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RYAN SITTON, *COMMISSIONER*  
WAYNE CHRISTIAN, *COMMISSIONER*



DANA AVANT LEWIS, *DIRECTOR*

# RAILROAD COMMISSION OF TEXAS

## HEARINGS DIVISION

**GUD NO. 10988, *Consolidated*  
PROPOSAL FOR DECISION**

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**STATEMENT OF INTENT OF EPCOR GAS TEXAS, INC., TO CHANGE GAS UTILITY RATES WITHIN THE UNINCORPORATED AREAS OF AUSTIN, COLORADO, GRIMES, HARRIS, MONTGOMERY, AND WALLER COUNTIES, TEXAS**

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**Administrative Law Judge Dee Marlo Chico**  
**Technical Examiners: Rose Ruiz, James Currier**

### **PARTIES**

**APPLICANT:**

**EPCOR Gas Texas, Inc. (EPCOR Gas)**  
Ann M. Coffin                      David Billinger  
Gene Montes                      Sheryl L. Hubbard  
Coffin Renner LLP              EPCOR Gas  
*Counsel for EPCOR Gas*

**INTERVENOR:**

**Staff of the Railroad Commission (Staff)**  
Natalie Dubiel  
Patrick B. Shelton  
Office of General Counsel, Railroad Commission of Texas  
*Counsel for Staff*

**INTERVENOR:**

**City of Magnolia (Magnolia)**  
Daniel J. Lawton  
Molly Mayhall Vandervoort  
*Counsel for Magnolia*

**PROTESTANT:**

**High Meadow Ranch Community Association (High Meadow)**  
Paul Gastineau  
*Representative for High Meadow*

**PROTESTANT:**

**Real Provencher and Frank Hicks (Provencher and Hicks)**  
Alton J. Hall, Jr.  
Adams and Reese LLP  
*Counsel for Provencher and Hicks*

### **STATEMENT OF THE CASE**

On June 29, 2020, EPCOR Gas Texas, Inc. (“EPCOR Gas”), filed with the Railroad Commission of Texas (“Commission”) a Statement of Intent to increase gas utility rates within the unincorporated areas of Austin, Colorado, Grimes, Harris, Montgomery, and Waller Counties, Texas (the “SOI”).

The parties in this proceeding include two intervenors—Staff of the Railroad Commission (“Staff”) and the City of Magnolia (“Magnolia”)—and two protestants—High Meadow Ranch Community Association (“High Meadow”) and Mr. Real Provencher and Mr. Frank Hicks (“Provencher and Hicks”).

EPCOR Gas, Staff, Magnolia, and High Meadow reached a settlement agreement, which Provencher and Hicks did not oppose. The settlement agreement resolves all issues, including the following:

- A reduction of about \$200,000 from EPCOR Gas’s original request;
- A rate of return of 7.57 percent based on a 9.45 percent return on equity, a 4.87 percent cost of debt, and a capital structure of 59 percent equity and 41 percent debt;
- Consolidation of Alamo Pipeline LLC into EPCOR Gas is just and reasonable and in the public interest;
- Consolidation of Pinehurst Construction LLC into EPCOR Gas is just and reasonable; and
- A total revenue requirement for EPCOR Gas of \$5,025,864, which includes a base revenue requirement of \$4,954,277 and the balance coming from other revenues, is just and reasonable.

The Commission has original jurisdiction only—over environs rate—in this docket. There are no municipal appeals. Included in this consolidated docket are GUD Nos. 10988 (the SOI) and 10997 (rate case expenses).

### **SUMMARY OF RECOMMENDATIONS**

The Administrative Law Judge and Technical Examiners recommend the Commission approve the settlement as outlined in this Proposal for Decision.

The deadline for Commission action is January 15, 2021.

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1. Exhibit List
2. Settlement Agreement (excludes voluminous receipts and invoices)
3. Proposed Final Order

## PROPOSAL FOR DECISION

### I. INTRODUCTION

On June 29, 2020, EPCOR Gas Texas, Inc. (“EPCOR Gas”), filed with the Railroad Commission of Texas (“Commission”) a Statement of Intent to increase gas utility rates within the unincorporated areas of Austin, Colorado, Grimes, Harris, Montgomery, and Waller Counties, Texas (the “SOI”).

The parties in this proceeding include two intervenors—Staff of the Railroad Commission (“Staff”) and the City of Magnolia (“Magnolia”)—and two protestants—High Meadow Ranch Community Association (“High Meadow”) and Mr. Real Provencher and Mr. Frank Hicks (“Provencher and Hicks”).

EPCOR Gas, Staff, Magnolia, and High Meadow reached a settlement agreement, which Provencher and Hicks did not oppose. The settlement agreement resolves all issues, including the following:

- A reduction of about \$200,000 from EPCOR Gas’s original request;
- A rate of return of 7.57 percent based on a 9.45 percent return on equity, a 4.87 percent cost of debt, and a capital structure of 59.00 percent equity and 41.00 percent debt;
- Consolidation of Alamo Pipeline LLC into EPCOR Gas is just and reasonable and in the public interest;
- Consolidation of Pinehurst Construction LLC into EPCOR Gas is just and reasonable;
- A total revenue requirement for EPCOR Gas of \$5,025,864, which includes a base revenue requirement of \$4,954,277 and the balance coming from other revenues, is just and reasonable;
- Capital investment for the period October 1, 2012 through June 30, 2020 is prudent; and
- Rate case expenses incurred and estimated by EPCOR Gas and Magnolia totaling no more than \$455,000.

The Commission has original jurisdiction only—over environs rates—in this docket. There are no municipal appeals. Included in this consolidated docket are GUD Nos. 10988 (the SOI) and 10997 (rate case expenses).

The Administrative Law Judge (“ALJ”) and Technical Examiners (collectively, the “Examiners”) recommend the Commission approve the settlement as outlined in this Proposal for Decision (“PFD”).

The deadline for Commission action is January 15, 2021.

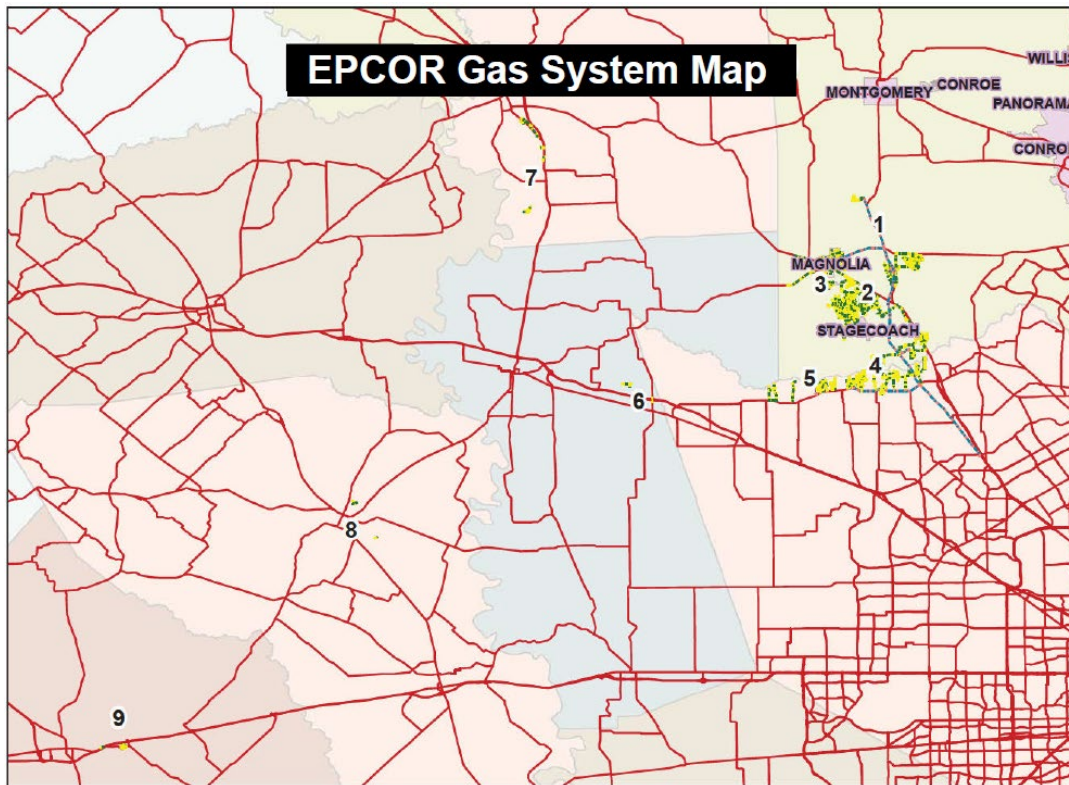
### II. PARTIES

The parties in this proceeding are Applicant EPCOR Gas, Intervenors Staff and Magnolia, and Protestants High Meadow and Provencher and Hicks.

