



Control Number: 45550



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APPLICATION OF DEER CREEK  
RANCH WATER COMPANY FOR A  
PASS-THROUGH RATE CHANGE

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PUBLIC UTILITY COMMISSION

OF TEXAS

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PUBLIC UTILITY COMMISSION  
FILING CLERK

## ORDER

This Order addresses the application of Deer Creek Ranch Water Company for approval of a pass-through rate change. Commission Staff recommended approval of the application, as it was amended and with corrections. Deer Creek's application, as amended, is approved consistent with Commission Staff's recommendations.

### I. Background

#### Deer Creek

On January 27, 2016, Deer Creek filed an application for a pass-through rate increase due to an overall increase in water fees imposed on the utility by the West Travis County Public Utility Agency (WTCPUA) for purchased water and by the Lower Colorado River Authority (LCRA) for treated water.<sup>1</sup> The proposed pass-through rate increase was composed of a rate decrease in WTCPUA's purchased water fees from \$3.46 per 1,000 gallons to \$2.76 per 1,000 gallons and an increase in the WTCPUA's base monthly minimum charge.<sup>2</sup> The pass-through rate increase affected all of Deer Creek's customers and became effective on February 1, 2016.<sup>3</sup>

#### Commission Staff

On February 17, 2016, Commission Staff recommended that Deer Creek's application be deemed deficient because Deer Creek failed to document its claimed 15% water loss, failed to provide documentation showing the change in the formula in this application, failed to provide tariff pages showing how the WTCPUA's base charges should be calculated per connection and the current amount charged per connection, and failed to true-up 2015 charges.<sup>4</sup>

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<sup>1</sup> Application of Deer Creek Ranch Water Company for a Water Pass-Through rate Change at 9 (Jan. 27, 2016).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Staff's Sufficiency Recommendation, Attached Memorandum at 1-2 (Feb. 17, 2016).

*Deer Creek*

On March 9, 2016, Deer Creek responded to the first notice of deficiency in this application, stating that it was not requesting a new pass-through provision or a change to its existing pass-through provision, which was approved by the Texas Commission on Environmental Quality (TCEQ) in 2007, and revised in 2012.<sup>5</sup> Deer Creek stated that it does not need any other Commission approval to pass-through a revised WTCPUA purchased water charge and the Commission does not have a mechanism for suspending pass-through rate changes.<sup>6</sup>

Deer Creek stated that it provided documentation of its 15% water loss and a copy of the tariff pages showing the formula for calculating the pass-through amounts.<sup>7</sup> Deer Creek stated that regulatory assessments are administered by the TCEQ, not the Commission, but will provide a copy of its fee receipt once the TCEQ provides it to Deer Creek.<sup>8</sup> Deer Creek also provided a spreadsheet for its pass-through charges in 2015 and stated that Commission Staff apparently added this true-up provision to Deer Creek's tariff without prior hearing or notice.<sup>9</sup>

*Commission Staff*

On March 24, 2016, Commission Staff issued its first (1<sup>st</sup>) requests for information (RFIs) to Deer Creek seeking all invoices from WTCPUA and LCRA that correspond to each payment made by Deer Creek for each month in 2015, total usage billed to customers by Deer Creek and billed to Deer Creek by the WTCPUA for each month in 2015 and total active service connections for the beginning of each month in 2015 and for January 1, 2016.<sup>10</sup>

On March 31, 2016, Commission Staff issued its second recommendation that Deer Creek's application be deemed deficient because Deer Creek had not fully addressed the deficiencies Staff identified in the application and recommended that Deer Creek be directed to provide the utility's 2015 water loss report submitted to the Texas Water Development Board (TWBD), the current

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<sup>5</sup> Response to Notice of Deficiency at 1 (Mar. 9, 2016).

<sup>6</sup> *Id.* at 2.

