

SOAH DOCKET NO. 582-12-6250
TCEQ DOCKET NO. 2012-0786-UCR

APPEAL OF THE CITY OF CRESSON'S § BEFORE THE
ORDER SETTING RATES FOR BFE § STATE OFFICE OF
WATER COMPANY § ADMINISTRATIVE HEARINGS

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BFE WATER COMPANY'S REPLIES TO EXCEPTIONS
TO THE PROPOSAL FOR DECISION

BFE Water Company ("BFE" or "Company") files these replies to exceptions filed by the Executive Director of the Texas Commission on Environmental Quality ("ED"), the City of Cresson ("Cresson"), and the Bourland Fields Estates Homeowners' Association and Harold Scott Perdue ("HOA/Perdue").

1. Engineering Fees

BFE agrees with the ED's argument regarding engineering fees.¹ The ED has recalculated the items in question, however, per the ALJ's request.² BFE does not dispute the accuracy of the ED's calculations as provided on Attachment A, except for one item. On Mr. Dickey's original depreciation analysis attached to his prefiled testimony, Mr. Dickey did not indicate that he added 10% engineering fees to the rate base item "well pump invoice No. 00039390000."³ That item was assigned an original cost of \$35,903 in Mr. Dickey's original depreciation analysis. However, in Attachment A to the ED's Exceptions, the same item is valued at \$32,639 instead of \$35,903. It appears that in complying with the PFD's request to calculate plant without the 10% engineering fees, the ED accidentally subtracted a 10% fee he

¹ The Executive Director's Exceptions to the Proposal for Decision and Proposed Order ("ED Exceptions") at 2.

² *Id.* and ED Exceptions at Attachment A.

³ ED Exh. BDD-12.

never added on in his original depreciation analysis. With that error corrected, BFE's total original cost of the facilities is \$250,080 and the net plant is \$183,338.

BFE provides an alternative calculation should the ALJ or the Commission determine the 10% legal fees should be included in BFE's rate base as the ED and BFE request.⁴ BFE notes that under this alternative calculation, the ground storage tank has been calculated at 44% used and useful. BFE does not concede that the tank is anything less than 100% used and useful. However, should the ALJ or Commission determine the tank is only 44% useful, the alternative calculations provide a picture of rate base with the engineering fees included. With the ALJ's adjustment for the tank but including the cost for engineering, BFE's original cost of plant is \$261,435 and a net plant of \$190,263.

2. Recommended Rates

BFE agrees with the ED's conclusion that the ED's recalculations per request from the ALJ do not change the fact that the revenue requirement for the Company is well above the requested rates. BFE agrees with the ED that BFE's proposed rates should be adopted.⁵

3. Lost Revenue Surcharge

BFE agrees with the calculations provided by the ED regarding the lost revenue surcharge.⁶

4. Pass Through Fee

BFE agrees with the ED that the pass through fee for the Upper Trinity Groundwater Conservation District of \$0.22 should be a separate line item on the customers' bills.⁷

⁴ Attachment 1 to these Replies to Exceptions.

⁵ ED Exceptions at 2.

⁶ ED Exceptions at 2-3 and Attachment C.

⁷ ED Exceptions at 3.

5. Income Tax

In light of the correction identified with BFE regarding rate base, the income tax calculation provided by the ED will also need to be recalculated.

6. BFE's Rate Filings

Both the City and HOA/Perdue resurrect arguments that BFE impermissibly filed two rate applications in 2009.⁸ These arguments have already been considered and rejected by the ALJ in the PFD.⁹ City and HOA/Perdue raise no new arguments not already considered and rejected by the ALJ. The ALJ was correct to determine that the City's and the HOA's jurisdictional challenges should be overruled.¹⁰

7. Assumed Name Certificate

The City also reurges previously rejected arguments regarding BFE's assumed name certificate.¹¹ The City has presented no new evidence or authorities in support of its argument. The ALJ appropriately analyzed and rejected Cresson's argument in the PFD. The City's exception should be denied.¹²

8. Return

Both the City and HOA/Perdue argue that BFE is not entitled to a return because they consider BFE's plant to be developer contributed.¹³ Again, neither the City nor HOA/Perdue raise any new evidence or any new arguments to support their positions. The ALJ appropriately

⁸ The City of Cresson's Exceptions and Briefs to the Proposal for Decision and Order by the State Office of Administrative Hearings ("Cresson's Exceptions") at 1-3; BFE HOA and Perdue Exception and Briefs to the Proposal for Decision and Order by the State Office of Administrative Hearings ("HOA/Perdue Exceptions") at 1-3.