### Applicant

Applicant EPCOR Gas is a “gas utility” under GURA Section 101.003 and a provider of natural gas services located in the unincorporated areas of Austin, Colorado, Grimes, Harris, Montgomery, and Waller Counties, Texas, serving approximately 4,300 customers and the incorporated city of Magnolia, Texas, serving approximately 450 customers.<sup>1</sup> The specific areas served by EPCOR Gas in Texas are shown below.<sup>2</sup>

**Figure 1. EPCOR Gas’s Service Areas**



**Key:** 1. Montgomery County (North Magnolia)      4. Harris County (Tomball)      7. Grimes County (Navasota)  
 2. Montgomery County (North Pinehurst)      5. Harris County (Hockley)      8. Austin County (Bellville)  
 3. City of Magnolia      6. Waller County (Hempstead)      9. Colorado County (Alleyton)

The last statement of intent was filed in 2012.<sup>3</sup> At that time, the system was owned and operated by Hughes Natural Gas Company.<sup>4</sup>

### Intervenors

Intervenor Staff participated in this docket “to assert its interest in assuring that the rules and regulations of the Railroad Commission of Texas, together with the appropriate statutes, have been followed.”<sup>5</sup>

<sup>1</sup> EPCOR Gas Ex. 3 (Billinger Test.) at 3; see Tex. Util. Code § 101.003(7) (defining “gas utility” as “a person or river authority that owns or operates for compensation in this state equipment or facilities to transmit or distribute combustible hydrocarbon natural gas or synthetic natural gas for sale or resale in a manner not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C. Section 717 et seq.). The term includes a lessee, trustee, or receiver of a gas utility.”).

<sup>2</sup> EPCOR Gas Response to Examiners’ RFI 1-4 at 4.

<sup>3</sup> GUD No. 10190, Final Order issued March 26, 2013.

<sup>4</sup> EPCOR Gas Ex. 4 (Hubbard Direct) at 3-4. EPCOR USA acquired the stock of Hughes Gas Resources, which is parent company of Hughes Natural Gas on June 1, 2017. *Id.* at 4, FN 1.

<sup>5</sup> Staff of the Railroad Commission of Texas’ Motion to Intervene, filed July 6, 2020.

Pursuant to GURA Section 103.023(a), municipalities have standing in each case before the Commission that relates to a gas utility's rates and services in the municipality.<sup>6</sup> Intervenor Magnolia is a city served by EPCOR Gas, is a regulatory authority, and has current customers of EPCOR Gas.<sup>7</sup>

### **Protestants**

High Meadow filed a Complaint and Statement of Intent to Participate Form (the "Form") on August 24, 2020. No objections to its participation as a protestant were received.

On August 13, 2020, Provencher and Hicks jointly filed a motion to intervene,<sup>8</sup> which was denied.<sup>9</sup> They were provided the Form pursuant to Commission Rule 7.240.<sup>10</sup> Provencher and Hicks timely filed the Form on August 27, 2020.<sup>11</sup> EPCOR Gas objected to their participation as protestants,<sup>12</sup> but Provencher and Hicks were admitted as protestants on September 21, 2020.<sup>13</sup> On October 2, 2020, Provencher and Hicks informed the Commission they were no longer requesting a hearing on this matter, effectively withdrawing their protest.<sup>14</sup>

### **III. PUBLIC COMMENTS**

The Commission received several communications from the public relating to EPCOR Gas's requested relief in this docket. EPCOR Gas properly provided notice to the public of its proposed increase by direct mail to its customers.<sup>15</sup> The Commission received thirteen comment letters from the public voicing opposition to EPCOR Gas's proposed rate increase.<sup>16</sup> All but one public commenter was provided the Form in accordance with Commission Rule 7.240 (Statement of Intent to Participate).<sup>17</sup> High Meadow and Provencher and Hicks timely returned the Form to the Commission and were admitted as protestants.

The comments opposed EPCOR Gas's requested relief.

<sup>6</sup> Tex. Util. Code § 103.023(a) (Municipal Standing).

<sup>7</sup> Motion to Intervene of the City of Magnolia, filed on July 23, 2020.

<sup>8</sup> Real Provencher and Frank Hicks' Motion for Leave for Late Intervention and Motion for Extension of Discovery Deadline from counsel for Provencher and Hicks, filed on August 13, 2020.

<sup>9</sup> Hearings Letter No. 08 (Order on Motion to Intervene; Comment from the Public), issued August 14, 2020 (attaching order denying Real Provencher and Frank Hicks' motion to intervene for not meeting the requirements under 16 Tex. Admin. Code §1.37); see 16 Tex. Admin. Code §1.37 (Intervention).

<sup>10</sup> Hearings Letter No. 08 (Order on Motion to Intervene; Comment from the Public), issue August 14, 2020 (attaching order denying Provencher and Hicks' Motion to Intervene and the Complaint and Statement of Intent to Participate Form).

<sup>11</sup> Complaint and Statement of Intent to Participate Form from Frank Hicks and Real Provencher, filed on August 27, 2020.

<sup>12</sup> EPCOR Gas Texas Inc.'s Objection to the Motion for Leave for Late Intervention Filed by Real Provencher and Frank Hicks from counsel for EPCOR Gas, filed on September 8, 2020.

<sup>13</sup> Hearings Letter No. 19 (Order on Provencher and Hicks' Participation, Discovery Issues, and Rate Case Expenses), issued September 21, 2020 (attaching order admitting Provencher and Hicks as protestants).

<sup>14</sup> Real Provencher and Frank Hicks' Statement of Position from counsel for Provencher and Hicks, filed on October 2, 2020 (stating that they "do not oppose the Settlement Agreement agreed to by the parties in this case. Therefore, Provencher and Hicks are not requesting a hearing on this matter.").

<sup>15</sup> Notice was completed on August 4, 2020. EPCOR Gas Ex. 2 (Affidavits attesting to Completion of Public Notice, filed August 17, 2020).

<sup>16</sup> One customer left a voice message requesting additional information to protest the rate increase. Instructions and a Complaint and Statement of Intent to Participate Form were provided on August 14, 2020. Letter to Angelo Russo from ALJ Chico, issued August 14, 2020.

<sup>17</sup> The Form was not forwarded to customers who filed their comment on October 8, 2020, because the letter was filed after the deadline for public comments. However, the complaint was placed in the case file along with the other public comments. Hearings Letter No. 28 (Late Filed Comment From the Public), issued November 6, 2020 (attaching Chris and Misty Henderson's comment protesting EPCOR Gas's rate increase).

#### IV. PROCEDURAL BACKGROUND

On June 29, 2020, EPCOR Gas filed with the Commission its SOI. Subsequently, Staff and Magnolia timely intervened.<sup>18</sup> High Meadow and Provencher and Hicks were later admitted as protestants.<sup>19</sup>

On July 29, 2020, the rate case expenses portion in GUD No. 10988 was severed and separated into GUD No. 10997.<sup>20</sup>

EPCOR Gas voluntarily extended the effective date to August 5, 2020.<sup>21</sup> The Commission suspended the effective date of EPCOR Gas's proposed rate change for a period of 150 days pursuant to GURA Section 104.107 (Rate Suspension; Deadline) on August 4, 2020.<sup>22</sup>

For all customers, EPCOR Gas published a Public Notice of its SOI by direct mail, which was completed on August 4, 2020, in accordance with Tex. Util. Code §104.103(b) and 16 Tex. Admin. Code §§ 7.230 and 7.235.<sup>23</sup> The Commission received 13 written communications from the public voicing opposition to EPCOR Gas's proposed rate changes.

On September 14, 2020, the Notice of Hearing was issued, setting the hearing on the merits to commence on October 21, 2020 ("Notice of Hearing"). The Notice of Hearing was mailed to the governing bodies of affected municipalities and counties in accordance with GURA Section 104.105 (Determination of Propriety of Rate Change; Hearing) on September 28, 2020.<sup>24</sup> On September 15, 2020, the Commission published the Notice of Hearing in *Gas Utilities Bulletin No. 1139*.<sup>25</sup>

On September 4, 2020, EPCOR Gas notified the Examiners it had reached an agreement in principle with Magnolia, Staff, and High Meadow that resolved all issues in the proceeding.<sup>26</sup> EPCOR Gas filed the Unanimous Settlement Agreement (the "Settlement") on September 16, 2020.<sup>27</sup> On October 2, 2020, Provencher and Hicks notified the Examiners they did not oppose the Settlement.<sup>28</sup> On October 12, 2020, the ALJ consolidated GUD No. 10997 (rate case expenses) with the main SOI docket.<sup>29</sup>

<sup>18</sup> See Hearings Letter No. 01 (Staff's Motions to Intervene), issued July 9, 2020 (granting Staff's motions to intervene); Hearings Letter No. 03 (City of Magnolia's Motion to Intervene), issued July 23, 2020 (granting Magnolia's motions to intervene).

