



# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

**GUD NO. 9835**

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

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**APPEARANCES:**

**FOR APPLICANT:**

Karl Nalepa  
RJ Covington Consultants, LLC  
11044 Research Blvd., Suite A-325  
Austin, Texas 78759

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY:**

|                     |  |
|---------------------|--|
| Docket Established: | November 12, 2008  |
| Final Hearing Date: | March 3, 2009  |
| Heard By:           | Gene Montes, Hearings Examiner<br>Mark Brock, Technical Examiner |
| Record Closed:      | April 3, 2009  |
| PFD Circulation     | April 3, 2009  |

### STATEMENT OF THE CASE

On July 16, 2008, Bluebonnet Natural Gas ("BNG") filed a *Statement of Intent to Increase Rates*. A final order was issued on November 28, 2008. The final order severed rate case expenses for consideration in a separate docket. BNG requested recovery of \$56,660.45 in actual rate case expenses and \$3,245 in estimated future expenses. Thus, the total rate case expense request was \$59,905.45. A hearing was held on March 3, 2009, to consider the rate case expense request. After considering the evidence presented at the hearing and reviewing the record the Examiners find that BNG has not established that this request was reasonable. The Examiners propose adjustments in five key areas.

First, the Examiners recommend that an adjustment be made to recognize the complete reworking of the initial cost of service model. Second, the Examiners recommend an adjustment to reflect the inappropriate allocation of resources undertaken by the consultants. Third, the Examiners recommend that an adjustment be made to correct an unjustified change in fees during the hearing. Fourth, and related to the last point, the Examiners recommend that a minor adjustment be made to correct an unjustified increase in rates in 2009. The Examiners find that expenses in the amount of \$49,138.75 are reasonable and recommend that the Commission approve the recovery of those expenses as set out below. The proposed adjustments are summarized in Table 1 below:

Table 1

| Examiner's Proposed Adjustments   |             |
|---|-------------|
| Requested Rate Case Expenses - Including \$3245 in estimated expenses.          | \$59,905.00 |
| 1. Failure to establish the necessity of certain expenses related to COS Model. | \$9,672.50  |
| 2. Failure to establish reasonable allocation of resources.                     | \$555.00    |
| 3. Failure to establish reasonableness of all rates.                            | \$332.50    |
| 4. Expenses included unrelated to proceeding.                                   | \$183.75    |
| 5. Failure to establish reasonableness of hourly rate increase.                 | \$22.50     |
| Total Rate Case Expense Recovery Recommended                                    | \$49,138.75 |

## 1. Procedural History

On July 16, 2008, Bluebonnet Natural Gas (“BNG”) filed with the Railroad Commission of Texas (“Commission”) a *Statement of Intent to Increase Rates*. That matter was docketed as Gas Utilities Docket No. 9810. On September 9, 2008, BNG filed its *Petition for De Novo Review of the Denial of the Statement of Intent filed by Bluebonnet Natural Gas, LLC by the City of Devers, Texas* and the case was docketed as GUD No. 9823. On September 23, 2009, BNG filed its *Petition for De Novo Review of the Denial of the Statement of Intent filed by Bluebonnet Natural Gas, LLC by the City of Mt. Enterprise, Texas* and that case was docketed as GUD No. 9827. Those cases were consolidated into GUD No. 9810. On November 28, 2008, the Commission issued an order in those consolidated proceedings. As part of that order, consideration of rate case expenses was severed into a separate docket. That case was docketed as GUD No. 9835.

The severance was necessitated by the fact that the notice issued by BNG in GUD No. 9810 did not indicate that in addition to the original rate request, it sought to recover its rate case expenses through a separate surcharge. The requested rate case expenses would have increased the rates above, and beyond, the amounts stated in the notice that was issued by BNG. Accordingly, the Commission did not approve rate case expenses in GUD No. 9810. Rather than disallowing those expenses in GUD No. 9810, the Commission ordered that those expenses be considered in this docket.

The company provided notice of this proceeding by U.S. Mail on December 17, 2008. Mrs. Virgil Ray Colins filed a protest on January 13, 2009, and a letter notifying her of the status of these proceedings was issued on February 5, 2009. No motions to intervene were filed in this case. The hearing was held on March 3, 2009. The following documents have been admitted into the record of this case.

- Examiners’ Exhibit 1, Notice of Hearing;
- Examiners’ Exhibit 2, PFD Issued in GUD No. 9810 and Order;
- Examiners’ Exhibit 3, Response in GUD No. 9810 to Request for Documents;
- Examiners’ Exhibit 4, Statement of Intent and Testimony filed in GUD No. 9810.
- Examiners’ Exhibit 5, 2008 Survey of Attorney’s Hourly Rates, Texas Lawyer; and,
- BNG Exhibit No. 1, Rate Case Expense Documentation filed in 9835.

Additionally, judicial notice of the entire record in GUD No. 9810 was taken pursuant to 16 *Tex. Admin. Code* § 1.102 and the *Tex. R. Civ. Evid.* 204.

## 2. Jurisdiction

The Commission has jurisdiction over BNG and over the matters at issue in this proceeding pursuant to *Tex. Util. Code Ann.* §§ 102.001, 103.003, 103.051, 104.001, 121.051, 121.052, and 121.151 (Vernon 2008). The statutes and rules involved in this proceeding include, but are not limited to *Tex. Util. Code Ann.* §§ 104.101, 104.102, 104.103, 104.105, 104.106, 104.107, 104.110, 104.301, and 16 *Tex. Admin. Code* Chapter 7.



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

A utility is generally entitled to recover rate case expenses pursuant to section 104.051 of the Texas Utilities Code. The general rule regarding rate case expenses is set out in the Commission regulations at Rule 7.5530.<sup>1</sup> In any proceeding, a utility or municipality claiming reimbursement for its rate case expenses has the burden to prove the reasonableness of the expenses by a preponderance of the evidence. Commission rules require that each gas utility and municipality detail and itemize rate case expenses. The party seeking reimbursement must also account for the allocation of those expenses. In meeting that burden, Rule 7.5530 requires evidence relevant to the following factors:

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.
6. Any other factors taken into account in setting the amount of compensation.

Those factors are not exhaustive and the rule provides additional guidance:

1. Whether the request for a rate change was warranted.
2. Whether there was duplication of services or testimony.
3. Whether the work was relevant and reasonably necessary to the proceeding.
4. 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.

