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SOAH DOCKET NO. 473-15-1149.WS  
PUC DOCKET NO. 43674

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PETITION OF THE CITY OF DALLAS FOR REVIEW OF A DECISION BY THE SABINE RIVER AUTHORITY TO SET WATER RATES (LAKE FORK RESERVOIR)	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**SABINE RIVER AUTHORITY'S RESPONSE TO  
CITY OF DALLAS' ORIGINAL PETITION AND  
REQUEST FOR INTERIM RATES**

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**ATTACHMENTS**

- A Water Supply Facilities Agreement, Feb. 12, 1974
- B Water Purchase Agreement, Oct. 1, 1981
- C Water Supply Contract and Conveyance, Oct. 1, 1981 (without exhibits)
- D Dallas Long Range Water Supply Plan Briefing
- E Dallas FY 2014-2015 Budget, excerpts

**SOAH DOCKET NO. 473-15-1149.WS  
PUC DOCKET NO. 43674**

<b>PETITION OF THE CITY OF</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>DALLAS FOR REVIEW OF A</b>	<b>§</b>	
<b>DECISION BY THE SABINE RIVER</b>	<b>§</b>	<b>OF</b>
<b>AUTHORITY TO SET WATER</b>	<b>§</b>	
<b>RATES (LAKE FORK RESERVOIR)</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**SABINE RIVER AUTHORITY’S RESPONSE TO  
CITY OF DALLAS’ ORIGINAL PETITION AND  
REQUEST FOR INTERIM RATES**

COMES NOW, the Sabine River Authority (“Authority”) and files this Response to the Original Petition and Request for Interim Rates (“Petition”) filed by the City of Dallas (“City”), appealing the Authority’s wholesale rates. In support of its Response, the Authority would respectfully show the following:

**I. INTRODUCTION**

The City’s Petition purports to appeal wholesale rates set by the Authority pursuant to a written agreement, but is, in truth, a complaint by the City that the Authority has violated the written agreement between the parties. The Public Utility Commission (“PUC” or “Commission”) should abate the Petition because the City alleges that the protested rates were not set pursuant to written agreement, an allegation contested by the Authority. The Commission has no jurisdiction to adjudicate whether contractual terms have been complied with, and it must either decline to take jurisdiction or summarily abate the proceeding.

In the alternative, the Commission should deny the Petition because the Petition does not allege specific facts as to how the Authority’s rates for the sale of raw water adversely affect the public interest, in violation of P.U.C. SUBST. R. 24.130(b) and 24.133(a), nor does it comply with the requirements of P.U.C. SUBST. R. 24.44.<sup>1</sup>

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<sup>1</sup> Original Petition for Review and Request for Interim Rates at 8 (Oct. 30, 2014) (“Petition”).

In the event the matter is not abated as required by P.U.C. SUBST. R. 24.131(d), any contested case hearing should be limited to a determination as to whether the protested rates are adverse to the public interest, pursuant to P.U.C. SUBST. R. 24.132(a), as the Authority does not agree to hold a consolidated hearing under P.U.C. SUBST. R. 24.132(d).

## **II. BACKGROUND**

In its Petition, the City has included an incomplete recitation of the history of both the relationship between the Authority and the City, and of the negotiations that have been on-going for over six years with regard to the water rate to be in effect commencing November 2, 2014. Although not germane to the sole issue that is presented by the City's Petition, *i.e.*, whether the wholesale rates established by the Authority violate the public interest, the City is correct that negotiations began in 2008; however, the City is incorrect in its statement regarding the nature of the action taken by the Authority on October 9, 2014. Such action was not precipitous, drastic, or unilateral, but was the most responsible action that could be taken in light of the City's demonstrated unwillingness to negotiate a reasonable rate for the renewal term of the contract that the City had opted to renew.

### **A. 1974 Water Supply Facilities Agreement.**

Pursuant to its creation statute, Vernon's Article 8230-133, the Authority has jurisdiction over the watershed of the Sabine River in Texas, including Lake Fork Creek, a tributary of the Sabine River.<sup>2</sup> In the early 1970's, the Authority determined to construct a dam and reservoir on Lake Fork Creek in Wood, Rains, and Hopkins Counties, Texas. In 1974, the Authority entered into a Water Supply Facilities Agreement with Dallas Power & Light Company, Texas Electric Service Company, and Texas Power & Light Company (the "Corporations"), acting by and through Texas Utilities Generating Company ("TUGCO") ("1974 Agreement"), by which the

