

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER setting retail water rates for Don M. Bryant d/b/a/ Buena Vista Water System, under Certificate of Convenience and Necessity No. 11656 in Burnet County, Texas; TCEQ Docket No. 2005-0875-UCR; SOAH Docket No. 582-05-7838

On September 21, 2006, the Texas Commission on Environmental Quality (Commission) considered the application of Don M. Bryant d/b/a/ Buena Vista Water System, (Applicant) to increase rates for retail water utility service provided under Certificate of Convenience and Necessity (CCN) No. 11656 in Burnet County, Texas.

An Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH) conducted hearings on the application on September 18, 2005, and March 7, 2006. The following were designated as parties to the proceeding: the Applicant; the Commission's Executive Director (ED); and the Commission's Office of Public Interest Counsel (OPIC).

After considering the ALJ's Proposal for Decision and the evidence and arguments presented, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Applicant provides retail water utility service under CCN No. 11656 to approximately 120 customers in Burnet County, Texas.
2. Applicant submitted an application for retail water rate/tariff changes on December 30, 2004, which was accepted for filing by the Commission on January 19, 2005. The rates proposed in this application were reviewed by Commission staff.
3. Applicant submitted two administratively incomplete applications, on November 18, 2004, and March 18, 2005, which the ED properly rejected.
4. Applicant submitted supplemental information on March 18, 2005.
5. The application proposed retail water rate/tariff changes with a proposed effective date of February 28, 2005.
6. In identifying the basis for the requested rate increase under the application, Applicant used a test year of January 1 through December 31, 2003, as adjusted for known and measurable changes to Applicant's allowable expenses that were determinable at the time of the application's filing.
7. The application incorporated the proposed retail water rate/tariff changes as follows:

APPLICANT'S PREVIOUS RATES	APPLICANT'S PROPOSED RATES
Monthly Base Rate: \$33.00 per connection (zero gallons included) for a standard 5/8 to 3/4-inch residential meter	Monthly Base Rate: \$36.00 per connection (zero gallons included) for a standard 5/8 to 3/4-inch residential meter
Additional Usage Charge: \$2.75 per 1,000 gallons	Additional Usage Charge: \$3.00 per 1,000 gallons
Tap Fee Charge: \$350.00	Tap Fee Charge: \$400.00

8. Applicant mailed notice of the proposed rate change to its ratepayers and other affected persons on November 9, 2004.
9. When more than ten percent of Applicant's customers opposed the rate change, the matter was referred, on July 19, 2005, to SOAH for a contested case hearing.
10. On August 9, 2005, notice of the contested case hearing was provided by mail to all affected ratepayers and other interested persons.
11. On September 13, 2005, a preliminary hearing on the matter was conducted by ALJ Penny A. Wilkov at the SOAH hearing facilities, William P. Clements Building, 300 West Fifteenth Street, Austin, Texas. The following were designated as parties: Don M. Bryant d/b/a Buena Vista, represented by owner Kathie Bryant, the ED, represented by Staff Attorney Ross W. Henderson, and OPIC, represented by Attorney Mary Alice C. Boehm-McKaughan. Don M. Bryant, deceased, is survived by his wife, Kathie Bryant.
12. The hearing on the merits was held on March 7, 2006, at the SOAH hearing facilities in Austin, Texas. The record closed on May 17, 2006, after consideration of the ED's post-hearing motion and responses, and after the parties submitted written closing arguments and responses.
13. Applicant and Kathie Bryant shared a joint checking account, a house, and a vehicle, with Applicant paying a substantial portion of the household expenses and all vehicular expenses.
14. Although Commission staff requested Applicant's financial records to separate personal expenses from Applicant's expenses, Applicant only provided copies of check stubs and unidentified and uncategorized invoices and receipts, attributing the deficiency in records to unavailability.
15. Applicant's accounting was in disorder, due to the commingled nature of the funds.

16. Applicant failed to keep and submit financial books and records to support the proposed rate structure as provided in the application.
17. Applicant could not support a revenue requirement as stated in the application.
18. The Applicant's annual revenue requirement, which was substantially less than the amount claimed in the application, was properly determined by the ED through the assessment of available data for the test year along with known and measurable changes to the Applicant's allowable expenses that were determinable at the time of the application's filing.
19. The proposed rate change is not just and reasonable.
20. The following rate design, previously charged by Applicant and pertaining to certain elements of the contested case hearing, is just and reasonable:

Monthly Minimum Bill:

Meter Size (Residential):

5/8 to 3/4 inches: \$33.00, including 0 gallons

1 inch: \$48.41, including 0 gallons

Gallonage Charge: : \$2.75 per 1,000 gallons

Tap fee: \$350.00

Reconnection fee \$25.00

Non-payment \$25.00

Customer's request \$50.00

Transfer fee: \$15.00

Late charge 10% of the bill

Returned check charge \$20.00

Deposit: \$50.00

Meter test fee \$25.00

21. The following rate design is not just and reasonable:

Monthly Minimum Bill:

Meter Size (Residential):