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

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

<sup>9</sup> *Id.*

<sup>10</sup> Commission Staff's first Request for Information to Deer Creek Ranch Water Company Question Nos. Staff 1-1 through Staff 1-4 at 6 (Mar. 24, 2016).

amount of WTCPUA base charges charged per connection, proof that Deer Creek's regulatory assessment fees are current and a true-up, including any and all calculations, for charges in 2015.<sup>11</sup>

*Deer Creek*

On May 19, 2016, Deer Creek responded to the second notice deeming this application deficient and provided the most recent TWDB Water Loss Audit, TCEQ's regulatory assessment receipt, the existing tariff, the notice of increase in pass-through rates, a copy of WTCPUA's and LCRA's charges and a copy of the previously-submitted true-up calculation.<sup>12</sup>

*Commission Staff*

On June 15, 2016, Commission Staff issued its second (2<sup>nd</sup>) RFI's to Deer Creek, seeking specific billing information, a copy of some bills, redacted for privacy, copies of WTCPUA's and LCRA's bills to Deer Creek for specific periods, information regarding the number of customers, documentation of WTCPUA's annual fee charged to Deer Creek (previously indicated as the LCRA reservation fee on Deer Creek's tariff) and how it is billed to Deer Creek, proof that Deer Creek has paid the annual fee in 2014, 2015, and 2016, and a copy of all contracts for purchased water, wholesale water or water rights with LCRA and WTCPUA that have not already been provided and to which Deer Creek is a party, including amended contracts, if amended since last filed with the Commission.<sup>13</sup>

On June 17, 2016, Commission Staff issued its third recommendation that this application be deemed deficient, because Deer Creek has not fully addressed the deficiencies previously identified by Commission Staff.<sup>14</sup> Commission Staff requested that Deer Creek be directed to provide documentation that 2014 regulatory assessment fees have been paid, a true-up, including any and all calculations for charges in 2015, specific billing register information starting January 2015 and ending January 2016, totals for the categories of billing register information, an actual full bill from a typical Deer Creek customer, redacted for privacy and including specific information, LCRA's bills to Deer Creek for specific periods of time, total number of active

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<sup>11</sup> Commission Staff's Second Sufficiency Recommendation at 1-2 (Mar. 31, 2016).

<sup>12</sup> Response to Notice of 2<sup>nd</sup> Deficiency at 1 (May 19, 2016).

<sup>13</sup> Commission Staff's Second Request for Information to Deer Creek Ranch Water Company Question Nos. Staff 2-1 through Staff 2-9 at 7 (Jun. 15, 2016).

<sup>14</sup> Commission Staff's 3<sup>rd</sup> Sufficiency Recommendation at 2-3 (Jun. 17, 2016).

customers for the beginning of each month beginning January 2015 and ending May 2016, documentation for WTCPUA charging Deer Creek an annual fee of \$50,000 and how it is billed to Deer Creek, and documentation that Deer Creek has paid the annual fee of \$50,000 in 2014, 2015, and 2016.<sup>15</sup>

**Deer Creek**

On August 4, 2016, Deer Creek responded to the third notice of deficiency, repeating many of its prior objections to the Commission's processing of this application, and stating that regardless of those objections, a copy of the information requested by Commission Staff was enclosed.<sup>16</sup> Deer Creek again stated that apparently the true-up provision was added to Deer Creek's tariff without a prior hearing or notice to any party.<sup>17</sup>

**Commission Staff**

After three unopposed extensions of time, on December 16, 2016, Commission Staff filed its final recommendation in this application. Commission Staff stated that the pass-through formula in Deer Creek's tariff does not accurately reflect the structure of the costs that are passed through to Deer Creek's customers.<sup>18</sup> Commission Staff stated that it conferred with Deer Creek and provided a jointly drafted pass-through formula that better captures the structure of Deer Creek's pass-through costs.<sup>19</sup> The jointly drafted revisions also remove the true-up requirement currently in Deer Creek's tariff.<sup>20</sup> Commission Staff stated that Deer Creek agrees with the new formula and recommended approval of the revised pass-through formula.<sup>21</sup>

Commission Staff also stated that Deer Creek was double collecting for the LCRA reservation fee and that Deer Creek charged tariffed rates that were higher than the actual rate being charged to them from the pass-through entity for several months in 2015.<sup>22</sup> These errors resulted

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<sup>15</sup> *Id.* at 3.