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<sup>2</sup> The Authority was created in 1949 by Act of the 51st Legislature, Tex. H.B. 467, 51st Leg., R.S. (1949), Chapter 110.

reservoir known as Lake Fork Creek Reservoir (sometimes also referred to as Lake Fork Creek or Lake Fork) and the water supply facilities located thereon would be constructed. These facilities were defined in the 1974 Agreement as “the water supply facilities consisting of the lands, easements, rights of way, dam, reservoir, and related facilities to be acquired, constructed, and owned by the Authority on Lake Fork Creek.”<sup>3</sup>

In furtherance of the 1974 Agreement, the Authority issued a series of revenue bonds, and the Corporations committed to retire the bonded indebtedness through payment of a semi-annual Facilities Charge.<sup>4</sup> The Corporations also became responsible for payment of a Service Charge amounting to 74% of the Authority’s annual direct costs and expenses directly associated with the operation and maintenance of the facilities, and based upon the Authority’s annual operating budget for Lake Fork Creek Reservoir. The Corporations were to construct at their expense all of the necessary works to provide for water intake and withdrawal at the points of delivery identified in the 1974 Agreement.

In consideration for the payment of the Facilities Charge and the Service Charge, the Corporations were entitled to withdraw up to 49% of the actual aggregate total available drawdown yield of the reservoir, not to exceed 80,000 acre-feet per year. They also acquired the option for an additional amount equal to 25% of the actual aggregate total available drawdown yield of the reservoir, not to exceed 40,000 acre-feet per year.

The 1974 Agreement between the Corporations and the Authority was for a term of forty (40) years after the date of the delivery and payment for the first issue or series of bonds, and for any period thereafter during which any bonds are outstanding.

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<sup>3</sup> 1974 Agreement, § 1.11. A copy of the 1974 Agreement is attached hereto as Attachment A.

<sup>4</sup> All of the revenue bonds were fully paid in 2004.

**B. 1981 Water Purchase Agreement.**

In 1981, the Authority entered into a Water Purchase Agreement with the Corporations, who were again acting through TUGCO ("1981 Agreement"). Under this 1981 Agreement, the Authority agreed to sell to the Corporations 20,000 acre-feet of water per year for purposes of generating power at their generating plant on Lake Fork Creek Reservoir. The Corporations agreed to pay the Authority the amount of \$550,000 during each contract year, regardless of the amount of water taken. In addition, the Corporations agreed to pay the Authority a proportionate part of the Authority's Service Charge (operation and maintenance expenses related to Lake Fork Creek Reservoir) in the ratio of 20/163.

The 1981 Agreement was to have expired on January 1, 2014. The 1981 Agreement also contained a renewal provision whereby, after the expiration of the Agreement, the Corporations would have the option thereafter to purchase water from Lake Fork Creek Reservoir in the same quantities as set forth in the 1974 Agreement, upon such terms and conditions that are mutually agreed upon, and for "such price as is prevailing in the general area at that time for contract sales of water of similar quality, quantity, and contract period."<sup>5</sup>

**C. 1981 Water Supply Contract and Conveyance.**

On the same day that the Authority and the Corporations entered into the 1981 Agreement (October 1, 1981), the Authority, the City of Dallas, and the Corporations entered into the Water Supply Contract and Conveyance ("1981 Water Supply Contract").<sup>6</sup> Under the provisions of this agreement, the Authority and the Corporations granted to the City the rights to the use of 74% of the dependable yield of water from the Lake Fork Reservoir, not to exceed 120,000 acre-feet per year, thereby transferring to the City all of the Corporations' rights to

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<sup>5</sup> 1981 Agreement, § 13.01 at 8. A copy of the 1981 Agreement is attached hereto as Attachment B.

<sup>6</sup> A copy of the 1981 Water Supply Contract, without exhibits, is attached hereto as Attachment C.

water under the 1974 Agreement. The ability of the City to take all of its water was subject to existing contracts with other entities.

