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HEARINGS SECTION

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

GUD NO. 10102

**RATE CASE EXPENSES SEVERED FROM
GAS UTILITIES DOCKET NO. 10083**

APPEARANCES:

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PROCEDURAL HISTORY:

| | |
|---------------------|--|
| Docket Established: | August 4, 2011 |
| Final Hearing Date: | April 11, 2012 (via briefs) |
| Heard By: | Cecile Hanna, Hearings Examiner Rose Ruiz, Technical Examiner |
| Record Closed: | May 31, 2012 |
| PFD Circulation: | May 31, 2012 |

STATEMENT OF THE CASE

In GUD No. 10083 and consolidated cases,¹ the Railroad Commission dismissed the Statements of Intent for insufficiency of the filing and failing to meet the burden of proof on multiple issues. Review of the rate case expenses and all related issues were severed into this proceeding, GUD No. 10102. The following entities are parties to this case: Hughes Natural Gas, Inc., the City of Magnolia, Staff of the Railroad Commission of Texas and Al E. Birdwell, Treasurer of the Village of New Kentucky POA. In this docket, the parties submitted the evidence and arguments by written filings.

All parties agree that the City of Magnolia's rate case expenses are necessary and reasonable and should be recovered. Furthermore, all parties agree that Hughes should not be entitled to recover rate case expenses in GUD No. 10102 for fees and expenses incurred in GUD No. 10083. The remaining issue is whether Hughes should be allowed to assess a surcharge to ratepayers for reimbursement of the City's rate case expenses, and if so, over what period of time.

Hughes proposes that the City's rate case expenses be collected by a surcharge from ratepayers over a 12-month period based on test year bills. This calculation would result in a monthly bill impact of \$1.04. The City of Magnolia deferred addressing this issue in an effort to minimize rate case expenses. Commission Staff maintains that Hughes should pay the City's rate case expenses without reimbursement from ratepayers since Hughes' Statement of Intent was dismissed.

As set forth below, the Examiners find that the City of Magnolia's actual and estimated rate case expenses of \$43,483.38 are necessary and reasonable. The Examiners recommend that Hughes be allowed to recover costs from ratepayers as the customers did benefit from the intervention and participation of the City of Magnolia in GUD No. 10083 by avoiding a rate increase. The Examiners recommend an adjustment to Hughes' proposal for a surcharge to ratepayers. The Examiners, however, recommend a 24-month recovery period instead of a 12-month recovery period. This adjustment results in a surcharge of \$0.52 per retail customer per month.

¹ Gas Utilities Docket Nos. 10083 & 10093: Hughes Natural Gas, Inc.'s *Statement of Intent* to Change Gas Distribution Rates in the Unincorporated Areas of Austin, Colorado, Grimes, Harris, Montgomery, and Waller Counties, Texas; and Petition for Review from Action of the City of Magnolia Denying Hughes Natural Gas Inc.'s Statement of Intent, respectively

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PROPOSAL FOR DECISION

1. Procedural History

a. Overview

Hughes Natural Gas, Inc. (“HNG” or “Hughes”) provides natural gas service to approximately 3,501 customers within the City of Magnolia and environs. On June 2, 2011, HNG filed with the Railroad Commission of Texas (Commission) a *Statement of Intent* to change gas distribution rates in the unincorporated areas of Austin, Colorado, Grimes, Harris, Montgomery and Waller Counties, Texas. The case was docketed as GUD No. 10083. Also, on June 2, 2011, HNG filed with the City of Magnolia (“City” or “Magnolia”) a *Statement of Intent* to change gas distribution rates that would implement a system-wide new schedule of rates for natural gas service to all of the customers served by HNG within the City of Magnolia. On June 14, 2011, the City of Magnolia denied HNG’s rate request. An appeal of the City’s action was filed at the Commission on June 20, 2011. The case was docketed as GUD No. 10093. The cases were consolidated on July 1, 2011.

Railroad Commission of Texas Staff (“Staff”) intervened in this proceeding on June 9, 2011. The City of Magnolia intervened on July 21, 2011. The Commission also received over 200 individual letters objecting to the proposed increase, a petition from the Powder Mill Estates Owners Associations signed by 99 residents, 55 protests filed by residents of the High Meadow Ranch Community Association, a petition from the Concord Estates Home Owners Association signed by 16 residents, and several petitions from the Village of New Kentucky POA signed by 107 residents. In all, approximately 470 residents and businesses served by HNG filed letters or signed a petition objecting to the proposed increase. Of the rate payers who filed protest letters, the following individuals formally intervened as a Protestant in this proceeding: Elizabeth Nixon, Angela Arndt, Sheryl McDonald, Kathleen Garrett, Shannon Hoffart, Ashley Carter, Michael Kelley, Douglas Mendez, Sheila McLendon, Cecilia Whitaker, Robert Whitaker, William Scates, Sherleen Scates, Al Birdwell, Shirley Kerr, Rolf Kerr, and Melissa Rogers.

The Commission issued a Final Order of Dismissal for GUD No. 10083 on January 10, 2012, which dismissed HNG’s *Statement of Intent* for insufficiency of the filing and failing to meet its burden of proof on multiple issues.

The Rate Case Expenses for GUD No. 10083 and 10093 were severed on July 18, 2011,² into the instant docket, GUD No. 10102. The parties in this Rate Case Expense docket³ include: HNG, City of Magnolia, Staff of the Railroad Commission of Texas and Al E. Birdwell, Treasurer of the Village of New Kentucky POA. A protest letter was filed by the Powder Mill Estates Owners’ Association, however, this association never intervened as a party.

² GUD No. 10083 (and consolidated cases), Hughes Natural Gas, Inc. *Statement of Intent* to Change Gas Distribution Rates in the Unincorporated Areas of Austin, Colorado, Grimes, Harris, Montgomery, and Waller Counties, Texas, Examiners’ Letter No. 10

³ This proposal for decision and proposed final order make frequent reference to GUD No. 10083, which includes GUD No. 10093 as a consolidated case.

b. Prehearing Motions

Motion for Reimbursement of Rate Case Expenses. The City of Magnolia filed a motion for reimbursement of rate case expenses incurred in GUD No. 10083 plus monthly reimbursement of its rate case expenses incurred in GUD No. 10102, pending a final Commission determination on the reasonableness of the rate case expenses and subject to refund for any expenses later found by the Commission to be unreasonable. The City argued that GURA § 103.022(b) entitles municipalities to reimbursement by the utility of the reasonable cost of the services provided by consultants, accountants, and attorneys related to the case. In the alternative, the City requested reimbursement of its rate case expenses plus 90% of its expenses on a monthly basis as allowed in prior Commission dockets.⁴

Staff supported the City's Motion for Reimbursement of rate case expenses arguing that the City was forced to litigate a deficient application and appeal, making expenses necessary by hiring attorneys and consultants to defend its denial action.

HNG's Motion to Abate. In response, HNG filed a Motion to Abate and Response to the City of Magnolia's Request for Recovery of Rate Case Expenses. HNG maintained that the utility was contemplating the refiling of its case and anticipated utilizing portions of testimony and evidence in the future proceeding. HNG argued that determining rate case expenses for the utility at this stage was premature. In reply, Staff and the City asserted that there is no reasonable basis to conclude that rate case expenses incurred in GUD No. 10083 may be used in a future case and that it is unlikely that past legal work and rate reviews may be utilized. The Examiners denied HNG's Motion to Abate the rate case proceeding and granted the alternative motion of the City. The Examiners instructed HNG to reimburse the City of Magnolia \$37,778.38 by April 1, 2012 for expenses incurred in GUD No. 10083 and 90% of the City's monthly expenses for GUD No. 10102.

HNG's Statement of Position and Filing of Direct Invoices. On March 2, 2012, the utility filed its direct invoices for rate case expenses. HNG asserted that it did not intend to seek recovery of the utility's rate case expenses through a surcharge but instead "reserves the right"⁵ to seek recovery of such expenses in a future proceeding. Again, HNG argued that there would be an overlap of the expenses between GUD No. 10083 and a new rate proceeding. As of March 2, 2012, the utility's rate case expenses totaled \$553,146,⁶ as follows:

Table 1.1
Hughes Rate Case Expenses as of 3/2/12

| | |
|--|-----------|
| Legal Expenses | \$321,837 |
| Expert Witness Consultants and Travel/Meals Expenses | \$223,275 |
| Transcript Costs | \$ 8,034 |
| TOTAL | \$553,146 |

⁴ GUD Nos. 10894, GUD No 10784, and 10200

⁵ Exam. Exh. 6 - HNG's Statement Position and Filing of Direct Invoices, March 2, 2012, and HNG's Motion to Abate filed 2/3/12

⁶ Exam. Exh. 6 - HNG's Statement Position and Filing of Direct Invoices, March 2, 2012

The City responded that HNG's Position Statement seemed to seek the same relief denied by the Motion to Abate and the City opposed the utility's proposal to defer any expenses to a future rate case proceeding. Similarly, Staff objected to the proposal by HNG to defer any expenses, as Staff argues that no authority exists for such request. All parties maintained that a live hearing was unnecessary. This is because no party contested the reasonableness of the City's rate case expenses and believed that the remaining issues were suitable for written filings and briefing.

Notice of Hearing. The Examiners, however, issued a Notice of Hearing in an effort to ensure due process related to the novel issue of a party's proposal to defer recovery of requested rate case expenses to a future docket. The notice of hearing set out the issues, as follows:

1. Whether the proposed rates are just and reasonable,
2. Whether the requested rate case expenses are justified,
3. Whether a party may defer recovery of requested rate case expenses to another, future, undesignated proceeding,
4. Whether a surcharge is appropriate and just and reasonable to recover the rate case expenses for the City of Magnolia and/or Hughes, or whether the utility should bear the costs of the City's rate case expenses due to the deficiencies in the *Statement of Intent* filing,
5. Any and all other issues raised in the pleadings, evidence, or argument that are necessary for the Commission to establish just and reasonable rates.

The parties filed briefs related to the scope of the hearing notice. Again, all parties asserted that the pending issues were appropriately handled by briefing and written filings as the reasonableness of the City's rate case expenses was uncontested.

In its briefing, HNG stated a different position than in earlier filings. HNG now maintained that the utility is not "seeking to recover any rate case expenses for Docket Nos. 10083 or 10102 in the instant rate case proceeding, nor is Hughes seeking to 'defer' any rate case expenses that relate solely to Docket Nos. 10083 and 10102. In other words, Hughes has made the decision to forego recovery of any expenses that relate solely to Docket 10083 or 10102."⁷

HNG went on to clarify its position that to the extent that Hughes files a subsequent rate case this year, and to the extent Hughes utilizes certain consulting studies or other legal work, in substantially the same format, then Hughes will request recovery of those limited rate case expenses in the future rate case associated with the new docket.

