



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

GUD No. 10148

Rate Case Expenses Severed from Gas Utilities Docket No. 10021.

APPEARANCES:

FOR APPLICANT

Jamie Nielson
Attorney at Law
P.O. Box 30530
Austin, Texas 78755-3530

RAILROAD COMMISSION OF TEXAS

John Pierce Griffin
Assistant Director of Appellate Law
Railroad Commission of Texas
1701 N. Congress
P.O. Box 12967
Austin, Texas 78711-2967

PROPOSAL FOR DECISION

Procedural History

Docket Established:
Heard By:

March 14, 2012
Randall Collins, Hearings Examiner,
Gene Montes, Hearings Examiner
November 2, 2010
October 23, 2012
March 7, 2013
None

Suspension Order:
Record Closed:
PFD Circulation:
Statutory Deadline:

a. Overview

a. Overview

AgriTexGas, LP (“AgriTex”) is an intrastate natural gas transmission pipeline operating solely in Texas. AgriTex is a gas utility as that term is defined TEX. UTIL. CODE ANN. §101.003(7) (Vernon 2007 & Supp. 2011) and §121.001(2007). AgriTex operates its regulated activities through approximately 30 counties in the Panhandle Region of Texas. AgriTex serves unincorporated residential, small commercial, industrial, and public authority customers that are within the original jurisdiction of the Railroad Commission of Texas (“Commission”). AgriTex also serves agricultural and irrigation customers that are specifically exempt from economic regulation by the Commission.

On October 8, 2010, AgriTexGas, LP filed a Statement of Intent to establish initial rates and related tariffs with the Railroad Commission of Texas (RRC),¹ The case was docketed as GUD No. 10021.² On October 3, 2011, AgriTexGas, LP filed an Amended Statement of Intent to increase rates and related tariffs. The implementation of the proposed rates was suspended on November 2, 2010.³ Notice of the proposed increase was provided as a separate mailing for all affected customers on November 9, 2011, satisfying the requirements of 16 TEX. ADMIN. CODE §§1.45, 7.230 and 7.235, TEX. UTIL. CODE ANN. § 104.103, and TEX. GOV’T. CODE ANN. § 2001.052. Commission Staff intervened in this proceeding on November 4, 2011, for the limited purpose of providing evidence on a Railroad Commission of Texas Audit Section Routine Audit No. 12-028 of AgriTexGas, LP. The docket was abated for a period of time and the company extended the proposed effective date of the environs rates. Notice of the Hearing was given to all parties entitled to notice and the hearing on the merits in this matter was held on February 2, 2012, and February 14, 2012. A final order was issued on April 24, 2012. AgriTex’s requests recovery of rate case expenses was severed into a separate proceeding, GUD No. 10148, on April 24, 2012.⁴

On October 23, 2012, Staff and AgriTex filed a Joint Stipulation and Settlement Agreement. As set out in the settlement agreement, AgriTex agreed to reduce its claim, for the purpose of a settlement by a total of \$33,893.75.⁵ That sum reflects the fact the AgriTex will forgo recovery of \$26,275.00, being expenses incurred by AgriTex to revise its filing. Additionally, AgriTex removed \$349.75 for tariff compliance and \$4,125.00 from audit compliance, for a total reduction of \$33,893.75⁵ from the reimbursement claim.⁶ In the Joint Stipulation and Settlement Agreement, AgriTex’s expense will be collected by a surcharge from ratepayers over a 36 month period by application of a rate case expense surcharge of \$0.088 per Ccf on each customer’s bill commencing within a reasonable period from the effective date of the final order in this proceeding. The rate case expense surcharge of \$0.088 per Ccf shall be in effect until rate case expenses are recovered, but in no event shall the amount collected exceed \$99,342.04.

¹ Gas Utilities Docket No. 10021, Statement of Intent

² Id.

³ Signed Suspension Order Mailed November 3, 2010

⁴ Final Order in GUD No. 10021

⁵ Joint Stipulation Agreement, filed October 23, 2010

⁶ Id.

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 AgriTex

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.⁷

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.

b Overall Request

AgriTex

The Utility initially requested total actual and estimated rate case expenses of \$119,627.96.⁸ The invoices covered services rendered from July 6, 2010 through January 31, 2012.⁹ This includes a requested (1) \$10,892.30 in total legal expenses; (2) \$86,475.70 in total

⁷ 16 TEX ADMIN CODE §7.5530(a)(2002)

⁸ Direct Testimony of Karl J. Nalepa, filed February 2, 2012

⁹ Id.

consulting expenses; and (3) \$525.00 in total other expenses.¹⁰ AgriTex estimated additional expenses of \$16,025.00. The amounts are set forth in Table 3.1 below.