<sup>16</sup> Response to Notice of Deficiency at 1-2 (Aug. 4, 2016).

<sup>17</sup> *Id.* at 2.

<sup>18</sup> Commission Staff's Recommendation at 1 (Dec. 16, 2016) (Staff Rec.).

<sup>19</sup> *Id.* at 1-2.

<sup>20</sup> *Id.* at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*, attached memorandum at 1.

in an over-collection of pass-through costs in the amount of \$47,259.77 in 2015. In addition, there were over-collections in 2016 due to notice of an incorrect pass-through rate in this application.<sup>23</sup>

Commission Staff recommends approval of a pass-through rate of \$2.38 per 1,000 gallons rate and provided a formula for calculation of the monthly fee at the beginning of each monthly billing cycle.<sup>24</sup> Commission Staff recommended that Deer Creek refund both the over-collection of \$47,259.77 and the over-collection from the incorrect rates produced in this application directly to customers, over a period equal in length to the period in which both over collections occurred.<sup>25</sup> Commission Staff provided instructions for the refunds to current and former customers.<sup>26</sup> Commission Staff recommended that Deer Creek be directed to provide an affidavit attesting to the refund upon completion or 36 months from the date of this Order, whichever is earlier, with a summary billing for the period of refunds reflecting, by account number, actual refunds made during the period.<sup>27</sup>

**Deer Creek**

On January 17, 2017, Deer Creek responded to Commission Staff's final recommendation, making certain factual and legal background statements.<sup>28</sup> Deer Creek stated that the utility does not object to the word description changes in its revised formula and stated that Commission Staff did not object to the noticed pass-through rate as calculated by the utility.<sup>29</sup> Deer Creek stated that Commission Staff claims that the utility overcharged, but that Staff did not claim that the utility charged rates inconsistent with its Commission-approved tariff.<sup>30</sup>

Deer Creek claimed that there is a problem with how the Commission has changed the process with pass-through notices and alleges that the Commission did not go through the

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<sup>23</sup> *Id.*

<sup>24</sup> Staff Rec., attached memorandum at 2.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Deer Creek Ranch Water Company, LLC's Response to Commission Staff's Recommendation at 1-2 (Jan. 17, 2017).

<sup>29</sup> *Id.* at 2.

<sup>30</sup> *Id.*

appropriate rule change notice and adoption process for this change.<sup>31</sup> Deer Creek states that the Commission's new methodology of including the calculated rate, instead of just the formula, within the tariff creates a fundamental rate situation; for example, if a wholesale provider temporarily lowers rates, is the utility required to lower rates even though the Commission issued a tariff with a higher rate? Or if the utility's provider for chemicals or some other costs lowers its price, does the utility get the benefit of the lower rate? Or, in the inverse, when the utility's service provider raises rates, does the Commission not require the utility to eat the increase in costs until it raises rates?<sup>32</sup>

Finally, Deer Creek recommends that the Commission approve the rates as originally noticed, and stated that if Commission Staff believes that Deer Creek overcharged its customers, then the Commission Staff has other, more appropriate legal mechanisms to make that claim and ask for that adjustment.<sup>33</sup>

**Commission Staff**

On January 31, 2017, Commission Staff supplemented its final recommendation and responded to Deer Creek. Commission Staff stated that it is not correct that Staff did not object to the pass-through rate as calculated and noticed by Deer Creek, and instead that Staff recommended a pass-through gallonage rate of \$2.38, which is lower than the \$2.76 noticed by Deer Creek, and a revised monthly fee to be implemented on final disposition of this application.<sup>34</sup>

Commission Staff stated that it did not question Deer Creek's compliance with the numbers printed in its tariff; instead, Staff highlighted that Deer Creek's tariff contained a provision requiring that pass-through charges be true-up and adjusted every 12 months.<sup>35</sup> In the process of performing the true-up, Commission Staff discovered that over-collections had resulted in 2015 and

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<sup>31</sup> *Id.* at 2-3.

<sup>32</sup> *Id.* at 3.

<sup>33</sup> *Id.*

<sup>34</sup> Commission Staff's Supplemental Recommendation at 2 (Jan. 31, 2017) (Staff Supp. Rec.).