As recently noted by the Austin Court of Appeals, the Commission has broad discretion to determine recovery of expenses in a ratemaking proceeding. The Court of Appeals noted that the Commission is the sole judge of the weight of the evidence and the reliability of the witnesses. Nevertheless, the Commission may not disregard undisputed facts or testimony unless the record contains some explanation or reason upon which the reasonableness of the Commission's action may be judged.<sup>2</sup> The Court of Appeals noted that any fee incurred by a utility to establish its cost of service is not automatically recoverable as a rate case expense. The Court explained that it is precisely in this context where the Commission's discretion plays an integral role and the Commission must consider all relevant factors and determine whether the rate case expense was reasonable and necessary to the proceeding.<sup>3</sup>

BNG seeks the recovery of a total of \$59,905 in rate case expenses. Of that amount \$56,660 are actual expenses and \$3,245 are estimated expenses to complete this proceeding. BNG employed RJ Covington Consultants, LLC, a utility consulting firm located in Austin, Texas. Several individuals associated with that firm provided consulting services: Karl J. Nalepa, Bob Stemper, Jackie Standard, and Anna Nguyen. The hourly rates charged by these

<sup>1</sup> 16 Tex. Admin. Code 7.5530 (2007) (Tex. R.R. Comm'n, Allowable Rate Case Expenses).

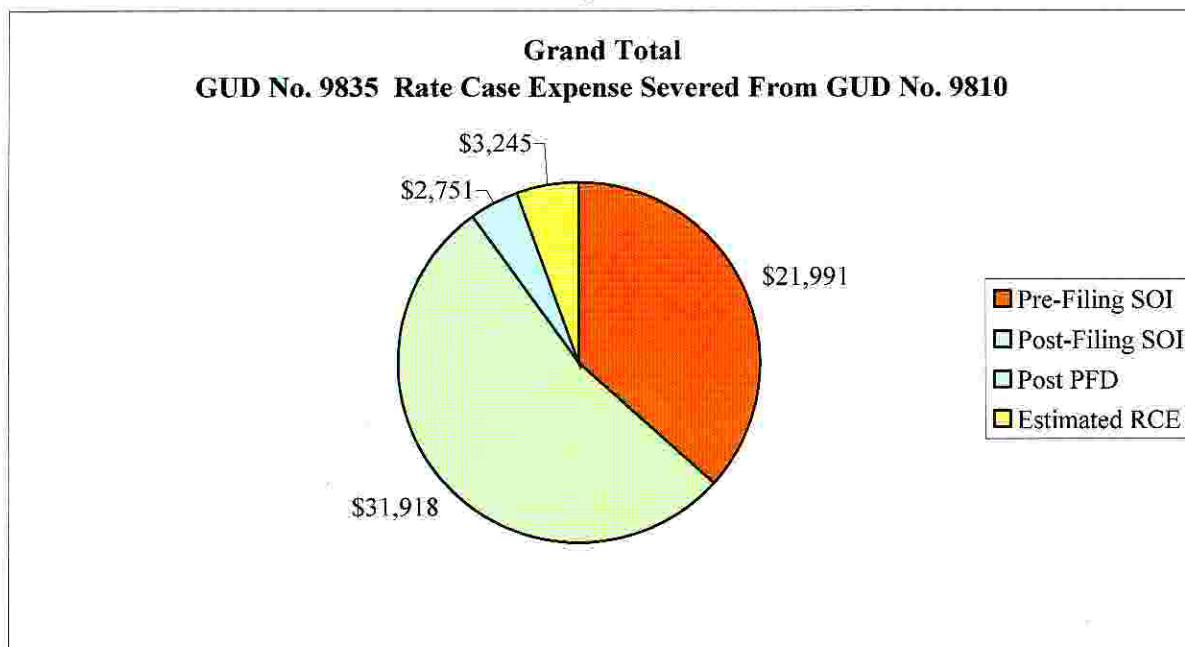
<sup>2</sup> *City of Port Neches, City of Nederland, City of Groves and the Texas Gas Service Company v. Railroad Commission*, 212 S.W.3d 565, 579 - 581 (Tex. App. - Austin 2006) (*City of Port Neches*).

<sup>3</sup> *City of Port Neches*, 212 S.W.3d at 581.

individuals ranged from \$120 to \$255. Mr. Nalepa attested to the reasonableness of the rates and noted that the individuals engaged to work on this case had several years of experience. Mr. Nalepa had 25 years, Mr. Stemper had 30 years, Ms. Standard had 30 years, and Ms. Nguyen had 8 years of industry experience, respectively. He testified that the rates charged were reasonable and within the range of rates charged by other consulting firms providing similar services.

A breakdown of the overall expenses in this proceeding is set out in the attached Examiners Schedule 2, and as noted costs may be set out into four broad categories. First, expenses associated with preparation of the Statement of Intent totaled approximately \$21,991. Second, expenses related to processing the case at the Commission after the case was filed, totaled approximately \$31,918. Third, expenses related to post-hearing activities such as review of the Proposal for Decision, and preparation of responses, totaled \$2,751. Fourth, estimated rate case expenses are \$3,245. The expenses are summarized below in Figure 1.

Figure 1



After considering the evidence submitted and the arguments presented at the rate case expense hearing, the Examiners find that BNG has not established that the proposed rate case expenses are reasonable. As set out in Examiners Schedule No. 2, the Examiners propose various adjustments resulting in a reduction of \$10,764.25. The Examiners recommend that adjustment be made in five key areas: First, the Examiners recommend that an adjustment be made to recognize the complete reworking of the initial cost of service model. Second, the Examiners recommend an adjustment to reflect the inappropriate allocation of resources undertaken by the consultants. Third, the Examiners recommend that an adjustment be made to correct an unjustified change in fees during the hearing. Fourth, and related to the last point, the Examiners recommend that a minor adjustment be made to correct an unjustified increase in rates in 2009. The Examiners find that expenses in the amount of \$49,138.75 are reasonable and recommend that the Commission approve the recovery of those expenses as set out below.



