

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

**RATE CASE EXPENSES SEVERED §
FROM GUD NO. 10083 § GAS UTILITIES DOCKET No. 10102
§**

FINAL ORDER

Notice of Open Meeting to consider this Order was duly posted with the Secretary of State within the time period provided by law pursuant to Tex. Gov't Code Ann. Chap 551, et seq. (Vernon 2004 & Supp. 2011). The Railroad Commission adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. Hughes Natural Gas, Inc. ("HNG" or "Hughes") is a gas utility as that term is defined in the Texas Utility Code.
2. HNG provides natural gas distribution service to approximately 3,500 customers within the City of Magnolia and its environs.
3. On June 2, 2011, HNG filed a Statement of Intent to Change Gas Distribution Rates in the unincorporated areas of Austin, Colorado, Grimes, Harris, Montgomery and Waller Counties, Texas, with the Railroad Commission of Texas ("Commission") and the case was docketed as GUD No. 10083.
4. On June 2, 2011, HNG also filed with the City of Magnolia ("City" or "Magnolia") a Statement of Intent to change gas distribution rates that would implement a system-wide new schedule of rates for natural gas service to all of the customers served by HNG within the City of Magnolia.
5. On June 14, 2011, the City of Magnolia denied HNG's rate request. An appeal of the City's action was filed at the Commission on June 20, 2011. The case was docketed as GUD No. 10093.
6. GUD Nos. 10083 and 10093 were consolidated on July 1, 2011, and all references in this Final Order to GUD No. 10083 include the consolidated docket GUD No. 10093.
7. Rate Case Expense issues were severed on July 18, 2011 and GUD No. 10102 was docketed on August 4, 2011.
8. The following entities intervened in GUD No. 10083: City of Magnolia, Staff of the Railroad Commission of Texas ("Staff") and Al E. Birdwell, Treasurer of the Village of New Kentucky POA.

9. The Commission issued a Final Order of Dismissal for GUD No. 10083 on January 10, 2012, which dismissed HNG's Statement of Intent for insufficiency of the filing and failing to meet its burden of proof on multiple issues.
10. All parties agree that the rate case expense issues in this proceeding are properly addressed through written filings and briefings.
11. HNG is foregoing recovery of rate case expenses related solely to Docket Nos. 10083 and 10102.
12. HNG is not seeking to defer any rate case expenses related solely to Docket Nos. 10083 and 10102.
13. The issue of the necessary and reasonableness of HNG's total fees and expenses of approximately \$553,146 for their Statement of Intent filing in GUD No. 10083 and the related rate case expense docket of GUD No. 10102 is moot.
14. All parties agree that the City of Magnolia's proposed actual and estimated rate case expenses are necessary and reasonable.
15. The Examiners reviewed all invoices supporting the rate case expenses by the City of Magnolia and find that the evidence demonstrates that the expenses submitted for reimbursement were necessarily incurred in the underlying docket and the rate case proceeding.
16. The City of Magnolia's witnesses established by a preponderance of the evidence that: the hourly rates charged by attorneys and consultants were necessary and reasonable; the number of attorneys and consultants working on the case was minimized; the invoices accurately documented hours worked and services provided; there were no time entries exceeding 12.0 hours per day; there were no double-billings or excess charges; there were no disbursements for any luxury items; there were no first-class air fare or use of non-commercial aircraft; there were no luxury hotel charges, limousine service or no meals in excess of \$25 per person; and there were no charges for sporting events, alcoholic drinks or other entertainment.
17. Stephen Mack, Attorney with the Lawton Law Firm, P.C., with 8 years of legal experience charged \$175 per hour.
18. Mr. Mack reduced his billing by 60% for the actual time spent on this case.
19. Daniel Lawton is the Owner Attorney of the Lawton Law Firm, P.C. and holds a Master's degree from Tufts University in Economics, billed at a rate of \$225 per hour.
20. Mr. Lawton has testified in numerous rate case proceedings in various jurisdictions at both the state and national level for over 25 years.