Admission of Evidentiary Exhibits. Given the change in HNG's argument and the position of all parties that a live hearing was unnecessary, the Examiners canceled the hearing date and submit this proposal for decision based on the written filings and arguments of the parties. The following exhibits are hereby admitted into the evidentiary record:

⁷ Hughes Natural Gas, Inc.'s Response to Examiners' Letter No. 4

- Exam. Exh. 1 - Direct Testimony and Exhibits of Stephen Mack
- Exam. Exh. 2 – Correction to Direct Testimony and Exhibits of Stephen Mack filed May 8, 2012
- Exam. Exh. 3 – Invoices for City of Magnolia filed March 2, 2012
- Exam. Exh. 4 – Direct Testimony of Real Provencher and Exhibits
- Exam. Exh. 5 – Correction to Direct Testimony of Real Provencher filed March 28, 2012
- Exam. Exh. 6 – HNG’s Statement Position and Filing of Direct Invoices, March 2, 2012
- Exam. Exh. 7 – City of Magnolia’s Updated Rate Case Expenses February through May 2012, filed on May 21, 2012

Pending Issues. All parties agree that the City’s proposed rate case expenses are necessary and reasonable and should be recovered. Furthermore, all parties agree that HNG should not be entitled to recover in GUD No. 10102 their rate case expenses incurred in GUD Nos. 10083, 10093 and 10102. The remaining issue is whether HNG should be allowed to assess a surcharge to rate payers for reimbursement of the City’s rate case expenses, and if so, over what period of time.

2. Jurisdiction

The Commission has jurisdiction over the applicant, associated affiliates, the proposed recovery of rate case expenses, and over the matters at issue in this proceeding pursuant to TEX. UTIL. CODE ANN. §§ 102.001, 103.003, 103.033, 103.051, 104.001, 121.051, 121.052, and 121.151 (Vernon 2007 and Supp. 2011). The statutes and rules involved in this proceeding include, but are not limited to TEX. UTIL. CODE ANN. §§ 104.051, 104.101, 104.102, 104.103, 104.105, 104.106, 104.107, 104.110, 104.301, and 16 TEX. ADMIN. CODE Chapter 7.

3. Overall Rate Case Expense Request of the Parties

a. Introduction

Rule 7.5530 provides that 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. Each entity seeking recovery of rate case expenses must 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.

Furthermore, Commission rules mandate that 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.

The City and HNG each filed detailed reports related to the rate case expenses, however, HNG is not requesting reimbursement of its rate case expenses. Thus, the analysis for the reasonableness of rate case expenses is limited to the City of Magnolia's rate case expenses. Besides detailed reports, the City also filed the Direct Testimony of Stephen Mack and a Rate Case Expense Affidavits of Daniel Lawton and Karl Nalepa in support of the request attesting to the reasonableness of the rates charged.⁸

b. Overall Request

(1) City of Magnolia.

In its *original* filing, the City requested total actual and estimated rate case expenses of \$43,483.38. The invoices covered services rendered from July, 2011 through March 26, 2012.⁹ This includes a requested (1) \$37,778.38 in actual fees and expenses through December 2011, for GUD No. 10083; (2) \$2,480.00 for actual fees and expenses for GUD No. 10102 through March 26, 2012;¹⁰ and (3) \$3,225.00 in estimated rate case expenses.¹¹ These figures represent a reduction by one half of the actual time spent and fees assessed by the consulting firm ReSolved Energy Consulting, LLC, and a 60% reduction by attorney, Stephen Mack, of the Lawton Law Firm, P.C.¹² These amounts are set forth in Table 3.1 below.

Table 3.1
Original Filing
As of March 2012
Municipal Rate Case Expenses for GUD No. 10083 and 10102

| | |
|-----------------------------|--------------------|
| The Lawton Law Firm | \$20,427.50 |
| Resolved Energy Consultants | \$15,846.88 |
| Hearing Transcript | \$ 1,504.00 |
| Total for GUD No. 10083 | \$37,778.38 |
| Actual for GUD No. 10102 | \$ 2,480.00 |
| Estimated for GUD No. 10102 | \$ 3,225.00 |
| TOTAL REQUESTED | \$43,483.38 |

⁸ Exam. Exh. 1 - Direct Testimony of Stephen Mack; Rate Case Expense Affidavit of Karl Nalepa Exhibit SPM-4; Exhibit SPM-5 Rate Case Expense Affidavit of Daniel Lawton to the Direct Testimony of Stephen Mack; and Exam. Exh. 2 – Correction to Direct Testimony of Stephen Mack.

⁹ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 3, ln. 16, SPM-3, and Exam. Exh. 3

¹⁰ Exam. Exh. 1 Direct Testimony of Stephen Mack, pp. 2-4 and SPM-5

¹¹ Exam. Exh. 1 Direct Testimony of Stephen Mack, pp. 2-4 and SPM-4

¹² Exam. Exh. 3

In an effort to minimize estimated expenses and obtain more recent actual rate case expenses, the Examiners requested an updated filing through May 2012. The City filed the following:

Table 3.2
Updated Filing as of May 21, 2012
Municipal Rate Case Expenses for GUD No. 10083 and 10102

| | |
|-----------------------------|--------------------|
| The Lawton Law Firm | \$20,427.50 |
| Resolved Energy Consultants | \$15,846.88 |
| Hearing Transcript | \$ 1,504.00 |
| Total Actual -GUD No. 10083 | \$37,778.38 |
| Total Actual -GUD No. 10102 | \$ 4,112.50 |
| Subtotal | \$41,890.88 |
| Estimated to complete case | \$ 1,592.50 |
| TOTAL REQUESTED | \$43,483.38 |

As can be seen in Tables 3.1 and 3.2 above, the expenses incurred on behalf of the City relate primarily to a combination of legal and consulting services. Stephen Mack with the Lawton Law Firm, P.C. testified that under GURA §103.022, municipalities are entitled to reimbursement of their reasonable rate case expenses.¹³ Mr. Mack testified that based upon his personal knowledge and review of the case, he concluded that the City's proposed fees and expenses are reasonable.¹⁴ Specifically, Mr. Mack stated, the following:

- The hourly rates charged by The Lawton Law Firm, P.C. are at the low end of a range of rates charged by firms in cases addressing utility rate matters;
- The Lawton Law Firm limited the amount of time in this proceeding and, even then, did not bill the City for all of the time spent on this case;
- The Lawton Law Firm coordinated with the Commission Staff so as to prevent duplication of efforts;
- The amount of work done, as well as, the time and labor required to accomplish the work is reasonable given the nature of the issues addressed;
- The complexity and expense of the work was relevant and reasonably necessary to the proceeding, and was commensurate with both the complexity of the issues in the proceeding and the nature of the findings sought.¹⁵

Mr. Mack testified that the hourly rates charged by the Lawton Law Firm are reasonable, the amount of work done and time and labor required to accomplish the work was reasonable, given the originality of the work and that the work performed was limited in order to avoid duplication.¹⁶ Mr. Mack charged \$175 per hour for 65.3 hours through December 2011 for a total of \$11,427.50. Mr. Mack worked 163.2 actual hours, which the Lawton Law Firm has

¹³ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 4, ln. 15-16

¹⁴ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 2, ln. 27 through p. 4, ln. 11

¹⁵ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 3

¹⁶ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 6

reduced by 60 percent. Mr. Mack testified that based upon his 8 years of legal experience¹⁷ and the complexity of the case, his rates are at the low end of the hourly rates charged by similarly situated attorneys.¹⁸

Likewise, Daniel Lawton billed 40 hours at a rate of \$225 per hour for a total of \$9,000 through December 2011.¹⁹ Mr. Lawton's rate is also at the low end of the hourly rates charged by similarly situated attorneys based upon his experience and credentials.²⁰ Mr. Lawton is a licensed attorney since 1994 and holds a Master's degree from Tufts University in Economics. Mr. Lawton has testified in numerous rate case proceedings in various jurisdictions at both the state and national level for over 25 years.²¹ Mr. Lawton's affidavit attests to the reasonableness of his rates and time spent by him in this docket in comparison to rates generally charged for this type of work.²² Mr. Lawton did not bill for time he spent working on the case prior to the preparation for the final hearing on the merits. The tasks that Mr. Lawton did not bill the City include reviewing discovery and motions, working with witnesses, participating in preliminary hearings and negotiations, and developing the City's issues.²³

Mr. Mack testified that utility legal rates in the Austin, Texas, area range from \$200-\$350 per hour. Thus, the rates charged by Mr. Mack and Mr. Lawton in this case are on the low side given their experience and credentials.²⁴ Mr. Mack also cited to a *Texas Lawyer* publication for the survey of annual salary and billing. According to this 2009 study, fourth year associate attorneys in the Austin area have rates ranging from an average low of \$245 per hour to \$396 per hour for equity partners.²⁵

Using the same criteria, Mr. Mack also reviewed the fees and expenses of the City's expert witnesses from Resolved Energy Consultants, LLC. Karl Nalepa has a B.S. in Mineral Economics and an M.S. in Petroleum Engineering. Mr. Nalepa has over 27 years of private and public sector experience as an energy economist.²⁶ Mr. Nalepa prepared written, pre-filed direct testimony and testified at the hearing on the merits related to the CapGas acquisition and affiliate transactions. Mr. Nalepa bills at a rate of \$250 per hour for a total of 66.25 hours. Mr. Nalepa agreed to reduce his charges by half for this proceeding due to the size of the service area. The 66.25 hours charged reflects this reduction.²⁷

Mr. Nalepa's associate Bob Stemper also worked on this case. Mr. Stemper analyzed issues, prepared exhibits, and assisted in writing testimony. Mr. Stemper is a management consultant with over 35 years of experience as a regulator and consultant to the energy industry. Mr. Stemper's expertise is in pricing, cost analysis, utility modeling, and regulatory matters.²⁸ Mr. Stemper provided analytical and technical services in the development of utility pricing and

¹⁷ Exam. Exh. 1 Direct Testimony of Stephen Mack, SPM-2

¹⁸ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 7 and SPM-2 & Exam. Exh. 2

¹⁹ Exam. Exh. 3 and Exam. Exh. 1 – SPM-5

²⁰ Exam. Exh. 1 – SPM-1, SPM-2, and SPM-5 and Exam. Exh. 2

²¹ Exam. Exh. 1 Direct Testimony of Stephen Mack, SPM-1 and SPM-5

²² Exam. Exh. 1 – SPM-5

²³ Exam. Exh. 1 Direct Testimony of Stephen Mack, SPM-5

²⁴ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 7 and Exam. Exh. 2

²⁵ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 6 and Exam. Exh. 2

²⁶ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 8 and SPM-4

²⁷ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 8 and SPM-4

²⁸ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 9

costs, analysis of demand side management programs, quantifying accounting adjustments, conducting competitive market assessments, and preparing and evaluating the revenue requirements of investor-owned utilities.²⁹ Mr. Stemper bills at the rate of \$225 per hour. Mr. Stemper billed for 67.25 hours. Mr. Stemper has also reduced his charges by half given the size of the HNG service area and the 67.25 hours reflects this reduction.³⁰ In conclusion, both Mr. Nalepa and Mr. Mack found the proposed consulting fees and expenses to be reasonable.³¹

Estimated Rate Case Expenses. Mr. Mack testified further that GURA contemplates that municipalities will be reimbursed for participation before the Commission and, if necessary, before the court. Moreover, the Commission has previously allowed a municipality to recover the estimated costs to complete the proceeding, including possible judicial appeals.³² According to Mr. Mack, the fact that a municipality's rate case expenses have not all been incurred, as of the date of the determination of the reasonableness of rate case expenses, does not render them unreasonable. The expenses need only be reasonable and incurred, prior to being recovered. The City, however, is requesting only the actual expenses incurred, and the estimated expenses, if and when they occur.

(2) Hughes Natural Gas, Inc.