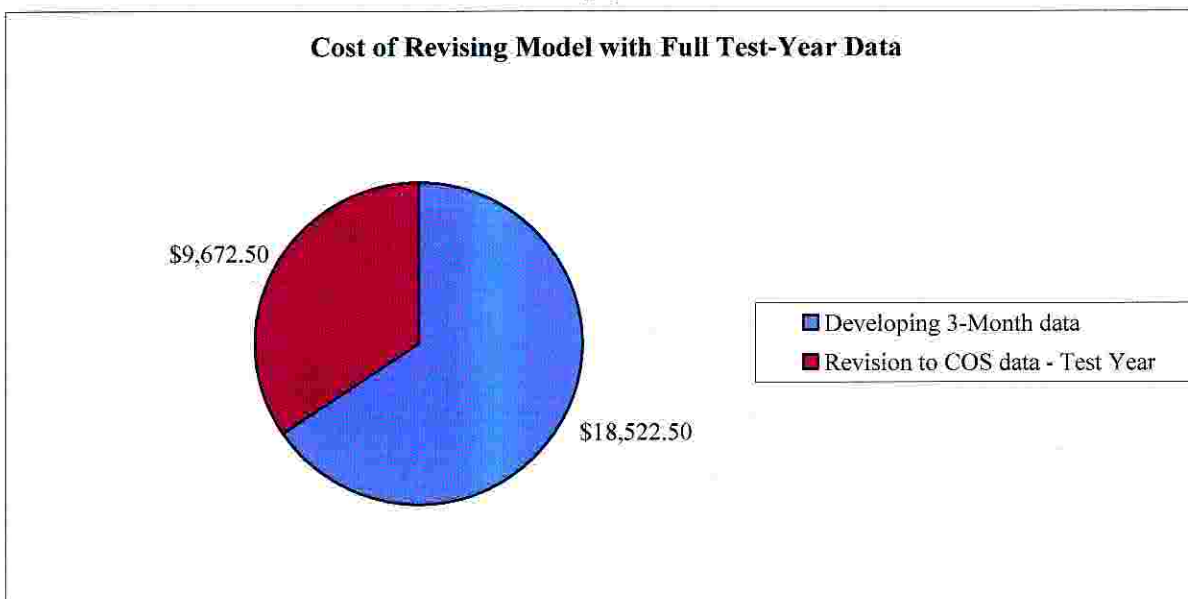
4. *Adjustment 1. Revision of Cost of Service Model — Recommended Adjustment (\$9,673)*

As originally filed the *Statement of Intent* was allegedly based upon the twelve-month period ending March 31, 2008, updated for known changes and conditions. Mr. Nalepa testified that BNG purchased the system on January 1, 2008. In reality, data included in the initial *Statement of Intent* only encompassed a three-month period. That data was annualized to estimate expenses over a twelve-month period.

The statute defines a test year 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. UTIL. CODE ANN. § 101.003(16). Accordingly, the Examiners directed BNG and its consultants to update the filing with a full test-year of data. BNG made an updated filing that included six months of actual data from the prior owner of the utility, and six months of actual BNG financial data.

As is evidenced by the invoices submitted in this proceeding the reworking of the filing increased the overall expenses by approximately 20%. Of the total amount directly attributable to the Cost of Service model employed in this case, about one third of the cost is attributable to the reworking of the cost of service model. Figure 2 below compares the expenditures associated with the development of the initial cost of service model and the revision of the cost of service model.

Figure 2



The updated filing would not have been required had BNG's initial *Statement of Intent* filing included a full test year of data. The preparation of the *Statement of Intent* and supporting model resulted in expenses that totaled approximately \$21,991, as set out in Examiner Schedule No. 3. The Examiners do not recommend disallowance of the entire amount as it likely reflects additional work done by the consultants. On the other hand, the Examiners recommend an adjustment to reflect the work that was necessitated by the use of three months worth of

underlying data. As reflected in Examiner Schedule 2, the estimated total amount billed for revision of the cost of service totaled \$9,673. The specific entries referencing the work in revising the cost of service data are set out in Examiners' Schedule No. 5. The Examiners find that an adjustment in this amount is reasonable.

5. *Adjustment 2. Allocation of Resources — Recommended adjustment (\$555)*

A review of the invoices filed in support of rate case expenses requires that an evaluation of the allocation of resources be conducted. In other words, were tasks engaged in by highly skilled and highly priced talent for matters that are easily delegable to non-professional or less experienced associates? Courts examining the award of attorneys' fees have, on occasion, disallowed expenses on this basis.<sup>4</sup>

The consultants who worked on this matter routinely billed for copying and filing documents at the Commission. Consultants who billed \$155 per hour, \$200 per hour, and \$245 per hour billed for copying and filing documents at the Commission. BNG has not established that even a billing rate of \$155 per hour is justified for copying and filing of documents at the Commission. The 2008 *Survey of Attorney's Hourly Rates in Texas* conducted by Texas Lawyer establishes that in 2008 the average billing rate for a senior legal assistant is \$122 per hour.<sup>5</sup> Those tasks could easily be allocated as part of the "support services" or delegated to a non-professional associate. In light of the evidence in the record, at a minimum, an adjustment should be made to reduce the charge to reflect the rate of the least experienced consultant.

The following are specific examples of misallocated resources. Invoice No. 2379 reflects that Mr. Bob. Stemper performed the following task: "Copy rate filing package and prepare for filing at RRC de novo review of Devers denial of rate request." Mr. Stemper billed for this service at a rate of \$200.00 per hour. Mr. Nalepa testified that Mr. Stemper was responsible for the model. The time involved in copying may not have been significant compared to the time spent drafting responses for request for information. Furthermore, he speculated that it is possible that the staff with the lower rate was not available on that date.

A similar example is reflected on Invoice No. 2400. Entries for the consultant's tasks include an entry for "travel to RRC to file responses," "[o]rganize rate case files," and "[c]opy and review materials for filing with RRC. Travel to RRC to deliver filing." A consultant billing at \$245 per hour performed these tasks. Mr. Nalepa testified that the fact that he delivered the documents indicates that he was consulting with the members of the Commission. That fact, however, was not noted in the invoice entry and is contrary to the documentary evidence. Other similar entries are reflected on Examiner Schedule No. 6.

The Examiners find that billing at a rate of \$200 an hour and \$245 an hour for this category of tasks is not reasonable. The expertise of the consultant, which presumably is reflected in the rate, is not necessary for copying and filing documents at the Commission. If the consultant with that expertise elects to copy documents, or file documents at the Commission

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<sup>4</sup> See, *New Mexico Citizens for Clean Air and Water v. Espanola Mercantile Co., Inc.* 72 F.2d 830, 835 (10<sup>th</sup> Cir. 1996) (Court cited several cases in support of the proposition that use of highly skilled and highly priced talent for matters easily delegable to non-professional or less experienced associates should not be included in an award for attorney's fees.)