Table 3.1
Original Filing
through January 31, 2012
AgriTex Rate Case Expenses for GUD No. 10021

Total Legal Expenses	\$8,666.60
Total Consulting Expenses	\$86,475.70
Total Other Expenses	\$525.00
Future estimated Expenses	\$16,025.00
TOTAL REQUESTED	\$111,692.30

AgriTex filed Supplement Rate Case Expense on March 5, 2012.¹¹

Table 3.2
Updated Filing
As of February 29, 2012
AgriTex Rate Case Expenses for GUD No.10021

Total Legal Expenses	\$19,558.90
Total Consulting Expenses	\$97,010.66
Total Other Expenses	\$525.00
Future estimated Expenses	\$11,200.00
TOTAL REQUESTED	\$128,128,294.56

AgriTex filed supplemental Direct Testimony of Karl J. Nalepa on June 5, 2012 to update rate case expenses through April 30, 2012.¹²

Table 3.3
Updated Filing
As of April 30, 2012
AgriTex Rate Case Expenses for GUD No. 10021

Total Legal Expenses	\$23,460.47
Total Consulting Expenses	\$100,066.91
Total Other Expenses	\$1,368.75
Future estimated Expenses	\$3,150.00
TOTAL REQUESTED	\$128,046.13

At the time the parties filed the Joint Stipulation and Settlement Agreement, an update to

¹⁰ Id.

¹¹ Supplemental Testimony of Karl J. Nalepa filed March 5, 2012

¹² Supplemental Direct Testimony of Karl J. Nalepa filed June 5, 2012

the Rate case expenses was filed as shown in Table 3.3.¹³

Table 3.4
As of September 30, 2012
AgriTex Rate Case Expenses for GUD No. 10021

Total Legal Expenses	\$25,337.63
Total Consulting Expenses	\$103,379.41
Total Other Expenses	\$1,368.75
Future estimated Expenses	\$3,150.00
TOTAL REQUESTED	\$133,235.79

As can be seen in Tables 3.1, 3.2, 3.3, and 3.4 above, the expenses incurred on behalf of AgriTex relate primarily to a combination of legal and consulting services. Karl J. Nalepa with the consulting firm of Resolved Energy Consulting, LLC (formerly RJ Covington Consulting) filed an affidavit stating that under 16 T.A.C. § 7.5530, AgriTex was entitled to reimbursement of its reasonable rate case expenses. Mr. Nalepa stated that based upon his personal knowledge, he concluded that the proposed fees and expenses are reasonable. Specifically, Mr. Nalepa stated the following:

- The hourly rates charged by Resolved Energy Consulting, LLC are reasonable rates charged by firms in cases addressing utility rate matters;
- Resolved Energy Consulting, LLC did not charge any expenses for luxury items and did not incur any airline, lodging, or meal expenses;
- 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 and necessary to completing the matter before the Commission.¹⁴

Mr. Nalepa billed at a rate of \$250 per hour for 208 hours of work.¹⁵

Bob Stemper with the consulting firm of Resolved Energy Consulting, LLC, performed consulting work under the supervision of Mr. Nalepa on this matter. Mr. Stemper billed at a rate of \$225 per hour for 229.75 hours of work.¹⁶

Additionally, Nita Stevens with the consulting firm of Resolved Energy Consulting, LLC, performed analyst work under the supervision of Mr. Nalepa on this matter. Mrs. Stevens billed at a rate of \$125 per hour for .75 hours of work.¹⁷

Jackie D. Standard with the consulting firm Jackie D. Standard Consulting filed an affidavit stating that under 16 T.A.C. § 7.5530, AgriTex is entitled to reimbursement of their reasonable rate case

¹³ Joint Stipulation and Settlement Agreement filed October 23, 2012

¹⁴ Affidavit of Karl J. Nalepa

¹⁵ Joint Stipulation

¹⁶ Affidavit of Bob Stemper

¹⁷ Affidavit of Nita Stevens

expenses. Mrs. Standard stated that based upon her personal knowledge, she concluded that the proposed fees and expenses are reasonable." Specifically, Mrs. Standard stated the following:

- The hourly rates charged by Jackie D. Standard Consulting are reasonable rates charged by firms in cases addressing utility rate matters;
- She did not charge any expenses for luxury items and did not incur any airline, lodging, or meal expenses;
- 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 and necessary to completing the matter before the Commission.¹⁸

Mrs. Standard billed at a rate of \$75 per hour for 28.25 hours of work for a total of \$ 2,118.75.¹⁹

Jamie Nielson with Jamie Nielson Attorney at Law filed an affidavit stating that under 16 T.A.C. § 7.5530, municipalities are entitled to reimbursement of their reasonable rate case expenses. Mr. Nielson stated that based upon his personal knowledge, he concluded that the proposed fees and expenses are reasonable." Specifically, Mr. Nielson stated the following:

