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REGARDING: **EXCEPTIONS LETTER (BY ALJ) W/AMENDED PROPOSED ORDER**
DOCKET NUMBER: **582-12-6250**

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application is allowed by an exception in the statute and is not prohibited. The Protestants' jurisdictional exceptions should be overruled.

Disallowances of Certain Tank, Engineering, and Legal Fee Expenses

BFE and the Executive Director (ED) except to my proposals to disallow certain engineering and legal fees and a portion of the cost of an 84,000-gallon tank from BFE's claimed original cost of its invested capital. These arguments were addressed in the PFD, and I have nothing more to add. I recommend that the Commission overrule these exceptions.

Hydrants and System Flushing

The Protestants object to my conclusion that the cost of BFE's fire hydrants should be included in BFE's invested capital. I found the hydrants are useful in providing water service because they are also used as valves to flush BFE's water system. In their exceptions, the Protestants claim the cost of the hydrants is unreasonably high to flush the system, apparently meaning the cost is excessive even if the hydrants are used and useful for that purpose. This is a new and slightly different argument that was not addressed in the PFD.

The City claims the evidence shows that six gate valves, for a combined cost of \$750, would be adequate to flush BFE's system and cost \$5,250 less than the hydrants. Accordingly, the City contends that the invested capital amount for the hydrants should be reduced to \$750. Similarly, the HOA and Mr. Perdue contend the cost of each hydrant is \$875 more than it should be, although they object to allowing any amount for the hydrants. However, the Protestants do not cite evidence showing that gate valves would accomplish the same flushing for a lower cost, and I have not been able to locate evidence of that kind. Moreover, no expert testified that the cost of the hydrants was excessive for use as flush valves. I recommend that the Commission overrule the Protestants' exceptions concerning the fire hydrants as flush valves.

Claimed Developer Contribution

In their exceptions, the Protestants again urge their contention that BFE's invested capital was contributed by a developer and BFE is not permitted to earn a return on it. These exceptions should be overruled. As discussed in the PFD, I did not find that BFE received cost-free capital from a developer or anyone else.

Number of Customers, Growth Rates, and Rate of Return

The City argues that there has been a known and measurable increase in the number of BFE's customers. Citing BFE's annual reports to the Commission for 2005 through 2010, the City argues that BFE had 37 customers at the end of 2010. This leads the City to raise two objections to the PFD. It contends that the 11.25% rate of return recommended in the PFD should be reduced by 1% because BFE does not serve a low growth area. The City also claims that any surcharges should be adjusted so that they would be recovered from 37 customers, not 35.

BFE and the ED object that these are new arguments not previously raised by the City and ask the Commission to overrule them. I recommend that the Commission overrule the City's exceptions, due to their lack of merit.

The ED's expert, Debi Loockerman, recommended an 11.25% rate of return in accordance with the Commission's rate-of-return worksheet. That included an additional 1% because BFE serves a low growth area. According to the worksheet, a low growth area is one that has had less than 5% customer growth over the last three years or in which customer growth is anticipated to be less than 5% in the future three-year period.¹

In its application, filed on October 6, 2009, and based on a test year from January 1 through December 31, 2008, BFE indicated that it had 35 connections.² During the hearing on April 2, 2013, Mr. Bourland testified that BFE had 35 connections at most, and arguably 32.³ There is no evidence showing that BFE currently has more than 35 connections. However, BFE previously reported to the Commission that it had 21 connections at the beginning of 2005, 25 connections at the end of 2005, and 37 connections at the end of 2010.⁴

The City contends that the additional 1% of rate of return is not warranted because in the three years prior to 2008 BFE had a 62% growth in customers, going from 21 to 34 customers, and from 2008 to 2010 BFE had 6% customer growth, going from 35 to 37 customers.

I do not agree with the City's analysis of growth and application of the criteria set out in the rate of return worksheet. Looking back three years from now, in the last portion of 2013, the number of BFE's customers has actually declined from 37 to 35, meaning BFE serves a low growth area. While there was a temporary increase in customers from 35 to 37 between 2008 and 2010, that increase evaporated, and there has not been a known and measurable change in the number of customers since then.