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

recommended refunds.<sup>36</sup> Commission Staff also recommended that Deer Creek be directed to refund any over-collections from it charging the incorrect rates noticed in this application.<sup>37</sup>

Commission Staff stated that Deer Creek's analogy is incorrect because pass-through charges by their very nature are designed so that a utility can pass the exact amount of a change through to its customers without earning a return or suffering a loss.<sup>38</sup> Commission Staff stated that it is therefore appropriate for a utility to follow the procedures to revise a pass-through charge whenever the underlying service provider changes the amount it charges.<sup>39</sup> Commission Staff stated that in this case, Deer Creek did not pass-through the exact amount of its charge, it over-collected, and the tariff provides a procedure (a true-up) to allow the utility to adjust the pass-through charge without changing its rates.<sup>40</sup> Commission Staff pointed out that if Deer Creek had under-collected, the tariff would have similarly trued up the pass-through charge so that Deer Creek did not suffer a loss.<sup>41</sup> Commission Staff reaffirmed its December 16, 2016 recommendations.<sup>42</sup>

### Commission

The Commission agrees with Commission Staff. Texas Water Code § 13.041(b) (TWC) authorizes the Commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Since September 1, 2014, when jurisdiction over the economic activities of water and sewer utilities was transferred from the TCEQ, and under the authority of this statute, the Commission has twice modified its rule affecting pass-through provisions, 16 Texas Administrative Code § 24.21 (TAC).<sup>43</sup> Contrary to Deer Creek's assertions, the Commission has

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 2-3.

<sup>39</sup> *Id.* at 3.

<sup>40</sup> Staff Supp. Rec. at 3.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *PUC Rulemaking Project to Amend Chapter 24 for the Implementation of Phase II of the Economic Regulation of Water and Sewer Utilities*, Project No. 43871, Order Adopting Amendments to §§ 24.3, 24.8, 24.14, 24.21, 24.23, 24.31, 24.32, 24.34, 24.41, 24.44, 24.72, 24.73, 24.102, 24.109, 24.111, 24.114, 24.131, 24.150; Repeal of §§ 24.11, 24.22, 24.25, 24.26, 24.28, 24.33, 24.36 as Approved at the August 14, 2015 Open Meeting at 109 (Aug. 24, 2015) (effective Sep. 13, 2015) (43871 Version of § 24.21); *PUC Rulemaking Proceeding to Amend Chapter 24 Water/Sewer Pass Through Clauses and Surcharge Rules*, Project No. 45112, Order Adopting Amendment to § 24.21 as Approved at the November 10, 2016 Open Meeting at 17 (Nov. 14, 2016) (effective Dec. 4, 2016).

not amended this rule improperly. The Commission followed the procedures established in the APA<sup>44</sup> for rule amendments when it adopted amendments to 16 TAC § 24.21.

Subsection (h) of the version of 16 TAC § 24.21 that was in effect at the time Deer Creek filed this application, and therefore the version of the rule that applies to this application, expresses the Commission's authority to review, revise and approve pass-through rate changes.<sup>45</sup>

The Commission concludes that 16 TAC § 24.21 contemplates that a utility will not under or over recover on pass-through charges, and carries with it the authority to require refunds or surcharges, as necessary. The Commission also concludes that the requirement in the rule that customers receive notice prior to the billing period in which the change is made, carries with it the

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<sup>44</sup> Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001-2001.902 (West 2016) (APA).