<sup>5</sup> See, Examiner Exhibit 5. The report suggests that in Austin that rate is \$103 per hour.



some adjustment should be made to the billing rate to reflect the level of expertise required to perform the task. Accordingly, the Examiners recommend that an adjustment be made in the amount of \$555.00.

6. *Adjustment 3. Changes in Fees — Recommended Adjustment (\$333)*

The bills submitted by BNG reflect that the rates for Ms. Jackie Standard varied from \$155 per hour to \$120 per hour. Invoice Numbers 2308, 2324, 2333, 2447 reflect a rate of \$155. On the other hand, Invoice Numbers 2355, 2408, reflect a rate of \$120. Mr. Nalepa testified that in 2008, he noticed that the rate charged for Ms. Standard varied. He did not, however, change the fee charged. In other words, even after noting the discrepancy Mr. Nalepa elected to maintain the lower billing rate for Ms. Standard. The monthly billing rate charged by this consultant is summarized in Table 1 below.

Table 2

| Rate for Consultant Jackie Standard |                    |
|-------------------------------------|--------------------|
| <i>Invoice Date and Number</i>      | <i>Hourly Rate</i> |
| June - 2008 (Inv. No. 2308)         | \$155.00           |
| July - 2008 (Inv. No. 2324)         | \$155.00           |
| September - 2008 (Inv. No. 2355)    | \$120.00           |
| December - 2008 (Inv. No. 2408)     | \$120.00           |
| February - 2009 (Inv. No. 2409)     | \$155.00           |

Mr. Nalepa asserted that the rate should have been maintained at \$155 while this case was pending. He acknowledged that during this period her duties did not change. He explained that while the case was pending he was aware of the “error” in the billing rate but declined to change it. Instead, he decided to change the billing rate in 2009 when the consulting firm adjusted all of the rates charged by its consultants. He concluded that, in effect, BNG received the benefit of a discounted rate for two or three invoices. The Examiners recommend that an adjustment be made to reduce the rates charged at \$155 per hour to \$120 per hour. As the duties performed remained essentially the same, it was not reasonable to assess a higher rate for the services provided by this consultant. Further, the fact that Mr. Nalepa reviewed the lower rate and declined to change it is evidence of the reasonableness of that rate. The adjustment results in a \$333 reduction to rate case expenses.

7. *Adjustment 4. Expenses unrelated to Statement of Intent proceeding — Recommended Adjustment (\$184).*

The rate case expense filing reflects that certain adjustments were made to remove expenses related to filing of tariffs after BNG acquired the utility systems. Although noted in the billing records filed in this case, those expenses were appropriately removed as the expenses related to those tasks were required as part of BNG’s operations as a utility. Expenses related to management of the utility were included in the cost of service model used to determine the rates to be established for BNG. The consulting expenses incorporated into the rates would



presumably include expenses related to filings with the regulatory authority.<sup>6</sup> Thus, these expenses should not be included as part of the rate case expense surcharge.

The fact that this category of expense was already removed is evidence that those expenses are not reasonably included in the rate case expense request. BNG, however, did not remove all expenses related to these tariff filings from its rate case expense request. Invoice No. 2308 includes several entries related to the filing of those tariffs that were not removed. On May 13, 2008, for example an entry is included that states, “[r]ecieve RRC confirmation on filed tariffs from J. Standard.” The entry for May 16, 2008, includes an entry for billing related to “[e]mails with J. Standard regarding tariff issues.” The entry for May 29, 2008, included an entry for “[e]mails with J. Standard regarding tariff issues.” The Examiners recommend that an adjustment be made to parallel the removal already made by BNG. The total number of hours included for those three entries is 1.75. As entries include other tasks that were completed, the Examiners recommend that only a portion be adjusted totaling .75 hours, or \$183.75.

8. *Adjustment 4* — Change in Rates while rate case expense proceeding pending (\$23).

Mr. Nalepa testified that the rates of the consultants are evaluated on an annual basis. In January, 2009, RJ Covington determined that the rates of its consultants should be increased. The total number of hours billed in 2009 was substantially less than in 2008. Some of the work required in 2009 was the result of BNG’s failure to include the request for rate case expenses in the notice that was initially mailed in 2009.<sup>7</sup> By charging a higher rate, BNG might benefit from the failure to properly notice the proposed rate increase. This is corrected through a minor adjustment of \$22.50, as reflected in Examiners’ Schedule 4a, line 31, and 4b, line 31.

9. *Conclusion* — Recommended Rate Case Expenses: \$49,139.

With the adjustments outlined above, the Examiners find that rate case expenses totaling \$46,138.75 is reasonable. In addition, the Examiners find that the estimated rate case expense of \$3,245 is reasonable. The total rate case expense recovery recommended by the Examiners is \$49,383.75. The Examiners find that application of elements of 16 *Tex. Admin. Code* § 7.5530 reveals that these expenses are just and reasonable.

As set out in Examiners Schedule No. 2, BNG consultants logged 269.75 hours in processing this case. Once the amount of time spent revising the flawed model that was initially submitted are removed, the reimbursement request recommended by the Examiners includes recovery for 223.75 hours. This amount appears to be reasonable in light of the fact that in order to prepare a full test year the consultants were required to examine the books and records of two companies. Furthermore, the previous rate structure included a complex set of varying rates and classes that complicated the cost of service analysis and the development of appropriate rates. The Examiners, however, would expect that future rate filings would require less time since preparation of the rate case will not require analyzing the books and records of two separate companies.

<sup>6</sup> See, Final Order, Exhibit KJN - 4, Page 4 of 4, line 3020 and 3021.

<sup>7</sup> See, Final Order, GUD No. 9810, Finding of Fact No. 32.

As attested by Mr. Nalepa, the rate charge by the consultants is within the range normally charged for the services provided by consultants. The utility consultants retained by BNG reflect several years of experience and, except for the rates discussed in Section 6, above, the rates charged were reasonable in light of the complexity of the previous rate structure and the recent acquisition of this utility system by BNG. With the adjustment recommended by the Examiners in Section 6, above, the Examiners find that the rate charged were reasonable.