<sup>19</sup> See Hearings Letter No. 14 (Abatement of Pending Procedural Deadlines, Public Commenters, and Protestant), issued September 8, 2020 (admitting High Meadow as a protestant); Hearings Letter No. 19 (Order on Provencher and Hicks' Participation, Discovery Issues, and Rate Case Expenses (attaching order admitting Provencher and Hicks as protestants).

<sup>20</sup> Hearings Letter No. 05 (Post-Prehearing Conference Rulings), issued July 29, 2020 (severing the rate case expenses portion of GUD No. 10988 into GUD No. 10997, Rate Case Expenses Severed From GUD No. 10988, Statement of Intent of EPCOR Gas Texas, Inc., to Change Gas Utility Rates Within the Unincorporated Areas of Austin, Colorado, Grimes, Harris, Montgomery, and Waller Counties, Texas).

<sup>21</sup> Letter to Hearings Director and Director of the Oversight and Safety Division from counsel for EPCOR Gas, filed June 30, 2020 ("In order to accommodate the regularly scheduled Railroad Commission open meetings, EPCOR Gas respectfully extends the effective date to August 5, 2020 to allow consideration of this docket at the next scheduled open meeting on August 4, 2020.").

<sup>22</sup> See Tex. Util. Code § 104.107(a)(2) (Rate Suspension; Deadline) ("Pending the hearing and a decision...the railroad commission may suspend the operation of the schedule for not longer than 150 days after the date the schedule would otherwise be effective.").

<sup>23</sup> Tex. Util. Code §104.103(a) (Notice of Intent to Increase Rates); 16 Tex. Admin. Code §§ 7.230 (Contents of Notice) and 7.235 (Publication and Service of Notice).

<sup>24</sup> See Tex. Util. Code § 104.105(c) ("The regulatory body shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county.").

<sup>25</sup> See *Gas Utilities Information Bulletin No. 1139*, published by the Railroad Commission of Texas Oversight and Safety Division on September 15, 2020, pp. 4-6 ("Bulletin No. 1139") (Containing the full notice of hearing).

<sup>26</sup> Letter to ALJ from counsel for EPCOR Gas, filed September 4, 2020.

<sup>27</sup> Joint Notice of Settlement and Motion to Admit Evidence from counsel for EPCOR Gas, filed September 16, 2020; see also Joint Ex. 1 (Settlement).

<sup>28</sup> Real Provencher and Frank Hicks' Statement of Position from counsel for Provencher and Hicks, filed October 2, 2020.

<sup>29</sup> Hearings Letter No. 24 (Rate Case Expenses Docket Consolidated with GUD No. 10988), issued October 12, 2020.

The hearing on the merits was held on October 21, 2020. The evidentiary exhibit list is **Attachment 1** to this PFD. Also included in the evidentiary record are EPCOR Gas's filings responding to Examiners' Request for Information ("RFI") requests 1-1, 1-2, 1-3, 1-4, 1-5, and 1-6.<sup>30</sup>

On October 30, 2020, the ALJ closed the evidentiary record.<sup>31</sup>

## V. JURISDICTION, BURDEN OF PROOF, AND NOTICE

### A. Jurisdiction

The Commission has jurisdiction over EPCOR Gas, which is a gas utility as defined in GURA Section 101.003(7). Pursuant to GURA Section 102.001(a), the Commission has exclusive original jurisdiction to set the rates EPCOR Gas requests for its environs customers.<sup>32</sup>

The Commission has jurisdiction over all matters at issue in this proceeding pursuant to GURA Chapters 102 (Jurisdiction and Powers of Railroad Commission and Other Regulatory Authorities) and 104 (Rates and Services). The statutes and rules involved in this proceeding include, but are not limited to, those contained in GURA Chapters 102 and 104, and Title 16 (Economic Regulation), Part 1 (Railroad Commission of Texas), Chapters 1 (Practice and Procedure) and 7 (Gas Services Division) of the Texas Administrative Code.

### B. Burden of Proof

As a gas utility proposing new rates, EPCOR Gas has the burden of proving its proposed rates are just and reasonable.<sup>33</sup>

### C. Notice

EPCOR Gas provided notice of its intent to increase rates to affected EPCOR Gas customers by direct mail to each EPCOR Gas customer in the unincorporated areas of Austin, Colorado, Grimes, Harris, Montgomery, and Waller Counties, Texas in accordance with GURA Section 104.103 (Notice of Intent to Increase Rates).<sup>34</sup> EPCOR Gas completed the notice requirements on August 4, 2020.<sup>35</sup> On September 14, 2020, the ALJ issued the Notice of Hearing, which complied with Chapter 2001 (Administrative Procedure) of the Texas Government Code, Part 1 (Railroad Commission of Texas) of Title 16 (Economic Regulation) of the Texas Administrative Code, and other applicable authority. On September 15, 2020, the Commission published the Notice of Hearing in *Gas Utilities Information Bulletin Nos. 1139* in compliance with Commission Rule § 7.235 (Publication and Service of Notice).<sup>36</sup> Pursuant to GURA Section 104.105 (Determination of Propriety of Rate Change; Hearing), the ALJ provided a copy of the Notice of Hearing to the governing body of each affected county.<sup>37</sup> Accordingly, the Examiners

<sup>30</sup> See Hearings Letter No. 27 (Close of Evidentiary Record), issued October 30, 2020 (ALJ taking official notice of EPCOR Gas's October 28, 2020 filings responding to the Examiners' RFIs).

<sup>31</sup> See Hearings Letter No. 27 (Close of Evidentiary Record), issued October 30, 2020.

<sup>32</sup> Tex. Util. Code § 102.001(a).

<sup>33</sup> Tex. Util. Code § 104.008 (Burden of Proof) ("In a proceeding involving a proposed rate change, the gas utility has the burden of proving that the rate change is just and reasonable, if the utility proposes the change.").

<sup>34</sup> See EPCOR Gas Ex. 2 (Affidavits Attesting to Completion of Public Notice, filed August 17, 2020).

<sup>35</sup> *Id.*

<sup>36</sup> See Bulletin No. 1139; see also 16 Tex. Admin. Code § 7.235(a)(1)(A) (Publication and Service of Notice) ("The Commission shall publish the notice of hearing in the next Bulletin published after the date of issuance of the notice of hearing.").

<sup>37</sup> Tex. Util. Code § 104.105(c) (Determination of Propriety of Rate Change; Hearing) ("The regulatory authority shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county.").



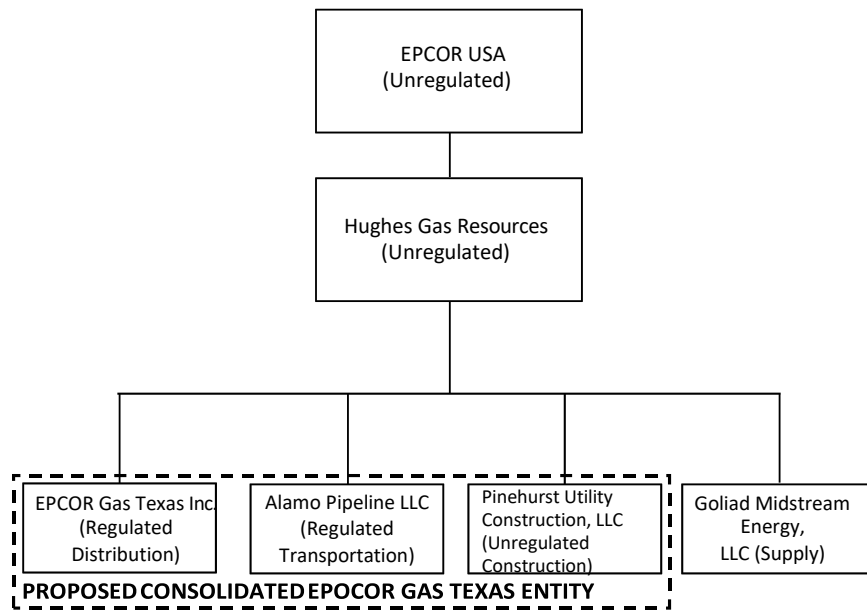
find proper notice has been issued in accordance with the applicable statutory and regulatory requirements.

## VI. OVERVIEW OF THE COMPANY

EPCOR Gas was formerly known as Hughes Natural Gas, Inc.<sup>38</sup> Hughes Natural Gas, Inc., was a subsidiary of Hughes Gas Resources, Inc. (“HGR”), which was also the parent company of Alamo Pipeline LLC (“Alamo”), Pinehurst Construction LLC (“Pinehurst”), and Goliad Midstream Energy LLC (“Goliad”).<sup>39</sup> After EPCOR USA acquired the stock of HGR on June 1, 2017, Hughes Natural Gas, Inc., changed its name to EPCOR Gas.<sup>40</sup> HGR remains the immediate parent company of EPCOR Gas (the distribution company), Alamo (the transmission company), Pinehurst (the construction company), and Goliad (the marketing company).<sup>41</sup>

EPCOR Gas seeks to consolidate Alamo and Pinehurst into EPCOR Gas’s local distribution company operations, thereby eliminating these affiliate services.<sup>42</sup> Following consolidation, Alamo and Pinehurst will cease to exist and Goliad will remain an affiliate of EPCOR Gas.<sup>43</sup> This information is depicted below.