<sup>45</sup> 43871 Version of § 24.21 at 139-140; *relating to* purchased water or sewage treatment provisions, stated:

- (1) A utility that purchases water or sewage treatment may include a provision in its tariff to pass through to its customers changes in such costs. The provision must specify how it is calculated and affects customer billings.
- (2) This provision must be approved by the Commission in a rate proceeding. A proposed change in the method of calculation of the provision must be approved in a rate proceeding.
- (3) Once the provision is approved, any revisions of a utility's billings to its customers to allow for the recovery of additional costs under the provision may be made only upon issuing notice as required by paragraph (4) of this subsection. The review of a proposed revision is an informal proceeding. Only the Commission Staff, or the utility may request a hearing on the proposed revision. The recovery of additional costs is defined as an increase in water use fees or in costs of purchased water or sewage treatment.
- (4) A utility that wishes to revise utility billings to its customers pursuant to an approved purchased water or sewer treatment or water use fee provision to allow for the recovery of additional costs shall take the following actions prior to the beginning of the billing period in which the revisions take effect:
  - a. submit a written notice to the Commission; and
  - b. email (if the customer has agreed to receive communications electronically) or mail notice to the utility's customers. Notice may be in the form of a billing insert and must contain the effective date of the change, the present calculation of customer billings, the new calculations of customer billings, and the change in charges to the utility for purchased water or sewage treatment or water use fees. The notice must include the following language: "This tariff change is being implemented in accordance with the utility's approved (purchased water) (water use fee) adjustment clause to recognize (increases) (decreases) in the (water use fee) (cost of purchased water) (water) (sewage treatment). The cost of these charges to customers will not exceed the (increased) (decreased) cost of (the water use fee) (purchased) (water) (sewage treatment)."
- (5) Notice to the Commission must include a copy of notice sent to the customers, proof that the cost of purchased water or sewage treatment has changed by the stated amount, and the calculations and assumptions used to determine the new rates.
- (6) Purchased water or sewage treatment provisions may not apply to contracts or transactions between affiliated interests.

authority to suspend rates, require re-noticing, and establish new effective dates, as necessary. For these reasons, the Commission agrees with all of Commission Staff's recommendations and approves Deer Creek's application accordingly.

The Commission adopts the following findings of fact and conclusions of law:

## **II. Findings of Fact**

1. On January 27, 2016, Deer Creek filed an application for a pass-through rate increase.
2. On January 28, 2016, a notice was issued establishing a February 17, 2016 deadline for Commission Staff to file a recommendation on Deer Creek's application and notice and to propose a procedural schedule.
3. On February 17, 2016, Commission Staff recommended that the application be deemed deficient and proposed deadlines for Deer Creek to cure the deficiencies and for a supplemental recommendation.
4. On February 18, 2016, a notice was issued deeming Deer Creek's application deficient consistent with commission Staff's February 17, 2016 recommendation, advising Deer Creek that 16 TAC § 24.21(h) does not address suspension of pass-through fee adjustments, but that it does contemplate that a pass-through adjustment will not be effective until approved by the Commission and therefore that implementation of the increased pass-through fee at this time was not appropriate and that refunds could be ordered, if necessary.<sup>46</sup> Deadlines were established for Deer Creek to cure the deficiencies that had been identified by Commission Staff and for Commission Staff to file a supplemental recommendation on the application and propose a procedural schedule, if appropriate.
5. On March 9, 2016, Deer Creek responded to the first notice of deficiency.
6. On March 24, 2016, Commission Staff issued its 1<sup>st</sup> RFIs to Deer Creek.

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<sup>46</sup> Notice Finding Application Deficient and Establishing Deadlines, at 1 (Feb. 18, 2016).

7. On March 31, 2016, Commission Staff again recommended that the application be deemed deficient and proposed deadlines for Deer Creek to cure the deficiencies and for a supplemental recommendation.
8. On April 4, 2016, a notice was issued, finding this application remained deficient and requiring Deer Creek to cure all of the deficiencies that had been identified by Commission Staff by May 18, 2016, and requiring a supplemental recommendation from Commission Staff by June 17, 2016.
9. On May 19, 2016, Deer Creek responded to the second notice of deficiency.
10. On June 15, 2016, Commission Staff issued its 2<sup>nd</sup> RFIs to Deer Creek.
11. On June 17, 2016, Commission Staff again recommended that the application be deemed deficient and proposed deadlines for Deer Creek to cure the deficiencies and for a supplemental recommendation.
12. On June 21, 2016, a notice was issued, finding this application remained deficient and establishing an August 5, 2016 deadline for Deer Creek to cure deficiencies and a September 9, 2016 deadline for a supplemental recommendation from Commission Staff.
13. On August 4, 2016, Deer Creek responded to the third notice of deficiency and filed confidential responses to some of Commission Staff's RFIs.
14. On September 9, 2016, Commission Staff recommended that the application be deemed administratively complete and sufficient for further review.
15. On September 13, 2016, a notice was issued, deeming the application sufficient for further review and establishing an October 24, 2016 deadline for Commission Staff to provide a final recommendation or propose a procedural schedule.
16. After several extensions of time, on December 16, 2016, Commission Staff recommended approval of the application, as amended and with corrections. Specifically, Commission Staff recommended approval of a pass-through rate of \$2.38 per 1,000 gallons rate and provided a formula for calculation of the monthly fee at the beginning of each monthly