As just noted, BNG simplified a complex rate structure. The previous jurisdictional rates included several rate classes: Residential, commercial, small commercial, large commercial, industrial, public authority, and a school and church classes. Within the various classes, the different rates applied for the residential customer class, two different rates applied for the commercial customer class, a single rate for the large commercial customer class, and a single rate for the school and church class. Various rates were applicable among the classes and within certain classes. Through the rate proceeding, BNG consolidated and simplified the rate design into two basic rates and classes: (1) a residential rate applicable to a residential customers class, and (2) a commercial rate applicable to a commercial customers class.

BNG proposes to recover the rate case expense in a surcharge to the customer on a volumetric basis. BNG proposes a surcharge of \$0.10809 per Ccf or \$1.0809 per Mcf. Based on the annual sales volume of approximately 60,335 Mcf, the proposed recovery rate is less than twelve months if the full amount sought is granted and approximately 8 months if the Examiner's recommendation is approved. The utility did not request interest on the uncollected balance and did not propose filing a report to the Commission during recovery or after all approved amounts are recovered for monitoring purposes. Recovery at the proposed rate could be a burden on the customer at such a high rate per unit.

The Examiners recommend recovery over an approximate two-year period at a rate of \$0.408 per Mcf. It is reasonable to allow the utility an interest carrying charge on the unrecovered monthly balance at a rate equal to the deposit interest rate set annually each December by the Public Utility Commission. It is also reasonable to require BNG to file a report detailing recovery with the Commission 45-days after the end of June and December identifying the beginning balance for the period, the recovery by month with the monthly volumes, the interest calculation and the ending balance. The report should 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.

Respectfully submitted,



Gene Montes  
Hearings Examiner  
Office of General Counsel



Mark Brock  
Technical Examiner  
Gas Services Division



**Bluebonnet Natural Gas, Inc.**  
**RATE CASE EXPENSE ANALYSIS**  
**Gas Utilities Docket No. 9835**

**CATEGORIES**

| Color Code    | Category   | Key Dates                   |
|---------------|--|-----------------------------|
| <b>Orange</b> | <b>Pre-Filing SOI</b>                              | <b>Before July 16, 2008</b> |
|               | Development of Schedules, Document & Pleading Prep |                             |
|               | Development of Testimony, Prep and Review          |                             |
|               | Development of Filing Package                      |                             |
|               | Filing SOI   | April 21, 2008              |
| <b>Green</b>  | <b>Post-Filing SOI</b>                             | <b>After July 16, 2008</b>  |
|               | Testimony Review                                   |                             |
|               | Discovery  |                             |
|               | Conferences and Hearings                           |                             |
|               | Other  |                             |
|               | Meals  |                             |
|               | Parking  |                             |
|               | Currier  |                             |
|               | Copies   |                             |
| <b>Blue</b>   | <b>Post Final Order</b>                            | <b>November 12, 2008</b>    |
|               | Briefs, Replies and Motions                        |                             |
|               | Appeals  |                             |
|               | RCE Preparation                                    |                             |
| <b>Yellow</b> | <b>Estimated RCE</b>                               |                             |

**Bluebonnet Natural Gas, Inc.**  
**RATE CASE EXPENSE ANALYSIS**  
**Gas Utilities Docket No. 9835**

**Summary**

| 1 Party  | Hours  | Rate Per Hour | Total \$<br>Amount | Estimated   | Total<br>Requested |
|--|--------|---------------|--------------------|-------------|--------------------|
| 2  |        |               |                    |             |                    |
| 3  |        |               |                    |             |                    |
| 4 <b>Total Rate Case Expenses Requested</b>          |        |               |                    |             |                    |
| 5 Pre-Filing SOI                                     | 107.75 |               | \$ 21,991          |             | \$ 21,991          |
| 6 Post-Filing SOI                                    | 145.5  |               | \$ 31,918          |             | \$ 31,918          |
| 7 Post Final Order                                   | 16.5   |               | \$ 2,751           |             | \$ 2,751           |
| 8 Estimated RCE                                      |        |               |                    | \$ 3,245.00 | \$ 3,245           |
| 9  |        |               |                    |             |                    |
| 10   |        |               |                    |             |                    |
| 11 Total   | 269.75 | \$ -          | \$ 56,660          | \$ 3,245    | \$ 59,905          |
| 12   |        |               |                    |             |                    |
| 13   |        |               |                    |             |                    |
| 14   |        |               |                    |             |                    |
| 15   |        |               |                    |             |                    |
| 16 <b>Examiner Recommended Adjustments</b>           |        |               |                    |             |                    |
| 17   |        |               |                    |             |                    |
| Revision to COS Model                                |        |               |                    |             |                    |
| 18 for 6-Month Data                                  | 46     |               | \$ 9,672.50        |             |                    |
| Work that could have                                 |        |               |                    |             |                    |
| been performed by                                    |        |               |                    |             |                    |
| 19 clerical  | 6.25   |               | \$ 555.00          |             |                    |
| Adjustment associated                                |        |               |                    |             |                    |
| 20 with Jackie Standard                              |        |               | \$ 332.50          |             |                    |
| Adjustment associated                                |        |               |                    |             |                    |
| 21 with Karl Nalepa                                  |        |               | \$ 194.00          |             |                    |
| Adjustment associated                                |        |               |                    |             |                    |
| 22 with Bob Stemper                                  |        |               | \$ 12.50           |             |                    |
| 23   |        |               |                    |             |                    |
| 24 Total Examiner Adjustments                        |        |               | \$ 10,766.50       |             | \$ 10,767          |
| 25   |        |               |                    |             |                    |
| 26   |        |               |                    |             |                    |
| 27   |        |               |                    |             |                    |
| 28   |        |               |                    |             |                    |
| 29 <b>Recommended Rate Case Expense</b>              |        |               |                    |             |                    |
| 30   |        |               |                    |             |                    |
| 31 Examiners Recommended Amount of RCE               |        |               | \$ 45,894          |             |                    |
| 32 Examiners Recommended Amount of RCE with Estimate |        |               |                    |             | \$ 49,139          |
| 33   |        |               |                    |             |                    |
| 34   |        |               |                    |             |                    |
| 35   |        |               |                    |             |                    |
| 36   |        |               |                    |             |                    |
| 37   |        |               |                    |             |                    |



**Bluebonnet Natural Gas, Inc.**  
**RATE CASE EXPENSE ANALYSIS**  
**Gas Utilities Docket No. 9835**

**Summary**

| Party                          | Hours | Rate Per Hour | Total \$<br>Amount | Estimated | Total<br>Requested |
|--------------------------------|-------|---------------|--------------------|-----------|--------------------|
| <b>Nalepa Actual Billed</b>    |       |               |                    |           |                    |
| Orange                         | 11    |               | \$ 2,695.00        |           | \$ 2,695           |
| Green                          | 56.5  |               | \$ 13,842.50       |           | \$ 13,843          |
| Blue                           | 4     |               | \$ 990             |           | \$ 990             |
| Yellow                         |       |               |                    |           |                    |
| Total                          | 71.5  | \$ -          | \$ 17,528          | \$ -      | \$ 17,528          |
| <b>Stemper Actual Billed</b>   |       |               |                    |           |                    |
| Orange                         | 85.5  |               | \$ 17,100.00       |           | \$ 17,100          |
| Green                          | 82.25 |               | \$ 16,450.00       |           | \$ 16,450          |
| Blue                           | 1.25  |               | \$ 263             |           | \$ 263             |
| Yellow                         |       |               |                    |           |                    |
| Total                          | 169   | \$ -          | \$ 33,813          | \$ -      | \$ 33,813          |
| <b>Nguyen Actual Billed</b>    |       |               |                    |           |                    |
| Orange                         | 4     |               | \$ 620.00          |           | \$ 620             |
| Green                          | 4.25  |               | \$ 658.75          |           | \$ 659             |
| Blue                           | 2     |               | \$ 310             |           | \$ 310             |
| Yellow                         |       |               |                    |           |                    |
| Total                          | 10.25 | \$ -          | \$ 1,589           | \$ -      | \$ 1,589           |
| <b>Standard Actual Billed</b>  |       |               |                    |           |                    |
| Orange                         | 7.25  |               | \$ 1,124           |           | \$ 1,124           |
| Green                          | 2.5   |               | \$ 300             |           | \$ 300             |
| Blue                           | 9.25  |               | \$ 1,189           |           | \$ 1,189           |
| Yellow                         |       |               |                    |           |                    |
| Total                          | 19    | \$ -          | \$ 2,613           | \$ -      | \$ 2,613           |
| <b>Total Covington Support</b> |       |               |                    |           |                    |
| Orange                         |       |               | \$ 452             |           | \$ 452             |
| Green                          |       |               | \$ 667             |           | \$ 667             |
| Blue                           |       |               | \$ -               |           | \$ -               |
| Yellow                         |       |               |                    |           |                    |
| Total                          | 0     | \$ -          | \$ 1,119           | \$ -      | \$ 1,119           |

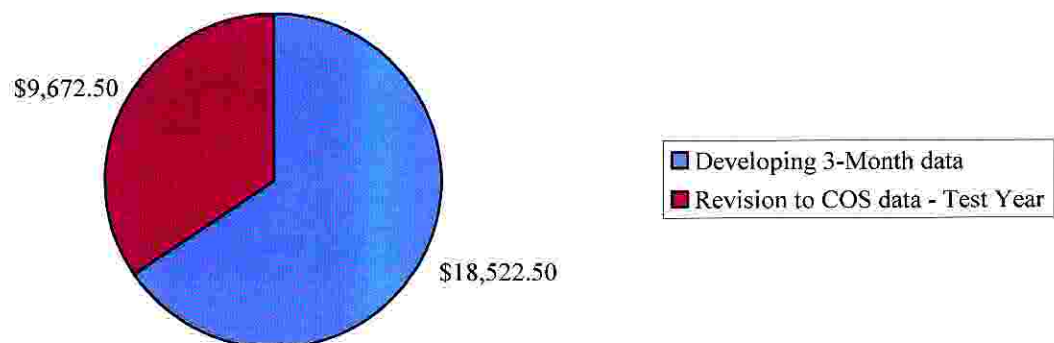
**Bluebonnet Natural Gas, Inc.**  
**Rate Case Expense Analysis**  
**Gas Utilities Docket No. 9835**

