residential customers were \$23.75 per month for water service and \$29.35 per month for wastewater service. This base rate included 2,000 gallons of water per month and 2,000 gallons of wastewater per month. Charges for additional water and wastewater use were made on a sliding scale depending on the water and wastewater usage above 2,000 gallons per month.
15. The current base rates charged by MMUD to its residential customers are \$26.12 per month for water service and \$29.35 per month for wastewater service. This base rate charge does not include any minimum amount, and additional charges are made based

upon the amount of water and wastewater used by the individual customers. Additional charges for water include \$4.89 per 1,000 gallons up to 8,000 gallons and \$5.18 per 1,000 gallons in excess of 8,000 gallons. Additional charges for wastewater service are \$4.25 per 1,000 gallons up to 8,000 gallons and \$4.50 per 1,000 gallons in excess of 8,000 gallons.

16. As of December 31, 2009, a total of \$19,020,000 remained to be paid on bonds issued to MMUD (hereinafter referred to as "the Bond Debt"). The Bond Debt is an obligation owed to the Texas Water Development Board.
17. In 2009, total principal and interest paid on the Bond Debt was \$1,444,450 (\$640,000 in principal and \$804,450 in interest). In 2010, the total principal and interest that will be required to be paid on the Bond Debt is \$2,076,119 (\$895,000 in principal and \$1,181,119 in interest).
18. As a result, interest payments on MMUD's long term bond debt increased in 2010 by \$52,639.21 per month.
19. These interest payments increased because interest on the outstanding balance of bonds issued in 2005 was deferred until 2010, at which time it was to be repaid over the remaining life of the bonds.
20. The ED calculated an allowable base water rate of \$43.57 per month per customer, with a gallonage rate of \$4.24 per 1,000 gallons of water used. When MMUD's gallonage rate of \$4.89 per 1,000 gallons is taken into account, the ED's allowable base rate comes out to \$40.29 per customer including zero gallons. This allowable base rate is higher than the water rate being charged by MMUD.
21. The ED calculated an allowable base wastewater rate of \$43.45 per month per customer, with a gallonage rate of \$2.94 per 1,000 gallons of wastewater. When MMUD's gallonage rate of \$4.25 per 1,000 gallons is taken into account, the ED's allowable base rate comes out to \$33.92 per customer. This allowable base rate is higher than the wastewater rate being charged by MMUD.
22. MMUD presented evidence on the expenses it incurred in this rate case. After allowing the parties to respond to MMUD's request for expenses, the record closed on February 11, 2011.

23. MMUD has incurred a total of \$17,394.17 in reasonable and necessary rate case expenses as a result of the Ratepayers' appeal.

II. CONCLUSIONS OF LAW

1. MMUD is a retail public utility under TEX. WATER CODE § 13.002(19).
2. The Commission has jurisdiction to consider the appeal of the District's rate increase, pursuant to TEX. WATER CODE § 13.043(b).
3. The ALJ conducted a contested case under the authority of TEX. GOV'T CODE ch. 2003, TEX. WATER CODE ch. 13, and 30 TEX. ADMIN. CODE (TAC) chs. 80 and 291.
4. Proper notice of the appeal and hearing was given by MMUD, as required by TEX. WATER CODE ch. 13 and 30 TAC ch. 291.
5. Based on the above Findings of Fact and Conclusions of Law, MMUD's proposed water rates, which have been in effect since September 1, 2009, are just and reasonable.
6. TEX. WATER CODE § 13.043(e) allows for the recovery of reasonable expenses incurred by the retail public utility in appeal proceedings.
7. Pursuant to 30 TAC § 291.41(e)(2), the Commission may allow a retail public utility to recover reasonable expenses incurred in appeal proceedings.
8. Based on the above Findings of Fact and Conclusions of Law, MMUD incurred reasonable and necessary expenses in this proceeding to resolve the Ratepayers' appeal.
9. Based on the above Findings of Fact and Conclusions of Law, MMUD incurred reasonable and necessary rate case expenses of \$17,394.17.
10. Based on the above Findings of Fact and Conclusions of Law, MMUD is entitled to recover the reasonable and necessary rate case expense of \$17,394.17 from its ratepayers.
11. The monthly surcharge to be charged to the ratepayers for _____ months is \$ _____.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The Ratepayers' "Petition to Appeal Rates Established by the [MMUD]" is denied.
2. MMUD may continue to charge rates that took effect on September 1, 2009.

3. The MMUD's request to apply a surcharge to recover rate case expenses in the amount of \$17,394.17, to be recovered as a monthly surcharge of \$ _____ to each water and sewer customer for _____ months or until paid, is approved. The surcharge shall be discontinued at such time as the amount of \$17,394.17 is recovered.
4. MMUD shall notify its ratepayers by mail of the surcharge in the first bill to ratepayers implementing the surcharge approved by this Order.
5. The effective date of this Order is the date the Order is final, as provided by TEX. GOV'T CODE § 2001.144 and 30 TAC § 80.273.
6. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief not expressly granted herein, are hereby denied for want of merit.
7. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order to the parties.
8. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman

