



Control Number: 42864



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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



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Governor

Public Utility Commission of Texas

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PUBLIC UTILITY COMMISSION
FILING CLERK

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Office of Policy and Docket Management

RE: **Open Meeting of January 17, 2019**
PUC Docket No. 42864
SOAH Docket No. 473-14-5146.WS – *Application of Farmers Transport, Inc. dba*
Enchanted Harbor Utility for Authority to Change Rates

DATE: December 14, 2018

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, January 17, 2019, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Wednesday, January 9, 2019.

If there are no corrections or exceptions, no response is necessary.

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**PUC DOCKET NO. 42864
SOAH DOCKET NO. 473-14-5146.WS**

APPLICATION OF FARMERS	§	PUBLIC UTILITY COMMISSION
TRANSPORT, INC. DBA ENCHANTED	§	
HARBOR UTILITY FOR AUTHORITY	§	OF TEXAS
TO CHANGE RATES	§	

PROPOSED ORDER

This Order addresses the application of Farmers Transport, Inc. to change its rates and tariff for water service in Calhoun County. Commission Staff and Farmers Transport filed an unopposed agreement that resolves certain issues between them. The Commission approves changes to Farmers Transport's water rates and tariff as modified by the agreement to the extent provided in this Order.

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

I. Findings of Fact

Jurisdiction

1. On September 1, 2014, functions relating to the economic regulation of water and sewer utilities were transferred from the Texas Commission on Environmental Quality (TCEQ) to the Commission.

Applicant

2. Farmers Transport is a domestic corporation as shown in the records of the Texas Secretary of State.
3. Farmers Transport provides water service to approximately 92 customers in the Enchanted Harbor and Koop subdivisions with public water system number 0290050.
4. Farmers Transport is authorized to provide water service to the public under certificate of convenience and necessity (CCN) number 12683 in Calhoun County.
5. Farmers Transport was referenced as Farmers Transport, Inc. dba Enchanted Harbor Utility and as Enchanted Harbor Utility in this proceeding.
6. Farmers Transport conducts its utility operations some of the time simply as Enchanted Harbor Utility and at other times as Farmers Transport, Inc. dba Enchanted Harbor Utility.

7. There is no evidence that Farmers Transport has an assumed name certificate for the name Enchanted Harbor Utility.

Application

8. On September 18, 2013, Farmers Transport submitted an application to the TCEQ requesting authority to change its water rates and tariff.
9. The application was assigned Docket No. 2014-0631-UCR under the following style: *Water Rate/Tariff Application for Farmers Transport Inc. dba Enchanted Harbor Utility in Calhoun County, Certificate of Convenience and Necessity No. 12683; Application No. 37728-R.*
10. TCEQ accepted the application for filing by letter dated December 16, 2013.
11. The application was transferred from TCEQ to the Commission on September 1, 2014, and on September 8, 2014, the application was assigned the style and docket number shown on this Order. On September 11, 2014, the application was entered in the records of the Commission.
12. Farmers Transport requested a revenue requirement of \$85,123 based on a test year amount of \$46,023 and known and measureable changes of \$39,100. The revenue requirement contains no return on \$20,206 of net invested capital.
13. Fixed expenses make up \$63,709 of the revenue requirement, and variable expenses make up the other \$21,414.
14. Farmers Transport used a test year ending December 31, 2012.
15. Farmers Transport proposed to increase its \$36.50 monthly base rate, including 2,000 gallons, to \$85.07, including 3,000 gallons. Based upon 92 connections, this results in an increase of \$53,621 in base-rate revenue.
16. Farmers Transport did not propose a change to the \$1.50 volumetric rate but did propose to change the tap fee from \$200 to \$500 and the reconnect fee from \$100 to \$500.
17. Farmers Transport also requested a capital-improvement surcharge of \$47.73 per connection per month for upgrades to its system at an estimated cost of \$455,000. Farmers Transport calculated the proposed surcharge based on 92 connections.

18. In 2013, the TCEQ notified Farmers Transport that it has too many connections for its 2-inch distributions line and that, based on the number of connections, it needed to upgrade to a 4-inch line. The capital-improvement project was to address this issue.
19. Farmers Transport previously requested authority to change rates in 2001.