Examiner Schedule No. 3

**Grand Total**  
**GUD No. 9835 Rate Case Expense Severed From GUD No. 9810**



**Cost of Revising Model with Full Test-Year Data**





**Bluebonnet Natural Gas, Inc.**  
**RATE CASE EXPENSE ANALYSIS**  
**Gas Utilities Docket No. 9835**

**R. J. Covington Expenses - Total**

| 1  | Date of Activity                                     | Hours | \$ Amount    | Activity  | Invoice No. | Category         | Color Code | Comments      |
|----|--|-------|--------------|---|-------------|------------------|------------|---------------|
| 2  |  |       |              |   |             |                  |            |               |
| 3  | 6/11/2008  |       | \$ 30.00     | Support Services  | 2308        | Pre-Filing SOI   | Orange     | Prep Invoices |
| 4  | 7/7/2008   |       | \$ 90.00     | Support Services  | 2324        | Pre-Filing SOI   | Orange     | Prep Invoices |
| 5  | 8/4/2008   |       | \$ 60.00     | Support Services  | 2333        | Pre-Filing SOI   | Orange     | Prep Invoices |
| 6  | 8/4/2008   |       | \$ 226.05    | Support Services  | 2333        | Pre-Filing SOI   | Orange     | Copies        |
| 7  | 8/4/2008   |       | \$ 46.39     | Support Services  | 2333        | Pre-Filing SOI   | Orange     | Supplies      |
| 8  | 9/12/2008  |       | \$ 45.00     | Support Services  | 2355        | Post Filing SOI  | Green      | Prep Invoices |
| 9  | 9/12/2008  |       | \$ 86.40     | Support Services  | 2355        | Post Filing SOI  | Green      | Copies        |
| 10 | 9/12/2008  |       | \$ 12.87     | Support Services  | 2355        | Post Filing SOI  | Green      | Travel        |
| 11 | 10/3/2008  |       | \$ 75.00     | Support Services  | 2379        | Post Filing SOI  | Green      | Prep Invoices |
| 12 | 10/3/2008  |       | \$ 263.40    | Support Services  | 2379        | Post Filing SOI  | Green      | Copies        |
| 13 | 11/7/2008  |       | \$ 30.00     | Support Services  | 2400        | Post Filing SOI  | Green      | Prep Invoices |
| 14 | 11/7/2008  |       | \$ 58.95     | Support Services  | 2400        | Post Filing SOI  | Green      | Copies        |
| 15 | 11/7/2008  |       | \$ 25.74     | Support Services  | 2400        | Post Filing SOI  | Green      | Travel        |
| 16 | 11/7/2008  |       | \$ 11.84     | Support Services  | 2400        | Post Filing SOI  | Green      | Postage       |
| 17 | 12/8/2008  |       | \$ 30.00     | Support Services  | 2408        | Post Filing SOI  | Green      | Prep Invoices |
| 18 | 12/8/2008  |       | \$ 8.25      | Support Services  | 2408        | Post Filing SOI  | Green      | Copies        |
| 19 | 12/8/2008  |       | \$ 19.31     | Support Services  | 2408        | Post Filing SOI  | Green      | Travel        |
| 20 | 2/9/2009   |       | \$ -         | Support Services  | 2447        | Post Final Order | Blue       | No Charge     |
| 21 |  |       |              |   |             |                  |            |               |
| 22 | Total Invoice Prep.                                  |       | \$ 360.00    |   |             |                  |            |               |
| 23 | Total Copies   |       | \$ 643.05    |   |             |                  |            |               |
| 24 | Total Travel   |       | \$ 57.92     |   |             |                  |            |               |
| 25 | Total Postage  |       | \$ 11.84     |   |             |                  |            |               |
| 26 | Total Telephone                                      |       |              |   |             |                  |            |               |
| 27 | Total Supplies                                       |       | \$ 46.39     |   |             |                  |            |               |
| 28 |  |       |              |   |             |                  |            |               |
| 29 | Total Covington Support                              |       | \$ 1,119.20  |   |             |                  |            |               |
| 30 |  |       |              |   |             |                  |            |               |
| 31 | Nalepa Actual Billed                                 |       | \$ 17,527.50 |   |             |                  |            |               |
| 32 | Stemper Actual Billed                                |       | \$ 33,812.50 |   |             |                  |            |               |
| 33 | Nguyen Actual Billed                                 |       | \$ 1,588.75  |   |             |                  |            |               |
| 34 | Standard Actual Billed                               |       | \$ 2,612.50  |   |             |                  |            |               |
| 35 |  |       |              |   |             |                  |            |               |
| 36 | Total Actual Expenses                                |       | \$ 56,660.45 |   |             |                  |            |               |
| 37 |  |       |              |   |             |                  |            |               |
| 38 | Total Covington Invoiced                             |       | \$ 57,779.65 |   |             |                  |            |               |
| 39 | Actual Expenses                                      |       | \$ 44,216.36 | As of 10/21/08  |             |                  |            |               |
| 40 | Increase   |       | \$ 13,563.29 | Approx. overall increase in cost extending the rate case to revise the COS Model. |             |                  |            |               |
| 41 |  |       |              |   |             |                  |            |               |
| 42 | Source: R.J. Covington Summary, Examiner's Schedules |       |              |   |             |                  |            |               |
| 43 |  |       |              |   |             |                  |            |               |

[illegible]









**Bluebonnet Natural Gas, Inc.**  
**RATE CASE EXPENSE ANALYSIS**  
**Gas Utilities Docket No. 9835**

R. J. Covington Expenses - Jackie Standard

| 1  | Date of Activity               | Hours  | \$ Amount   | Activity  | Invoice No. | Category         | Color Code | Comments |
|----|--------------------------------|--------|-------------|---|-------------|------------------|------------|----------|
| 2  |                                |        |             |   |             |                  |            |          |
| 3  | 06/20 - 23/08                  | 7.25   | \$ 1,123.75 | Review/Edit tariffs   | 2324        | Pre-Filing SOI   | Orange     |          |
| 4  | 08/28 - 30/08                  | 2.5    | \$ 300.00   | Research Large Comm. Rates  | 2355        | Post filing SOI  | Green      |          |
| 5  | 11/18 - 24/08                  | 7      | \$ 840.00   | Prep Tariffs fro filing   | 2408        | Post Final Order | Blue       |          |
| 6  | 1/29/2009                      | 2.25   | \$ 348.75   | File Tariffs  | 2447        | Post Final Order | Blue       |          |
| 7  |                                |        | \$ -        |   |             |                  |            |          |
| 8  |                                |        |             |   |             |                  |            |          |
| 9  |                                |        |             |   |             |                  |            |          |
| 10 |                                |        |             |   |             |                  |            |          |
| 11 | Total Hours                    | 19     |             |   |             |                  |            |          |
| 12 |                                |        |             |   |             |                  |            |          |
| 13 | Hourly Rate                    | \$ 155 |             | Applicable to Invoices 2324 & 2447  |             |                  |            |          |
| 14 | Hourly Rate                    | \$ 120 |             | Applicable to Invoices 2355 & 2408  |             |                  |            |          |
| 15 | Total Amount Billed            |        | \$ 2,612.50 |   |             |                  |            |          |
| 16 |                                |        |             |   |             |                  |            |          |
| 17 | Actual RCE                     |        | \$ 2,612.50 |   |             |                  |            |          |
| 18 |                                |        |             |   |             |                  |            |          |
| 19 | Estimated RCE                  |        | \$ -        |   |             |                  |            |          |
| 20 |                                |        |             |   |             |                  |            |          |
| 21 | Total Requested                |        | \$ 2,612.50 |   |             |                  |            |          |
| 22 |                                |        |             |   |             |                  |            |          |
| 23 | Examiners Adjustment           |        | \$ (333)    | Adjustment represents all hours billed at the discounted rate of \$120/hour. (19 Hours at \$120 minus \$2,612.50) |             |                  |            |          |
| 24 |                                |        |             |   |             |                  |            |          |
| 25 | Examiners Recommended          | \$     | 2,280       |   |             |                  |            |          |
| 26 |                                |        |             |   |             |                  |            |          |
| 27 |                                |        |             |   |             |                  |            |          |
| 28 |                                |        |             |   |             |                  |            |          |
| 29 |                                |        |             |   |             |                  |            |          |
| 30 | Source: Standard hourly detail |        |             |   |             |                  |            |          |
| 31 |                                |        |             |   |             |                  |            |          |
| 32 |                                |        |             |   |             |                  |            |          |
| 33 |                                |        |             |   |             |                  |            |          |
| 34 |                                |        |             |   |             |                  |            |          |
| 35 |                                |        |             |   |             |                  |            |          |

