



# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

**GUD No. 9846**

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**Rate Case Expenses Severed from Gas Utilities Docket Nos. 9797 and 9809.**

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### **APPEARANCES:**

Jamie Nielson  
Attorney at Law  
7000 North Mo-Pac Expressway  
Second Floor  
Austin, Texas 78731

Universal Natural Gas, Inc. ("Universal")

### **PROPOSAL FOR DECISION**

#### **1. Procedural History**

On April 21, 2008, Universal filed a statement of intent to increase rates on customers located in the unincorporated areas of Montgomery, Walker, Madison And Houston Counties, Texas. On July 15, 2008, Universal filed an appeal of the action of the City of Huntsville, Texas. On July 21, 2008, the Examiners consolidated Universal's appeal and its statement of intent into Gas Utilities Docket No. 9797 ("GUD No. 9797"). On December 16, 2008, The Railroad Commission of Texas ("Commission") approved its final order in GUD No. 9797. In its December 16, 2008, final order issued in GUD No. 9797, the Commission severed consideration of Universal's rate case expenses into a separate docket, Gas Utilities Docket No. 9846: Rate Case Expenses severed from Gas Utilities Docket Nos. 9797 and 9809. On February 25, 2009, a final hearing was conducted in this docket at the Commission's offices in Austin, Texas.

#### **2. Jurisdiction**

The Commission has jurisdiction over the matters at issue in this proceeding under TEX. UTIL. CODE ANN. §§ 102.001, 104.001, 121.051, and 121.151 (Vernon 2007 & Supp. 2008). The statutes and rules involved include, but are not limited to TEX. UTIL. CODE ANN. §103.022 (Vernon 2007 & Supp. 2008) and 16 TEX. ADMIN. CODE § 7.5530 (2002).

### 3. Analysis of the Utility's Rate Case Expenses

Two witnesses submitted direct testimony regarding the subject matter of this docket. Ms. Amalija J. Hodgins, Attorney at Law, submitted written direct testimony on behalf of Universal and appeared at the final hearing in order to address the rate case expenses incurred by Universal in GUD No. 9797.<sup>1</sup> Mr. Karl J. Nalepa of RJ Covington Consulting, LLC, submitted written direct testimony on behalf of Universal and appeared at the final hearing in order to address the rate case expense recovery method proposed by Universal.<sup>2</sup>

Universal requests approval for reimbursement of \$123,396 actual and estimated future rate case fees and expenses. The utility is requesting \$113,041 in actual fees and expenses incurred in GUD No. 9797 to date and \$10,355 in estimated future fees and expenses. The following table summarizes the expenses incurred.

Legal Fees and Expenses	\$11,342
Consulting Fees and Expenses	\$101,699
Estimated Future Expenses	\$10,355
Total Expenses	\$123,396

Mr. Nalepa's testimony addresses Universal's proposed rate case expense surcharge calculation and rate. Universal proposes the implementation of its Rate Case Surcharge ("RCS") Rider which utilizes a volumetric surcharge on all tariffed customer classes over a twenty-four month period. Universal proposes a \$0.18 per Mcf surcharge on all Mcf during each billing period. The Company proposes a true-up for under or over-collection of rate case expenses to be included in Commission staff's annual audit following the end of the twenty-four month surcharge period. The Company also proposes to collect interest on the outstanding balance of rate case expenses. Universal requests the Commission's published rate applicable to interest on customer deposits, which is currently 2.09%.<sup>3</sup>

Ms. Hodgins' testimony addressed the expenses incurred in the underlying docket, GUD No. 9797. She conducted a review of fees and expenses under applicable standards for rate case expenses. Ms. Hodgins testified that the hourly rates charged by consulting attorneys, and special service consultants are reasonable; the number of consulting attorneys working on the underlying docket was minimized; with a few minor exceptions, the invoices accurately document hours worked and services provided; there were no time entries exceeding 12.0 hours per day; and there were no disbursements that are subject to special scrutiny (*e.g.*, hotels, valet parking, designer coffee, airfare,

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<sup>1</sup> Universal Exhibit No. 1, Direct Testimony of Amalija J. Hodgins.

<sup>2</sup> Universal Exhibit No. 2, Direct Testimony of Karl J. Nalepa.

<sup>3</sup> Universal Exhibit No. 2, Direct Testimony of Karl J. Nalepa.



meals).<sup>4</sup> Ms. Hodgins testified that the total fees and expenses charged were reasonable and necessary. She testified that in her opinion, "the amount of time spent to date is commensurate with the number, complexity, and gravity of the issues posed by the Company's filing."<sup>5</sup>

The Examiners reviewed all billings, invoices and evidence submitted by Universal. The Examiners have found no evidence of double-billing, excess charges, inappropriate documentation of work, excessive entertainment and dining expenses, or other charges that were not incurred as a direct result of Universal prosecuting GUD No. 9797 before the Commission. The graphs attached in Examiners' Exhibit 1 break down the incurrence of expenses in relation to when they were incurred during the prosecution of the docket.<sup>6</sup> The legal expenses were all incurred after the Proposal For Decision was issued in GUD No. 9797. The invoices, testimony and other evidence submitted by Universal address the information required under §7.5530(a).<sup>7</sup> The evidence indicates that the amount of work required to prosecute GUD No. 9797 justifies the work performed by the utility's attorneys and consultants pursuant to the requirements of §7.5530(a).<sup>8</sup>

Rule 7.5530(b)<sup>9</sup> sets out four additional factors that the Commission is to consider when determining the reasonableness of rate case expenses. Ms. Hodgins testified that there was no duplication of services or testimony and that the work performed by Universal's attorneys and consultants was relevant and reasonably necessary to the proceeding. The Examiners agree and find that the evidence in the record establishes there was no duplication of services or testimony and that the work performed by Universal's attorneys and consultants was relevant and reasonably necessary to the proceeding, as this was Universal's first statement of intent rate case.

One factor the Commission is required to consider is whether the request for a rate change was warranted. Universal initially sought an approximate overall revenue increase of \$341,306 in

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<sup>4</sup> Universal Exhibit No. 1 at 4, Direct Testimony of Amalija J. Hodgins.

<sup>5</sup> Universal Exhibit No. 1 at 16. (Hodgins Direct Testimony).

<sup>6</sup> In this docket, approximately 90% of incurred expenses were consultant expenses. Fees for services provided by R. J. Covington are approximately 87% of incurred expenses.

<sup>7</sup> 16 TEX. ADMIN. CODE § 7.5530(a) (2002).

<sup>8</sup> 16 TEX. ADMIN. CODE § 7.5530(a)(2002). In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to Texas Utilities Code, §103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Each gas utility and/or municipality shall detail and itemize all rate case expenses and allocations and shall provide evidence showing the reasonableness of the cost of all professional services, including but not limited to: (1) the amount of work done; (2) the time and labor required to accomplish the work; (3) the nature, extent, and difficulty of the work done; (4) the originality of the work; (5) the charges by others for work of the same or similar nature; and (6) any other factors taken into account in setting the amount of the compensation.

<sup>9</sup> 16 TEX. ADMIN. CODE § 7.5530(b) (2002). 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 the complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted.



its originally filed request. After correction to the schedules for errors discovered in the model, the requested revenue increase was lowered to \$101,991. The Commission approved an overall cost of service for Universal of \$1,522,634, which constituted a revenue reduction of \$188,426. The Examiners' opinion is that Universal's rate request was warranted because the utility had yet to file a statement of intent rate case. Additionally, the rate request was warranted because the utility's prior rates were too high as established by the resulting rate decrease. The Commission ultimately denied the utility's rate request, decreased Universal's overall revenue requirement, decreased Universal's rates for gas service, and initiated an inquiry into its operations, specifically with regards to two Universal affiliates, MoGas Operating Company and XTX Pipeline.

The remaining factor requires the Commission to consider whether the complexity and expense of the work was commensurate with both the complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted. This, in effect, requires the Commission to put in perspective the amount of work performed as compared to the amount of revenue increase sought and amount of revenue increase granted. Ultimately, Universal received a rate decrease. However, the issues involved in GUD No. 9797 were complex issues involving transactions with multiple affiliates of Universal. The complexity of these issues has resulted in two inquiry proceedings before the Commission, GUD Nos. 9844 and 9845. The nature of the affiliate transactions and the financial data needed to review the transactions required extensive work by Universal's consultants. The Examiners are unaware of any previously established Commission practice or precedent that should have prevented Universal from seeking approval of its cost of service model as filed in GUD No. 9797. Additionally, GUD No. 9797 was Universal's first statement of intent rate case before the Commission. This necessitated additional work by its consultants. The Examiners find that the work involved in GUD No. 9797 was not disproportionate to the complexity of the issues or the amount of revenue increase sought in GUD No. 9797.