Under this Agreement, the City assumed the obligations of the Corporations to pay the semi-annual Facilities Charge to amortize the revenue bonds issued by the Authority, and to pay the Service Charge for operation and maintenance expenses as set forth in the 1974 Agreement. The City also agreed to repay to the Corporations the amount of \$1,440,998.11, being the total of all bond principal paid by the Corporations prior to execution of the 1981 Water Supply Contract.<sup>7</sup> The Corporations retained an option to purchase up to 17,000 acre-feet per year from the City; as consideration for the option, the Corporations were to pay to the City 17/120 of the annual Service Charge the City was obligated to pay to the Authority, until the option is exercised. The option was to expire on January 1, 2014, unless a renewal was negotiated between the City and the Corporations. The Corporations' price of water after the initial term of the option was to be the City's charge for untreated raw water, established from time to time by the City Council, based upon periodic cost of service studies, unless a different price structure was agreed upon by the City and the Corporations at the time of renewal. Water sold by the City to the Corporations was to be sold on a "take or pay" basis, payable semi-annually in advance.<sup>8</sup>

The term of the 1981 Water Supply Contract was to renew for another forty-year term on November 2, 2014, unless the City gave written notice to the Authority by November 1, 2013, of its intent to not renew. With only one exception, the terms and conditions of the 1981 Water Supply Contract were to continue for any renewal term.<sup>9</sup>

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<sup>7</sup> 1981 Water Supply Contract (Attachment C), § 3.08 at 13.

<sup>8</sup> *Id.*, §§ 5.01-5.06 at 15-17.

<sup>9</sup> *Id.*, § 6.01 at 21. The one exception for terms and conditions that do not survive into the renewal terms is Section 2.03, which provides that until November 1, 2014, no party will withdraw any water from Lake Fork Creek Reservoir if the withdrawal would cause the surface level of the water to be lower than 372 feet above mean sea level.



The 1981 Water Supply Contract also provided that the renewal was subject to Section 6.02 thereof, which addressed compensation for any renewal term. The compensation for the renewal term, exclusive of the City's pro rata share of the Service Charge, was to be determined by mutual agreement between the Authority and the City, taking into account "such price as is prevailing in the general area at the time for like contract sales of water of similar quality, quantity and contract period."<sup>10</sup>

Thus, during the renewal term, the Facilities Charge is no longer required (because the bonds have been fully paid), but the City remains responsible for its share of the cost to operate and maintain the facilities at Lake Fork Creek Reservoir based upon the Authority's annual operating budget for the Lake Fork Creek Reservoir, and is additionally required to pay compensation to the Authority that takes into account prevailing prices in the general area at the time of renewal for like contract sales of water of similar quality, quantity, and contract period.

**D. Compensation to Authority During the Renewal Period.**

On October 9, 2014, the Authority's Board of Directors unanimously approved a motion to set the amount of compensation for the next renewal term of the 1981 Water Supply Contract effective November 2, 2014 (the date identified in the 1981 Water Supply Contract for the commencement of the renewal term and rates thereunder). The Authority had attempted in good faith to reach an agreement with the City on the amount of such compensation, but when it became apparent to the Authority that the City was unwilling to agree to a "price as is prevailing in the general area at the time for like contract sales of water of similar quality, quantity and contract period," the Authority determined that it needed to act to have the compensation set by the start of the renewal period.

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<sup>10</sup> *Id.*, § 6.02 at 21.

Throughout the period from January 2008 until October 9, 2014, when the Authority and the City engaged in sporadic discussions concerning the compensation to be paid by the City for the renewal term, the City continually refused to discuss an amount that would reflect the prevailing rate, as required by the 1981 Water Supply Contract. On numerous occasions, the City requested, and the Authority provided, information on the “prevailing rate,” as well as information on the Authority’s contracts with other entities and the rate schedules adopted by the Authority. The Authority performed multiple rate calculations at the City’s request. However, the City consistently refused to propose a rate in acknowledgement of the requirement in the 1981 Water Supply Contract that the renewal compensation was to take into account the prevailing prices in the area, and at the time, for contract water.

When it became apparent to the Authority that the City did not intend to offer a rate comparable to rates prevailing in the general area at the time for like contract sales of water of similar quality, quantity and contract period, as required in the 1981 Water Supply Contract, the Authority determined the prevailing rate based on the best information available to it, and adopted same as the amount of compensation to be paid by the City for the renewal period.

### **III. NO JURISDICTION**

#### **A. The Commission Has No Jurisdiction Over the City’s Claims of Breach of Contract.**

The gravamen of the City’s complaint in its Petition is that the Authority acted wrongfully in adopting rates for the renewal term of the 1981 Water Supply Contract. Indeed, the City uses words such as “wrongful” and “violation” throughout its Petition.<sup>11</sup> The “current dispute,” as articulated by the City, is that the rates adopted by the Authority violate the contract terms in twelve listed particulars, most of which have no relation to the public interest criteria set out in P.U.C. SUBST. R. 24.133.