**Bluebonnet Natural Gas, Inc.**  
**RATE CASE EXPENSE ANALYSIS**  
**Gas Utilities Docket No. 9835**

Examiner's Analysis of 3-Month Data vs. 6-Month Data

| 1  | Date of Activity | Hours  | \$ Amount    | Activity   | Invoice No.  | Comments |
|----|------------------|--------|--------------|--|--------------|----------|
| 2  |                  |        |              |  |              |          |
| 3  | May-08           | 13.5   | \$ 2,700     | Prep and Review data for filing                        | 2308 Stemper |          |
| 4  | May-08           | 1.5    | \$ 232.50    | Participate in call                                    | 2308 Nguyen  |          |
| 5  | June-08          | 2.25   | \$ 551.25    | Review Data, work w/Stemper on filing                  | 2324 Nalepa  |          |
| 6  | June-08          | 47     | \$ 9,400     | Develop Filing   | 2324 Stemper |          |
| 7  | June-08          | 1.75   | \$ 271.25    | Discuss data collection w/Stemper                      | 2324 Nguyen  |          |
| 8  | July-08          | 1.5    | \$ 367.50    | Work on filing package                                 | 2333 Nalepa  |          |
| 9  | July-08          | 25     | \$ 5,000     | Work on filing package                                 | 2333 Stemper |          |
| 10 |                  |        |              |  |              |          |
| 11 | Total Hours      | 92.5   | \$ 18,522.50 | Prior to filing SOI developing 3-Month data            |              |          |
| 12 |                  |        |              |  |              |          |
| 13 | August-08        | 7      | \$ 1,715     | Work on Revised COS Model                              | 2355 Nalepa  |          |
| 14 | August-08        | 24.25  | \$ 4,850     | Work on Revised COS Model                              | 2355 Stemper |          |
| 15 | September-08     | 8.25   | \$ 1,650     | Work on Revised COS Model                              | 2379 Stemper |          |
| 16 | September-08     | 3.5    | \$ 857.50    | Work Related to Revised COS Model                      | 2400 Nalepa  |          |
| 17 | September-08     | 3      | \$ 600       | Work on Revised COS Model                              | 2400 Stemper |          |
| 18 |                  |        |              |  |              |          |
| 19 | Total Hours      | 46     | \$ 9,672.50  | Work Related to Revision to COS Model for 6-Month Data |              |          |
| 20 |                  |        |              |  |              |          |
| 21 |                  |        |              |  |              |          |
| 22 |                  |        |              |  |              |          |
| 23 |                  |        |              |  |              |          |
| 24 | Hourly Rate      | \$ 245 | Nalepa       |  |              |          |
| 25 | Hourly Rate      | \$ 200 | Stemper      |  |              |          |
| 26 | Hourly Rate      | \$ 155 | Nguyen       |  |              |          |
| 27 |                  |        |              |  |              |          |

28 Note: The hours above represent only the hours that were specifically identified as work associated with the COS Model.

29  
30 Source: R.J. Covington invoices



## Amount to

| 1 | Date of Activity | Hours | \$ Amount As Billed | \$ Amount As Adjusted | Reduce Requested Amount | Activity                         | Invoice No. | Name of Billed Party | Comments                  |
|---|------------------|-------|---------------------|-----------------------|-------------------------|----------------------------------|-------------|----------------------|---------------------------|
| 2 |                  |       |                     |                       |                         |                                  |             |                      |                           |
| 3 | May-08           | 0.75  | \$ 183.75           | 0                     | \$ 183.75               | Discuss tariff issues w/Standard | 2308        | Nalepa               | Un-Related to Rate Filing |
| 4 | July-08          | 0.5   | \$ 123              | \$ 78                 | \$ 45                   | Deliver rate filing package      | 2333        | Nalepa               | Could be done by Clerk    |
| 5 | September-08     | 0.25  | \$ 61.25            | \$ 38.75              | \$ 23                   | File Discovery Responses         | 2379        | Nalepa               | Could be done by Clerk    |
| 6 | September-08     | 1.5   | \$ 300.00           | \$ 232.50             | \$ 67.50                | Making Copies                    | 2379        | Stemper              | Could be done by Clerk    |
| 7 | October-08       | 2     | \$ 490.00           | \$ 310.00             | \$ 180.00               | Making Copies, deliver to RRC    | 2400        | Nalepa               | Could be done by Clerk    |
| 8 | October-08       | 1.25  | \$ 250.00           | \$ 193.75             | \$ 56.25                | Making Copies                    | 2400        | Stemper              | Could be done by Clerk    |

§ 245 Nalepa

\$ 200 Stemper

\$ 155 Nguyen

Source: R.J. Covington invoices

24

25

26

## 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. 2009). 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, Nacadoches, 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 in 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 \$555.00 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 expense 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 \$45,893.75 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 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 such 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 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 recover 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 Railroad Commission of Texas ("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. 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").
5. 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.
6. TEX. UTIL. CODE ANN. §104.107 (Vernon 1998 & Supp. 2005) 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.
7. In accordance with TEX. UTIL. CODE §104.103 (Vernon 1998 and Supp. 2005), 16 TEX. ADMIN. CODE ANN. §7.230 (2002), and 16 TEX. ADMIN. CODE ANN. §7.235 (2002), adequate notice was properly provided.
8. In accordance with the provisions of TEX. UTIL. CODE ANN. §104.102 (Vernon 1998 & Supp. 2005), 16 TEX. ADMIN. CODE ANN. §7.205 (2002), and 16 TEX. ADMIN. CODE §7.210 (2002), BNG filed its Statement of Intent to change rates.
9. 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).
10. BNG has not met its burden of proof in accordance with the provisions of TEX. UTIL. CODE ANN. §104.008 (Vernon 1998 and Supp. 2005) that the proposed rate changes are just and reasonable.
11. The rate case expense set out in Finding of Fact 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. 2005).

12. 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.
13. BNG is required by 16 TEX. ADMIN. CODE §7.315 (2002) 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 \$46,422 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 rate 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 with 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 \_\_\_\_\_ day of April, 2009.

**RAILROAD COMMISSION OF TEXAS**

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**CHAIRMAN VICTOR G. CARRILLO**

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**COMMISSIONER MICHAEL L. WILLIAMS**

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**COMMISSIONER ELIZABETH A. JONES**

**ATTEST:**

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**SECRETARY**