Real Provencher, President of HNG, testified that HNG had made a decision not to seek recovery of its rate case expenses incurred from Docket Nos. 10083 and 10102. He added that the utility is in the process of evaluating whether it will file a new Statement of Intent this year. Mr. Provencher testified that HNG will consider at that time whether they will utilize previously conducted consulting studies with the new rate filing package and whether HNG will later seek recovery of those expenses and fees.³³

Mr. Provencher testified further that the utility is not contesting the reasonableness of the rate case expenses proposed by the City. HNG, however, is requesting the recovery of the rate case expenses incurred by the City of Magnolia over a one-year period through a rate surcharge to all retail customers served by HNG.³⁴ The utility maintains that recovery of the rate case expenses through a surcharge over a period of one to three years is consistent with Commission precedent.³⁵ Mr. Provencher testified that the City's customers benefited from the City's participation in the HNG's *Statement of Intent* case and therefore, HNG should be allowed to recover these amounts from customers. Also, because the municipal appeal and the environs rate proceeding were consolidated into one docket, Mr. Provencher believes that it is appropriate to recover the rate case expenses from all ratepayers.³⁶

²⁹ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 8 and Exh. SPM-4

³⁰ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 8 and Exh. SPM-4

³¹ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 3, 8-9, SPM-4

³² Exam. Exh. 1 Direct Testimony of Stephen Mack, pp. 4-5; GUD Nos. 9787, 10016, 9517 and 9846

³³ Exam. Exh. 4 Direct Testimony of Real Provencher, p. 6

³⁴ Exam. Exh. 4 Direct Testimony of Real Provencher, p. 2-4 and RP-1

³⁵ Exam. Exh. 4 Direct Testimony of Real Provencher, p. 2 and RP-1; GUD No. 9954 *Rate Case Expenses Severed From GUD No. 9902*; GUD No. 9901 *Rate Case Expenses Severed from GUD No. 9869 and 9870*; GUD No. 9867 *Rate Case Expenses Severed from GUD No. 9839*.

³⁶ Exam. Exh. 4 Direct Testimony of Real Provencher, pp. 3-4 and RP-1

According to Mr. Provencher, the proposed rate case expense surcharge was computed by dividing the total amount of actual and estimated rate case expense for the City of Magnolia by normalized test year bills to determine a surcharge factor of \$1.0350. The monthly bill impact would be \$1.04 per meter/per month for a twelve-month period.³⁷

Mr. Provencher testified further that if the Commission or parties prefer a longer recovery period for the surcharge, that HNG would request an interest component on those payments at HNG's current Commission approved weighted average cost of capital of 10.25%.³⁸ HNG proposes to review all invoiced amounts for rate case expenses and compare those amounts to the actual rate case expenses recovered from all customers to provide a true-up of the rate case expenses. To the extent that HNG has overrecovered rate case expenses, HNG will return any overrecovery through the surcharge mechanism. Conversely, to the extent that HNG has underrecovered the rate case expenses paid to the City, then HNG will continue the surcharge until all amounts are fully recovered. HNG proposes to provide a reconciliation report to the Commission within 45 days of the end of the recovery period.³⁹

(3) Railroad Commission Staff

Staff supported the City's filing for Rate Case Expense reimbursement.⁴⁰ Staff argued that the City's expenses were reasonable and necessary as the municipality was forced to litigate an inadequate application and appeal. According to Staff, the utility brought the matter before the Commission with incomplete records and non-compliance with the State's statutory and rule requirements. Staff emphasized its support of the City's request for reimbursement of its reasonable expenses.

Similarly, in another briefing Staff made clear its position that the City of Magnolia should be reimbursed for its reasonable expenses because it was the action of Hughes that necessitated the responsive work performed by the City. Staff also stated that "Hughes should not be allowed to mulct the ratepayers in expenses it incurred in filing and pursuing a rate case that was found to be so deficient that the Commission dismissed it."⁴¹

In final briefing,⁴² Staff summarized its position on the issues, as follows:

1. The City of Magnolia is entitled to recovery of its reasonable expenses as permitted by §103.022(a) of the Texas Utilities Code.
2. Hughes did not meet its burden in GUD 10083 and should not be allowed to recover expenses for putting Staff and the City of Magnolia through an exercise of abuse and futility.
3. Staff knows of no authority for deferring expenses as Hughes has requested, therefore, the utility should not be allowed to defer its expense

³⁷ Exam. Exh. 4 Direct Testimony of Real Provencher, p. 4, RP-1 and RP-2

³⁸ Exam. Exh. 4 Direct Testimony of Real Provencher, p. 5, RP-1 and RP-2

³⁹ Exam. Exh. 4 Direct Testimony of Real Provencher, p. 5, RP-1 and RP-2

⁴⁰ Staff's Support for the City of Magnolia's Rate Case Expense Reimbursement, January 27, 2012

⁴¹ Staff's Response to Examiners' Letter No. 2, March 16, 2012

⁴² Staff's Prehearing Brief, April 5, 2012

- claim to an unfiled docket and Hughes should not be rewarded now or in the future with recovery of any of its expenses incurred in GUD 10083.
4. Commission Rule, 16 TAC §7.5530(b) allows the Commission to determine the reasonableness of rate case expenses on several factors including the amount of any increase granted. No increase was granted, therefore, the ratepayers should not be asked to pay for the mistakes of Hughes. Hughes alone should bear the cost of reimbursing Magnolia for its reasonable expenses.

Staff concluded by asserting that Hughes should not be allowed to defer any expenses from GUD No. 10083 into any future docket stating, "It must confront the failure of its application in GUD No. 10083 in this docket" and "Hughes alone should bear the expense of making Magnolia whole for its expenses necessitated by Hughes' actions." As a result, it is Staff's argument that Hughes should not be entitled to recovery of the City's expenses via a surcharge on the ratepayers.

