

RAILROAD COMMISSION OF TEXAS

**RATE CASE EXPENSES SEVERED §
FROM GUD NO. 9364. §
§**

**GAS UTILITIES DOCKET
NO. 9584**

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

FINDINGS OF FACT

BACKGROUND AND HISTORY

1. CenterPoint Energy Entex (Entex) owns and operates a gas distribution system in and around the City of Tyler referred to as the Tyler Integrated Distribution System ("Tyler IDS").
2. The Tyler IDS is part of the Beaumont East Texas Division.
3. The Tyler IDS provides natural gas service to approximately 32,000 residential, commercial, and large volume customers in, and adjacent to, the City of Tyler and Bullard, Texas.
4. Approximately 26,000 customers reside within the City of Tyler, approximately 400 customers are in the City of Bullard, and approximately 5,600 customers are in the unincorporated areas near the City of Tyler.
5. In 1990, the City of Tyler and Entex entered into a franchise agreement that expired in 2000.
6. The City of Tyler began examining issues related to Entex's franchise agreement in 1997.
7. The focus of review of the franchise agreement was a period from November 1, 1992, through October 31, 2002. That period is referred to by the parties to this proceeding as the "Review Period."
8. In particular, the review focused on the activities of Entex with regard to the operation of its Purchase Gas Adjustment clause (PGA).
9. The City of Tyler notified Entex that it would commence a hearing on September 25, 2002, to consider the propriety of Entex's gas purchase practices.
10. On September 17, 2003, Entex filed a petition at the Railroad Commission seeking a declaratory judgment. That case was docketed as GUD No. 9337.

11. Entex also filed a proceeding in district court seeking to enjoin the proposed action of the City of Tyler.
12. The parties entered into discussions to determine the appropriate venue for resolution of the issues related to the PGA clause.
13. The parties agreed to bring the case to the Commission as an original jurisdiction matter.
14. The City of Tyler ceded its ratemaking jurisdiction pursuant to Section 103.001 of the Texas Utilities Code on the limited issue of “whether Entex properly and lawfully charged and collected for gas sales to residential and commercial customers in the City of Tyler during such period, to consider any appropriate remedies, including but not limited to, refunds, with interest, and to enter such orders as may be appropriate.”
15. The *Joint Petition for Review of Charges for Gas Sales (Joint Petition)* was filed on January 22, 2003, and docketed as GUD No. 9364.
16. The district court proceeding and GUD No. 9337 were subsequently simultaneously dismissed.
17. Notice of Hearing was issued on November 18, 2004, and a hearing was held from December 7, 2004, through December 17, 2004. A supplemental hearing on rate case expenses was held on January 17, 2005.
18. The Commission issued a Final Order in GUD No. 9364 on Tuesday, May 24, 2005.
19. The Commission severed all rate case expense issues for consideration in a separate docket.
20. This docket, GUD No. 9584, was established for consideration of the rate case expense issues.
21. In GUD No. 9364, the Commission determined that Entex did not notify the City of Tyler regarding its criteria for offering service to customers pursuant to a Complementary Contract and a Backup Contract

RATE CASE EXPENSES

22. By city ordinance, the City of Tyler ceded ratemaking jurisdiction to the Commission and “intended the relief sought in that docket to be ratemaking in that it would affect and change the compensation received by Entex for sales and service on Entex’s Tyler Integrated Distribution System.”
23. The Commission has determined that this is a ratemaking proceeding.
24. The City of Tyler has provided testimony and evidence in the record for actual rate case expense of \$1,142,124.94 and estimated future expenses of \$460,000.

25. Entex has provided testimony and evidence in the record for a total of \$1,598,366.93 in rate case expense and estimated future expenses of \$442,000.
26. It is not reasonable that the City of Tyler recover \$14,041.89 associated with the early stages of the negotiations of the Franchise Agreement with Entex.
27. The City of Tyler sought to recover \$46,622,731 for alleged discrimination, imprudent gas purchases and customer overcharges by CenterPoint Energy Entex.
28. The City of Tyler did not prove its claims of discrimination, imprudence and customer overcharges.
29. The only relief ordered by the Commission requires CenterPoint Energy Entex to refile its tariffs for the Tyler IDS.
30. The City of Tyler could have required CenterPoint Energy Entex to refile its tariffs for the Tyler IDS independent of this docket.
31. In determining the reasonableness of rate case expenses, the Commission is required to consider whether the ratemaking proceeding was warranted.
32. In determining the reasonableness of rate case expenses, the Commission is required to consider whether the complexity and expense of the work is commensurate with the amount of increase sought as well as the amount of any increase granted.
33. Given that no refund was granted, and that the City of Tyler could have ordered the only relief granted by the Commission in Docket 9364, the request for the ratemaking proceeding in the City of Tyler versus CenterPoint Energy Entex was not warranted.
34. Given that the City of Tyler sought to recover \$46,622,731, and the Commission ordered no refund, and that the expense of the work exceeds the amount of recovery ordered by over \$2,000,000, the expenses are not commensurate with the amount of recovery ordered.
35. Because the ratemaking proceeding was not warranted, and because the expense of the work was not commensurate with the amount of recovery granted, the rate case expenses requested by the City of Tyler and CenterPoint Energy Entex are unreasonable.

CONCLUSIONS OF LAW

1. Entex is a gas utility as defined in Texas Utilities Code. TEX. UTIL. CODE ANN. §§ 101.003(7) and 121.001 (Vernon Supp. 2004).
2. The Commission has jurisdiction over the subject matter of this case under TEX. UTIL. CODE ANN. §§102.001 and 103.001. (Vernon & Supp. 2004).
3. TEX. UTIL. CODE § 103.022 provides for the recovery of rate case expense by a municipality and a utility involved in a ratemaking proceeding. (Vernon & Supp. 2004).

4. TEX. UTIL. CODE § 104.051 permits the “utility a reasonable opportunity to earn a reasonable return on the utility’s invested capital used and useful in providing service to the public.” (Vernon & Supp. 2004).
5. 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 allocation and shall provide evidence showing the reasonableness of the cost of all professional services, including but not limited to: (1) the amount of work done; (2) the time and labor required to accomplish the work; (3) the nature, extent, and difficulty of the work done; (4) the originality of the work; (5) the charges by others for work of the same or similar nature; and (6) any other factors taken into account in setting the amount of the compensation. 16 TEX. ADMIN. CODE § 7.5530(a).
6. In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including but not limited to those set out in Conclusion of Law No. 5, and shall also consider whether the request 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. 16 TEX. ADMIN. CODE § 7.5530(a).

IT IS ORDERED THAT all requested rate case expenses be denied.

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, 2005.

RAILROAD COMMISSION OF TEXAS

VICTOR G. CARRILLO
CHAIRMAN

/s/_____
MICHAEL L. WILLIAMS
COMMISSIONER

/s/_____
ELIZABETH A. JONES
COMMISSIONER

ATTEST

/s/_____
SECRETARY