billing cycle.<sup>47</sup> Commission Staff recommended that Deer Creek refund both the over-collection of \$47,259.77 from 2015 and the over-collection from the incorrect rates produced in this application directly to customers, over a period equal in length to the period in which both over-collections occurred.<sup>48</sup> Commission Staff provided instructions for the refunds to current and former customers.<sup>49</sup> Commission Staff recommended that Deer Creek be directed to provide an affidavit attesting to the refunds upon completion or 36 months from the date of this Order, whichever is earlier, with a summary billing for the period of refunds reflecting, by account number, actual refunds made during the period.<sup>50</sup> Commission Staff provided a revised tariff for Deer Creek.

17. On December 29, 2016, a notice was issued establishing a January 17, 2017 deadline for Deer Creek to respond to Commission Staff's final recommendation, and a January 31, 2017 deadline for Commission Staff to file a supplemental recommendation, if needed.
18. On January 17, 2017, Deer Creek responded to Commission Staff's recommendation, recommending that the rates as originally noticed be approved instead of the new rate recommended by Commission Staff and arguing that a refund would be more appropriate in a different proceeding.
19. On January 31, 2017, Commission Staff filed a supplemental recommendation responding to Deer Creek and affirmed its December 16, 2016 recommendations and stated that a hearing is not necessary in this application.
20. The only parties to this application are Commission Staff and Deer Creek.
21. No party has requested a hearing.
22. On March 3, 2017, a notice was issued docketing this proceeding.

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<sup>47</sup> Staff Rec., attached memorandum at 2.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

### III. Conclusions of Law

1. The Commission has jurisdiction over this proceeding under TWC § 13.041(b).
2. Deer Creek is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.003(59).
3. Notice consistent with 16 TAC § 24.21(2)(E) was provided.
4. Commission Staff has demonstrated that its recommended pass-through provision revisions, rates, formulas, refunds and other recommendations are consistent with the requirements of 16 TAC § 24.21.
5. The notice requirements under 16 TAC § 22.35 have been met in this proceeding.

### IV. Ordering Paragraphs

1. Deer Creek's application, as amended and as corrected by Commission Staff, is approved.
2. The revised pass-through provision in the tariff attached to this Order is approved.
3. A pass-through rate of \$2.38 per 1,000 gallons rate for purchased water fees imposed on Deer Creek by the WTCPUA and a monthly fee based on the formula provided by Commission Staff for calculation of the monthly fee at the beginning of each monthly billing cycle is approved for Deer Creek's customer's effective February 1, 2016.
4. Deer Creek shall refund both the over-collection of \$47,259.77 from 2015 and the over-collection from the incorrect rates produced in this application directly to customers, over a period equal in length to the period in which both over collections occurred.
5. Deer Creek shall provide refunds to current and former customers consistent with the instructions provided in Commission Staff's December 16, 2016 recommendation.
6. Deer Creek shall provide an affidavit attesting to the required refunds upon completion or 36 months from the date of this Order, whichever is earlier, with a summary billing for the period of refunds reflecting, by account number, actual refunds made during the period.
7. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 30<sup>th</sup> day of March 2017.

**PUBLIC UTILITY COMMISSION OF TEXAS**



**DONNA L. NELSON, CHAIRMAN**



**KENNETH W. ANDERSON, JR., COMMISSIONER**



**BRANDY MARTY MARQUEZ, COMMISSIONER**

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