**Figure 2. Organizational Chart**



## VII. COMPLIANCE WITH COMMISSION RULES; BOOKS AND RECORDS

EPCOR Gas presented evidence that it maintains its books and records in accordance with Commission requirements.<sup>44</sup> The Director of Rates for EPCOR USA (“EUSA”) testified EPCOR Gas maintains its books and records in accordance with Commission Rule § 7.310

<sup>38</sup> EPCOR Gas Ex. 5 (Loy Test.) at 2.

<sup>39</sup> EPCOR Gas Ex. 3 (Billinger Test.) at 3.

<sup>40</sup> EPCOR Gas Ex. 4 (Hubbard Test.) at FN 1; EPCOR Gas Ex. 5 (Loy Test.) at 2.

<sup>41</sup> EPCOR Gas Ex. 3 (Billinger Test.) at 5.

<sup>42</sup> EPCOR Gas Ex. 1 (SOI) at 6; EPCOR Gas Ex. 5 (Loy Test.) at 7.

<sup>43</sup> *Id.* at 7, 9.

<sup>44</sup> See EPCOR Gas Ex. 4 (Hubbard Test.) at 7-12.

(System of Accounts), which requires each gas utility to “utilize the Federal Energy Regulatory Commission’s (FERC) Uniform System of Accounts (USOA) prescribed for Natural Gas Companies subject to the Provisions of the Natural Gas Act (as amended from time to time) (FERC USOA) for all operating and reporting purposes.”<sup>45</sup> The information contained within EPCOR Gas’s books and records, as well as the summaries and excerpts therefrom, qualify for the presumption set forth in Commission Rule § 7.503 (Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities).<sup>46</sup> EPCOR Gas is in compliance with Commission Rule § 7.501 (Certain Matters to be Submitted in Rate Hearings), which requires the separate presentation in a rate proceeding of evidence related to certain types of financial transactions, and in some cases, exclusion of these costs from rates,<sup>47</sup> Finally, EUSA’s Director of Rates also testified EPCOR Gas has not included any advertising in the requested cost of service in the SOI; therefore, EPCOR Gas is in compliance with Commission Rule § 7.5414 (Advertising, Contributions, and Donations).<sup>48</sup>

No party disputes that EPCOR Gas maintains its books and records in accordance with Commission requirements.

Considering the evidence, the Examiners find that EPCOR Gas has established that it complied with these Commission rules. Accordingly, EPCOR Gas is entitled to the presumption set forth in Commission Rule § 7.503 (Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities) that the unchallenged amounts shown in its books and records are presumed to have been reasonably and necessarily incurred.<sup>49</sup>

### VIII. EPCOR GAS’S ORIGINAL REQUEST

EPCOR Gas’s original request included the following:<sup>50</sup>

- An increase of EPCOR Gas’s annual revenues by \$1,075,900;
- Cost of equity set at 10.4 percent;
- Prudency determination regarding capital investment for the period October 1, 2012 through June 30, 2020;
- A favorable public interest finding regarding EPCOR’s proposal to consolidate its affiliated gas utility, Alamo Pipeline LLC, into EPCOR Gas and to establish base

<sup>45</sup> *Id.*; see 16 Tex. Admin. Code § 7.310(a) (System of Accounts).

<sup>46</sup> EPCOR Gas Ex. 4 (Hubbard Test.) at 7-12; see 16 Tex. Admin. Code § 7.503(a) (Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities).

<sup>47</sup> EPCOR Gas Ex. 4 (Hubbard Test.) at 10-12; see 16 Tex. Admin. Code § 7.501 (Certain Matters to be Submitted in Rate Hearings).

<sup>48</sup> EPCOR Gas Ex. 4 (Hubbard Test.) at 12.; see 16 Tex. Admin. Code § 7.5414 (Advertising, Contributions, and Donations) (“Actual expenditures for advertising shall be allowed as a cost of service for ratemaking purposes provided that the total sum of such expenditures shall not exceed one-half of 1.0% of the gross receipts of the utility for utility services rendered in the public...”).

<sup>49</sup> See 16 Tex. Admin. Code § 7.503(a) (Evidentiary Treatment of Uncontroverted Books and Records of Gas Utilities) (“In any proceeding before the Commission involving a gas utility that keeps its books and records in accordance with Commission rules, the amounts shown on its books and records as well as summaries and excerpts therefrom shall be considered prima facie evidence of the amount of investment or expense reflected when introduced into evidence, and such amounts shall be presumed to have been reasonably and necessarily incurred; provided, however, that if any evidence is introduced that an investment or expense item has been unreasonably incurred, then the presumption as to that specific investment or expense item shall no longer exist and the gas utility shall have the burden of introducing probative evidence that the challenged item has been reasonably and necessarily incurred.”).

<sup>50</sup> See, e.g., EPCOR Gas Ex.1 (SOI).

rates that reflect this consolidation as well as that of its affiliate, Pinehurst Utility Construction LLC, into EPCOR Gas's local distribution company operations;

- New depreciation rates;
- A finding in compliance with Commission's Accounting Order issued in GUD No. 10695; and
- Rate case expense recovery tariff to recover reasonable rate case expenses.

The test year is based on the 12-month period ended December 31, 2019, as adjusted for known and measurable changes, which include plant additions through June 30, 2020.<sup>51</sup>

## IX. TERMS OF THE SETTLEMENT

The Settlement resolves all issues in GUD No. 10988 and the consolidated rate case expenses docket. Significant discovery occurred. EPCOR Gas, Staff, Magnolia, and High Meadow (collectively, "Parties") participated in settlement negotiations and agreed that resolution of this docket by settlement will avoid prolonged litigation, which will significantly reduce the amount of reimbursable rate case expenses associated with this docket.<sup>52</sup> These parties agree that the rates, terms, and conditions reflected in the Settlement comply with the rate-setting requirements of GURA Chapter 104 (Rates and Services).<sup>53</sup> A copy of the Settlement is **Attachment 2** to this PFD.<sup>54</sup> Protestants Provencher and Hicks do not oppose the Settlement Agreement.<sup>55</sup>

The Examiners have reviewed the Settlement and find that its terms and rate elements are just, reasonable, in the public interest, and consistent with the requirements of the Texas Utilities Code and applicable Commission rules. Accordingly, the Examiners recommend that the Settlement be approved.

### A. Revenue Requirement

Under the Settlement, EPCOR Gas will have a total revenue requirement of \$5,025,864, which includes a base revenue requirement of \$4,954,277, and the balance coming from other operating revenues, such as meter changes, service initiation, and returned checks.<sup>56</sup> The base revenue requirement is a reduction of approximately \$200,000 from EPCOR Gas's request prior to settling.<sup>57</sup> The base revenue requirement is inclusive of the \$4,430,486 base revenue for unincorporated customers and \$523,760 base revenue for incorporated customers. The Parties agree to the rates, terms, and conditions reflected in the tariffs, which are attached as Exhibits A(1) and A(2) to the Settlement in **Attachment 2**.<sup>58</sup> The Parties further agree that the revenue requirement represents an overall settlement and that amounts associated with particular expenses are not identified in the overall revenue requirement unless specified in the

<sup>51</sup> *Id.* at 4; EPCOR Gas Ex. 4 (Hubbard Test.) at 3.

<sup>52</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 1.

<sup>53</sup> *Id.* at 2 ¶ 1, 4 ¶ 18.

<sup>54</sup> **Attachment 2** excludes voluminous receipts and invoices related to EPCOR Gas's and Magnolia's incurred rate case expenses, treated later in the PFD.

<sup>55</sup> Real Provencher and Frank Hicks' Statement of Position from counsel for Provencher and Hicks, filed on October 2, 2020.

<sup>56</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 2 ¶ 1; EPCOR Gas Ex. 1 (SOI) at Exhibit G p. 4.

<sup>57</sup> *Id.* at Exhibit B, line 26, row c.

<sup>58</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 2 ¶ 1. Exhibit A(1) of the Settlement applies to the unincorporated areas of EPCOR Gas. Exhibit A(2) of the Settlement applies to customers within the City of Magnolia.

Settlement.<sup>59</sup> The base rate annual revenues include \$278,878 of affiliate expenses, treated separately below.<sup>60</sup> The revenue requirement also reflects a corporate income tax rate of 21 percent to recognize changes to the Federal Tax Code due to the Tax Cuts and Jobs Act of 2017.<sup>61</sup>

The Parties agree that the rates, terms, and conditions reflected in Exhibits A(1) and A(2) to the Settlement comply with the rate-setting requirements of GURA Chapter 104 (Rates and Services).<sup>62</sup> The Texas Utilities Code requires that “the regulatory authority shall establish the utility’s overall revenues at 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.”<sup>63</sup>

Considering the evidence, the Examiners find the overall revenues for EPCOR Gas in the Settlement to be just and reasonable and consistent with GURA Chapter 104 (Rates and Services).