21. Mr. Lawton did not bill the City of Magnolia for time he spent working on the case prior to the preparation for the final hearing on the merits, which included the following tasks: reviewing discovery and motions, working with witnesses, participating in preliminary hearings and negotiations, and developing the City's issues.
22. The hourly rates charged by the Lawton Law Firm, P.C. for this docket are at the low end of a range of rates charged by firms in cases addressing utility rate matters.
23. The City's expert witnesses from Resolved Energy Consultants, LLC were Karl Nalepa and Bob Stemper.
24. Mr. Nalepa has a B.S. in Mineral Economics and an M.S. in Petroleum Engineering and has over 27 years of private and public sector experience as an energy economist.
25. Mr. Nalepa prepared written, pre-filed direct testimony and testified at the hearing on the merits related to the CapGas acquisition and affiliate transactions.
26. Mr. Nalepa bills at a rate of \$250 per hour for a total of 66.25 hours.
27. Mr. Nalepa agreed to reduce his charges by half for this proceeding and the 66.25 hours reflects this reduction.
28. Bob Stemper is a management consultant with over 35 years of experience as a regulator and consultant to the energy industry.
29. Mr. Stemper's expertise is in pricing, cost analysis, utility modeling, and regulatory matters.
30. Mr. Stemper provided analytical and technical services in the development of utility pricing and costs, analysis of demand side management programs, quantifying accounting adjustments, conducting competitive market assessments, and preparing and evaluating the revenue requirements of investor-owned utilities.
31. Mr. Stemper analyzed issues, prepared exhibits, and assisted in writing testimony.
32. Mr. Stemper bills at the rate of \$225 per hour and billed for 67.25 hours.
33. Mr. Stemper reduced his charges by half and the 67.25 hours reflects this reduction.
34. The Lawton Law Firm limited the amount of time in this proceeding and, even then, did not bill the City for all of the time spent on this case.
35. The Lawton Law Firm coordinated with the Commission Staff so as to prevent duplication of efforts.

36. The evidence shows that the Lawton Law Firm and the consulting experts reduced their billing and limited the issues and the amount of time and personnel reviewing and participating in the proceeding in an effort to keep rate case expenses down.
37. The amount of work done, as well as, the time and labor required to accomplish the work is reasonable given the nature of the issues addressed.
38. The work of the City's attorneys and consultants was commensurate with the proportional efforts necessary to participate in the case and the work was also relevant and reasonably necessary to the proceeding, given the complexity of the issues, the originality of the work, and the magnitude of the rate increase proposed.
39. The City of Magnolia has established that the requested rate case expenses in the total actual and estimated amount of \$43,483.38 are just and reasonable. Those expenses include:
 - a. City of Magnolia's requested actual rate case expenses of \$41,890.88 in actual expenses and fees; and
 - b. City of Magnolia's estimated future rate case expenses of \$1,592.50.
40. It is reasonable for the City to be reimbursed for the actual fees and expenses of \$41,890.88 incurred, and any estimated expenses should be reimbursed if, and when, they occur up to a remaining \$1,592.50.
41. HNG was instructed to reimburse the City of Magnolia \$37,778.38 by April 1, 2012 for expenses incurred in GUD No. 10083 and 90% of the City's monthly expenses for GUD No. 10102, until a final Commission determination on the necessary and reasonableness of the City's rate case expenses.
42. HNG is foregoing the portion of its own rate case expenses of approximately \$553,146 for GUD Nos. 10083 and 10102 that related solely to Docket Nos. 10083 and 10102.
43. Based upon the record in this case and GUD No. 10083, it is unreasonable to allow HNG to recover the City's rate case expenses with a surcharge to ratepayers in GUD No. 10083.
44. It is reasonable to require the City of Magnolia to file a report with the Commission and HNG within 90 days after the issuance of the Final Order in this docket that provides the invoices for the \$1,592.50 for estimated rate case expenses.

CONCLUSIONS OF LAW

1. Hughes Natural Gas, Inc. ("HNG" or "Hughes") is a "Gas Utility" as defined in TEX. UTIL. CODE ANN. § 101.003(7) (Vernon 2007 and Supp. 2011) and § 121.001 and is

therefore subject to the jurisdiction of the Railroad Commission (“Commission”) of Texas.

