

**BEFORE THE
RAILROAD COMMISSION OF TEXAS**

**STATEMENT OF INTENT OF HUGHES §
NATURAL GAS, INC. and PETITION §
FOR REVIEW FROM ACTION OF THE § GAS UTILITIES DOCKET
CITY OF MAGNOLIA DENYING § NOS. 10083 and 10093
HUGHES NATURAL GAS INC.'S §
STATEMENT OF INTENT §**

FINAL ORDER OF DISMISSAL

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. § 551.001, *et seq.*, (Vernon 2004 & Supp. 2010). The Railroad Commission of Texas adopts the following findings of fact and conclusions of law and orders as follows:

FINDINGS OF FACT

1. Hughes Natural Gas, Inc., (HNG) is a gas utility as that term is defined in the Texas Utility Code.
2. 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.
3. The Commission has jurisdiction over HNG and over the matters at issue in this proceeding pursuant to TEX. UTIL. CODE ANN. §§ 102.001, 103.003, 103.051, 104.001, 121.051, 121.052, and 121.151 (Vernon 2007 and Supp. 2010). The statutes and rules involved in this proceeding include, but are not limited to TEX. UTIL. CODE ANN. §§ 104.101, 104.102, 104.103, 104.105, 104.106, 104.107, 104.110, 104.301, and 16 TEX. ADMIN. CODE Chapter 7.
4. The implementation of the proposed rates was suspended on June 27, 2011.
5. Notice of the proposed increase was provided by bill insert to all customers inside the City of Magnolia and to all environs customers in accordance with TEX. UTIL. CODE ANN. §104.103(b)(2) on June 7, 2011.
6. A Supplemental Notice of the proposed increase was provided by bill insert to all customers inside the City of Magnolia and to all environs customers in accordance with TEX. UTIL. CODE ANN. §104.103(b)(2) on July 7, 2011.
7. On June 14, 2011, the City of Magnolia denied the proposed rate increase.

8. On June 20, 2011, HNG filed an appeal and that case was docketed as GUD No. 10093, *Petition for Review from Action of the City of Magnolia Denying Hughes Natural Gas Inc.'s Statement of Intent*.
9. GUD No. 10093 was consolidated into this proceeding, GUD No. 10083, on July 1, 2011.
10. Staff of the Railroad Commission of Texas (Staff) intervened in this proceeding on June 9, 2011.
11. The City of Magnolia (City) intervened in this proceeding on July 21, 2011.
12. The Commission received over 200 individual letters and several petitions from homeowners and neighborhood associations. In all, approximately 470 residential and commercial customers served by HNG objected to the proposed rate increase.
13. Of the rate payers who filed letters objecting to the rate increase, the following individuals also formally intervened as Protestants 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.
14. The hearing on the merits in this matter commenced on September 26, 2011, and was concluded on September 28, 2011.

Books and Records

15. The preponderance of the credible evidence fails to demonstrate that HNG maintains its books and records in accordance with FERC USOA and Commission Rule 7.310.
16. HNG is not entitled to the presumption of Commission Rule 7.503 allowing amounts shown on the company's books and records, as well as, summaries and excerpts taken from those records to be *prima facie* evidence of the amount of investment or expense reflected and reasonably incurred.

Notice

17. HNG mailed its customers an initial notice on June 7, 2011, and then sent a supplemental notice on July 7, 2011, entitled *Supplemental Notice of Request for Gas Rate Increase*.
18. The supplemental notice was necessitated due to an error in the address referenced for the Railroad Commission of Texas.
19. The *Supplemental Notice of Request for Gas Rate Increase* issued indicated that a residential customer receiving a bill for 6 Mcf would experience an increase of 33.1%.