The extent to which the rate decrease approved in GUD No. 9797 impacts the Commission's determination of the reasonableness of Universal's rate case expenses is a public policy question. Under §7.5530(b) the Commission has the authority to determine that a portion of the rate case expenses are not reasonable because the utility did not receive a rate increase. The Examiners have found no recent precedent to recommend a rate case expense reduction based on an analysis of §7.5530(b).

Further, the Examiners have not identified any specific amounts, expenditures, fees, and expenses actually incurred in GUD No. 9797 that are different from the types of fees and expenses approved by the Commission in prior rate cases. Therefore, the Examiners recommend that the Commission approve the utility's request to recover \$113,041 in actual expenses incurred in GUD No. 9797.

The Examiners recommend that the Commission approve the utility's request to recover a maximum of \$10,355 in estimated future expenses necessary to complete GUD Nos. 9797 and 9846, subject to subsequent verification of actual incurrence and reasonableness of these amounts. Ms. Hodgins proposes that the Commission approve a ceiling on rate case expenses. The Examiners



agree and recommend that Universal's recovery of rate case expenses be capped at \$123,396. Additionally, Ms. Hodgins proposes to review any future incurred expenses under the applicable standards and to file an affidavit stating her recommendation for recovery. Her proposal is consistent with the Examiners' recommendation and should be adopted.

The Examiners agree with Universal that a monthly volumetric surcharge of \$0.18 per Mcf for all customer classes is a reasonable method to recover Universal's rate case expenses. The Examiners also agree with Universal that it is reasonable to implement the surcharge in the first billing cycle following the date the final order is approved by the Commission. Universal proposes to use the Commission's published interest rate on customer deposits for outstanding balances of rate case expenses. The Examiners propose to clarify the interest charge by recommending that it be the Commission's published rate on an annual basis (currently 2.09%, annualized), and that the rate be charged on the monthly outstanding balance of uncollected rate case expenses. Thus, the Examiners recommend that Universal collect interest on the un-recovered balance each month at a rate of 2.09% per annum, or 0.0017417 monthly. The Examiners also recommend that Universal file on a semi-annual basis a report with the Director of the Gas Services Division identifying the amount of rate case expenses recovered to date; the outstanding rate case expense balance at the beginning of the semi-annual period; the amounts of interest charged, accrued and recovered under the RCS Rider; the volumes and amounts collected by month by customer class; and the ending balance for the period. Universal shall include in the semi-annual report to the Director of the Gas Services Division a monthly reconciliation of the amounts billed by Ms. Hodgins (not to exceed \$1,600), Mr. Neilson (not to exceed \$6,175) and R.J. Covington (not to exceed \$2,580) representing the amounts billed for Estimated Rate Case Expenses. The report shall include copies of the invoices billed by the three outside parties afore mentioned, the work performed, the purpose and necessity of the work performed. The report should be filed no later than 45 days after the end of June and December.

Universal proposes that the true-up be conducted based on the Audit section's annual audit. The Examiners agree that rate case expense recovery should be trued-up. The Examiners also recognize the Audit Section will conduct an audit and will look at rate case expenses recovered by Universal. The Examiners propose that the twenty-four month period requested by Universal not be a firm time period, and that the recovery period not be limited. The Examiners recommend that Universal recover the allowed rate case expense, a maximum amount of \$123,395.37, on a monthly basis from all customers at a rate of \$0.18 per Mcf for a period of approximately 24 months. The recovery of rate case expense should be a separate line item on the customer's bill clearly identifying the recovery rate and amount recovered each month. If at the end of the 24-month recovery period, Universal is either over or under recovered, the utility shall file a report with the Director of the Gas

Services Division identifying the over or under recovered amount and the estimated number of months required to fully collect any under recovered amount. All over-recovered amounts shall be refunded, with interest, in the following billing cycle.

The Examiners recommend that the Railroad Commission of Texas approve the attached Proposed Final Order containing findings of fact and conclusions of law.