## B. Rates

The base rates are designed for EPCOR Gas to recover \$4,954,246 in base rate revenues from both incorporated and unincorporated customers, which is 21 percent more than the current amount of \$4,083,262.<sup>64</sup> The table below compares the current revenue EPCOR Gas receives from base rates to the revenue using the settled rates, which is also illustrated in the proof of revenues attached as part of Exhibit B to the Settlement in **Attachment 2**.<sup>65</sup> Public Authority customers are realizing an increase of about 287 percent. EPCOR Gas explains that this class was created a few years after EPCOR Gas’s last rate case and was excluded from the periodic interim rate adjustment (“IRA”) rate increases.<sup>66</sup> Currently, the Public Authority customer charge is 37 percent lower and the volumetric charge is 68 percent lower than the other Environs classes.<sup>67</sup>

**Table 1. Annual Base Revenue Allocation**

Customer Class	Current	Settlement	Increase	Percent Increase	Percent Allocated
Residential Primary	\$3,633,527	\$4,269,752	\$636,225	17.5%	86.18%
Residential Secondary	\$6,756	\$9,168	\$2,412	35.7%	0.19%
Commercial	\$436,631	\$650,749	\$214,118	49.0%	13.14%
Public Authority	\$6,348	\$24,577	\$18,229	287.1%	0.50%
<b>System</b>	<b>\$4,083,262</b>	<b>\$4,954,246</b>	<b>\$870,984</b>	<b>21.3%</b>	<b>100%</b>

<sup>59</sup> *Id.* at 2 ¶ 8.

<sup>60</sup> *Id.* at 4 ¶ 17.

<sup>61</sup> *Id.* at 4 ¶ 12.

<sup>62</sup> *Id.* at 2 ¶ 1.

<sup>63</sup> Tex. Util. Code § 104.051 (Establishing Overall Revenues).

<sup>64</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at Exhibit B, p. 2, line no. 23.

<sup>65</sup> See *id.* at Exhibit B.

<sup>66</sup> EPCOR Gas Ex. 5 (Loy Test.) at 29.

<sup>67</sup> *Id.*

The Parties agree to the below monthly customer charges and volumetric rates.<sup>68</sup>

**Table 2. Agreed Rates and Rate Design**

<b>Customer Charge</b>	
Residential Primary (Unincorporated and Incorporated)	
250 Meters*	\$24.45
>250 Meters**	\$29.50
Residential Secondary (Unincorporated and Incorporated)	
250 Meters	\$12.23
Commercial (Unincorporated and Incorporated)	
250 Meters	\$40.00
>250 Meters	\$55.00
Public Authority (Unincorporated and Incorporated)	
250 Meters	\$40.00
>250 Meters	\$55.00
<b>Volumetric Rate – All Customers</b>	
\$1.1415 per Ccf	

\* Meter capacity up to 250 cubic feet per hour.

\*\* Meter capacity greater than 250 cubic feet per hour

The revenue requirement is recovered from proposed rates as set out in the Settlement. Residential primary customers will pay \$12.60 less for the monthly customer charge. The table below compares the current rates to the settled rates.<sup>69</sup>

**Table 3. Current to Settled Customer Charge**

<b>Customer Class</b>	<b>Current</b>	<b>Settlement</b>	<b>Difference</b>
Residential Primary	\$37.05	\$24.45	(\$12.60)
Residential Secondary	\$11.62	\$12.23	\$0.61
Commercial	\$37.05	\$40.00	\$2.95
Public Authority	\$23.25	\$40.00	\$16.75

Residential primary customers will pay about 49 cents more per Ccf for the volumetric charge. The table below compares the current rates to the settled rates.<sup>70</sup>

**Table 4. Current to Settled Volumetric Charge (Ccf)**

<b>Customer Class</b>	<b>Current</b>	<b>Settlement</b>	<b>Difference</b>
Residential Primary	\$0.6560	\$1.1415	\$0.4855
Residential Secondary	\$0.6560	\$1.1415	\$0.4855
Commercial	\$0.6560	\$1.1415	\$0.4855
Public Authority	\$0.2090	\$1.1415	\$0.9325

The base rate increases are mitigated by reductions to the cost of gas. The cost of gas is decreasing from \$0.7860 per Ccf to \$0.3200 per Ccf, because EPCOR is decreasing its payment to Goliad for marketing services by \$1.25 per Mcf and is eliminating the \$3.41 per Mcf payment

<sup>68</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 2-3 ¶ 9.

<sup>69</sup> *Id.*; EPCOR Gas Ex. 1 (SOI) at 4-5.

<sup>70</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 2-3 ¶ 9; EPCOR Gas Ex. 1 (SOI) at 4-5.

to Alamo for transportation service.<sup>71</sup> The reasons for the decrease are discussed later in the Gas Supply section. The average usage residential primary customer will realize a bill decrease of \$11.68, from \$104.82 to \$93.14.<sup>72</sup> Appended to the PFD in **Attachment 2** is the bill impact for all customer classes.<sup>73</sup> The bill impact does not include the effect of property taxes, margin taxes, or franchise fees recoverable through the Tax Rider.<sup>74</sup>

In addition to base rates, the Parties agreed to a rate case surcharge of \$0.0301 per Ccf for an approximate 60-month period, applicable to all customers.<sup>75</sup> Rate case expenses are discussed in further detail below.

Considering the evidence, the Examiners find that the Settlement rates comply with GURA Sections 104.003 (Just and Reasonable Rates) and 104.006 (Rates for Area not in Municipality). Specifically, the rates are not unreasonably preferential, prejudicial, or discriminatory but are sufficient, equitable, and consistent in application to each class of customer.<sup>76</sup> The evidence also shows the rates for the environs customers will not exceed 115 percent of the average of all rates for similar services for all municipalities served by EPCOR Gas in the same counties.<sup>77</sup> Furthermore, Settlement rates are just and reasonable and comply with GURA Section 104.004 (Unreasonable Preference or Prejudice Prohibited), because the rates do not establish or maintain an unreasonable difference concerning rates of services between localities or between classes of service.<sup>78</sup>

### C. Public Interest Determination

GURA Section 102.051 (Report of Certain Transactions; Railroad Commission Consideration) requires a gas utility to report to the Commission a merger or consolidation with another gas utility operating in this state.<sup>79</sup> EPCOR, in its SOI filed on June 29, 2020, reported its intent to consolidate affiliated companies Alamo and Pinehurst into EPCOR Gas as required under Texas Utilities Code § 102.051 and establish base rates that reflect the consolidation of the historic activities performed by these affiliated entities into EPCOR Gas's local distribution company operations.<sup>80</sup>

Pursuant to the Settlement, the Parties agree to the following: (1) consolidation of Alamo into EPCOR Gas is just and reasonable, in the public interest, and satisfies all the requirements of Texas Utilities Code § 102.051;<sup>81</sup> and (2) consolidation of Pinehurst into EPCOR Gas is just and reasonable.<sup>82</sup>

As explained earlier, EPCOR Gas has operated and maintained the gas system since June 1, 2017. EPCOR Gas is a distribution company. Its three affiliates are (1) Alamo, the

<sup>71</sup> EPCOR response to Examiners' RFI 1-3; Joint Ex. 1 (Unanimous Settlement Agreement) at 4 ¶¶15, 16.

<sup>72</sup> *Id.*; Joint Ex. 1 (Unanimous Settlement Agreement) at Exhibit F.

<sup>73</sup> *Id.* at Exhibit F.

<sup>74</sup> EPCOR response to Examiners' RFI 1-3.

<sup>75</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 5 ¶ 20-21, Exhibit A(1) p. 12, Exhibit A(2) p. 16.

<sup>76</sup> Tex. Util. Code 104.003 (Just and Reasonable Rates).

<sup>77</sup> Tex. Util. Code § 104.006 (Rates for Area not in Municipality).

<sup>78</sup> Tex. Util. Code § 104.004 (Unreasonable Preference or Prejudice Prohibited).

<sup>79</sup> Tex. Util. Code § 102.051(a)(2).

<sup>80</sup> EPCOR Gas Ex. 5 (Loy Test.) at 4.

<sup>81</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 2 ¶ 3.