⁹ PFD at 9-13.

¹⁰ PFD at 9.

¹¹ Cresson's Exceptions at 4-5.

¹² PFD at 9.

¹³ Cresson's Exceptions at 5-6; HOA Exceptions at 4-5.

weighed the evidence and concluded that none of BFE's plant was developer contributed. As the ALJ aptly noted in the PFD, "[t]here is far too little evidence to prove or infer that Mr. Bourland or BFE gave away hundreds of thousands of dollars of assets in this way."¹⁴ The City and HOA/Perdue's exceptions cannot overcome the complete lack of evidence to support their arguments and should be denied.

~~Additionally, the City raises a completely new argument in its exceptions—that the recommended return on equity for BFE should be reduced by 1% because the City contends the utility does not serve a low growth area.¹⁵ First, this argument is untimely. The return on equity recommended by the PFD is that recommended by ED witness Debi Loockerman in her direct testimony filed in March.¹⁶ The City presented no testimony on this issue and did not brief this issue in closing arguments.~~

Additionally, the City does not present record citations to the evidence it alleges supports its argument. Ms. Loockerman determined that BFE is a low growth utility with growth: "D-2a. less than 5% customer growth over the last three years; OR b. documentation of potential anticipated future customer growth of less than 5% over a three year period; declining population."¹⁷ The City's math urging otherwise is simply incorrect. The City focuses on the growth in meters during 2009. Assuming the City's numbers are correct, that growth is equal to 5.7%. However, that is the growth for only one year—not three years as alleged by the City. The City completely ignores that by the numbers provided by the City, growth in 2010 was 0%.¹⁸ The growth for 2008 was only 2.9%. Therefore, for the three year period from 2008-2010, BFE

¹⁴ PFD at 36.

¹⁵ Cresson's Exceptions at 7-8.

¹⁶ ED Exh. DL-11.

¹⁷ *Id.*

¹⁸ Cresson's Exceptions at 8.

experienced only 2.87% growth. 2.87% is less than 5%; thus, BFE qualifies as a low growth utility.

Because its arguments are untimely, unsupported, and inaccurate, the City's exception should be denied.

9. New Argument by Cresson Regarding Billing Units for Purpose of the Rate Case Expense Recovery Surcharge

In its exceptions, the City for the very first time, makes the argument that there should be a known and measurable change to the number of meters from 35 to 37.¹⁹ This argument is untimely, as it is raised for the very first time in the City's Exceptions and was not raised in testimony, at hearing, nor in closing argument. Additionally, the City fails to provide a record citation to support its contentions. Accordingly, the City's exception should be denied.

10. Fire Hydrants

The City and HOA/Perdue argue that the ALJ was incorrect to include fire hydrants in BFE's rate base.²⁰ The City and the HOA/Perdue raise no new arguments or evidence for exclusion of these items from rate base. The ALJ correctly considered and rejected the City's and HOA/Perdue's arguments. The City's own exceptions admit that the fire hydrants are used to flush the system.²¹ The ALJ was correct to rely on the only expert evidence in the record on this matter—the testimony of Mr. Fenner and Mr. Dickey and to conclude that the fire hydrants are used and useful in providing retail water utility service.²² The City's and HOA/Perdue's exceptions should be denied.

¹⁹ Cresson's Exceptions at 6-7.

²⁰ Cresson's Exceptions at 7; HOA/Perdue Exceptions at 5-6.

²¹ Cresson's Exceptions at 7.

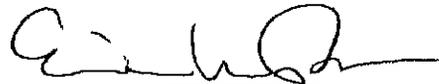
²² PFD at 26.

CONCLUSION

BFE appreciates the thoughtful consideration provided by the ALJ in this matter. BFE would respectfully request entry of an order consistent with BFE's Exceptions to the Proposal for Decision and with this Reply to Exceptions. BFE respectfully requests any and all further relief to which it is duly entitled.