Pass Through Fee

In its Application, BFE proposed a gallonage charge of \$3.22 for each additional 1,000 gallons over the first 5,000 gallons. An asterisk is next to the \$3.22 in the Application, and the asterisk note states: "Includes pass through fee for Upper Trinity Groundwater Conservation District of \$.22 per 1,000 gallons."⁵ The ED objects that the PFD did not address the treatment of the pass through fee.

The ED proposes that the Commission's final order include a finding that the pass through fee is not included in BFE's proposed gallonage charges and include a separate line item on customers' bills for that fee. BFE agrees with that exception, and no other party responded to it. Nevertheless, I recommend overruling the exception.

¹ ED Exs. DL 1 at 12-13 & DL 11.

² ED Ex. A, attach. A at 14 & 15 of 41.

³ Tr. at 19.

⁴ Cresson Ex. 1, attach. N, 2005 report at 4 & 2010 report at 4.

⁵ ED Ex. A, attach. A at 35 of 41.

The asterisk notation seems to indicate that payment of the \$3.22 per 1,000 gallons after the first 5,000 gallons would include and account for the pass through fee. Nothing else in BFE's application suggested that its customers would be charged an additional \$.22 per 1,000 gallons per month for BFE to pass through to the district. I do not find that BFE is entitled to rates higher than it proposed and notified its customers that it planned to put in effect in order to recover the pass through fee.

Working Capital Allowance

The ED did not provide a recalculation of working capital allowance. Taking into account the applicable rule,⁶ the PFD, and the ED's recalculations, the working capital allowance should be \$5,816.⁷ The revised proposed order reflects this amount. It is not clear to me if the inclusion of this working capital amount requires additional recalculation, so I recommend none at this time.

Recalculation Exceptions

As I requested in the PFD, the ED included in his exceptions recalculations of certain items based on the PFD and the record. Three of the recalculations are disputed by BFE. Generally, I recommend that the Commission sustain the ED's recalculation exceptions. In the revised proposed order, however, I have made minor changes to the ED's recalculations in order to round off to the nearest dollar and correctly total each column in the Depreciation Analysis in Finding of Fact No. 20.

Because I did not find in the PFD that the original cost of certain capital items should be increased by 10% to account for related engineering services, the ED's recalculations removed those 10% increases. BFE contends that the ED mistakenly subtracted 10% from the original cost of a well pump, invoice number 00039390000. It claims that the \$35,903 original cost that Brian Dickey had previously recommended for that item did not include a 10% engineering fee adjustment. BFE is incorrect on this point. While Mr. Dickey did not specially mention in his testimony that he added 10% for engineering,⁸ other evidence shows that he added it. As shown in Bret Fenner's testimony, the original cost of the well pump was \$32,638.66, or \$32,639 after rounding.⁹ Thus, Mr. Dickey added an additional 10%,¹⁰ which the ED's recalculation correctly removed.

BFE also claims that depreciation expense and normalized federal income tax expense needs to be recalculated once again. That exception appears to be based on BFE's incorrect argument concerning the well pump.

The ED's recalculations do not require adjustment of BFE's proposed rates. Given that, the revised proposed order would approve the rates proposed by BFE.

⁶ 30 Tex. Admin. Code. §291.31(c)(2)(C).

⁷ (57622-142-7312-3641)/8=5815.875

⁸ ED Ex. BDD 12.

⁹ BFE Ex. 2 at 28-29. I recommend rounding to the nearest dollar in accord with the ED's recalculations.

¹⁰ \$32,638.66*1.1=\$35,902.526.

Rate Case Expense Surcharge

BFE objects to my proposals to disallow \$2,973 that it claims as legal expenses for the rate case and \$1,200 that it claims as City-related rate case expenses. BFE also objects to my proposal to allow it to recover its rate case expenses through a connection surcharge over 60 months, or until fully collected. BFE contends the recovery period should not be longer than three years. These issues are thoroughly discussed in the PFD, and I have nothing more to add. I recommend that the Commission overrule BFE's exceptions on these points.