<sup>82</sup> *Id.* at 2 ¶ 4.

transmission company, (2) Pinehurst, the construction company, and (3) Goliad, the marketing company.<sup>83</sup>

Upon approval of consolidation by the Commission, EPCOR Gas will operate both distribution and transmission assets. The Director of Gas Operations at EPCOR Gas explains that consolidating Alamo will allow for a more streamlined approach to its business and more transparency in the cost of service for its customers.<sup>84</sup> Specifically, the transmission services previously provided by Alamo will become part of EPCOR Gas's operations and all of Alamo's assets will be used by EPCOR Gas to transport gas to its distribution system.<sup>85</sup> Consolidation also will allow for cross training of field employees and will unify and create consistency in asset accounting practices.<sup>86</sup>

EPCOR Gas explains that since its purchase by EPCOR USA, all the construction employees and equipment were moved into the EPCOR Gas operations; thus, Pinehurst does not currently provide it any services.<sup>87</sup> As a result, EPCOR Gas notes that all costs Pinehurst previously billed for construction services to its affiliates (Hughes Natural Gas and Alamo) have been eliminated and Pinehurst no longer offers non-affiliated third-party construction services.<sup>88</sup>

Following consolidation, Alamo and Pinehurst will cease to exist.<sup>89</sup> According to EPCOR Gas, the impact of consolidating Alamo and Pinehurst into its operations will increase base rates but decrease the cost of gas paid by customers.<sup>90</sup> The Parties agree that upon implementation of new rates resulting from this docket, EPCOR Gas will eliminate the \$3.41 per Mcf transport charge previously charged to customers for use of the Alamo Pipeline.<sup>91</sup>

Having considered the GURA Section 102.051 factors, EPCOR Gas's supporting evidence, and the Settlement, the Examiners find that the consolidation of Alamo and Pinehurst into EPCOR Gas is in the public interest and satisfies all requirements of Texas Utilities Code §102.051.

#### D. Gas Supply

EPCOR Gas currently purchases all of its gas supply from its marketing company affiliate Goliad.<sup>92</sup> Goliad has entered into multi-year agreements with both Kinder Morgan and Enbridge for the supply of gas to the EPCOR Gas system, with the agreements containing hub-based pricing with a nominal fixed fee per MMBTU.<sup>93</sup> EPCOR Gas explains that its price of natural gas from Goliad is based on actual contracted purchase price from Kinder Morgan and Enbridge.<sup>94</sup> Under the Settlement, EPCOR Gas will decrease the payment to Goliad for charges related to aggregating gas supplies on behalf of EPCOR Gas from \$1.35 per Mcf to \$0.10 per Mcf.<sup>95</sup>

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<sup>83</sup> EPCOR Gas Ex. 3 (Billinger Test.) at 5.

<sup>84</sup> *Id.* at 6; *see generally id.* at 5-7 (describing the effects of EPCOR Gas's restructuring plan to consolidate Alamo and Pinehurst into EPCOR Gas's operations).

<sup>85</sup> *Id.* at 7.

<sup>86</sup> *Id.* at 6; EPCOR Gas Ex. 7 (Watson Test.) at 7.

<sup>87</sup> EPCOR Gas Ex. 3 (Billinger Test.) at 5.

<sup>88</sup> *Id.*

<sup>89</sup> EPCOR Gas Ex. 5 (Loy Test.) at 7.

<sup>90</sup> *Id.* at 5.

<sup>91</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 4 ¶ 16.

<sup>92</sup> EPCOR Gas Ex. 3 (Billinger Test.) at 15. EPCOR Gas has not changed how the gas is contracted with Goliad since its last rate case. *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 16.

<sup>95</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 4 ¶ 15.

Considering evidence in the record, the Examiners find EPCOR Gas's payment reduction to Goliad, as agreed to in the Settlement, is a reasonable and necessary costs of providing gas utility services and this reduced price charged to EPCOR Gas is no higher than the prices charged by Goliad to other affiliates or divisions of EPCOR Gas or to a non-affiliated person for the same item or class of items.

### E. GUD No. 10695 Compliance

On February 27, 2018, the Commission issued an Accounting Order in GUD No. 10695 that reflects the Commission's directives regarding changes to utility rates to account for the change in the federal corporate income tax rate due to the Federal Tax Cut and Jobs Act of 2017. The Director of Rates for EUSA discussed the treatment of regulatory assets and liabilities, including the accounting for excess accumulated deferred income taxes ("ADIT") resulting from the Tax Cuts and Jobs Act of 2017, EPCOR Gas's plan to return the excess ADIT to customers, and EPCOR Gas's compliance with the amortization of the excess deferred income tax liability ("EDIT").<sup>96</sup> The EUSA Director of Rates testified EPCOR Gas filed GURA Section 104.111 (Approval of Decrease in Rates) filings with the Commission for a reduction in rates caused by the Tax Cuts and Jobs Act of 2017—tax rates dropped from 35 percent to 21 percent on October 4, 2018 and October 23, 2018.<sup>97</sup> The reduced rates were then implemented on November 1, 2018 for the unincorporated areas.<sup>98</sup> The EUSA Director of Rates explained EPCOR Gas elected not include the excess ADIT at the time of the Section 104.111 filing, because it appeared the excess ADIT would be a regulatory asset that would reduce the impact of the tax rate reduction.<sup>99</sup> Instead, EPCOR Gas chose to include the impact of the reduction in the federal income tax rate on its ADIT in this filing.<sup>100</sup>

In the Settlement, the Parties agree that (1) EPCOR Gas has complied with all the requirements in the Accounting Order;<sup>101</sup> (2) the revenue requirement reflects a corporate income tax rate of 21 percent to recognize changes to the Federal Tax Code due to the Tax Cuts and Jobs Act of 2017;<sup>102</sup> and (3) this docket resolves all issues regarding EPCOR's EDIT resulting from the reduction in the federal corporate income rate due to the Federal Tax Cut and Jobs Act of 2017.<sup>103</sup>

Considering the evidence, the Examiners find EPCOR Gas has complied with the requirements set forth in the GUD No. 10695 Accounting Order (Feb. 27, 2018) and Order Nunc Pro Tunc (March 20, 2018).

<sup>96</sup> EPCOR Gas Ex. 4 (Hubbard Test.) at ES-1, 3, 12-13.

<sup>97</sup> *Id.* at 12; see Tex. Util. Code § 104.111 (Approval of Decrease in Rates) ("Notwithstanding any other provision in this subtitle, the regulatory authority may, without reference to the cost of service standard prescribed by Section 104.051, administratively approve a decrease in rates proposed by the applicant and agreed on by each party directly affected unless the regulatory authority determines that the proposed decrease is not in the public interest."); see also EPCOR Gas Ex. 4 (Hubbard Test.) at 23 (quantifying the excess ADIT resulting from the tax rate reduction from 35 percent to 21 percent).

<sup>98</sup> *Id.* at 12.

<sup>99</sup> *Id.* at 12-13.

<sup>100</sup> *Id.* at 12.

<sup>101</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 4 ¶ 13; see also EPCOR Gas Ex. 4 (Hubbard Test.) at 12-13 (providing testimony of compliance with the Accounting Order).

<sup>102</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 4 ¶ 12; see also EPCOR Gas Ex. 4 (Hubbard Test.) at 23 (addressing the tax rate reduction).

<sup>103</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 4 ¶ 14; see also EPCOR Gas Ex. 4 (Hubbard Test.) at 12-13 (discussing EPCOR Gas's compliance with the amortization of the excess deferred income tax liability and corporate rate reduction liability).



## F. Cost of Capital

Prior to settling, EPCOR Gas requested a rate of return (“ROR”) of 8.13 percent based on a 10.40 percent return on equity (“ROE”), a 4.87 percent cost of debt, and a capital structure of 59 percent equity and 41 percent debt.<sup>104</sup> In the Settlement, the Parties agree to a 7.57 percent ROR by reducing the ROE request by 95 basis points to 9.45 percent.<sup>105</sup> The settled capital structure and weighted cost of capital, including the pre-tax return, is shown below.<sup>106</sup>

**Table 5. Cost of Capital**

<b>Class of Capital</b>	<b>Percent</b>	<b>Cost</b>	<b>Weighted Cost of Capital</b>	<b>Pre-tax Return</b>
Long-Term Debt	41.00%	4.87%	1.997%	1.997%
Common Equity	59.00%	9.45%	5.576%	7.058%
<b>Total</b>	<b>100.00%</b>		<b>7.572%</b>	<b>9.055%</b>

The Parties agree that the capital structure and related components, as shown above, shall be used in future IRA filings.<sup>107</sup>

Considering the evidence, the Examiners find the rate of return, including the capital structure, cost of debt, and return on equity in the Settlement to be just and reasonable and consistent with GURA Section 104.052 (Establishing Fair Rate of Return).

## G. Depreciation Rates

The Parties agree to the depreciation rates reflected in for intangible, transmission, distribution, and general plant, as reflected in **Attachment 2**.<sup>108</sup>

Considering the evidence, the Examiners find the depreciation rates reflected in the Settlement are proper and adequate, just and reasonable, supported by the evidence, and are consistent with the requirements in GURA Section 104.054 (Depreciation, Amortization, and Depletion). Accordingly, the Examiners recommend their approval.