20. Protestants raised issues about the clarity of the notice and the confusion stemmed from the calculation of the proposed increase.
21. A residential gas bill is generally made up of two broad components: the amount due as a result of base rates and the amount due for natural gas consumption, a pass through cost to the customer.
22. The percentage change proposed, with the cost of gas, for environs customers who consume 6 Mcf is 33.1%.
23. The percentage change proposed in base rates, excluding the cost of gas, for environs customers who consume 6 Mcf, is 68.73%.
24. The percentage change proposed, with the cost of gas, for customers within the City of Magnolia who consume 6 Mcf, is 23.92%.
25. The percentage change proposed, excluding the cost of gas, for customers within the City of Magnolia who consume 6 Mcf, is 52.84%.
26. By including the pass through cost of gas in the calculation of the percentage change, the notice dampened the effect of the proposed increase on base rates. Removal of the pass through cost of gas reveals the effect of the base rate increase.
27. The company's notice did not provide an analysis of the rate increase with and without gas costs.
28. It has been the practice of other utilities before the Commission in several cases to carefully delineate the effect of the proposed increase with and without gas costs.
29. The notice issued by HNG complied with the minimum requirements of the statute and regulations. The notice issued is consistent with the prior notice submitted in HNG's last rate proceeding, GUD No. 9731.
30. In order to avoid confusion in the future and unnecessary controversy, HNG is directed to precisely describe the proposed rate increase with and without gas costs in all future rate proceedings in addition to the statutory and regulatory requirements of the GURA.

Affiliate Issues

31. Hughes Gas Resources, Inc. ("HGR") is a holding company organized as a Subchapter S corporation and is the parent company that owns the following four subsidiaries: (1) Hughes Natural Gas ("HNG") (the applicant), (2) Alamo Pipeline LLC., ("Alamo"), (3) Goliad Midstream Energy, LLC. ("Goliad"), and (4) Pinehurst Utility Construction, LLC. ("Pinehurst" or "PUC").
32. Hughes Gas Resources is owned by Frank Hicks and Real Provencher and HGR provides the capital required by the subsidiaries, including HNG.

33. These four companies as a group are related affiliates through their common ownership of the parent company Hughes Gas Resources and are referred to as the "Hughes Resources Affiliated Group of Companies."
34. Mr. Provencher and Mr. Hicks serve alternately as President and Vice President of the various companies, as follows: (a) Hughes Gas Resources – President is Mr. Hicks and Vice President is Mr. Provencher; (b) HNG – President is Mr. Provencher and Vice President is Mr. Hicks; (c) Goliad – President is Mr. Provencher and Vice President is Mr. Hicks; and (d) Alamo – President is Mr. Provencher and Vice President is Mr. Hicks; (e) Pinehurst – President is Mr. Hicks and Vice President is Mr. Provencher.
35. Decker Properties, LLC ("Decker"), a fifth affiliate, is owned exclusively by Frank Hicks and Karen Hicks.
36. Decker is an affiliate company due to Mr. Hick's association with Hughes Gas Resources, Inc. and the remainder of the affiliated group of companies.
37. All of the affiliates provide services to HNG.
38. Work conducted among the affiliates is often conducted on an informal basis and some of some of the transactions are not memorialized in writing.
39. While Mr. Hicks employs timesheets for his work at HNG, the work performed by HNG for affiliates is not consistently tracked by all employees.
40. The accounts payable human resources employee allocated her expenses to HNG based upon an informal estimate.
41. Mr. Provencher, who performs services for all affiliates, maintains no timekeeping records for HNG or the other affiliates.
42. The affiliate entities are not stand-alone entities and benefit from the use of several physical assets and services provided by HNG personnel for which no costs are assigned to the affiliate.

Alamo Pipeline, LLC

43. Alamo is a natural gas transmission utility that provides natural gas transportation in Harris and Montgomery County and much of the gas supplied to HNG is transported on Alamo's Pinehurst Pipeline.
44. Alamo delivers gas for Goliad to HNG and XTX Pipeline, LLC.

Goliad Midstream Energy, LLC

45. Goliad buys and sells natural gas delivered to local distribution companies in Montgomery and Harris County. All of its sales are delivered on the Pinehurst Pipeline owned by Alamo.

Pinehurst Utility Construction, LLC

46. Pinehurst provides construction services to HNG, to Alamo and to unrelated third parties and also performs services such as yard-line installations for customers of HNG.
47. HNG's test-year-operating expenses included amounts for services that were provided by Pinehurst.
48. HNG's plant in service includes amounts for plant construction services provided by Pinehurst during the test year.
49. HNG provided uncompensated advertising on its website on behalf of Pinehurst.

Decker Properties, LLC

50. Decker is a property management company.
51. HNG and several of the other affiliates lease office and warehouse space from Decker.
52. HNG pays a monthly rent of \$3,500.
53. The leases among the affiliates, including HNG, are not memorialized in writing.