Notice

20. On September 12, 2013, Farmers Transport mailed notice of the proposed rate changes to all of its affected customers.
21. On October 18, 2013, the TCEQ issued a notice of deficiency related to the notice mailed on September 12, 2013.
22. On October 30, 2013, Farmers Transport mailed an amended notice of the proposed rate change to all of its affected customers.
23. On November 1, 2013, Farmers Transport filed with the TCEQ a copy of the notice of rate changes and the affidavit of Jesse Wood, President of Farmers Transport, attesting that notice was mailed on October 30, 2013 to each customer and other affected party. This affidavit was entered in the Commission's records on September 11, 2014.
24. On July 9, 2014, Farmers Transport filed with the TCEQ the affidavit of Jesse Wood, Manager of Enchanted Harbor Utilities, attesting that notice of the July 28, 2014 preliminary hearing was mailed on June 27, 2014 to each of the utility's customers and affected municipalities, if any. The affidavit was entered in the Commission's records on September 14, 2014.

Effective Date of Rates

25. Farmers Transport proposed an effective date of January 1, 2014 for its proposed rate changes.
26. In its notice of deficiency dated October 18, 2013, the TCEQ suspended the effective date of Farmers Transport's proposed rate changes.
27. By letter dated December 16, 2013, the TCEQ notified Farmers Transport that its proposed rates could go into effect on January 1, 2014.

Intervenors

28. On July 29, 2014 at the preliminary hearing in this docket, the State Office of Administrative Hearings (SOAH) administrative law judge (ALJ) admitted ratepayers Keith L. Smith, Anne Clark, and Evelyn Saucier as intervenor parties to this proceeding. SOAH Order No. 1 memorializes this action.
29. On September 4, 2014, as an attachment to the initial settlement agreement identified in finding of fact 35, Keith L. Smith, Anne Clark, and Evelyn Saucier each withdrew their request to intervene in this proceeding and none have participated in this matter afterward. No action was taken on the withdrawals.
30. On April 14, 2017, Farmers Transport filed a motion to remove the intervenors from this proceeding because they were no longer customers of Farmers Transport. No ruling was made on that motion.

Referral to SOAH for Hearing

31. On May 7, 2014, the application was transferred to the chief clerk of the TCEQ for referral to SOAH for hearing.
32. On June 23, 2014, the chief clerk of the TCEQ issued notice that SOAH would conduct a prehearing conference on July 28, 2014.
33. On July 8, 2014, TCEQ referred this proceeding to SOAH and it was assigned SOAH Docket No. 582-14-3880.
34. On July 29, 2014, SOAH conducted a preliminary hearing at which Farmers Transport, the executive director of TCEQ, and ratepayers Keith L. Smith, Anne Clark, and Evelyn Saucier appeared. The SOAH ALJ memorialized the prehearing conference in SOAH Order No. 1.
35. On August 26, 2014, Farmers Transport filed a motion to remand with an attached mediated settlement agreement (the initial agreement) signed by all parties, which resolved certain issues in this proceeding, including the withdrawal of intervenor ratepayers Keith L. Smith, Anne Clark, and Evelyn Saucier. Neither the TCEQ, nor SOAH, nor the Commission ever considered the initial agreement.

36. In SOAH Order No. 2 issued on September 3, 2014, the SOAH ALJ notified the parties of the transfer of subject matter jurisdiction from TCEQ to the Commission, identified the Commission's newly-adopted water rules, changed the SOAH docket number to reflect the Commission's jurisdiction, established filing and service procedures, and provided a September 10, 2014 deadline for the filing of any change in party status or representation to ensure proper service.
37. From October 10, 2014 through December 16, 2016, Commission Staff filed reports regarding the status of finalizing the settlement agreement.
38. In SOAH Order No. 3 issued on January 20, 2017, the SOAH ALJ abated the case and required a status report by February 17, 2017 if the parties did not file final settlement documents before that date.
39. From February 17, 2017 through February 20, 2018, Commission Staff filed status updates requesting that the SOAH ALJ not remand the matter to the Commission until the parties could develop a settlement package, and the SOAH ALJ entered Order Nos. 4 through 16, continuing abatement of the case and requiring a settlement package or status update regarding settlement finalization.
40. On February 28, 2018, Commission Staff and Farmers Transport filed a motion containing a second agreement between Commission Staff and Farmers Transport and asking that the SOAH ALJ admit evidence, set a reasonable deadline for the intervenors to file objections to the agreement, and that after that deadline, the docket be remanded to the Commission for final approval.
41. In SOAH Order No. 17 issued on April 16, 2018, the SOAH ALJ established a deadline of May 1, 2018 for intervenors to file objections to the agreement. No intervenor filed objections to the agreement.
42. On June 7, 2018, Commission Staff filed a motion asking the SOAH ALJ to rule on the previous motion to admit evidence and remand this matter to the Commission.
43. In SOAH Order No. 18 issued on June 11, 2018, the SOAH ALJ admitted evidence, dismissed the case from the SOAH docket, and remanded the case to the Commission. The SOAH ALJ admitted the following evidence into the record: (a) Farmers Transport's