Response by HNG and the City. In response to Staff's position that HNG should not be entitled to assess a surcharge on ratepayers to recover the City's reasonable rate case expenses, HNG argues that the ratepayers are benefiting from the utility foregoing its own rate case expenses of \$553,146.⁴³ Consequently, HNG seeks to surcharge the customers over a one year period for the City's reasonable expenses. On the other hand, the City stated that in an effort to minimize rate case expenses, the City will neither address HNG's request to defer rate case expenses to some future docket nor HNG's request to surcharge customers for the rate case expenses incurred by the City in opposing HNG's rate increase request.

c. Examiners' Recommendation

The Examiners reviewed all billings, invoices and evidence submitted by the City, Staff, and HNG. The Examiners found no evidence of double-billing, excess charges, inappropriate documentation of work, or other charges that were not incurred as a direct result of the City prosecuting GUD No. 10083 and 10102 and the related proceeding. These filings demonstrate that no expenses were charged for any luxury items, that there are no first-class air fare or use of non-commercial aircraft, no luxury hotel charges, no limousine service, no meals in excess of \$25 per person, no charges for sporting events, alcoholic drinks or other entertainment.

Furthermore, the detailed billings and invoices have been reviewed and there are no instances of billing in excess of 12 hours per day or being charged more than once for a service or expenditure. Nor, was the hourly rate charged higher than the agreed upon rate. In addition, the expenses for transcripts were necessary for the City to brief the issues before the Commission. The expense of \$1,504.00 submitted for transcripts and photocopying are reasonable given the complexity of the case and length of the hearing.⁴⁴

The following tables show the experience, rate charged and number of hours billed for the legal fees and consultants, respectively:

⁴³ Exam. Exh. 6, HNG's Statement Position and Filing of Direct Invoices, March 2, 2012

⁴⁴ Exam. Exh. 1 Direct Testimony of Stephen Mack, p. 12 and SPM-3

Table No. 3.3
City of Magnolia's Legal Fees Through March 2012

| | Years of Experience | Hours | Rate | Total |
|------------|---------------------|---------------------|--------|-----------|
| Mr. Lawton | 18 | 40.00 ⁴⁵ | 225.00 | 9,000.00 |
| Mr. Mack | 8 | 65.30 ⁴⁶ | 175.00 | 11,427.50 |
| Total | | 105.30 | | 20,427.50 |

Table No. 3.4
City of Magnolia's Expert Witness and Consulting Fees Through March 2012

| | Years of Experience | Hours | Rate | Total |
|---------------------------------------|---------------------|-------|--------|-------------|
| Mr. Nalepa | 27 | 66.25 | 250.00 | 16,562.50 |
| Mr. Stemper | 30 | 67.25 | 225.00 | 15,131.25 |
| Total | | | | 31,693.75 |
| 50% reduction per agreement with City | | | | (15,846.87) |
| Total | | | | 15,846.88 |

The Examiners find that the amount of time spent is commensurate with the number, complexity and gravity of the issues posed by HNG's *Statement of Intent* filing and this rate case expense proceeding. This case involved a proposed system wide revenue increase of approximately 64 percent.⁴⁷ The evidence shows that the Lawton Law Firm and the consulting experts limited the issues and the amount of time and personnel reviewing and participating in the proceeding in an effort to keep rate case expenses down. The time spent by the City was commensurate with the minimum amount of time required to review a rate case of this size and to participate in the hearing and briefing of the issues. Moreover, the Lawton Law Firm and the consulting experts reduced their billing and did not charge the city for a significant amount of the time spent working on the case. Thus, the total fees and expenses incurred by the Lawton Law Firm and the consulting experts are proportionate to the efforts necessary to represent the City, given the complexity of the issues, the originality of the work, and the magnitude of the rate increase proposed.

⁴⁵ This number reflects a substantial reduction by Mr. Lawton, as Mr. Lawton did not bill the City for time spent working on the case prior to the preparation for the final hearing on the merits, reviewing discovery, and motions, working with witnesses, participating in preliminary hearings and negotiations, and developing the issues.

⁴⁶ This number reflects a reduction from 163.2 actual hours worked by Mr. Mack.

⁴⁷ GUD No. 10083 (and consolidated cases), Hughes Natural Gas, Inc. *Statement of Intent* to Change Gas Distribution Rates in the Unincorporated Areas of Austin, Colorado, Grimes, Harris, Montgomery, and Waller Counties, Texas, Examiners' Letter No. 10, p. 7.

The Examiners find that the proposed \$41,890.88 for the City's total fees and expenses were reasonably incurred and necessary to the underlying proceeding and this rate case expense docket. The City should be reimbursed for the actual expenses incurred as updated through May 2012, and any estimated expenses should be reimbursed if and when they occur up to a remaining \$1,592.50.

For clarity, this recommendation does not comment on the reasonableness of the fees and expenses incurred by HNG as a result of the underlying rate case and the rate case expense docket. Mr. Provencher testified that HNG is no longer requesting reimbursement or a "deferral" of the over \$500,000 in total fees and expenses for the company.⁴⁸ Thus, the issue of the reasonableness of HNG's total fees and expenses for their *Statement of Intent* filing and the rate case expense docket is moot.

Rule 7.5530(b) requires the Commission to consider whether the request for a rate change was warranted in granting rate case expenses. Staff argued that since HNG's application was dismissed due to insufficiency, then HNG should bear the cost of the City's rate case expenses not the rate payers. The Examiners recognize that HNG submitted evidence of over \$500,000 in rate case expenses that the utility is foregoing. The Examiners recommend that HNG be authorized to recover the costs of reimbursement to the City for its rate case expenses through a surcharge to the retail customers represented in GUD No. 10083 and consolidated cases. The Examiners, however, recommend an adjustment to the proposed surcharge by extending the recovery period of the surcharge to 24 months and allowing interest at the Public Utility Commission's ("PUC") rate of .12% for customer deposits.