Respectfully submitted,

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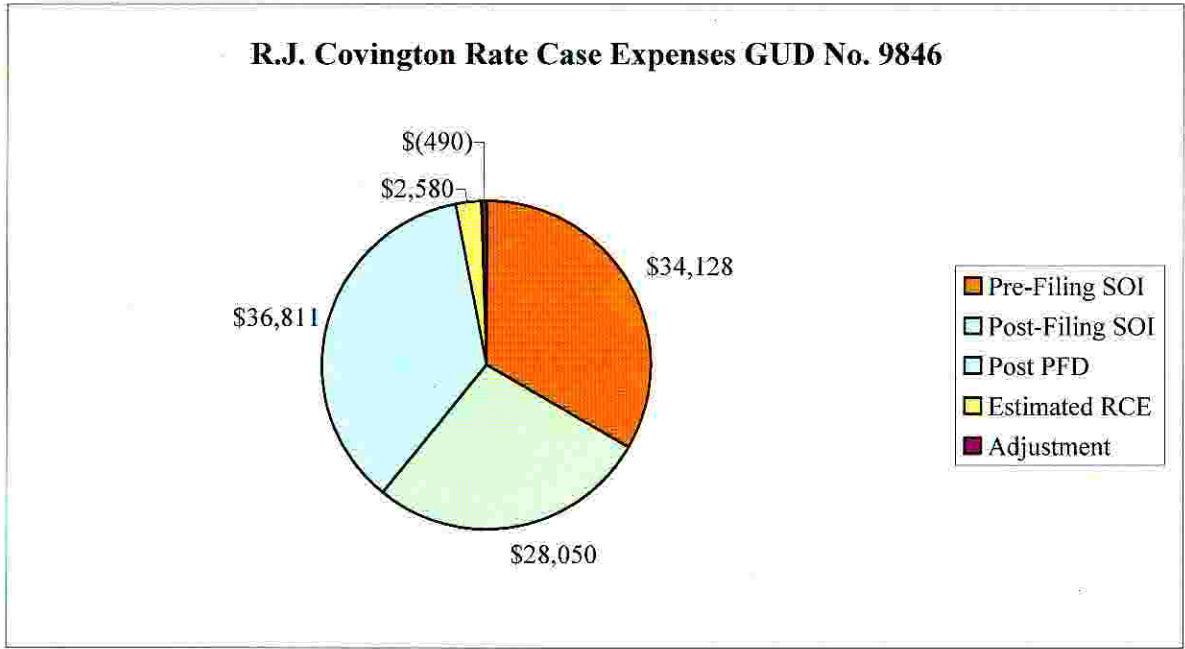
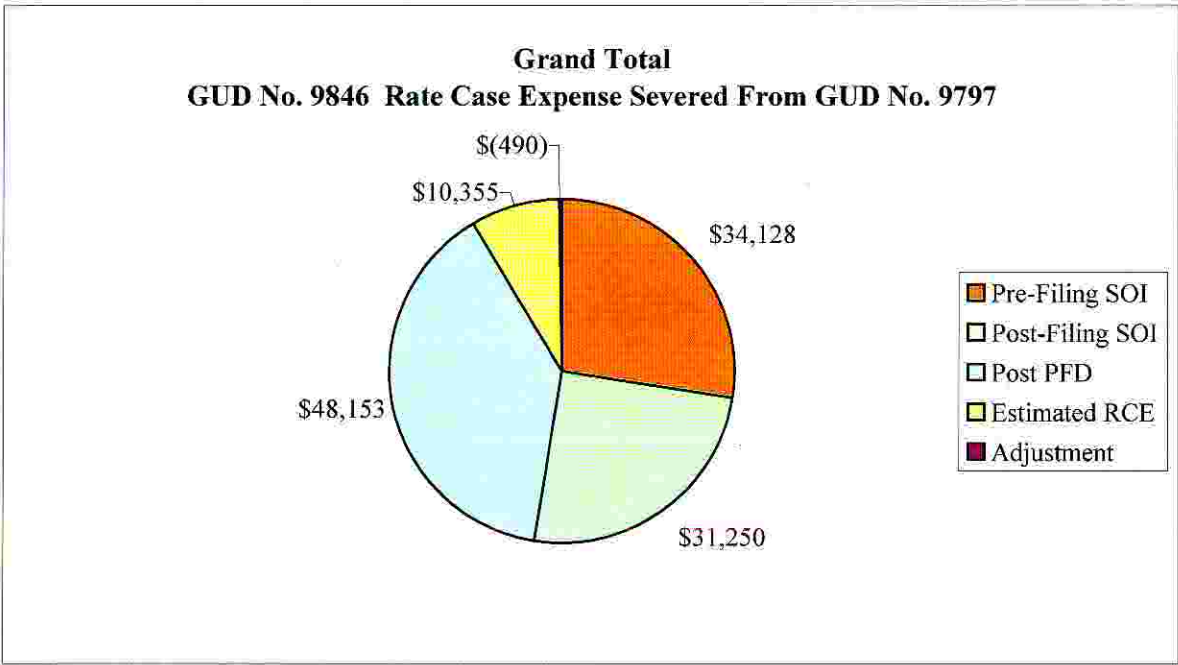
John Chakales  
Hearings Examiner  
Office of General Counsel