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<sup>11</sup> “Wrongful” appears on page 4 of the Petition; forms of “violate” appear on pages 7 (five times), and 8 (two times).

Further, in describing the nature of the relief sought by its Petition, the City alleges that the rate-setting by the Authority “is in violation of the contract, consequently the action of October 9, 2014 does not constitute ‘a rate set pursuant to a contract’ within the meaning of P.U.C. SUBST. R. Sec. 24.131(c).” The City further argues that if the Authority does not agree that the rate is not set pursuant to a contract, the Administrative Law Judge (“ALJ”) should abate the case until the dispute under the contract has been resolved by a court.

The Authority does not agree that the rate was not set pursuant to the contract. Therefore, as posited by the City, the provisions of P.U.C. SUBST. R. 24.131(d) require the ALJ to abate this proceeding. In light of the clear statement by the City that its claim is for breach of contract, and because the Commission is without authority to rewrite the terms of the 1981 Water Supply Contract, the Commission should summarily abate this proceeding.

The 1981 Water Supply Contract provides that compensation for the renewal term of the contract shall take into account “such price as is prevailing in the general area at the time for like contract sales of water of similar quality, quantity and contract period.”<sup>12</sup> The Service Charge paid by the City to the Authority, an obligation that is not affected by the City’s Petition and that *automatically* carries over into the renewal term, is the manner in which the Authority recovers a portion of the costs of operating and maintaining Lake Fork Creek Reservoir.

The rate set by the Authority in October 2014 is the compensation to be paid by the City during the renewal term. The bonds sold to construct the reservoir and attendant facilities have been paid (therefore there are no on-going Facilities Charges), and the operation and maintenance costs are recovered through the Service Charge (which is based on the Authority’s annual operating budget for Lake Fork Creek Reservoir). Therefore, the rate set by the Authority for the renewal term is the additional compensation to be paid by the City during such term.

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<sup>12</sup> 1981 Water Supply Contract (Attachment C), § 6.02 at 21.

This renewal rate is the contractual rate that is to be set taking into account prices prevailing in the area and at the time, for similar sales of water.

By filing its Petition, the City is seeking to have the Commission set a rate for the raw water that is based on the Authority's cost of service, which would entail a complete re-write of Sections 6.01 and 6.02 of the 1981 Water Supply Contract, which state as follows:

6.01. . . . this Agreement shall be renewed for additional periods of forty (40) years upon the same terms and conditions, with the exception of Section 2.03, and subject to Section 6.02, throughout the useful life of the Reservoir.

6.02. The amount of compensation that the Authority shall be entitled to receive during any renewal term (exclusive of the City's pro rata share of the Service Charge) shall be determined by ***mutual agreement between the City and the Authority, taking into account such price as is prevailing in the general area at the time for like contract sales of water of similar quality, quantity, and contract period....*** [Emphasis added.]

The City complains that the Authority has violated the contract by setting the rate in the manner in which it did. However, the City's remedy is not to be found at the Commission, because the Commission has no jurisdiction to construe contracts or to adjudicate whether they have been breached. By bringing its Petition and seeking to have the Commission set compensation based upon the Authority's cost of service, in direct contradiction to the contractual terms agreed to by the City and the Authority, the City is inappropriately asking the Commission for the remedy of reformation, substituting a cost of service rate for the agreed, negotiated provision of "mutual agreement, taking into account prevailing price." This remedy is clearly beyond the jurisdiction of the Commission.<sup>13</sup>

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<sup>13</sup> *Id.* As further evidence of the City's improper appeal to the Commission to revise the contract, it should be noted that the 1981 Water Supply Contract only discusses agency rate jurisdiction in the context of interim rates during the pendency of the parties identifying an agreeable prevailing rate.

Prior to setting the rate, the Authority reviewed the existing water rates charged by other river authorities, and determined that the price of \$0.5613 per 1,000 gallons, on a take-or-pay basis, complied with Section 6.02 of the 1981 Water Supply Contract. In addition, the Authority reviewed the water rates that the City expected to pay for projects identified in the City's Long Range Water Supply Plan, and found these rates to also be "prevailing prices" that could be considered by the Authority in setting rates.<sup>14</sup>

The Authority appropriately took prevailing prices into account when it set the renewal term compensation in October, after the City consistently ignored this provision in its proposals to the Authority. Instead of attempting to establish a reasonable rate for the renewal term, the City consistently hewed to the position that it would only pay for operating and maintenance costs (*i.e.*, the Service Charge), which were not open to renegotiation.