Physical Assets

54. The preponderance of the credible evidence established that the following entities were able to use the following *physical assets* without paying for those assets:
 - a. Hughes Gas Resources lists as its principal office and/or the principal place of business: 31830 State Highway 249, Pinehurst, Texas 77382. This address is listed on all business filings with the Secretary of State. Hughes Gas Resources receives mail at that address. Mr. Provencher and Mr. Hicks perform tasks for Hughes Gas Resources at this address. Hughes Gas Resources does not pay rent for this property.
 - b. Goliad lists as its principal office and/or the principal place of business: 31830 State Highway 249, Pinehurst, Texas 77382. This address is listed on all business filings with the Secretary of State. Goliad receives mail at this address. Mr. Provencher and Mr. Hicks perform tasks for Goliad at this address. Goliad does not pay rent for this property.
 - c. Mr. Provencher, Mr. Hicks, and Ms. Miller provide services for various members of the Hughes Resources Affiliated Group of Companies. The proposed allocation for rent, however, does not allocate any of the rental expense for the space occupied by those individuals to any of the affiliated members in that group of companies.
 - d. The contract between Goliad, as the seller of natural gas, and HNG, as the buyer of gas provides that notices required by the contract are to be made at the following address, telephone number and facsimile:

- Physical Address: 31830 State Highway 249, Pinehurst, TX 77362
 - Telephone: (281)766-1280 (Goliad) and (281) 766-1290 (HNG)
 - Facsimile: (281) 259-7773 (both Goliad and HNG)
 - Attn: Real Provencher (Goliad) and Frank Hicks (HNG)
- e. The contract between Goliad, as the seller of natural gas, and a third party not affiliated with HNG, provides that notices to Goliad are to be made at the following address, telephone number and facsimile:
- Physical Address: 31830 State Highway 249, Pinehurst, TX 77362
 - Telephone: (281)766-1280
 - Facsimile: (281) 259-7773
 - Attn: Real Provencher
- f. Goliad does not pay any portion of the telecommunications equipment expenses at the above referenced address.
- g. Frank Hicks and Real Provencher each drive a vehicle provided by HNG. Mr. Hicks and Mr. Provencher drive to work in this vehicle and perform tasks on behalf of Hughes Gas Resources, Inc., Alamo, Goliad, Pinehurst and Decker. None of these affiliates pay for the vehicle or the gasoline to operate the vehicle.
- h. Goliad and HGR do not pay for telephone services at the office address of 31830 State Highway 249, Pinehurst, Texas 77382. Calls are routed to Mr. Provencher related to all affiliates at that address.
- i. No evidence was provided that any allocation was made of HNG information technology equipment to Alamo. Mr. Provencher exchanged several emails with Staff of the Commission at the time the initial rates for Alamo were filed. The email address referenced in some of those documents is as follows:
RealP@hughesnaturalgas.com

Employee Services

55. The preponderance of the credible evidence established that the following *services* were rendered to the affiliates at no cost to the affiliate:
- a. Several affiliates do not pay for any vehicle insurance associated with HNG vehicles that are used in providing service to the affiliates.
 - b. Several affiliates do not pay for property insurance associated with HNG property that is used in providing service to the affiliates.
 - c. Real Provencher who is an officer of HNG provides administrative, directional, accounting, managerial, clerical, secretarial duties, and other essential business functions on behalf of all affiliates and none of the affiliates compensate him for those services.

- d. On behalf of Alamo, the President of HNG, Mr. Provencher, worked with Staff of the Railroad Commission to establish Alamo's initial rates in 2010 to establish initial rates. Discussions and email exchanges between the President and the Gas Services Division regarding the proposed tariff spanned from May of 2010 to November of 2010.
- e. The President of HNG, Mr. Provencher, submitted the initial study, prepared by GDS Associates, in support of Alamo's tariff. A study that Mr. Provencher reviewed.
- f. The Distribution Annual Report on file at the Commission is signed by Mr. Provencher on behalf of Alamo and included a declaration that it "was prepared by me or under my supervision, and that the data and facts stated therein are true, correct, and complete to the best of my knowledge."
- g. Mr. Provencher is a signatory on the Gas Services Agreement entered into between HNG and Goliad and XTX Pipeline and Goliad.
- h. Mr. Provencher signed on behalf of Goliad as the supplier to Goliad's contract with XTX Pipeline and HNG and negotiated on behalf of Goliad.