4. Conclusion

In conclusion, the Examiners find that the parties have established that \$43,483.38 in actual and estimated rate case expenses are necessary and reasonable. The Examiners recommend approval of the recovery of the City of Magnolia's reasonable actual and estimated rate case expenses incurred in GUD Nos. 10083 and 10102 in the amount of \$43,483.38.

Hughes proposes that the expense be collected by a surcharge from ratepayers over a 12-month period based on test year bills. This calculation would result in a monthly bill impact of \$1.04. The City of Magnolia deferred addressing this issue in an effort to minimize rate case expenses. Commission Staff maintains that Hughes should pay the City's rate case expenses without reimbursement from ratepayers since Hughes' *Statement of Intent* was dismissed.

The Examiners believe that all of the utility's customers benefited from the City of Magnolia scrutinizing the filing and providing evidence in GUD No. 10083, which highlighted the deficiencies in HNG's filing and ultimately avoided a rate increase. Moreover, Hughes is foregoing its own rate case expenses of over \$500,000. Thus, the Examiners recommend that Hughes be allowed to recover the City's rate case expenses with a surcharge to ratepayers as adjusted by the Examiners.

⁴⁸ Exam. Exh. 4 Direct Testimony of Real Provencher, pp. 5-6 and RP-1 and RP-2

The Examiners recommend this amount be recovered by Hughes by means of a surcharge for a two year period on rates charged to retail customers represented in the GUD No. 10083. The recommended surcharge on rates will be charged at \$0.52 per customer per month for all customer classes. The Examiners recommend that Hughes be allowed to apply an interest carrying charge on the un-recovered monthly rate case expense balance at a rate of .12%, which is the 2012 PUC rate for customer deposits.

It is further recommended that the \$0.52 monthly surcharge shall be a separate line item on each customer's bill clearly identifying the rate case expense recovery charge. The Examiners recommend that it is reasonable to require the City of Magnolia to file a report with the Commission and Hughes within 90 days after the issuance of the Final Order in this docket that provides the invoices for the \$1,592.50 for estimated rate case expenses.

Hughes is also directed to file a compliance report annually to report the status of rate case expenses recovered. This report will be filed with the Market Oversight Section of the Commission within 45 days following the end of the twelve month recovery period. The report shall detail monthly collections, outstanding balances, and interest applied.

The Examiners find that the requested rate case expenses are necessary, just and reasonable as set forth in the Rate Case Expense Surcharge Tariff, which is "Attachment A" to the proposed Final Order.

Respectfully submitted,



Cecile Hanna
Hearings Examiner
Office of General Counsel



Rose Ruiz
Technical Examiner
Office of General Counsel

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

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

PROPOSED FINAL ORDER

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

FINDINGS OF FACT

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

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

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

36. The evidence shows that the Lawton Law Firm and the consulting experts reduced their billing and limited the issues and the amount of time and personnel reviewing and participating in the proceeding in an effort to keep rate case expenses down.
37. The amount of work done, as well as, the time and labor required to accomplish the work is reasonable given the nature of the issues addressed.
38. The work of the City's attorneys and consultants was commensurate with the proportional efforts necessary to participate in the case and the work was also relevant and reasonably necessary to the proceeding, given the complexity of the issues, the originality of the work, and the magnitude of the rate increase proposed.
39. The City of Magnolia has established that the requested rate case expenses in the total actual and estimated amount of \$43,483.38 are just and reasonable. Those expenses include:
 - a. City of Magnolia's requested actual rate case expenses of \$41,890.88 in actual expenses and fees; and
 - b. City of Magnolia's estimated future rate case expenses of \$1,592.50.
40. It is reasonable for the City to be reimbursed for the actual fees and expenses of \$41,890.88 incurred, and any estimated expenses should be reimbursed if, and when, they occur up to a remaining \$1,592.50.
41. HNG was instructed to reimburse the City of Magnolia \$37,778.38 by April 1, 2012 for expenses incurred in GUD No. 10083 and 90% of the City's monthly expenses for GUD No. 10102, until a final Commission determination on the necessary and reasonableness of the City's rate case expenses.
42. The municipal appeal and the environs rate proceeding were consolidated into one docket and thus, all of the utility's customers benefited from the City of Magnolia scrutinizing the filing and providing evidence in GUD No. 10083, which highlighted the deficiencies in HNG's filing and avoided a rate increase by the dismissal of HNG's filing.
43. HNG is foregoing its own rate case expenses of approximately \$553,146 for GUD Nos. 10083 and 10102.
44. It is reasonable to allow HNG to recover the City's rate case expenses with a recommended surcharge to ratepayers for a two year period on rates charged to all retail customer classes represented in GUD No. 10083.
45. It is reasonable to allow HNG to recover the recommended surcharge on rates to be charged at \$0.52 per customer per month for all retail customer classes in GUD No. 10083.

46. It is reasonable to allow HNG to apply an interest carrying charge on the un-recovered monthly rate case expense balance at a rate of .12%, which is the 2012 Public Utility Commission's ("PUC") interest rate for customer deposits.
47. It is reasonable to require HNG to make the \$0.52 monthly surcharge a separate line item on each customer's bill clearly identifying the rate case expense recovery charge.
48. It is reasonable to require the City of Magnolia to file a report with the Commission and HNG within 90 days after the issuance of the Final Order in this docket that provides the invoices for the \$1,592.50 for estimated rate case expenses.
49. It is reasonable to require HNG to file a compliance report annually to report the status of rate case expenses recovered; this report will be filed with the Market Oversight Section of the Commission within 45 days following the end of each twelve month recovery period and the report shall detail monthly collections, outstanding balances, and interest applied.
50. It is reasonable to require HNG to true-up rate case expenses after the twenty-four month recovery period because it will allow the utility to recover the exact amount of the City's rate case expenses without over-recovering or under-recovering from the utility's customers.
51. The requested rate case expenses are necessary, just and reasonable as set forth in the Rate Case Expense Surcharge Tariff, which is "Attachment A" to the proposed Final Order, and incorporated into the Final Order.

