

## **RESOLUTION NO. R-2011-6**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS ORDERING TALL TIMBERS UTILITY COMPANY, INCORPORATED (TTUC) TO IDENTIFY AND SUBMIT WITHIN A SPECIFIED TIME CERTAIN INFORMATION ON "CAPACITY FEES" ASSESSED BY TTUC AS A CONDITION OF EXTENDING SERVICE WITHIN THE CITY; ORDERING TTUC TO REFUND OR CREDIT ALL ACCOUNTS CHARGED "CAPACITY FEES"; ORDERING TTUC TO SUBMIT WITHIN A SPECIFIED TIME TO THE DIRECTOR OF UTILITIES A SCHEDULE FOR REFUNDING OR CREDITING "CAPACITY FEES" OVERCHARGES; AND REQUIRING DELIVERY OF THIS RESOLUTION TO TTUC.**

**WHEREAS**, Tall Timbers Utility Company, Inc. (TTUC) provides retail sewer utility service within part of the City of Tyler, and pursuant to state law, TTUC has filed a tariff with the City of Tyler specifying the rates, terms and conditions on which TTUC will provide and extend sewer utility service inside TTUC's certificated service area located inside the City of Tyler; and

**WHEREAS**, the City of Tyler is the regulatory authority having a statutory duty to review, approve, interpret and enforce retail sewer utility tariffs within its municipal boundaries, including regulatory authority over TTUC; and,

**WHEREAS**, TTUC has charged developers and others a "capacity fee" as a condition of extending service to new developments inside the City of Tyler; and

**WHEREAS**, the City Council of the City of Tyler, in Resolution No. R-2009-27, found that the "capacity fee" charged by TTUC was not authorized because such fee had never been presented to the City Council for approval; and

**WHEREAS**, TTUC appealed the City of Tyler's finding in Resolution No. R-2009-27 to the Texas Commission on Environmental Quality (TCEQ) to obtain a ruling by TCEQ that its capacity fee was authorized by its approved tariff, but on September 7, 2010, TTUC withdrew its appeal, thereby conclusively acknowledging that the "capacity fee" is not authorized by its tariff; and

**WHEREAS**, the City of Tyler is concerned that TTUC charged a "capacity fee" as a condition of extending service to other developments within the City of Tyler, including charging "capacity fees" of \$550 and \$1,000 per connection;

**WHEREAS**, the Director of Utilities and Public Works (Director) has requested information regarding the "capacity fees" charged to developers within the City of Tyler, but TTUC has refused to provide the requested information;

**WHEREAS**, it is the obligation of the City of Tyler to determine whether the charges made by TTUC are authorized by TTUC's tariff and other law and to enforce compliance by TTUC with the tariff.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, THAT:**



**PART 1:** The City Council renews its finding from Resolution No. R-2009-27 that TTUC is not authorized by its tariff to charge a predetermined "capacity fee" as a condition of extending service to new developments. Specifically, TTUC is not authorized to charge a predetermined "capacity fee" of either \$550 or \$1,000 per connection, as a condition of extending service to new subdivisions inside the City of Tyler.

**PART 2:** The City Council orders TTUC to identify all "capacity fees" assessed after November 13, 2002, as a condition of extending service within the City of Tyler. TTUC shall submit documentation to the Director showing the total amount paid to TTUC as "capacity fees," the per connection amount of the "capacity fee," and the date the fees were paid to TTUC for each subdivision for which "capacity fees" were assessed. TTUC shall provide this information to the Director within 30 days of the adoption of this resolution.


**PART 3:** The City Council orders TTUC to refund all unauthorized and unlawfully charged "capacity fees" by crediting each account associated with a connection for which a "capacity fee" was paid the amount of the "capacity fee." If a "capacity fee" was paid for a connection that is not currently in service, the amount of the "capacity fee" shall be credited to the account once service is connected or reconnected to the lot. TTUC shall submit to the Director a plan for crediting these accounts within 45 days after the adoption of this resolution and shall credit these accounts within 60 days after the adoption of this resolution, unless a later deadline is allowed by the Director.

**PART 4:** Failure by TTUC to provide the documentation required by Part 2 of this resolution or to refund "capacity fees" as required by Part 3 of this resolution shall be considered a violation of Articles 15-3 and 15-4 of the Code of Ordinances, City of Tyler, Texas, the Charter of the City of Tyler, and a failure to provide continuous and adequate service. Each day after the specified compliance date shall be considered a separate violation until TTUC comes into compliance.

**PART 5:** Copies of this Resolution shall be sent to TTUC.

**PART 6:** That this Resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED** this 26th day of January, 2011.

  
BARBARA BASS, MAYOR OF  
THE CITY OF TYLER, TEXAS

ATTEST:

  
CASSANDRA BRAGER, CITY CLERK

APPROVED:

  
GARY C. LANDERS, CITY ATTORNEY

