

RAILROAD COMMISSION OF TEXAS

**SEVERED RATE CASE EXPENSES
FROM DOCKET NO. 9810**

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GAS UTILITIES DOCKET NO. 9835

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. Chapter 551, et seq. (Vernon 1994 & Supp. 2008). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. Bluebonnet Natural Gas (“BNG”) is a gas utility as that term is defined in the Texas Utility Code.
2. BNG owns and operates a gas distribution system that distributes gas in the following municipalities: Devers, Mt. Enterprise, and Nome, Texas and its surrounding environs. BNG also operates systems in the following counties: Hardin, Jefferson, Liberty, Nacodoches, Rusk and Tyler.
3. On July 16, 2008, BNG filed a *Statement of Intent* requesting that the Railroad Commission of Texas (“Commission”) approve new rates for all customer classes within the areas served by BNG. BNG also filed *Statement of Intent* within the municipalities served by it.
4. The notice that was issued by BNG at the time the *Statement of Intent* was filed did not include a notice of the proposed surcharge related to rate case expenses and indicated that the proposed increase would not exceed \$219,991.
5. The proposed rate increase was approved and the final order was issued in the rate proceeding on November 28, 2008.
6. In order to allow BNG an opportunity to provide notice of the proposed surcharge to recover rate case expenses and review the reasonableness of the proposed rate case expenses, the Commission severed consideration of the proposed rate case expenses into a separate docket.

7. BNG requested recovery of rate case expenses in the amount of \$59,905.
8. BNG provided notice of the proposed increase due to the proposed rate case expense surcharge by U.S. Mail on December 17, 2008. BNG's publication of notice meets the statutory and rule requirements of notice for the proposed change in rates to recover rate case expenses.
9. A protest was filed with the Commission regarding the proposed rate increase on January 13, 2009. No motions to intervene were filed in this case.
10. A hearing was convened on March 3, 2009.
11. Of the total rate case expenses requested by BNG, \$21,991 is attributable to the preparation of the cost of service model.
12. BNG has not established that the amount of work done to prepare the cost of service model was reasonable.
13. The data submitted in the initial *Statement of Intent* to support the proposed increase was based upon three months of data that was annualized to estimate expenses over a twelve-month period.
14. After the case was filed, and in order to provide twelve months of data BNG submitted cost of service data for the six month period from June 2007 through December 2007, a period when Panther Natural Gas Company, Ltd. operated the gas utility system, and January 2008 through December 2008, a period when BNG operated the gas utility system.
15. Revising the cost of service study resulted in an additional expenditure of \$9,672.50. The additional expenditure was required because the original cost of service model did not include a full 12 months of test-year data.
16. It is reasonable to adjust the expense related to the preparation of cost of service model by \$9,672.50.
17. Matters easily delegable to non-professional or less experienced consultants and associates should not be billed at the same rate as matters that require the technical and legal expertise of highly skilled and experienced consultants and attorneys.
18. On several occasions BNG billed for copying and filing documents at the Commission by highly trained technical consultants at rates in excess of \$200 per hour.
19. It is reasonable to remove \$371.25 of the proposed rate case expenses related to copying and filing documents by highly trained and technical consultants.

20. BNG has not established that certain rates charged by a consultant employed by BNG were reasonable. The bills submitted by BNG reflect that the rate for one consultant varied from \$155 per hour to \$120 per hour.
21. The nature of the assigned tasks to this consultant did not change during the proceeding in GUD No. 9810.
22. Representatives of the consultants were aware of the different billing rates but declined to adjust the rate during the proceeding and concluded that a rate of \$120 per hour was reasonable.
23. It is not reasonable to bill \$155.00 per hour for tasks that the consultant concluded are reasonably billed at \$120.00. Adjusting the hours billed at \$155.00 to \$120.00 is reasonable and results in an adjustment of \$333.00
24. BNG made certain adjustments to the documentation submitted in support of its rate case expense request to remove billing for expenses unrelated to GUD No. 9810.
25. Those expenses were related to the day-to-day management of the utility, such as filing tariffs at the Commission and were expressly considered in the setting of BNG's rates in GUD No. 9810. Therefore, a separate surcharge for the recovery of those expenses is not required.
26. BNG's removal of those expenses is evidence of the reasonableness of excluding that category of expense.
27. BNG, however, did not remove all expenses related to those tasks and the billing records submitted in support of the rate case expense request reflect that BNG seeks recovery for expenses related to the filing of tariffs.
28. Specifically, an entry made on May 16, 2008, and one on May 29, 2008, reference the work related to the same category of expense that was previously removed by BNG. No adjustment was made by BNG to those billing entries. It is reasonable to adjust the expense associated with those entries by 0.75 hours and reduce the expenses requested by \$183.75.
29. The consultants raised billing rates in January of 2009. The proceeding was not concluded in 2008, to allow BNG an opportunity to properly notice the proposed rate case expense surcharge. As a result, any increase in billing rates would provide a benefit to BNG for its failure to properly notice the proposed surcharge. An adjustment of \$22.50 is reasonable to ensure that BNG does not recover expenses at the elevated rate.
30. Once the adjustments noted in Findings of Fact No. 11 through 29 above are made the total

rate case expense of \$46,077.50 and estimated rate case expenses of \$3,245 is reasonable.