In his exceptions, the ED verifies my conclusion in the PFD that BFE will need to surcharge each connection \$79.93 per month for 60 months to recover its \$167,844.13 of rate-case expenses that were reasonable, necessary, and in the public interest. This recommended surcharge is in the revised proposed order.

Under-collection Surcharge

In his exceptions, the ED also included calculations of the amounts of revenue that BFE lost because the rates that the City set and the interim rates that I set were lower than BFE originally proposed and the PFD recommends. The under-collection totaled \$27,167.39 as of September 13, 2013, and will increase by \$442.36 per month until a final order is issued. To recover the under-collection, BFE would need to levy a surcharge of \$32.34 per connection per month for 24 months or \$21.56 per connection per month for 36 months. No party disputes the ED's surcharge calculations.

The ED recommends allowing BFE to recover the under-collection over 24 months, roughly the same period of time the rates set by the City were in effect, which is typical Commission practice. I agree with the ED's recommendation on this point, and the revised proposed order reflects it.

Sincerely,



WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE

WGN/Ls
Enclosures
cc: Mailing List

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER GRANTING, IN PART, THE APPEAL BY BFE WATER COMPANY OF
THE RATEMAKING ACTION OF THE CITY OF CRESSON IN PARKER COUNTY;
APPLICATION NO. 37311-A;
TCEQ DOCKET NO. 2012-0786-UCR;
SOAH DOCKET NO. 582-12-6250**

On _____, the Texas Commission on Environmental Quality (Commission) considered the appeal by BFE Water Company (BFE) of the ratemaking action of the City of Cresson in Parker County, Application No. 37311-A. A Proposal for Decision (PFD) was presented by William G. Newchurch, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the appeal on April 2-3, 2013, in Austin, Texas.

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Commission has issued Certificate of Convenience and Necessity (CCN) No. 12899 to "BFE Development Corporation dba BFE Water Company," which authorizes BFE to provide retail water utility services to customers in a portion of the City of Cresson, Texas (Cresson or City).
2. On January 27, 2009, BFE filed with Cresson an application to change its rates (Previous Application).

3. On September 8, 2009, the Cresson City Council voted to take no action on the Previous Application; and on October 7, 2009, Cresson's mayor formally informed BFE that the City Council's vote would allow BFE to submit its application directly to the Commission.
4. Based on the above Finding of Fact, Cresson concluded that it did not have jurisdiction over the Previous Application, dismissed it, and directed BFE to file a corrected application with the Commission.
5. As advised by Cresson, on October 6, 2009, BFE filed with the Commission a corrected application, proposing to increase its water rates effective January 16, 2010 (Application).
6. Subsequently, the Commission staff concluded that it had accepted the Application in error because Cresson had not adopted an ordinance relinquishing the City's original jurisdiction to the Commission before the Application was filed.
7. On June 11, 2010, the Commission staff forwarded the Application to Cresson.
8. On February 21, 2011, Cresson began to exercise jurisdiction over the Application and scheduled a preliminary hearing for March 7, 2011.
9. On August 23, 2011, Cresson ordered BFE to deposit into an escrow account all monies received or to be received from the sale of water after May 31, 2011, that was attributable to any increase in rates in effect prior to January 16, 2010. Cresson amended that escrow order on September 13, 2011.
10. On January 12, 2012, Cresson set interim rates for BFE that were lower than the rates BFE had proposed in the Application.