5/8 or 3/4 inches: \$36.00, including 0 gallons

1 inch: \$51.41, including 0 gallons

Gallonge Charge: \$3.00 per 1,000 gallons

Tap fee: \$400.00

22. Any other rates and fees will remain the same as they were prior to the filing of the rate change application.
23. The rates and fees noted in Findings of Fact No. 20 are applicable to all water service rendered by the Applicant on or after February 28, 2005.
24. The rates identified as not just and reasonable are those noted in Finding of Fact No. 21, which the Applicant is now charging as interim rates under Code § 13.187(a).
25. Crediting or refunding of interim rates collected in excess of the rates identified as just and reasonable in Finding of Fact No. 20 plus interest is necessary; the return of excess collections plus interest to ratepayers over a two-year period through a uniform credit or refund per customer per month, with repayment to end at such time as the total amount of excess rate collections is returned, is just and reasonable.
26. A return of 12 percent upon the Applicant's invested capital is just and reasonable.

CONCLUSIONS OF LAW

1. Applicant, Don M. Bryant d/b/a/ Buena Vista Water System, is a retail public utility under TEX. WATER CODE ANN. § 13.002(19) and a public utility under TEX. WATER CODE ANN. § 13.002(23).
2. The Commission has jurisdiction to consider an application for a rate increase filed by a retail public water utility, pursuant to TEX. WATER CODE ANN. § 13.181.
3. The ALJ conducted a contested case proceeding and proposed a decision on the Applicant's proposed water rate/tariff changes under the authority of TEX. GOV'T. CODE. ch. 2003, TEX. WATER CODE ANN. ch. 13, and 30 TEX. ADMIN. CODE chs. 80 and 291.
4. Proper notice of the application was given by the Applicant, as required by TEX. WATER CODE ANN. § 13.187.
5. Based on Finding of Fact No. 13-17, Applicant failed to keep uniform accounts, as prescribed by the Commission, of all business transacted as required by 30 TEX. ADMIN. CODE § 291.72.
6. Based on Finding of Fact No. 13-17, Applicant failed to provide, within a reasonable time after the application was filed, the necessary documentation or other evidence that supported the expenses shown in the application, and such expenses should be disallowed, pursuant to TEX. WATER CODE ANN. §13.187(c).
7. Based on Finding of Fact No. 13-17, Applicant did not establish that the proposed changes in the rates made, demanded, or received were just and reasonable, as required by TEX. WATER CODE ANN. §13.182(a).
8. The rates and fees previously charged by the Applicant, set forth in Findings of Fact No. 20, are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory,

but are sufficient, equitable and consistent in application to each class of customer, as required by TEX. WATER CODE ANN. §§ 13.182, 13.189, and 13.190.

10. The rates and fees previously charged by the Applicant, as set forth in Findings of Fact No. 20, will permit the Applicant to recover its reasonable and necessary operating expenses and to have a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public.
11. The Commission has the authority under TEX. WATER CODE ANN. § 13.187(i) to require the Applicant to refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest.

III. EXPLANATION OF CHANGES

1. The Commission modified Findings of Fact No. 21 in order to remove the references to the unchanged fees in the Applicant's tariff (the reconnect fee through the meter test fee).
2. The Commission modified Findings of Fact No. 25 in order to add the phrase "plus interest" twice within the finding.
3. The Commission added Conclusion of Law No. 11 to identify the authority for the ALJ's recommendation regarding crediting or refunding overcharges plus interest made the subject of Finding of Fact No. 25.
4. The Commission added Ordering Provision No. 4 and re-numbered the remaining ordering provisions to implement the ALJ's recommendation regarding crediting or refunding overcharges plus 6% interest made the subject of Finding of Fact No. 25.

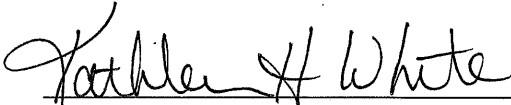
NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY THAT:

1. The application of Don M. Bryant d/b/a/ Buena Vista Water System, for water rate/tariff changes is denied.
2. Rates and fees for Don M. Bryant d/b/a/ Buena Vista Water System are approved as set forth in Finding of Fact No. 20. The effective date of the approved rates is February 25, 2005. The approved rates are applicable to all water service rendered on or after that date.
3. Don M. Bryant d/b/a/ Buena Vista Water System shall file a tariff reflecting the rates approved by the Commission within ten days of the date of this Order.
4. Don M. Bryant d/b/a Buena Vista Water System shall refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus 6% interest over a two year period, with repayment to end at such time as the total amount of the excess rate collections is returned.
5. Don M. Bryant d/b/a/ Buena Vista Water System shall notify customers, by mail, of the final rate structure within 30 days of the date of this Order.
6. The effective date of this Order is the date the Order is final, as provided by TEX. GOV'T. CODE ANN. § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.
7. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief not expressly granted herein are hereby denied for want of merit.
8. The Chief Clerk of the Commission shall forward a copy of this Order to all parties.

9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: **SEP 22 2006**

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


Kathleen Hartnett White, Chairman