## H. Capital Investment Prudency

EPCOR Gas requests a prudency determination for the capital investment booked to plant for the period October 1, 2012, through June 30, 2020. All capital investment through December 31, 2018 has been included in prior IRA filings for its unincorporated service areas.<sup>109</sup> EPCOR Gas and its predecessor Hughes Natural Gas filed six IRA requests with the Commission since base rates were last approved in GUD No. 10190.<sup>110</sup> The most recent IRA filing was made on July 2, 2019, docketed as GUD NO. 10861 and approved on October 1, 2019.<sup>111</sup>

<sup>104</sup> EPCOR Gas Ex. 6 (Hevert Test.) at ES-1; EPCOR Gas Ex. 1 (SOI) at Schedule G p. 45.

<sup>105</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 3 ¶¶ 10.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 3 ¶¶ 10, 11.

<sup>108</sup> *Id.* at 2 ¶ 7 and Exhibit C; see also EPCOR Gas Ex. 7 (Watson Test.) at 4, 7 (testifying that the EPCOR Gas Depreciation Study, which was conducted during 2020 and evaluated EPCOR Gas’s assets in service as of December 31, 2019, supports an overall reduction in depreciation expense and rates).

<sup>109</sup> EPCOR Gas Ex. 3 (Billinger Test.) at 11; see EPCOR Gas Ex. 3a (Billinger Voluminous Exhibits) at Exhibit DB-1.

<sup>110</sup> EPCOR Gas Ex. 5 (Loy Test.) at 3.

<sup>111</sup> *Id.*

**Table 6. GRIP Filings Since GUD No. 10190**

<b>GUD No.</b>	<b>Test Year</b>	<b>Order Date</b>
10861	Jan. 1, 2018 – Dec. 31, 2018	October 1, 2019
10734	Jan. 1, 2017 – Dec. 31, 2017	October 30, 2018
10614	Jan. 1, 2016 – Dec. 31, 2016	June 6, 2017
10504	Jan. 1, 2015 – Dec. 31, 2015	June 7, 2016
10425	Jan. 1, 2014 – Dec. 31, 2014	June 9, 2015
10386	Oct. 1, 2012 – Dec. 31, 2013	December 2, 2014

EPCOR Gas provided evidence to support the reasonableness, necessity, and usefulness of the capital investments made from October 1, 2012, through June 30, 2020.<sup>112</sup> According to EPCOR Gas, system safety and reliability drive capital investment.<sup>113</sup> Since the conclusion of its last case in GUD No. 10190, EPCOR Gas affirms it has made substantial capital investments to expand its facilities and to support customer growth and economic development in its service areas.<sup>114</sup>

Consistent with the Settlement,<sup>115</sup> the Examiners find EPCOR Gas's capital investment through June 30, 2020, to be prudent, used and useful, and just and reasonable.

#### **I. Future Interim Rate Adjustment (IRA) Factors**

The Parties agree that any IRA filing for EPCOR Gas pursuant to Texas Utilities Code §104.301 shall use the following factors until changed by a subsequent general rate proceeding:<sup>116</sup>

- a. The capital structure and related components as discussed earlier.
- b. For any initial IRA filing, the beginning amount for system-wide net plant in service for the EPCOR Gas Texas Service Area system shall be \$24,763,019 as presented in Exhibit C to the Settlement in **Attachment 2**;
- c. For any initial IRA filing and for any subsequent IRA filings, the depreciation rate for each account shall be those presented in Exhibit C to the Settlement in **Attachment 2**;
- d. For any initial IRA filing, the rates as shown in Term 9 of the Settlement, or Table 2 in the PFD, will be the starting rates to which any IRA adjustments are applied;
- e. Federal income taxes will be calculated using a 21 percent rate, unless the federal income tax rate is changed, in which case the new rate will be applied;
- f. The base rate revenue allocation factors to spread any change in IRA increase/decrease to the appropriate customer classes are as follows:

**Table 7. Base Rate Revenue Allocation Factors**

<b>Residential Primary</b>	<b>Residential Secondary</b>	<b>Commercial</b>	<b>Public Authority</b>
86.18%	0.19%	13.14%	0.50%

<sup>112</sup> See EPCOR Gas Ex. 3 (Billing Test.) at 8-12.

<sup>113</sup> *Id.* at 8.

<sup>114</sup> *Id.* at 8-9.

<sup>115</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 2 ¶¶ 6.

<sup>116</sup> *Id.* at 3-4 ¶¶ 11.

The Examiners find these factors and conditions to be just and reasonable and consistent with statutory and Commission requirements. Accordingly, the Examiners recommend approval of these factors.

### J. Tariffs

The Parties agree that (1) the tariffs applicable to the unincorporated areas, which are included in Exhibit A(1) of the Settlement, be approved as just and reasonable by the Commission and that (2) the rate schedules applicable to customers within the City of Magnolia, which are included in Exhibit A(2) of the Settlement, be approved by the City of Magnolia as just and reasonable.<sup>117</sup> The Parties agree that the rates, terms, and conditions reflected in Exhibit A(1) to the Settlement comply with the rate-setting requirements of Chapter 104 of the Texas Utilities Code and shall be effective upon approval by the Commission.<sup>118</sup> The Parties further agree that within 30 days of the Final Order, EPCOR Gas shall electronically file its rate schedules in proper form that accurately reflect the rates in Exhibit A(1) of the Settlement.<sup>119</sup>

**Table 8. EPCOR Gas's Environs Tariffs**

<b>Rate Schedule</b>	<b>Purpose</b>
R1-ENV	Residential Environs Service Rate
R2-ENV	Residential Secondary Environs Service Rate
C-ENV	Commercial Environs Service Rate
PA-ENV	Public Authority Environs Service Rate
GAS-ENV	Cost of Gas Component Rate Schedule
PSR-ENV	Pipeline Safety and Regulatory Program Rate Schedule
RCE-ENV	Rate Case Expense Surcharge Rate Schedule
TAX-ENV	Tax Adjustment Rate Schedule
QUALITY-ENV	Environs Quality of Service Rules Rate Schedule
MISC-ENV	Environs Miscellaneous Service Charges
WNA	Weather Normalization Adjustment Clause Rate Schedule
	Line Extension Policy

Considering the evidence, the Examiners find the Settlement's tariffs to be just and reasonable and recommend their approval.

### K. Services Provided by Affiliates

The Commission is required to make specific findings related to affiliate transactions before rates may be adopted.<sup>120</sup> Those findings include: (1) a specific finding of the reasonableness and necessity of each item or 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 division or to a non-affiliated person for the same item or class of items.<sup>121</sup>

Here, EPCOR Gas requests recovery of certain affiliate expenses. The Director of Rates for EUSA indicates the prices charged to EPCOR Gas are no higher than the prices charged by the supplying affiliate to its other affiliates or to a non-affiliated person for the same item or class

<sup>117</sup> *Id.* at 2 ¶ 2.

<sup>118</sup> *Id.* at 2 ¶ 1. The Parties also agree the rates, terms, and conditions reflected in Exhibit A(2) to the Settlement comply with the rate-setting requirements of Chapter 104 of the Texas Utilities Code. *Id.*

<sup>119</sup> *Id.* at 6 ¶ 25.

<sup>120</sup> See Tex. Util. Code § 104.055 (Net Income; Allowable Expenses).

<sup>121</sup> Tex. Util. Code § 104.055(b).

of items.<sup>122</sup> Furthermore, services were provided to EPCOR Gas by affiliates EPCOR USA, Alamo, and Pinehurst, totaling \$278,878 during the test year.<sup>123</sup> The Parties agree that EPCOR Gas has established that affiliate expenses in the amount of \$278,878 included in EPCOR's filing are just and reasonable and consistent with Texas Utilities Code § 104.055(b)(1) and that the acceptance of the treatment of affiliate expenses is the product of compromise and settlement and is not of precedential value in any other proceeding.<sup>124</sup> EPCOR Gas provides the following affiliate expenses for the test year:<sup>125</sup>

- EPCOR USA \$266,903
- Alamo Pipeline, LLC \$ 1,874
- Pinehurst Utility Construction, LLC \$ 10,101

Considering the evidence, the Examiners find that EPCOR Gas has established that the services provided to it by its affiliates are reasonable and necessary. The affiliate expenses included in the Settlement are reasonable and necessary costs of providing gas utility service, and the prices charged to EPCOR Gas are no higher than the prices charged by the supplying affiliate to other affiliates or divisions of EPCOR Gas or to a non-affiliated person for the same item or class of items. Accordingly, the Examiners recommend that the affiliate expenses included in the Settlement amount be approved.