2. The Commission has jurisdiction over HNG and its statement of intent and appeals under TEX. UTIL. CODE ANN. §§ 102.001, 103.022, 103.054, & 103.055, 104.001, 104.001 and 104.201 (Vernon 2007 and Supp. 2011).
3. Under TEX. UTIL. CODE ANN. §102.001 (Vernon 2007 and Supp. 2011), the Commission has exclusive original jurisdiction over the rates and services of a gas utility that distributes natural gas in areas outside of a municipality and over the rates and services of a gas utility that transmits, transports, delivers, or sells natural gas to a gas utility that distributes the gas to the public.
4. This proceeding was processed in accordance with the requirements of the Gas Utility regulatory Act (GURA), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-2001.902 (Vernon 2000 and Supp. 2009) (APA).
5. In accordance with the stated purpose of the TEX. UTIL. CODE ANN., Subtitle A, expressed under TEX. UTIL. CODE ANN. § 101.002 (Vernon 2007 and Supp. 2011), the Commission has assured that the rates, operations, and services established in this docket are just and reasonable to customers and to the utilities.
6. In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to TEX. UTIL. CODE ANN. §103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Evidence must be provided related to, but not limited to, the amount of work done, the time and labor required to accomplish the work, the nature, extent, and difficulty of the work done, the originality of the work, the charges by others for work of the same or similar nature, and any other factor taken into account in setting the amount of the compensation. 16 TEX. ADMIN. CODE 7.5530(a).
7. In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out previously, and shall also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted. 16 TEX. ADMIN. CODE 7.5530(b).
8. The City of Magnolia established by a preponderance of the evidence its necessary and reasonable rate case expenses enumerated in the findings of fact herein and also established that they comply with 16 TEX. ADMIN. CODE 7.5530(a) and (b).
9. The Commission has the authority to require HNG to reimburse the City’s necessary and reasonable rate case expenses, and pursuant to § 104.051 to deny the utility the ability to

recover those expenses through a surcharge to rate payers, pursuant to TEX. UTIL. CODE ANN. §§ 103.022(b), 104.001 – 104.008, 104.051 (Vernon 2007 and Supp. 2011).

- 10. The Commission makes no determination on future recovery of rate case expense in a future docket. To the extent that HNG presents any consulting studies or other legal or consulting work for a 2012 rate filing, the Commission will make a determination in that docket whether such rate case expenses are reasonable and necessary to support that 2012 filing.

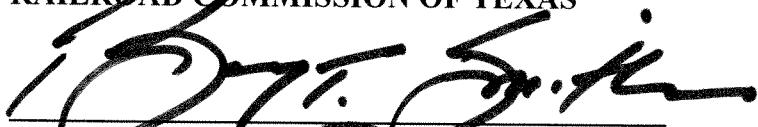
IT ORDERD that the City of Magnolia’s rate case expenses in the amount of \$43,483.38 be reimbursed by HNG and that no surcharge be assessed to ratepayers.

IT IS FURTHER ORDERED that City of Magnolia shall file a report with the Commission and HNG within 90 days after the issuance of the Final Order in this docket that provides the invoices for the \$1,592.50 for estimated rate case expenses.

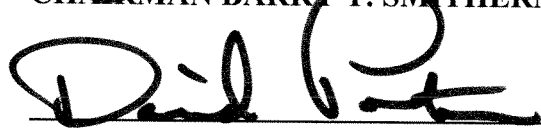
This Order will not be final and effective until 20 days after a party is notified of the Commission’s order. A party is presumed to have been notified of the Commission’s order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at interest, this order shall not become final and effective until such motion is overruled, or if such motion is granted, this order shall be subject to further action by the Commission. Pursuant to TEX. GOV’T CODE §2001.146(e), the time allotted for Commission action on a motion for rehearing in this case prior to its being overruled by operation of law, is hereby extended until 90 days from the date the order is served on the parties.

SIGNED this 17th day of July, 2012.

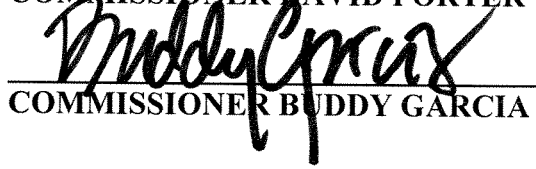
RAILROAD COMMISSION OF TEXAS



CHAIRMAN BARRY T. SMITHERMAN

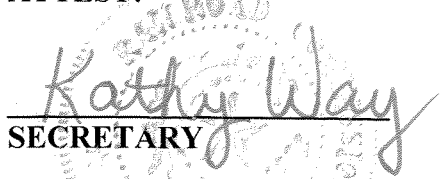
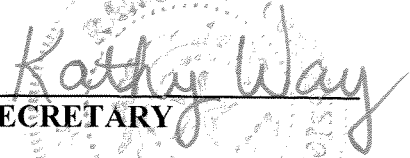


COMMISSIONER DAVID PORTER



COMMISSIONER BUDDY GARCIA

ATTEST:



SECRETARY