CONCLUSIONS OF LAW

1. Hughes Natural Gas, Inc. ("HNG" or "Hughes") is a "Gas Utility" as defined in TEX. UTIL. CODE ANN. § 101.003(7) (Vernon 2007 and Supp. 2011) and § 121.001 and is therefore subject to the jurisdiction of the Railroad Commission ("Commission") of Texas.
2. The Commission has jurisdiction over HNG and its statement of intent and appeals under TEX. UTIL. CODE ANN. §§ 102.001, 103.022, 103.054, & 103.055, 104.001, 104.001 and 104.201 (Vernon 2007 and Supp. 2011).
3. Under TEX. UTIL. CODE ANN. §102.001 (Vernon 2007 and Supp. 2011), the Commission has exclusive original jurisdiction over the rates and services of a gas utility that distributes natural gas in areas outside of a municipality and over the rates and services of a gas utility that transmits, transports, delivers, or sells natural gas to a gas utility that distributes the gas to the public.

4. This proceeding was processed in accordance with the requirements of the Gas Utility regulatory Act (GURA), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001-2001.902 (Vernon 2000 and Supp. 2009) (APA).
5. In accordance with the stated purpose of the TEX. UTIL. CODE ANN., Subtitle A, expressed under TEX. UTIL. CODE ANN. § 101.002 (Vernon 2007 and Supp. 2011), the Commission has assured that the rates, operations, and services established in this docket are just and reasonable to customers and to the utilities.
6. In any rate proceeding, any utility and/or municipality claiming reimbursement for its rate case expenses pursuant to TEX. UTIL. CODE ANN. §103.022(b), shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence. Evidence must be provided related to, but not limited to, the amount of work done, the time and labor required to accomplish the work, the nature, extent, and difficulty of the work done, the originality of the work, the charges by others for work of the same or similar nature, and any other factor taken into account in setting the amount of the compensation. 16 TEX. ADMIN. CODE 7.5530(a).
7. In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out previously, and shall also consider whether the request for a rate change was warranted, whether there was duplication of services or testimony, whether the work was relevant and reasonably necessary to the proceeding, and whether the complexity and expense of the work was commensurate with both complexity of the issues in the proceeding and the amount of the increase sought as well as the amount of any increase granted. 16 TEX. ADMIN. CODE 7.5530(b).
8. The City of Magnolia established by a preponderance of the evidence its necessary and reasonable rate case expenses enumerated in the findings of fact herein and also established that they comply with 16 TEX. ADMIN. CODE 7.5530(a) and (b).
9. The Commission has the authority to allow HNG to recover the City's necessary and reasonable rate case expenses through a surcharge on its rates, under TEX. UTIL. CODE ANN. §§ 104.001 – 104.008, 104.051 (Vernon 2007 and Supp. 2011).

IT IS THEREFORE ORDERED that the attached tariff is just and reasonable and is incorporated into this Final Order. ("Attachment A")

IT IS FURTHER ORDERED that the City of Magnolia's rate case expenses in the amount of \$43,483.38 be recovered from customers through a surcharge of \$0.52 per month for 24 months from all retail customer classes represented in GUD Nos. 10083 and 10093.

IT IS FURTHER ORDERED that the \$0.52 monthly surcharge shall be a separate line item on each customer's bill clearly identifying the rate case expense recovery charge.

IT IS FURTHER ORDERED that HNG is authorized to apply an interest carrying charge on the un-recovered monthly rate case expense balance at a rate of .12%, which is the 2012 Public Utility Commission interest rate for customer deposits.

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

IT IS FURTHER ORDERED that HNG shall file annually with the Commission Gas Services Market Oversight Section, a compliance report on the status of rate case expenses recovered, due within 45 days following the end of each twelve month recovery period. The report shall detail the monthly collections for the rate case expense surcharge, show the outstanding balances and interest applied.

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

SIGNED this ___ day of June, 2012.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN BARRY T. SMITHERMAN

COMMISSIONER DAVID PORTER

COMMISSIONER BUDDY GARCIA

ATTEST:

SECRETARY

GUD No. 10102
Attachment A
Rate Case Expense Surcharge Tariff

Rate Case Expense Surcharge:

A monthly surcharge of \$0.52 per meter/per month surcharge. This rate will be in effect for approximately 24 months until all approved and expended rate case expenses are recovered from all retail customers as documented in the compliance filing on rate case expense recovery for GUD No. 10102.

Formula:

The Rate Case Expense Surcharge is calculated in accordance with the following formula:

| | |
|--|-----------------|
| Estimated Rate Case Costs | \$ 43,483 |
| Proposed recovery period - years | <u>2</u> |
| Annual recovery | \$ 21,742 |
| Normalized Test Year Bills | <u>42,012</u> |
| Surcharge factor | <u>\$0.5175</u> |
| Bill Impact - Incorporated/Unincorporated | \$0.52 |

Interest is applied to the monthly outstanding balance at the rate of 0.12%.

Application:

All retail customers served by Hughes

Compliance Report:

Within 45 days following the first twelve month period and after the final collection month, Hughes shall file a reconciliation report. Hughes shall file the report with the Commission, addressed to the Director of the Gas Services Division and referencing Gas Utilities Docket No. 10102, *Rate Case Expense Recovery Report*. The report shall include:

- the meters billed by month by customer class during the applicable period,
- the amount of Rate Case Expense recovered, by month
- interest calculation applied, by month
- the outstanding balance, by month

Effective Date:

Issuance date of Final Order in GUD No. 10102