Specific Expense Adjustments Related to Affiliate Transactions

56. The company's filing includes a salary request for nine full-time employees and two part-time employees. The total initial salary request of the company was \$511,397.
57. After the case was filed the company recognized that an adjustment should be made to the salary of the accounts payable and human resources employee, Barbara Miller.
58. In the company's revised filing, Ms. Miller's salary and benefits were reduced by \$17,005.
59. Included in the salary request was an adjustment to increase salaries for all personnel.
60. HNG has not met its burden of proof with regards to the salary levels included in the cost of service.
61. Services provided by an employee of a regulated utility to an affiliate should be compensated by that affiliate because an uncompensated service to an affiliate is a subsidy to that affiliate paid by the rates charged to customers of the system.
62. Any subsidy provided by HNG to an affiliate that, in turn, provides services to HNG is necessarily part of the cost of that service.
63. Unless the costs of services are accounted for through a direct assignment or allocation the affiliate standard set out in Section 104.055(b)(2) cannot be satisfied.
64. Uncompensated service paid for by captive customers results in rates that are not just and reasonable and result in a restriction on competition.

65. The President of HNG performed work activities and provided uncompensated services to the affiliates.
66. Absent the services provided by Mr. Provencher, Alamo and Goliad would cease to function.
67. The following employees provided services to the affiliates of HNG: President, Staff Accountant, Customer Service Representative, and Accounts Payable and Human Resources.
68. The proposed increase in salaries is not just and reasonable because HNG has not established by a preponderance of the credible evidence that the alleged increased labor requirement is not due to the fact that employees of the HNG, provide uncompensated services to the affiliates of HNG.
69. Vehicles are part of the total compensation package provided to the President and the Vice President of HNG and the vehicle expense is included in the cost of service calculation. The amounts included include expenses for fuel, maintenance, and lease.
70. After the hearing, HNG conceded that the expenses related to Mr. Hick's vehicle should be allocated.
71. The allocation proposed by HNG failed to capture all expenses associated with that expense: The vehicle expense adjustment only captured the fuel expense component of the vehicle.
72. The affiliate Decker collects rent for the property located at 31830 State Highway 249, Pinehurst, TX 77362.
73. The rental expense is calculated based on the square footage of four entities that occupy the physical space: HNG, Pinehurst, Alamo and a third party.
74. The total annual rental expense collected by Decker from those members of the Hughes Resources Affiliated Group of Companies is \$62,688.
75. The rental expense collected from HNG is \$42,072 and that amount has been included in the cost of service calculation.
76. The space occupied by Mr. Provencher, Mr. Hicks, and Ms. Miller is allocated exclusively to HNG.
77. The phone system installed in the office is shared among all Hughes Resources Affiliated Group of Companies.

78. All of the affiliates have utilized and continue to use the original server owned by HNG for file storage and data retrieval.
79. HNG failed to meet its burden of proof regarding rental expenses and vehicle expenses.
80. None of the space occupied by shared employees is allocated to the affiliates.
81. Goliad and Hughes Resources pay no rent and are provided telephone services at no charge at that address.
82. It is not reasonable that the lease agreement applicable to each affiliate has not been reduced to writing or that the rental agreement is not maintained in the files of the utility in order to comply with the requirements of the FERC USOA.
83. The record in this case does not establish that policies and procedures are in place to ensure that assets of HNG are shared among affiliates.
84. The total workforce associated with Pinehurst has not been established in this record.
85. An accurate employee count is essential to the rental allocation process proposed by HNG.
86. The company has not included all costs of receiving services from Pinehurst for construction projects undertaken for HNG.
87. HNG provides an array of uncompensated services to Pinehurst.
88. In the market-place these services have a value and their expense should have been included in the calculation of the costs of receiving service from Pinehurst.
89. Failure to account for the cost of the services provided by the President of HNG to Pinehurst is not consistent with the requirements of the FERC USOA, is not just and reasonable, does not permit an accurate calculation of the costs of services provided by Pinehurst to HNG, and requires that ratepayers bear the expense of the business services provided to affiliates by HNG.
90. None of these services provided by HNG to Pinehurst were factored into the calculation of the costs of construction services provided to Pinehurst and there is no way to assess whether the rate charged by Pinehurst is competitive and therefore includable as a just and reasonable expense.
91. HNG has failed to establish that expenses related to activities conducted by Pinehurst on behalf of HNG are just and reasonable and all of those expenses are properly excludable from rate base.
92. The plant in service includes contributions made by Pinehurst.