**B. The Petition Fails to Allege Facts Regarding the Rates as Required by P.U.C. SUBST. R. 24.130(b).**

In the event the Commission determines that this proceeding should not be abated, the City has failed to allege specific facts explaining how the compensation set by the Authority pursuant to the 1981 Water Supply Contract adversely affects the public interest, as required by the Commission's rules.<sup>15</sup>

Allegations in the Petition that the Authority adopted a rate in *violation* of the Agreement, that the rate was not negotiated in *violation* of the Agreement, that the rate *violates* the descriptive terms of the Agreement, that the rate does not take into account like contract sales of water in the general area at the time and of similar quality, quantity and contract period, and that the Authority took "precipitous, drastic, and unilateral action to purportedly set a rate," are

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<sup>14</sup> These prices ranged from \$551 to \$1,302/acre-foot, or \$1.691 to \$3.9939/1,000 gallons.

<sup>15</sup> P.U.C. SUBST. R. 24.130(b).

merely allegations of a breach of contract, and do not fall under the rubric of any of the public interest criteria set forth in P.U.C. SUBST. R. 24.133.<sup>16</sup>

Allegations in the Petition that the Authority adopted a rate that is not based on any appropriate cost considerations, that is not based on any cost-of-service analysis, and that is a “take or pay” rate rather than a rate based on usage, are not relevant areas of inquiry in a public interest proceeding.<sup>17</sup> These allegations and the City’s bare recitation of provisions from the Commission’s rule on the public interest standard are insufficient to overcome the true nature of its complaint, which is the claim that the Authority has violated the terms of the 1981 Water Supply Contract, a complaint that the Commission is without authority to hear.

**C. The Petition is Insufficient Under P.U.C. SUBST. R. 24.44.**

If jurisdiction is taken under Texas Water Code § 12.013, it is evident that the Petition is insufficient under P.U.C. SUBST. R. 24.44. Under that rule, in order to seek review of rates for the sale of water under Texas Water Code § 12.013, the petition must include information that the petitioner is willing to pay a just and reasonable price for the water, and that the party owning or controlling the water has water not contracted to others and available for petitioner’s use.<sup>18</sup> Petitioner has not included any such statements in its Petition; the City has instead requested that the Commission set interim rates in the amount of \$0 for the renewal term of the 1981 Water Supply Contract, which cannot be understood as a just or reasonable price. Therefore, the Petition is insufficient.

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<sup>16</sup> Petition at 2, 4, 7-8.

<sup>17</sup> Petition at 7-8.

<sup>18</sup> P.U.C. SUBST. R. 24.44(a)(4) and (5).

**D. The Petition Does Not Trigger Commission Jurisdiction Under Texas Water Code § 13.043(f).**

The City is incorrect in its assertion that the Commission has jurisdiction of its Petition under Texas Water Code § 13.043(f).<sup>19</sup> Section 13.043(f) addresses the provision of “water or sewer service” from a retail public utility or political subdivision of the state to another retail public utility. While the Authority can agree that the Dallas Department of Water Utilities is a retail water utility as defined in Texas Water Code § 13.002(20), because it provides potable water service to the ultimate consumer for compensation, and that the Authority is a political subdivision of the state, the Authority does not agree that it is providing “water service” as defined in the Texas Water Code, to the City or to any other entity.

The Texas Water Code does not separately define “water service,” but § 13.002 defines both “retail water or sewer utility service” and “wholesale water or sewer service.” Both definitions require the provision of *potable water*:

§ 13.002(20): “Retail water or sewer utility service” means *potable water service* or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

§ 13.002(25): “Wholesale water or sewer service” means *potable water* or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.<sup>20</sup>

The Authority does not provide potable water or potable water service, nor is it a retail public utility:

§ 13.002(19): “Retail public utility” means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for

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<sup>19</sup> Petition at 4.

<sup>20</sup> Tex. Water Code Ann. §§ 13.002(20) and 13.002(25) (West 2008 & Supp. 2014) (Emphasis added).

providing *potable water service* or sewer service, or both, for compensation.<sup>21</sup>

There is no other definition of “water service” that would capture the Authority’s activities under the 1981 Water Supply Contract. Thus, the Commission has no jurisdiction over the Authority’s rates under § 13.043(f) of the Texas Water Code.