- The hourly rates charged by him are reasonable rates charged by firms in cases addressing utility rate matters;
- He did not charge any expenses for luxury items and did not incur any airline, lodging, or meal expenses;
- 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 and necessary to completing the matter before the Commission.²⁰

Mr. Nielson billed at a rate of \$350 per hour for 86.70 hours of work for a total of \$26,737.63.²¹

c Examiners' Recommendation

The Examiners reviewed all billings, invoices and evidence submitted by AgriTex. 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 parties prosecuting or defending GUD No. 10021 and the related proceeding. These filings demonstrate that no expenses were charged for any luxury items, that there were no first- class air fares 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

¹⁸ Affidavit of Jackie D. Standard

¹⁹ Joint Stipulation

²⁰ Affidavit of Jamie Nielson

²¹ Joint Stipulation

or expenditure. Nor, was the hourly rate charged higher than the agreed upon rate. In addition, the expenses for transcripts were necessary for the parties to brief the issues before the Commission.

The Examiners find that the amount of time spent is commensurate with the number, complexity and gravity of the issues posed by AgriTex *Statement of Intent* filing and this rate case expense proceeding. The evidence shows that the law firms 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 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. Thus, the total fees and expenses incurred by the law firm and the consulting experts are proportionate to the efforts necessary to represent the parties, given the complexity of the issues, the originality of the work, and the magnitude of the rate increase proposed.

Rule 7.5530(b) requires The Commission to consider whether the request for a rate change was warranted in granting rate case expenses. The Examiners recommend that AgriTex be authorized to recover the costs of reimbursement to the Cities for its rate case expenses through a surcharge to the retail customers represented in GUD No. 10021.

The Examiners find that the proposed \$99,324.04 for the Parties' total fees and expenses were reasonably incurred and necessary to the underlying proceeding and this rate case expense docket.

Therefore, the Examiners recommend that the Commission approve the amount agreed to by the parties of \$99,342.04 in actual expenses incurred in GUD No. 10021. The Examiners agree with settlement Agreement that a monthly volumetric surcharge of \$0.088 per Ccf for all customer classes is a reasonable method to recover AgriTex's rate case expenses.

4. Conclusion

In conclusion, the Examiners find that the parties have established that \$99,324.04 in actual and estimated rate case expenses is necessary and reasonable. The Examiners recommend approval of the recovery of the reasonable actual and estimated rate case expenses incurred in GUD No. 10021 in the amount of \$99,324.04.

AgriTex proposes that the expense be collected by a surcharge from ratepayers over a 36 month period by application of a rate case expense surcharge of \$0.088 per Ccf on each customer's bill commencing within a reasonable period from the effective date of the final order in this proceeding. The rate case expense surcharge of \$0.088 per Ccf shall be in effect until rate case expenses are recovered, but in no event shall the amount collected exceed \$99,342.04. This calculation would result in a monthly bill impact of approximately \$5.28 based upon an assured average consumption of 6mcf.

Agritex will file annually, due on the 15th of each December, a report with the Gas Services Division of the Railroad Commission of Texas a report detailing the monthly collections for the Rate Case Surcharge ("RCS") and show the outstanding balance. No interest will accumulate on the outstanding balance.

AgriTex 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 first twelve month recovery period and subsequently the end of the second 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.

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

Respectfully submitted,



Randall D. Collins
Hearings Examiner
Hearings Division



Gene Montes
Hearings Examiner
Hearings Division

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

RATE CASE EXPENSES SEVERED FROM GAS UTILITIES DOCKET NO. 10021	§ § § §	GAS UTILITIES DOCKET NO. 10148
---	------------------	---

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 2004 & Supp. 2008). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. AgriTexGas, LP ("AgriTex") is a utility as that term is defined in the Texas Utility Code, and is subject to the jurisdiction of the Railroad Commission of Texas ("Commission").
2. AgriTex owns and operates a gas distribution system that provides gas service to 30 counties in the Panhandle Region of Texas.
3. On October 8, 2010, AgriTex filed a statement of intent to increase rates on customers located in the unincorporated areas of its service area which was docketed by the Commission as Gas Utilities Docket No. 10021 ("GUD No. 10021").
4. On April 24, 2012, the Examiners severed rate case expense issues in GUD No. 10021 into this docket.
5. On April 24, 2012, the Commission issued a final order in GUD No. 10021.
6. On October 23, 2012, Staff and AgriTex filed a *Joint Stipulation and Settlement Agreement* addressing all issues of AgriTex's request for reimbursement of rate case expenses, and for the purpose of developing a record that the Commission will use in making a determination on AgriTex's rate case expense request.
7. The evidence established that the hourly rates charged by consulting attorneys were reasonable; the number of consulting attorneys working on the underlying docket was minimized; the invoices accurately documented hours worked and services provided; there were no time entries exceeding 12.0 hours per day; and there were no

disbursements for hotels, valet parking, designer coffee, airfare, or meals requiring special scrutiny or disallowance.