application for a water rate and tariff change, filed on September 18, 2013; (b) Farmers Transport's affidavit of notice of the application, filed on September 11, 2014; (c) Farmers Transport's affidavit of notice of the prehearing conference, filed on September 4, 2014; (d) the second settlement agreement and attachments, filed on February 28, 2018; (e) the testimony and attachments of Farmers Transport witness Marvin B. Morgan, filed on March 27, 2018; (f) the direct testimony of Commission Staff witness Heidi Graham, filed on February 28, 2018; (g) the tariff for Farmers Transport, Inc. dba Farmers Transport, filed on February 28, 2018; and (h) the affidavit of Jesse Wood, filed on February 28, 2018.

Testimony

44. Commission Staff filed the testimony of Heidi Graham of the Water Utility Division on February 28, 2018 as attachment C to the motion to admit evidence.
45. Farmers Transport filed the affidavit of Jesse Wood, manager of Enchanted Harbor Utility, on February 28, 2018 as attachment D to the motion to admit evidence.
46. On March 27, 2018, Farmers Transport filed the testimony in support of the settlement agreement of Marvin Morgan.

Initial Agreement

47. The parties executed the initial agreement in this docket on August 22, 2014 and filed it on August 26, 2014. Neither the TCEQ nor the Commission ever acted on this initial agreement.
48. Under the initial agreement, Farmers Transport's annual revenue requirement is \$79,233, a reduction of \$18,208 from the application.
49. Under the initial agreement, the monthly base rate including 3,000 gallons for a 5/8-inch or 3/4-inch meter is \$59.00, the volumetric rate is \$6.00 per 1,000 gallons, the tap fee is \$200, and the reconnect fee is \$375.
50. Under the initial agreement, usage beginning after August 1, 2014 is subject to the agreed rates.
51. Under the initial agreement, Farmers Transport will collect a capital-improvement surcharge of \$42.78 per connection per month. Farmers Transport agreed to escrow the collected amounts and have withdrawals supervised by the TCEQ executive director.

52. Under the initial agreement, collection of the surcharge was contingent on Farmers Transport securing third-party financing at a rate of 10% per year or lower.
53. Under the initial agreement, Farmers Transport agreed to complete the capital improvements by December 31, 2016 and to cease collecting the surcharge if it failed to meet the deadline.
54. If Farmers Transport could not secure third-party financing, Farmers Transport agreed to make the capital improvements as collected surcharges accrued, and the parties agreed the completion deadline did not apply.
55. Under the initial agreement, the TCEQ executive director agreed to review how Farmers Transport allocated the surcharge amounts collected in 2014 before entering the agreement and to determine whether the funds were expended on capital-improvement projects listed in the application.
56. Under the initial agreement, Farmers Transport will not seek to recover and will not collect any rate-case expenses incurred or to be incurred regarding this application.
57. Under the initial agreement, Farmers Transport is not required to issue refunds or credits for the difference in rates in effect from January 1, 2014 through July 31, 2014.
58. Neither the initial agreement nor the rates in that agreement were approved by the TCEQ, SOAH, or the Commission.

Post-Initial-Agreement Events

59. After issuing notice of the application, the number of connections served by Farmers Transport declined from 92 to 57, as of February 6, 2017, as customers chose to construct private wells rather than pay the capital-improvement surcharge. The current number of customers is not reflected in the record.
60. Farmers Transport modified the capital-improvement plan to address the fewer connections and reflect the actual upgrades and repairs needed for the system with a reduced demand. The modification lowered the cost for the capital improvement project to \$312,288, a reduction of \$142,712.

61. Farmers Transport was unable to secure third-party financing that met the conditions of the initial agreement.
62. Jesse Wood, President of Farmers Transport, agreed to personally finance capital improvements in the amount of \$150,000 at 10% interest per year. Mr. Wood subsequently agreed to reduce the interest rate to 5% per year.
63. Commission Staff stated it is not aware if collected surcharges were escrowed as required by the initial agreement, and it did not have the opportunity to supervise withdrawals.
64. Farmers Transport completed the capital-improvement projects by December 31, 2016.
65. Commission Staff reviewed invoices, receipts, and personal loan documents for the constructed capital improvements and identified \$12,620.14 in expenses claimed by Farmers Transport as unreasonable and unnecessary. After this adjustment, the total amount to be recovered under the capital-improvement surcharge is \$312,288.
66. As of May 10, 2017, Farmers Transport had collected \$114,346 in surcharge revenues, leaving \$197,941.95 remaining to be recovered.