11. On January 24, 2012, Cresson's City Council issued a final order fixing BFE's rates. The final rates were lower than those BFE had proposed in the Application. Additionally, Cresson denied BFE's request to recover its expenses of seeking the rate increase; disbursed to BFE's customers funds in the escrow account into which the City had previously ordered BFE to deposit rate-increase collections; and ordered BFE to refund to its customers the amounts, plus 4.0% interest, that BFE had collected that exceeded the rates the City finally set.
12. On March 13, 2012, BFE filed this appeal asking the Commission to review Cresson's actions setting BFE's rates based on the Application.
13. BFE served copies of the appeal on Cresson, Harold Scott Perdue, and the Bourland Field Estates Homeowners' Association, Inc.
14. On May 9, 2012, the appeal was referred to SOAH for hearing.
15. On May 11, 2012, the Commission's Chief Clerk mailed notice of a preliminary hearing to BFE; Cresson; Harold Scott Perdue; the Bourland Field Estates Homeowners' Association, Inc.; the Commission's Executive Director (ED); and the Commission's Office of Public Interest Counsel (OPIC).
16. On June 7, 2012, the ALJ held a preliminary hearing as indicated in the notice, found that the Commission and SOAH had jurisdiction to consider the appeal, and admitted the following parties:

PARTY	REPRESENTATIVE
BFE	Lambeth Townsend & Eileen McPhee
ED	Kayla Murray
OPIC	Scott Humphrey
Cresson	Ron Becker
Harold Scott Perdue and the Bourland Field Estates Homeowners' Association, Inc.	Harold Scott Perdue

17. On May 30, 2012, BFE also filed a motion to set interim rates, in accordance with 30 Texas Administrative Code § 291.29(d). After considering that motion at the preliminary hearing in accordance with the process set out in § 291.29, the ALJ granted the motion on June 8, 2012.
18. The following tables summarize BFE’s rates and fees in effect before BFE filed the October 6, 2009 Application, the rates and fees BFE proposed in that Application, the interim and final rates and fees the City approved, and the interim rates and fees set by the ALJ that are now in effect:

MONTHLY BASE RATES INCLUDING 0 GALLONS (per residential meter diameter)					
	Previous	BFE’s Requested	City’s Interim	City’s Final	ALJ’s Interim
5/8 or 3/4 inch	\$24.00	\$38.50	\$24.62	\$15.72	\$35.22
1 inch	\$40.00	\$96.25	\$61.54	\$47.93	\$87.72
1 ½ inch	\$80.00	\$192.50	\$80.00	\$80.00	\$175.22
2 inch	\$128.00	\$308.00	\$128.00	\$128.00	\$280.22
3 inch	\$240.00	\$673.20	\$240.00	\$240.00	\$612.22
4 inch	\$400.00	NA	\$400.00	\$400.00	NA

GALLONAGE CHARGES (per 1,000 gallons)					
	Previous	BFE’s Requested	City’s Interim	City’s Final	ALJ’s Interim
First 5,000 gallons	\$2.00	\$3.22	2.00	\$2.81	\$3.00
Next 10,000 gallons	\$2.00	\$3.72	2.00	\$2.81	\$3.00
Next 15,000 gallons	\$3.25	\$4.22	3.25	\$3.31	\$3.50
After 30,000 gallons	\$4.00	\$4.22	4.00	\$3.81	\$4.00

MISCELLANEOUS FEES					
	Previous	BFE's Requested	City's Interim	City's Final	ALJ's Interim
Tap fee	\$500.00	\$500.00	\$500.00	\$500.00	NA
Reconnect fee, non-payment	\$25.00	\$25.00	\$25.00	\$25.00	NA
Reconnect fee, customer request	\$40.00	\$40.00	\$40.00	\$40.00	NA
Transfer fee	\$35.00	\$35.00	\$35.00	\$35.00	NA
Late charge	10%	10%	\$5.00	\$5.00	NA
Return check charge	\$25.00	\$25.00	\$25.00	\$25.00	NA
Deposit	\$50.00	\$50.00	\$50.00	\$50.00	NA
Meter test fee	\$25.00	\$25.00	\$25.00	\$25.00	NA

19. The test year for the October 6, 2009 Application is January 1 through December 31, 2008.

20. The following table summarizes BFE's invested capital used and useful to provide retail water service during the test year. For each capital asset, the table lists the acquisition date, the percentage used and useful to provide retail water service, reasonable original cost, expected economic life, actual depreciated life, annual depreciation, accumulated depreciation, and net plant value:

DEPRECIATION ANALYSIS								
Description	Acquired Date	Used & Useful	Original Cost	Economic Life (years)	Actual Depreciated Life (years)	Annual Deprec.	Accum. Deprec.	Net Plant
Land		100%	\$0	n/a	n/a	n/a	n/a	\$0
Water well	15-Oct-98	100%	\$75,891	50	10.21	\$1,518	\$15,500	\$60,391
40 hp 150 gpm well pump	15-Oct-98	100%	\$21,996	10	10.21		\$21,996	\$0
Well pump invoice No. 00039390000	15-Sep-08	100%	\$32,639	10	0.29	\$3,264	\$956	\$31,683

Booster pump 5 hp	15-Oct-98	100%	\$800	5	10.21		\$800	\$0
Booster pump 5 hp	15-Oct-98	100%	\$800	10	10.21		\$800	\$0
Booster pump 2 hp	15-Oct-98	100%	\$400	10	10.21		\$400	\$0
Hypochlorinator	15-Oct-98	100%	\$350	10	10.21		\$350	\$0
Masonry pump house	15-Oct-98	100%	\$6,402	30	10.21	\$213	\$2,179	\$4,223
Ground storage 84,000 gallons	15-Oct-98	44%	\$11,884	50	10.21	\$238	\$2,427	\$9,457
Pressure tank 500 gallons	15-Oct-98	100%	\$1,200	50	10.21	\$24	\$245	\$955
Pressure tank 500 gallons	15-Oct-98	100%	\$1,200	50	10.21	\$24	\$245	\$955
Pressure tank 500 gallons	15-Oct-98	100%	\$1,200	50	10.21	\$24	\$245	\$955
Distribution system	15-Oct-98	100%	\$76,341	50	10.21	\$1,527	\$15,592	\$60,748
Fire hydrants	15-Oct-98	100%	\$6,000	50	10.21	\$120	\$1,225	\$4,775
4-inch well collection line	15-Oct-98	100%	\$213	50	10.21	\$4	\$43	\$169
Water plant piping	15-Oct-98	100%	\$2,000	50	10.21	\$40	\$408	\$1,592
Electrical	15-Oct-98	100%	\$3,500	30	10.21	\$117	\$1,191	\$2,309
Meters	15-Oct-98	0%	\$0	20	10.21	\$0	\$0	\$0
Double service connection	15-Oct-98	0%	\$0	20	10.21	\$0	\$0	\$0
Single service connection	15-Oct-98	0%	\$0	20	10.21	\$0	\$0	\$0
Fencing and gates	15-Oct-98	100%	\$3,600	20	10.21	\$180	\$1,838	\$1,762
Compressor	15-Oct-98	100%	\$400	20	10.21	\$20	\$204	\$196
TOTALS			\$246,816			\$7,313	\$66,644	\$180,170

21. There are six fire hydrants on BFE's system. The fire hydrants are used and useful as valves to flush BFE's water system, which is necessary to provide water utility service.

22. During the peak month of the test year, July 2008, BFE's 35 customers used 1,135,200 gallons of water, which is an average of 36,619 gallons per day. This is a very high consumption pattern.
23. BFE needs at least 36,619 gallons of storage capacity to meet its customers' demand for water.
24. Forty-four percent, or 36,619 gallons, of the capacity of BFE's 84,000-gallon water storage tank is necessary, used, and useful to provide water utility service.
25. The remaining 56%, or 47,381 gallons, of the capacity of BFE's 84,000-gallon water storage tank is not necessary, used, and useful to provide water utility service.
26. The costs of BFE's meters and double- and single-service connections are recovered through tap fees rather than rates.
27. BFE did not use developer-contributed or other forms of cost-free capital to provide retail water service.
28. BFE has no debt. No portion of the cost of BFE's invested capital is due to the cost of debt.
29. BFE's reasonable rate of return on its invested capital is 11.25% because:
 - a. The average return for a highest risk, Baa-rated public-utility bond during the test year was 7.25%;
 - b. The risk to BFE's capital is higher because it is a small utility serving fewer than 200 connections and a slowly growing area;