Respectfully submitted,

LLOYD GOSSELINK
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5830
Facsimile: (512) 472-0532



LAMBETH TOWNSEND
State Bar No. 20167500

EILEEN MCPHEE
State Bar No. 24060273

ATTORNEYS FOR BFE WATER COMPANY

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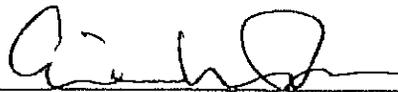
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TCEQ, Office of the Chief Clerk
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Via Electronic Mail

Bias Coy
TCEQ, Office of Public Interest Counsel
P. O. Box 13087, MC-103
Austin, Texas 78711-3087
Via Electronic Mail

Ron Becker
City of Cresson
123 Concorde Circle
Cresson, Texas 76035
Via Electronic Mail

Scott Perdue
Bourland Field Estates
Homeowners' Association
137 Constellation Drive
Cresson, Texas 76035
Via Electronic Mail

Kayla Murray
TCEQ, Office of the Executive Director
P. O. Box 13087, MC-173
Austin, Texas 78711-3087
Via Electronic Mail



EILEEN L. McPHEE

Description	Acquired Date	Claimed Economic Life, yrs	Claimed Original Cost	% Used and Useful	Ver./Est. Original Cost	Economic Life, yrs	Actual Deprec. Life	Annual Deprec.	Accum. Deprec.	Net Plant
Land		n/a			0	n/a	n/a	n/a		0
Water Well plus 10% engineering fees	15-Oct-98	50	\$83,480	100%	83,480	50	10.21	\$1,670	17,050	66,430
40 hp 150 gpm well pump plus 10% engineering fees	15-Oct-98	10	\$24,196	100%	24,196	10	10.21	--	24,196	0
well pump invoice no. 00439930000	15-Sep-08	10	\$35,903	100%	35,903	10	0.29	\$3,590	1,052	34,851
Booster pump 5 hp plus 10% engineering fees	15-Oct-98	5	\$880	100%	880	5	10.21	--	880	0
Booster pump 5 hp plus 10% engineering fees	15-Oct-98	10	\$880	100%	880	10	10.21	--	880	0
Booster pump 2 hp plus 10% engineering fees	15-Oct-98	10	\$440	100%	440	10	10.21	--	440	0
Hypochlorinator plus 10% engineering fees	15-Oct-98	10	\$385	100%	385	10	10.21	--	385	0
Masonry Pump House										
Ground Storage 21,000 gallons	15-Oct-98	30	\$6,402	100%	6,402	30	10.21	\$213	2,179	4,223
Pressure Tank 500 gallons plus 10% engineering	15-Oct-98	50	\$27,009	44%	11,884	50	10.21	\$238	2,427	9,457
Pressure Tank 500 gallons plus 10% engineering	15-Oct-98	50	\$1,320	100%	1,320	50	10.21	\$26	270	1,050
Pressure Tank 500 gallons plus 10% engineering	15-Oct-98	50	\$1,320	100%	1,320	50	10.21	\$26	270	1,050
Distrib. System	15-Oct-98	50	\$1,320	100%	1,320	50	10.21	\$26	270	1,050
Fire Hydrant	15-Oct-98	50	\$76,341	100%	76,341	50	10.21	\$1,527	15,592	60,748
4" Well Collection Line plus 10% engineering fees	15-Oct-98	50	\$6,000	100%	6,000	50	10.21	\$120	1,225	4,775
Water plant piping plus 10% engineering fees	15-Oct-98	50	\$234	100%	234	50	10.21	\$5	48	186
Electrical plus 10% engineering fees	15-Oct-98	50	\$2,200	100%	2,200	50	10.21	\$44	449	1,751
Meters	15-Oct-98	30	\$3,850	100%	3,850	30	10.21	\$128	1,311	2,539
Double Service Connection	15-Oct-98	20	\$6,900	0%	0	20	10.21	\$0	0	
Single Service Connection	15-Oct-98	20	\$6,600	0%	0	20	10.21	\$0	0	
Fencing and gates plus 10% engineering fees	15-Oct-98	20	\$3,960	100%	3,960	20	10.21	\$198	2,022	1,938
Compressor plus 10% engineering fees	15-Oct-98	20	\$440	100%	440	20	10.21	\$22	225	215
			\$290,358		\$261,435			\$7,833	\$71,171	\$190,263

ATTACHMENT
A



816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

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Documents Transmitted: TCEQ Docket No. 2012-0786-UCR, SOAH Docket No. 582-12-6250, TCEQ Application No. 37311-A, Appeal filed by BFE Water Company of the Ratemaking Action of the City of Cresson and Motion for Interim Rate Relief in Parker County

Comments: Please see attached BFE Water Company's Replies to Exceptions to the Proposal for Decision

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