A handwritten signature in blue ink, appearing to read "Mark Brock", with a stylized, flowing script.

Mark Brock  
Technical Examiner  
Gas Services Division

**Universal Natural Gas, Inc.  
Rate Case Expense Analysis  
Gas Utilities Docket No. 9846**

**Examiner Exhibit 1**





**BEFORE THE  
RAILROAD COMMISSION OF TEXAS**

<b>RATE CASE EXPENSES SEVERED</b>	§	
<b>FROM GAS UTILITIES DOCKET</b>	§	<b>GAS UTILITIES DOCKET</b>
<b>NOS. 9797 AND 9809</b>	§	<b>NO. 9846</b>
	§	
<b>FINAL ORDER</b>		

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 2004 & 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. Universal Natural Gas, Inc. ("Universal") is a utility as that term is defined in the Texas Utility Code, and is subject to the jurisdiction of the Railroad Commission of Texas ("Commission").
2. Universal owns and operates a gas distribution system that provides gas service to customers in Montgomery, Walker and Houston Counties, Texas.
3. On April 21, 2008, Universal filed a statement of intent to increase rates on customers located in the unincorporated areas of Montgomery, Walker and Houston Counties, Texas, which was originally docketed by the Commission as Gas Utilities Docket No. 9797.
4. On July 16, 2008, Universal filed an appeal of the action of the City of Huntsville, Texas, which was originally docketed by the Commission as Gas Utilities Docket No. 9809.
5. On July 21, 2008, the Examiners consolidated Gas Utilities Docket Nos. 9797 and 9809 into one docket, Gas Utilities Docket No. 9797 ("GUD No. 9797"), because the two dockets requested the same rates and involved common questions of law and fact pursuant to 16 TEX. ADMIN. CODE § 1.125 (1991).
6. On December 16, 2008, the Commission issued a final order in GUD No. 9797.
7. In the December 16, 2008, final order issued in GUD No. 9797, the Commission severed rate case expense issues out of GUD No. 9797 and into a separate docket, Gas Utilities Docket No. 9846: Rate Case Expenses severed from Gas Utilities Docket No. 9797.
8. A final hearing was conducted in Austin on February 25, 2009, to take testimony, other evidence, and legal argument on all issues of law and fact that were raised in or relevant to Universal's request for reimbursement of rate case expenses, and for the purpose of developing a



record that the Commission will use in making a determination on Universal's rate case expense request.

9. Universal's witnesses established that the hourly rates charged by consulting attorneys, and special service consultants were reasonable; the number of consulting attorneys working on the underlying docket was minimized; the invoices accurately documented hours worked and services provided; there were no time entries exceeding 12.0 hours per day; and there were no disbursements for hotels, valet parking, designer coffee, airfare, or meals requiring special scrutiny or disallowment.

10. The Examiners reviewed all invoices supporting the rate case expenses incurred by Universal and did not find any duplication of services or testimony. There is no evidence in the record that any of the expenses submitted for reimbursement were not necessarily incurred in the prosecution of Universal's rate case proceeding before the Commission.

11. The requested actual rate case expenses of Universal in the amount of \$113,041 for actual work performed were reasonable and were necessary for the prosecution of GUD No. 9797 before the Commission.

12. The evidence in the record indicates that Universal's proposed \$0.18 per Mcf surcharge to recover rate case expenses will allow the utility to recover its costs without over-recovering from its customers. It is therefore reasonable that Universal recover all rate case expenses approved herein by use of a \$0.18 per Mcf surcharge for its customers located in Montgomery, Walker and Houston Counties, Texas.