- c. BFE had no major deficiencies in its most recent inspection and no current enforcement actions within the three-year period including the test year; and
 - d. BFE has made good-faith efforts to solve any current problems.
30. BFE’s reasonable and necessary federal income tax expense should be calculated as a known and measurable change based on its adjusted test year revenue determined in this appeal, less expenses, and using the lowest business tax rate of 15% published by the Internal Revenue Service.
31. The reasonable and necessary federal income tax expense that should be included in BFE’s cost of service is \$3,641.
32. BFE realized \$500 during the test year from tap fees, which should be subtracted from the amount of BFE’s revenue requirement that is recoverable through rates.
33. The following table summarizes BFE’s necessary and reasonable costs of services during the test year as adjusted for known and measurable changes:

Item	Amount
Salaries	\$0
Contract services	\$9,852
Chemicals & treatment	\$5,772
Utilities	\$4,877
Repairs & maintenance	\$3,546
Office expense	\$286
Accounting and legal	\$876
Insurance	\$410
Miscellaneous	\$275
Ad valorem taxes	\$142
Depreciation	\$7,312
Return on invested capital	\$20,633
Federal income tax - normalized	\$3,641
Total cost of service	\$57,622
Other revenues – tap fees	(\$500)
Net recoverable from rates	\$57,122

34. In accordance with 30 Texas Administrative Code § 291.31(c)(2)(C)(iii), BFE’s necessary and reasonable cost of service should include a working-capital allowance of one-eighth of BFE’s total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments (operations and maintenance expense does not include depreciation, other taxes, or federal income taxes).
35. BFE’s working-capital allowance should be \$5,816.
36. The following table summarizes the average number of BFE’s customers in each meter-size category and their equivalents during the test year:

CALCULATION OF EQUIVALENTS			
Meter size	Connections	Multiplier	Equivalents
5/8 or 3/4 inches	32	1.00	32
1 inch	3	2.50	7.5
1 ½ inch	0	5.00	
2 inch	0	8.00	
3 inch	0	15.00	
4 inch	0	25.00	

37. The following table segregates BFE’s allowable costs-of-service items into fixed costs, which should be recovered through base rates, and variable costs, which should be recovered through gallonage charges:

FIXED AND VARIABLE COSTS		
Item	Fixed (%)	Variable (%)
Salaries	50	50
Contract services	90	10
Chemicals & treatment	0	100
Utilities	0	100
Repairs & maintenance	50	50
Office expense	50	50
Accounting and legal	100	0
Insurance	100	0
Miscellaneous	50	50
Ad valorem taxes	100	0
Depreciation	100	0
Return on invested capital	60	40
Federal income tax - normalized	60	40
Rate-case expense	50	50
Other revenues – tap fees	60	40

38. In setting BFE’s rates, Cresson denied BFE’s request to levy a 10% charge on each customer who pays a bill late and instead authorized BFE to collect a \$5.00 late charge.

39. Since the January 16, 2010 effective date and through September 13, 2013, BFE has lost \$27,167.39 of revenue because the rates and fees Cresson set and the interim rates the ALJ set were lower than the final rates approved in this Order. BFE also lost an additional \$442.36 per month between September 13, 2013, and the date that this order was issued.

40. In the proceedings before Cresson, SOAH, and the Commission concerning its October 6, 2009 Application to increase its water rates effective January 16, 2010, BFE incurred \$167,844.13 in rate-case expenses that were reasonable, necessary, and in the public interest: \$159,486.55 in legal fees, which were incurred beginning in February 2011 and include the cost of the transcript of the hearing on the merits; and \$8,357.58 for consulting services.