93. The company has not included the amounts associated with the materials for work performed by Pinehurst.
94. Projects should be booked as instructed by the FERC USOA at original cost with an adjustment of its value.
95. Materials and supplies held in inventory and then used in projects or expensed should be accounted for according to FERC USOA.

Failure to Establish Essential Rate Components

96. HNG's proposed level of rate base is not reasonable or supported by the preponderance of the credible evidence pursuant to the requirements of TEX. UTIL. CODE ANN. § 104.051.
97. The preponderance of the credible evidence regarding capital infusions does not support HNG's proposed capital structure of 90% equity and 10% debt.
98. HNG failed to show by a preponderance of the credible evidence that the company infused capital in the amount of \$1,352,289 between January 2011 and March 2011.
99. Based on the forgoing findings of fact, HNG has not established the value of the company's invested capital because HNG failed to properly account for various affiliate transactions and HNG failed to establish the level of infused capital.
100. Based on the forgoing findings of fact, HNG has not established its reasonable and necessary operating expenses.
101. In GUD No. 9731, HNG's last rate proceeding, the issue of affiliate expenditures was also addressed and the Commission disallowed \$166,920 for the company's rate request.
102. Based on the forgoing findings of fact, HNG has not established the value of invested capital.
103. Based on the forgoing findings of fact, HNG has not established its reasonable and necessary operating expenses.
104. HNG's June 2, 2011, *Statement of Intent* to change gas distribution rates was insufficient to establish the company's invested capital used and useful in providing service to the public and the filing was insufficient to establish the company's reasonable and necessary operating expenses as required by TEX. UTIL. CODE ANN. § 104.051.

CONCLUSIONS OF LAW

1. Hughes Natural Gas, Inc., (HNG) is a "Gas Utility" as defined in TEX. UTIL. CODE ANN. §101.003(7) (Vernon 2007 and Supp. 2010) and §121.001(Vernon 2007) and is therefore subject to the jurisdiction of the Railroad Commission of Texas ("Commission").
2. The Commission has jurisdiction over HNG and HNG's Statement of Intent and appeals under TEX. UTIL. CODE ANN. §§ 102.001, 103.022, 103.054, 103.055, 104.001 and 104.201 (Vernon 2007 and Supp. 2010).
3. Under TEX. UTIL. CODE ANN. §102.001 (Vernon 2007 and Supp. 2010), 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 conducted in accordance with the requirements of the Gas Utility regulatory Act (GURA), and the Administrative Procedure Act, TEX. GOV'T CODE ANN. §§ 2001.001 *et seq.* (Vernon 2008 & Supp. 2010) ("APA").
5. TEX. UTIL. CODE ANN. §104.107 (Vernon 2007 and Supp. 2010) provides the Commission's authority to suspend the operation of the schedule of proposed rates for 150 days from the date the schedule would otherwise go into effect.
6. The proposed rates constitute a major change as defined by TEX. UTIL. CODE ANN. §104.101 (Vernon 2007 and Supp. 2010).
7. In accordance with TEX. UTIL. CODE ANN. §104.103 (Vernon 2007 and Supp. 2010), 16 TEX. ADMIN. CODE ANN. §§ 7.230 and 7.235, adequate notice was properly provided.
8. HNG failed to meet its burden of proof in accordance with the provisions of TEX. UTIL. CODE ANN. §104.008 (Vernon 2007 and Supp. 2010) on the elements of its requested rate increase identified in this order.
9. The revenue, rates, rate design, and service charges proposed by HNG are not just and reasonable, not unreasonably preferential, prejudicial, or discriminatory, and are not sufficient, equitable, and consistent in application to each class of consumer, as required by TEX. UTIL. CODE ANN. §104.003 (Vernon 2007 and Supp. 2010).
10. HNG failed to establish by a preponderance of the credible evidence that its affiliate transactions comply with TEX. UTIL. CODE ANN. § 104.055, in establishing a gas utility's rates, the regulatory authority may not allow a gas utility's payment to an affiliate for the cost of a service, property, right or other item or for an interest expense to be included as capital cost or an expense related to gas utility service except to the extent that the regulatory authority finds the payment is reasonable and necessary for each item or class of items as determined by the regulatory authority. That finding must include (1) a