13. The evidence in the record indicates that imposing a \$0.18 per Mcf surcharge on gas volumes will not be overly-burdensome on Universal's customers, and will allow Universal to recover its expenses. It is reasonable that Universal recover all rate case expenses approved herein over a period of approximately twenty-four (24) months billed to all customers subject to the final orders approved in GUD No. 9797.

14. Allowing Universal to charge interest on outstanding rate case expense amounts at the Commission's published rate applicable to interest on customer deposits, which is currently 2.09% per annum, will allow Universal to recover the costs associated with recovering rate case expenses over a period of twenty-four months and is therefore reasonable.

15. Universal's proposal to true-up rate case expenses after the twenty-four month recovery period is reasonable because it will allow the utility to recover the exact amount of rate case expenses without over-recovering or under-recovering the utility's rate case expenses from customers.

16. It is reasonable to allow Universal to recover up to \$10,355 in estimated future rate case expenses, provided that Universal submit evidence of actual incurrence and the reasonableness and necessity of the future expenses to the Gas Services Division of the Commission.

### CONCLUSIONS OF LAW

1. Universal Natural Gas, Inc. ("Universal") is a gas utility as defined in TEX. UTIL. CODE ANN. §§ 101.003(7), 121.001 (Vernon 2007 & Supp. 2008) and is subject to the Commission's jurisdiction under TEX. UTIL. CODE ANN. §§ 104.001, 121.051 (Vernon 2007 & Supp. 2008).
2. 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 (2002).
3. The rate case expenses enumerated in the findings of fact herein are reasonable and comply with 16 TEX. ADMIN. CODE ANN. § 7.5530 (2002).
4. The Commission has the authority to allow Universal to recover rate case expenses through a surcharge on its rates, under TEX. UTIL. CODE ANN. § 104.051 (Vernon 2007 & Supp. 2008).

**IT IS THEREFORE ORDERED** that Universal Natural Gas, Inc. is authorized to recover all rate case expenses incurred in GUD No. 9797 and approved by this order by means of a surcharge on its rates charged to ratepayers subject to the final orders entered in GUD No. 9797. A surcharge on rates shall be charged at \$0.18 per Mcf on all gas volumes for all customer classes and be implemented over a period of approximately twenty-four (24) months, commencing with the date this final order becomes effective. The \$0.18 per Mcf surcharge shall be a separate line item on each customer's bill clearly identifying the recovery rate and amount recovered each month.

**IT IS FURTHER ORDERED** that Universal Natural Gas, Inc. shall file a semi-annual report with the Director of the Gas Services Division identifying the amount of rate case expenses recovered to date; the outstanding rate case expense balance at the beginning of the semi-annual period; the amounts of interest charged, accrued and recovered under the RCS Rider; the volumes and amounts collected by month by customer class; and the ending balance for the period. Universal shall include in the semi-annual report a monthly reconciliation of any future expenses and fees billed by Ms. Hodgins (not to exceed \$1,600), Mr. Neilson (not to exceed \$6,175) and R.J. Covington (not to exceed \$2,580). The report shall include copies of the invoices billed, the work performed, the purpose and necessity of the work performed, and an affidavit by Ms. Hodgins. The semi-annual report should be filed no later than 45 days after the end of June and December.

**IT IS FURTHER ORDERED** that Universal Natural Gas, Inc. shall true-up any amounts over-recovered or under-recovered at the end of the twenty-four month recovery period. If at the end of the 24-month recovery period, Universal is either over or under recovered, the utility shall file a report with the Director of the Gas Services Division identifying the over or under recovered amount and the estimated number of months required to fully collect any under recovered amount. All over-recovered amounts shall be refunded, with interest, in the following billing cycle.



**IT IS FURTHER ORDERED** that any proposed findings of fact and conclusions of law not specifically adopted herein are **DENIED**. **IT IS ALSO ORDERED** that each exception to the Examiners' Proposal for Decision not expressly granted herein is overruled and all pending motions and requests for relief not previously granted herein are hereby **DENIED**.

**IT IS FURTHER ORDERED THAT** Universal Natural Gas, Inc. may begin surcharging rates for rate case expenses 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 \_\_\_\_ day of April, 2009.

**RAILROAD COMMISSION OF TEXAS**

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**CHAIRMAN VICTOR CARRILLO**

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**COMMISSIONER ELIZABETH A. JONES**

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**COMMISSIONER MICHAEL L. WILLIAMS**

**ATTEST:**

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**SECRETARY**