8. The Examiners reviewed all invoices supporting the rate case expenses incurred by AgriTex and did not find any duplication of services or testimony. There is no evidence in the record that any of the expenses set forth in the Joint Stipulation and Settlement Agreement were not necessarily incurred in the prosecution of AgriTex's rate case proceeding before the Commission.

9. AgriTex's initially requested actual and estimated rate case expenses in the amount of \$133,235.79 for actual and future work for the prosecution of GUD No. 10021 before the Commission. The Examiners find that the proposed \$99,324.04 for AgriTex's total fees and expenses as set forth in the Joint Stipulation and Settlement Agreement were reasonably incurred and necessary to the underlying proceeding and this rate case expense docket.

10. As set out in the settlement agreement, AgriTex agreed to reduce its claim, for the purpose of a settlement by a total of \$33, 893.75. That sum reflects the fact the AgriTex will forgo recovery of \$26, 275.00, being expenses incurred by AgriTex to revise its filing. Additionally, AgriTex removed \$349.75 for tariff compliance and \$4, 125.00 from audit compliance, for a total reduction of \$33, 893.75 from initial the reimbursement claim of \$133, 235.79.

11. The evidence in the record and settlement agreement indicates that AgriTex's proposed \$0.088 per Ccf surcharge to recover rate case expenses, as shown on AgriTex's proposed Rate Case Expense Surcharge tariff (attached hereto as Exhibit A), will allow the utility to recover its costs without over-recovering from its customers. It is therefore reasonable that AgriTex recover all rate case expenses approved herein by use a \$0.088 per Ccf surcharge for its customers located in its service area.

12. The \$0.088 per Ccf surcharge on gas volumes will not be overly-burdensome on AgriTex's customers, and will allow AgriTex to recover its expenses. In GUD No. 10148 the per Ccf rate-case-expense surcharge will be \$0.088. Assuming an average consumption rate of 6 Mcf (or 60 Ccf) the average monthly residential rate-case-expense surcharge will be $\$0.088 \times 60 = \5.28 .

13. AgriTex proposes that the expense be collected by a surcharge from ratepayers over a 36 month period by application of a rate case expense surcharge of \$0.088 per Ccf on each customer's bill commencing within a reasonable period from the effective date of the final order in this proceeding. The rate case expense surcharge of \$0.088 per Ccf shall be in effect until rate case expenses are recovered, but in no event shall the amount collected exceed \$99,342.04.

CONCLUSIONS OF LAW

- I. AgriTex Gas, LP (“AgriTex”) is a gas utility as defined in TEX. UTIL. CODE ANN. §§ 101.003(7), 121.001 (Vernon 2007 & Supp. 2008) and is subject to the Commission’s jurisdiction under TEX. UTIL. CODE ANN. §§ 104.001, 121.051 (Vernon 2007 & Supp. 2008).
- II. Each party seeking reimbursement for its rate case expenses has the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence, under 16 TEX. ADMIN. CODE § 7.5530 (2002).
- III. The rate case expenses enumerated in the findings of fact herein are reasonable and comply with 16 TEX. ADMIN. CODE ANN. § 7.5530 (2002).
- IV. The Commission has the authority to allow AgriTex to recover rate case expenses through a surcharge on its rates, under TEX. UTIL. CODE ANN. § 104.051 (Vernon 2007 & Supp. 2008).

IT IS THEREFORE ORDERED that AgriTex Gas, LP is authorized to recover all rate case expenses incurred in GUD No. 10021 and approved by this order by means of a surcharge on its rates charged to ratepayers subject to the final orders entered in GUD No. 10021. A surcharge on rates shall be charged at \$0.088 per Ccf on all gas volumes for all customer classes, commencing with the date this final order becomes effective. The \$0.088 per Ccf surcharge shall be a separate line item on each customer’s bill clearly identifying the recovery rate and amount recovered each month. AgriTex Gas, LP’s Rate Case Expense Surcharge tariff is approved.

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

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

Each exception to the examiners' proposal for decision not expressly granted herein is overruled. All requested findings of fact and conclusions of law which are not expressly adopted herein are denied. All pending motions and requests for relief not previously granted or granted herein are denied.

SIGNED this 26th day of March, 2013.

RAILROAD COMMISSION OF TEXAS

CHAIRMAN BARRY T. SMITHERMAN

COMMISSIONER DAVID PORTER

COMMISSIONER CHRISTI CRADDICK

ATTEST:

SECRETARY