II. CONCLUSIONS OF LAW

1. BFE is a retail public utility. Tex. Water Code §§ 13.002(19) and 13.002(23).
2. The Commission has jurisdiction to hear and decide BFE's appeal of the decisions of Cresson concerning the water rates BFE may charge. Tex. Water Code § 13.043(a).
3. SOAH has jurisdiction to conduct a contested case hearing and issue a proposal for decision in this case. Tex. Gov't. Code ch. 2003.
4. Proper notices of the appeal and hearing were given. Tex. Gov't Code §§ 2001.051 and 2001.052; 30 Tex. Admin. Code § 291.41.
5. BFE has the burden of proof on all issues in this case. Tex. Water Code § 13.184(c).
6. BFE has not filed a second application to change its rates in violation of Texas Water Code § 13.187(p).
7. Rates are based on a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. 30 Tex. Admin. Code § 291.31(a) & (b).
8. Under 30 Texas Administrative Code § 291.31(c), the return on invested capital is the rate of return times invested capital.
9. The invested capital amounts set forth in the Findings of Fact reflect the reasonable original cost of property used by and useful to BFE in providing service, less depreciation. Tex. Water Code § 13.185.

10. The rate of return set forth in the Findings of Fact will yield a fair, but no greater, return on the invested capital used and useful in rendering service to the public and considers the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management. Tex. Water Code § 13.184(a) & (b); 30 Tex. Admin. Code § 291.31(c)(1)(B).
11. The depreciation expenses set forth in the Findings of Fact are based on BFE's original costs and computed on a straight line basis over the useful life of each asset over the expected or remaining life of the asset. 30 Tex. Admin. Code § 291.31(b)(1)(B).
12. The federal income tax expense set forth in the Findings of Fact is calculated on a normalized basis. 30 Tex. Admin. Code § 291.31(b)(1)(C) & (D).
13. The costs of service set forth in the Findings of Fact are BFE's reasonable and necessary operating expenses incurred during the test year as adjusted for known and measurable changes. Tex. Water Code §§ 13.002(22), 13.183 and 13.185; 30 Tex. Admin. Code § 291.31(a) and (b).
14. The costs of service set forth in the Findings of Fact are sufficient to provide BFE with a reasonable opportunity to earn a fair and equitable return on its invested capital while preserving its financial integrity. Tex. Water Code §§ 13.183 and 13.184.
15. Commission rule 30 Texas Administrative Code § 291.87(c) allows a utility to charge either \$5.00 or 10% for late payment of a bill and does not restrict a utility's choosing one or the other.
16. BFE's late charge should be 10% of the unpaid bill, as BFE has chosen in accordance with 30 Texas Administrative Code § 291.87(c).

17. The evidence does not show that Texas Water Code § 13.185(f) applies to BFE for purposes of calculating its allowable federal income tax expense.
18. In accordance with Texas Water Code §§ 13.182, 13.189, and 13.190, the following rates and fees for BFE are just; reasonable; not unreasonably preferential, prejudicial, or discriminatory; sufficient; equitable; and consistent in application to each class of customers and should be approved:

MONTHLY BASE RATES INCLUDING 0 GALLONS (residential per meter diameter)	
5/8 or 3/4 inches	\$38.50
1 inch	\$96.25
1 ½ inch	\$192.50
2 inch	\$308.00
3 inch	\$577.50

GALLONAGE CHARGES (per 1,000 gallons)	
First 5,000 gallons	\$3.22
Next 10,000 gallons	\$3.72
Next 15,000 gallons	\$4.22
After 30,000 gallons	\$4.22

MISCELLANEOUS FEES	
Tap fee	\$500.00
Reconnect fee, non-payment	\$25.00
Reconnect fee, customer request	\$40.00
Transfer fee	\$35.00
Late charge	10%
Return check charge	\$25.00
Deposit	\$50.00
Meter test fee	\$25.00

19. The above rates and fees are the rates and fees Cresson should have fixed in the action from which BFE appealed. Tex. Water Code § 13.043(a).