Second Agreement

67. On February 28, 2018, the parties filed a second agreement, including a proposed tariff that maintains the same terms as the 2014 agreement except it updates the terms regarding the capital-improvement-projects plan, financing, and surcharges collected and addresses the tap fee and reconnection fee.
68. Under the second agreement, Farmers Transport will collect a capital-improvement surcharge of \$42.78 per connection per month until the remaining amount of \$197,941.95 is collected.
69. Under the second agreement, amounts collected under the capital-improvement surcharge will be escrowed, the Commission will supervise withdrawals from the escrowed account, and the surcharged amount will only be used for the capital-improvement projects listed in the second settlement agreement.
70. Under the second agreement, the tap fee will remain at \$200, and the reconnect fee will increase to \$375.

71. As part of the second agreement, Farmers Transport agreed that it will not recover any rate-case expenses related to this application.

Agreed Rates and Tariff

72. The agreed rates will provide Farmers Transport \$40,356 in base-rate revenue, on an annual basis, based on 57 connections. There is no evidence that Farmers Transport will receive any variable-rate revenue. In addition, Farmers Transport will receive \$29,261 through the capital-improvement surcharge on an annual basis, based on 57 connections.
73. Farmers Transport stated that the agreed rates will provide a positive cash flow and that, with the capital-improvement surcharge, the financial integrity of the utility can be maintained until another rate increase is requested, in part, because it is not refunding the difference in amounts collected under its proposed rate and the settled rate.
74. The proposed tariff included as attachment A to the second agreement provides reasonable rates and rules of service.

Informal Disposition

75. More than 15 days have passed since completion of the notice provided in this docket.
76. The only active parties to this proceeding are Farmers Transport and Commission Staff.
77. The rates and tariff approved by this Order are not adverse to any party.
78. All requests for hearing have been withdrawn, and there is no need for a hearing in this docket.

II. Conclusions of Law

1. The Commission has jurisdiction to consider Farmers Transport's application under Texas Water Code (TWC) §§ 13.041, 13.181, 13.183, 13.1871, and 13.1872.
2. Farmers Transport is a public utility as defined in TWC § 13.002(23).
3. Farmers Transport is a class C utility as defined in TWC § 13.002(4-c) and 16 Texas Administrative Code (TAC) § 24.3(17).
4. Notice of the application complies with TWC § 13.1871 and 16 TAC § 24.27.

5. The Commission processed this docket in accordance with the requirements of the TWC, the Administrative Procedure Act,¹ and Commission rules.
6. In compliance with TWC § 13.183(b), the additional revenues from customers authorized in this proceeding are capital-improvement funds necessary to provide facilities capable of providing continuous and adequate service.
7. In compliance with TWC § 13.183(b), facilities constructed with the additional revenues are customer contributions or contributions in aid of construction and may not be included in invested capital.
8. In compliance with TWC § 13.183, and based on the findings of fact above, Farmers Transport's overall revenues preserve the financial integrity of Farmers Transport and permit Farmers Transport a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public over and above its reasonable and necessary operating expenses.
9. The rates approved in this case are just and reasonable, comply with the ratemaking provisions in TWC chapter 13, and are not unreasonably discriminatory, preferential, or prejudicial.
10. The application does not constitute a major rate proceeding as defined by 16 TAC § 22.2(27).
11. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves Farmers Transport's rates and tariff included as attachment A to the second settlement agreement filed on February 23, 2018, to the extent provided in this Order.

¹ Tex. Gov't Code §§ 2001.001--.902.

2. Farmers Transport must not seek to recover and may not collect any rate-case expenses that it incurred or will incur related to this docket.
3. The Commission approves a capital-improvement surcharge in the amount of \$42.78 per connection per month. Farmers Transport may assess the surcharge until the amount of \$197,942 is collected and may only use the collected surcharge amounts for the capital-improvement projects described in the second agreement. Farmers Transport must refund to its customers any surcharge amounts collected in excess of \$312,288.
4. Within 90 days after the amount of \$197,942 is collected, Farmers Transport must file an accounting of the actual cost of the capital-improvement projects listed in the second agreement. If Farmers Transport collected surcharge amounts in excess of \$312,288, Farmers Transport must file an affidavit identifying the over-collection and the amounts refunded to each customer.
5. Within 10 days of the date of this Order, Commission Staff must file a clean record copy of Farmers Transport's tariff for Central Records to stamp *Approved*.
6. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
7. The Commission denies all other motions and any other requests for general or specific relief if not expressly granted in this Order.

Signed at Austin, Texas the _____ day of January 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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