#### L. Pipeline Safety and Regulatory Fees

The Parties agree that EPCOR Gas collect the Pipeline Safety and Regulatory Program Fee surcharge pursuant to Commission Rule 8.201 as an annual fee.<sup>126</sup> The surcharge is detailed in Rate Schedule PSR-ENV for the environs customers.<sup>127</sup> The Parties also agree that EPCOR Gas file an annual Pipeline Safety and Regulatory Program Compliance Filing with Staff no later than 90 days after the last billing cycle in which the Pipeline Safety and Regulatory Program Fee is billed to customers.<sup>128</sup>

Considering the evidence, the Examiners recommend the Commission approve the Pipeline Safety and Regulatory Fee tariffs and compliance measures reflected in the Settlement.

#### M. Rate Case Expenses

EPCOR Gas and Magnolia request reimbursement/recovery of reasonable rate case expenses totaling \$455,000.<sup>129</sup> In any gas utility rate proceeding, the utility and municipalities participating in the proceeding, if any, may be reimbursed their reasonable rate case expenses.<sup>130</sup>

<sup>122</sup> EPCOR Gas Ex. 4 (Hubbard Test.) at 13-14 (also testifying that "The costs included in the cost of service for the affiliate services provided to EPCOR Gas are reasonable and necessary").

<sup>123</sup> EPCOR Response to Examiners' RFI 1-2.

<sup>124</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 4 ¶¶ 17.

<sup>125</sup> EPCOR Response to Examiners' RFI 1-2; *compare with* EPCOR Gas Ex. 4 (Hubbard Test.) at 13-16 (establishing the affiliate expenses under EPCOR Gas's original request).

<sup>126</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at 7 ¶¶ 26; 16 Tex. Admin. Code § 8.201 (Pipeline Safety and Regulatory Program Fees).

<sup>127</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at Exhibit A(1) p.11. The surcharge for incorporated customers is detailed in Rate Schedule PSR-INC. *Id.* at Exhibit A(2) p. 15.

<sup>128</sup> *Id.* at 7 ¶¶ 26.

<sup>129</sup> *Id.* at 4-5 ¶¶ 19.

<sup>130</sup> See 16 Tex. Admin. Code § 7.5530 (Allowable Rate Case Expenses) (providing that a utility may be reimbursed its reasonable rate case expenses from certain customers), Tex. Util. Code § 103.022 (Rate Assistance and Cost Reimbursement) (providing that the governing body of a participating municipality may be reimbursed its reasonable rate case expenses from the utility).

Any gas utility or municipality claiming reimbursement for its rate case expenses shall have the burden to prove the reasonableness of such rate case expenses by a preponderance of the evidence.<sup>131</sup> Each gas utility and/or municipality shall detail and itemize all rate case expenses and allocations 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.<sup>132</sup>

In determining the reasonableness of the rate case expenses, the Commission shall consider all relevant factors including, but not limited to, the above evidence. The Commission 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 that may be granted.<sup>133</sup>

EPCOR Gas and Magnolia filed affidavits and supporting evidence for reimbursement of rate case expenses.<sup>134</sup> The Parties' agreed amounts and agreed allocation are treated separately below.

### 1. Amounts

EPCOR Gas and Magnolia represent their reasonable rate case expenses incurred through August 31, 2020 and the estimated rate case expenses incurred through completion of this case in the table below:

**Table 9. Rate Case Expenses<sup>135</sup>**

	<b>Required Regulatory Expenses</b>	<b>Litigation Expenses</b>	<b>Estimate to Completion</b>	<b>Total</b>
<b>EPCOR Gas</b>	\$195,278.74	\$173,213.50	\$28,290.76	\$ 396,783
<b>Magnolia</b>	\$ 0.00	\$ 52,217.00	\$ 6,000.00	\$ 58,217
<b>Total</b>	\$195,278.74	\$225,430.50	\$34,290.76	<b>\$ 455,000</b>

EPCOR GAS agrees to reimburse Magnolia the amount of the rate case expenses set forth above within 30 days of the issuance of an order authorizing recovery of those expenses.<sup>136</sup>

<sup>131</sup> 16 Tex. Admin. Code § 7.5530(a) (Allowable Rate Case Expenses).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Joint Ex. 1 (Unanimous Settlement Agreement) at Exhibit D (Affidavits from Ann M. Coffin, counsel for EPCOR Gas, and Molly Mayhall Vandervoort, counsel for Magnolia, and supporting invoices and receipts).

<sup>135</sup> *Id.* at 5 ¶ 19.

<sup>136</sup> *Id.* at 5 ¶ 20.

The attorney hourly fee ranged from \$240 through \$560. The consultant hourly fee ranged from \$163 through \$657.<sup>137</sup>

EPCOR Gas and Magnolia provided evidence supporting reimbursement of the above amounts under Commission Rule § 7.5530 (Allowable Rate Case Expenses), including: (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) other factors taken into account in setting the amount of compensation.<sup>138</sup>

Staff, EPCOR Gas, Magnolia, and High Meadow agree that the above amounts are reasonable and recoverable.

The Examiners reviewed the testimony and documentation supporting the rate case expense amounts shown above. Considering the above factors, the Examiners find that the above rate case expense amounts for EPCOR Gas and Magnolia are reasonable and that they proved the reasonableness of their respective rate case expenses by a preponderance of the evidence. Accordingly, the Examiners recommend these amounts be approved.

## **2. Allocation and Surcharge**

Under the Settlement, the Parties agree to equal recovery of rate case expenses through a volumetric surcharge from incorporated and unincorporated customers on a system-wide basis within EPCOR Gas' service area.<sup>139</sup> The Parties agree this method is appropriate, reasonable, and supported by good cause.<sup>140</sup> The recovery period for the surcharge to recover rate-case expenses will be 60 months,<sup>141</sup> recoverable through a volumetric surcharge of \$0.0301 per Ccf for all customers.<sup>142</sup> Consistent with the Settlement, the Examiners find the Parties' proposed allocation and surcharge to be just and reasonable and consistent with Commission Rule § 7.5530 (Allowable Rate Case Expenses).

The Examiners therefore find that good cause exists to recover the actual and estimated expenses of EPCOR Gas and Magnolia—totaling \$455,000—equally from all incorporated and unincorporated/environs customers in EPCOR Gas' service area. Equal allocation among all EPCOR Gas' customers is necessary in the interest of justice because all customers benefit from the Parties' Settlement and participation by EPCOR Gas and Magnolia resulted in the Settlement.

## **3. Compliance**

Staff, EPCOR Gas, Magnolia, and High Meadow agree to the compliance terms below.<sup>143</sup>

- EPCOR Gas shall file annually, due on or before April 1, a rate case expense compliance filing with the Commission's Oversight and Safety Division, referencing GUD

<sup>137</sup> CAD 900 or USD 657 were for services from the director of a consulting company that conducted a compensation study for EPCOR Gas. Joint Ex. 1 (Unanimous Settlement Agreement) at Exhibit D p. 5, Exhibit E pp. 38-41.

<sup>138</sup> *Id.* at Exhibit D.

<sup>139</sup> *Id.* at 5 ¶ 23.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 5 ¶ 20, Exhibit A(1) (RCE-ENV), Exhibit A(2) (RCE-INC).

<sup>142</sup> *Id.* at Exhibit A(1) at 12; *Id.* Exhibit A(2) at 16.

<sup>143</sup> *Id.* at 6 ¶ 24.

No. 10988. The report shall include the amount of rate case expense recovered by month and the outstanding balance by month as set out in Rate Schedules RCE.

- EPCOR Gas and Magnolia submit to Commission Staff invoices reflecting actual rate case expenses with sufficient detail so that Staff can accurately audit such invoices for the purposes of reconciling estimated rate case expenses to actual rate case expenses. In no case shall the total actual expenses exceed \$455,000.
- EPCOR Gas files an annual rate case expense compliance filing with Commission Staff detailing the balance of actual plus estimated rate case expenses at the beginning of the annual period, the amount collected by customer class, and the ending or remaining balance within 90 days after each calendar year end.

#### **4. Rate Case Expenses Conclusion**

Considering the Settlement and evidentiary record, the Examiners find that the terms in the Settlement relating to the amounts, reimbursement, allocation, and recovery of rate case expenses are just and reasonable and consistent with Commission Rule 7.5530 (Allowable Rate Case Expenses). Accordingly, the Examiners recommend approval.

#### **X. CONCLUSION**

The Settlement resolves all issues in GUD No. 10988, *consolidated*. The Examiners find that EPCOR Gas's request for a rate change pursuant to the Settlement is warranted. The recommendations contained herein are just and reasonable, supported by the weight of reliable and probative evidence, consistent with the public interest, and proper under applicable Texas law. Accordingly, the Examiners recommend that the Settlement be approved.

#### **XI. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The Findings of Fact and Conclusions of Law contained in the Proposed Final Order, appended to this PFD as **Attachment 3**, are incorporated herein by reference.

**Signed on November 18, 2020.**

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**Dee Marlo Chico**  
**Administrative Law Judge**

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*Rose A. Ruiz*  
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**Rose A. Ruiz**  
**Technical Examiner**

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**James R. Currier**  
**Technical Examiner**