31. As adjusted in Findings of Fact No. 11 through 29, the amount of work done was reasonable to prepare the cost of service study.
32. Except for the rates identified in Finding of Fact No. 20 through 23, BNG established that the rates the consultants charged was the same or similar in nature to the rates charged by other consultants.
33. BNG established that the proposed rate increase set out in the *Statement of Intent* was reasonable.
34. BNG substantially simplified the existing rate structure
35. Based on the billing records and the staffing of the case there did not appear to be any unnecessary duplication of effort.
36. BNG has not established that the proposed recovery mechanism is reasonable.
37. BNG proposed a surcharge of \$0.10809 per Ccf or \$1.0809 per Mcf. Recovery at the proposed rate could pose a burden on the customer at a high rate per unit. A customer who consumes 6 Mcf per month would be charged \$6.49 as a rate case expense surcharge.
38. A recovery of rate case expenses over an approximate two-year period at a rate of \$0.408 per Mcf is reasonable.
39. It is reasonable that BNG file a report detailing recovery with the Railroad Commission 45 days after the end of June and December identifying the beginning balance for the period, the recovery by month with monthly volumes the interest calculation and the ending balance. It is reasonable that the report include a reconciliation of the estimated rate case expense approved by providing invoices submitted to the total authorized recovery of the estimated rate case expense.

CONCLUSIONS OF LAW

1. Bluebonnet Natural Gas ("BNG") is a "Gas Utility" as defined in TEX. UTIL. CODE ANN. §101.003(7) (Vernon 1998 & Supp. 2005) and § 121.001(Vernon 1998 & Supp. 2005) and is therefore subject to the jurisdiction of the Railroad Commission ("Commission") of Texas.
2. The Commission has jurisdiction over BNG's Statement of Intent under TEX. UTIL. CODE ANN. §§ 102.001, 104.001, 104.001, and §104.201(Vernon 1998 & Supp. 2008).

3. Under TEX. UTIL. CODE ANN. § 102.001 (Vernon 1998 & Supp. 2008), 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. A “test year” is defined as the most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a gas utility are available, TEX. GOV'T CODE ANN. §§ 101.003(16).
5. This Statement of Intent 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 & Supp. 2008) (“APA”).
6. In accordance with the stated purpose of the Texas Utilities Code, Subtitle A, expressed under TEX. UTIL. CODE ANN. §101.002 (Vernon 1998 & Supp. 2008), the Commission has assured that the rates, operations, and services established in this docket are just and reasonable to customers and to the utilities.
7. TEX. UTIL. CODE ANN. §104.107 (Vernon 1998 & Supp. 2008) provides the Commission authority to suspend the operation of the schedule of proposed rates for 150 days from the date the schedule would otherwise go into effect.
8. In accordance with TEX. UTIL. CODE §104.103 (Vernon 1998 and Supp. 2008), 16 TEX. ADMIN. CODE ANN. § 7.230 (2002), and 16 TEX. ADMIN. CODE ANN. § 7.235 (2008), adequate notice was properly provided.
9. In accordance with the provisions of TEX. UTIL. CODE ANN. §104.102 (Vernon 1998 & Supp. 2008), 16 TEX. ADMIN. CODE ANN. § 7.205 (2002), and 16 TEX. ADMIN. CODE §7.210 (2008), BNG filed its Statement of Intent to change rates.
10. Each party seeking reimbursement for its rate case expenses has the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence, under 16 Tex. Admin. Code § 7.5530 (2008).
11. BNG has not met its burden of proof in accordance with the provisions of TEX. UTIL. CODE ANN. § 104.008 (Vernon 1998 and Supp. 2008) that the proposed rate changes are just and reasonable.
12. The rate case expense set out in Finding of Fact No. 30 is reasonable and BNG is entitled to recover those rate case expenses through a surcharge on its rates under TEX. UTIL. CODE ANN. § 104.051 (Vernon 1998 & Supp. 2008).

13. The rate case expenses enumerated in Finding of Fact 30 are reasonable and comply with the requirements of 16 Tex. Admin. Code Ann. § 7.5530.
14. BNG is required by 16 TEX. ADMIN. CODE § 7.315 (2008) to file electronic tariffs incorporating rates consistent with this Order within thirty days of the date of this Order.

IT IS THEREFORE ORDERED that Bluebonnet Natural Gas is authorized to recover \$46,077.50 in actual rate case expenses and that Bluebonnet Natural Gas is authorized to recover up to \$3,245 in estimated future rate case expenses provided that Bluebonnet Natural Gas submit evidence of actual incurrence and the reasonableness and necessity of future expenses to the Gas Services Division of the Commission.

IT IS FURTHER ORDERED that a surcharge on rates shall be calculated on a per Mcf basis on all customer classes and implemented over a period of approximately twenty-four (24) months, commencing on the date this final order becomes effective.

IT IS FURTHER ORDERED that a recovery of rate case expenses over an approximate two-year period at a rate of \$0.408 per Mcf is reasonable.

IT IS FURTHER ORDERED that BNG's rates as requested and to the extent recommended to be approved in the findings of fact and conclusions of law are **HEREBY APPROVED** to be effective for gas consumed and for services delivered on and after the date of this Order.

IT IS FURTHER ORDERED THAT BNG may begin surcharging rates for gas delivered and for services delivered on and after the date of this Order. This Order will not be final and appealable 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. Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All

requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

SIGNED this 28th day of April, 2009.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN VICTOR G. CARRILLO

COMMISSIONER ELIZABETH A. JONES

COMMISSIONER MICHAEL L. WILLIAMS

ATTEST:

SECRETARY