specific finding of reasonableness and necessity to each class of items allowed; and (2) a finding that the price to the gas utility is not higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to a nonaffiliated person for the same item or class of items.

11. In accordance with TEX. UTIL. CODE ANN. §104.054 (Vernon 2007 and Supp. 2010) a gas utility may not discriminate against a person who sells or leases equipment or performs services in competition with the gas utility or engage in a practice that tends to restrict or impair that competition.
12. In this proceeding, HNG has the burden of proof under TEX. UTIL. CODE ANN. §104.008 (Vernon 2007 and Supp. 2010) to show that the proposed rate changes are just and reasonable.
13. HNG is required by 16 TEX. ADMIN. CODE § 7.310 to utilize the Federal Energy Regulatory Commission's (FERC) Uniform System of Accounts (USOA) prescribed for natural gas companies.
14. The FERC USOA defines a cost to mean the amount of money actually paid for property or services. When the consideration given is other than cash in a purchase and sale transaction, the value of such consideration shall be determined on a cash basis. 16 CFR Part 201, Definitions, 9.
15. The FERC USOA requires that each entry in the books and records of the company shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto. The books and records referred to in the FERC USOA include not only accounting records in a limited technical sense, but all other records such as minute books, stock books, report, correspondence, memoranda, etc., which may be useful in developing the history of or facts regarding any transaction. 16 CFR Part 201, General Instructions, 2 A & B.
16. The FERC USOA requires that all amounts included in the accounts prescribed by the USOA shall be just and reasonable. 16 CFR Part 201, General Instructions, 2 E.
17. TEX. UTIL. CODE ANN. § 104.051 requires that in establishing a gas utility's rates, the regulatory authority shall establish the utility's overall revenues an amount that will permit 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 in excess of its reasonable and necessary operating expenses.
18. Tex. Util. Code Ann. § 104.052 requires that a regulatory authority may not establish a rate that yields more than a fair return on the adjusted value of the invested capital used and useful in providing service to the public.
19. HNG's June 2, 2011, Statement of Intent to change gas distribution rates was insufficient to establish the company's invested capital used and useful in providing service to public

and the filing was insufficient to establish the company's reasonable and necessary operating expenses as required by TEX. UTIL. CODE ANN. § 104.051.

IT IS THEREFORE ORDERED that HNG's proposed schedule of rates is hereby **DENIED** and that this case is hereby **DISMISSED**.

IT IS FURTHER ORDERED that HNG may charge only those rates that were in effect prior to filing this *Statement of Intent* proceeding on June 2, 2011, and that the tariffs that were in effect on that date remain in effect.

IT IS FURTHER ORDERED that all proposed findings of fact and conclusions of law not specifically adopted in this Order are hereby **DENIED**.

IT IS ALSO ORDERED that all pending motions and requests for relief not previously granted or granted herein are hereby **DENIED**.

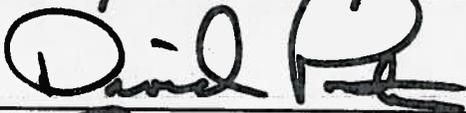
This Order will not be final and effective until 20 days after a party is notified of the Commission's order. A party is presumed to have been notified of the Commission's order three days after the date on which the notice is actually mailed. If a timely motion for rehearing is filed by any party at 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 ANN. §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 10th day of January, 2012.

RAILROAD COMMISSION OF TEXAS



CHAIRMAN ELIZABETH JAMES JONES

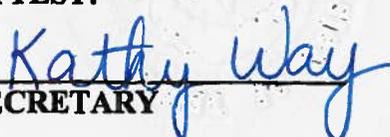


COMMISSIONER DAVID PORTER



COMMISSIONER BARRY T. SMITHERMAN

ATTEST:



SECRETARY