20. In accordance with 30 Texas Administrative Code § 291.28(7), the rate-case expenses, including attorney fees, set forth in the Findings of Fact are reasonable, necessary, and in the public interest.
21. Because the rates and fees Cresson set and the interim rates the ALJ set were lower than the rates BFE proposed and the Commission approves in this Order, BFE should be allowed to levy a surcharge of \$32.24 per connection per month until it fully recovers the \$27,167.39 of revenue that it lost through September 13, 2013, and the additional \$442.36 per month that it lost from September 13, 2013, until this Order was adopted. Additionally, BFE should be authorized to levy a surcharge of \$79.93 per month per connection until it has recovered its \$167,844.13 of rate-case expenses, including attorney fees, that are reasonable, necessary, and in the public interest.
22. In accordance with 30 Texas Administrative Code §§ 291.29(i) and 291.41(e)(4), BFE should be allowed to recover in a reasonable number of monthly installments the revenue that it lost because the rates Cresson set and the interim rates the ALJ set were lower than the final rates that are approved in this Order.

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

1. BFE's appeal is granted in part.
2. BFE's rates and fees are approved as set out below:

MONTHLY BASE RATES INCLUDING 0 GALLONS (residential per meter diameter)	
5/8 or 3/4 inches	\$38.50
1 inch	\$96.25
1 ½ inch	\$192.50
2 inch	\$308.00
3 inch	\$577.50

GALLONAGE CHARGES (per 1,000 gallons)	
First 5,000 gallons	\$3.22
Next 10,000 gallons	\$3.72
Next 15,000 gallons	\$4.22
After 30,000 gallons	\$4.22

MISCELLANEOUS FEES	
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Reconnect fee, customer request	\$40.00
Transfer fee	\$35.00
Late charge	10%
Return check charge	\$25.00
Deposit	\$50.00
Meter test fee	\$25.00

3. BFE is authorized to levy a surcharge of \$32.34 per month per connection until it has recovered the \$21,167.39 of revenue that it lost through September 13, 2013, and the additional \$442.36 per month of revenue that it lost from September 13, 2013, until this Order was adopted because the rates Cresson set and the interim rates the ALJ set were lower than the final rates approved in this Order.

4. BFE is authorized to levy a surcharge of \$79.93 per month per connection until it has recovered its \$167,844.13 of rate-case expenses, including attorney fees, that are reasonable, necessary, and in the public interest.

5. BFE shall file a tariff reflecting the rates approved by the Commission within 10 days of the date of this Order.
6. BFE shall notify customers by mail of the final rate structure within 30 days of the date of this Order and shall include the statement required by 30 Texas Administrative Code § 291.28(5) along with the first bill to customers implementing the rates approved by this Order.
7. The effective date of this Order is the date the Order is final, as provided by Texas Government Code § 2001.144 and 30 Texas Administrative Code § 80.273.
8. 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.
9. If any provision, sentence, clause, or phase 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.
10. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order and tariff to the parties.

Issue Date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., Chairman
For the Commission

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

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SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: BFE WATER COMPANY
SOAH DOCKET NUMBER: 582-12-6250
REFERRING AGENCY CASE: 2012-0786-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ WILLIAM G. NEWCHURCH**

REPRESENTATIVE / ADDRESS

PARTIES

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BOURLAND FIELD ESTATES HOMEOWNERS'
ASSOCIATION, INC.

HAROLD SCOTT PERDUE

Liz Slick

From: XMediusFAX@soah.state.tx.us
Sent: Wednesday, September 18, 2013 9:27 AM
To: Liz Slick
Subject: Broadcast Completed: ALJ EXCEPTIONS LTR - DKT. #582-12-6250
Attachments: 59FFE36F-6E09-4B8C-ABE4-2DB74280AB8E-18150-BR.pdf

Time Submitted : Wednesday, September 18, 2013 9:18:52 AM CT
Time Completed : Wednesday, September 18, 2013 9:27:11 AM CT
Nb of Success Items : 4
Nb of Failed Items : 0

Status	Time Sent	Pages Sent	Duration	Remote CSID	Destination	Error Code
Success	Wednesday, September 18, 2013 9:23:06 AM CT	24	251	512 239 1232	5122390606	0
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Success	Wednesday, September 18, 2013 9:23:26 AM CT	24	257	5122395533	5122395533	0
Success	Wednesday, September 18, 2013 9:27:01 AM CT	24	488		5124720532	0