#### **IV. THE PROTESTED RATES DO NOT IMPAIR THE CITY’S ABILITY TO PROVIDE SERVICE TO ITS CUSTOMERS**

The City makes the bare allegation on page 8 of its Petition that the adopted rate impairs its ability to continue to provide service to its customers based on the City’s financial integrity and operational capability. Absolutely no facts have been provided that would support this conclusory statement. To the contrary, the public record demonstrates that the City’s total operational budget dwarfs that of the Authority, and the rates adopted by the Authority amount to *less than 1%* of the City’s total operating budget for Fiscal Year (“FY”) 2014-2015, as shown below.

The total annual cost to the City under the Authority’s adopted rates would be \$24,117,246 (based on the rate of \$0.5613/1,000 gallons). On an acre-foot basis, the Authority’s adopted rates amount to \$183/acre-foot. The current amount of the Service Charge paid by the City (a rate that will not change under the renewal, and that is not the subject of the Petition) for FY 2015 will be \$3,022,023, which is less than \$23/acre-foot, or less than \$0.07/1,000 gallons.

On September 17, 2014, the Dallas City Council was presented with a “Long Range Water Supply Plan” for the City. In that Plan, the 4<sup>th</sup> and 5<sup>th</sup> highest-ranked future strategies for the City are the Lake Palestine pipeline project and the related Bachman WTP pipeline connection project. These two projects (first in priority in the Plan behind water savings through

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<sup>21</sup> *Id.* at § 13.002(19) (Emphasis added).



conservation and supply through reuse), will cost the City \$751/acre-foot and \$551/acre-foot, respectively, for a total of 114,337 acre-feet per year.<sup>22</sup>

Further, according to the City's Annual Budget for FY 2014-2015, the proposed water utility's operating budget is \$615 million, representing an increase of 3.2% from the FY 2013-2014 operating budget of \$595 million.<sup>23</sup> The impact of this 3.2% increase on the typical residential monthly bill will be almost negligible; according to the FY 2014-2015 budget, the average bill will increase by 1.9%.<sup>24</sup> The "amount of compensation" to be paid by the City to the Authority under the 1981 Water Supply Contract renewal pales in comparison: \$0.5613/1,000 gallons, or \$24,117,246 per year, is less than 4% of the Dallas Water Utility's proposed FY 2014-2015 entire operating budget.

The City's allegation that the price charged by the Authority for water from Lake Fork Creek Reservoir will mean that the City can no longer provide service to its retail customers because its financial integrity and operational capabilities will be impaired, is contrary to the facts that are available on the public record.

## **V. INTERIM RATES ARE NOT AUTHORIZED**

As noted above, the Commission is without jurisdiction to adjudicate the City's claims for breach of contract. Parties to a contract are unable to confer jurisdiction on the Commission where there is none. Outside of a proceeding under the provisions of the Texas Water Code to review and set wholesale water rates, the Commission has no independent jurisdiction to establish interim rates.<sup>25</sup> Because the Commission does not have jurisdiction of the City's

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<sup>22</sup> Dallas Long Range Water Supply Plan Briefing (Attachment D) at 28 (Sept. 17, 2014).

<sup>23</sup> Dallas FY 2014-2015 Budget (Attachment E) at 473.

<sup>24</sup> *Id.* at 12.

<sup>25</sup> See, for example, Tex. Water Code §12.013(e): "The commission may establish interim rates and compel continuing service *during the pendency of any rate proceeding.*"

Petition under Texas Water Code § 13.043(f) (*i.e.*, no potable water is being supplied), the interim rate authorization of Texas Water Code § 13.043(h) also does not apply.

Wholesale rates set pursuant to a written contract, such as the rate being appealed herein, are not to be lightly set aside. The seminal case on the ability of a state agency to modify rates charged pursuant to a written contract states that before modifying rates, the agency must “first make a finding that the rates affected by a ‘decision of the provider’ adversely affect the public interest by being unreasonably preferential, prejudicial, or discriminatory.”<sup>26</sup> Because this is the very topic that is to be addressed in the public interest phase of a wholesale rate review, it makes no sense to hold the same evidentiary hearing twice that will address the same criteria, *i.e.*, the public interest criteria of P.U.C. SUBST. R. 24.133(a).

Assuming, *arguendo*, that the Commission is authorized to modify the contractual rates and establish interim rates without having undertaken the public interest review, which the Authority does not concede, the Commission’s rules provide guidelines for the establishment of interim rates. Rule 24.29(d) states as follows:

(d) Interim rates may be established by the commission in those cases under the commission’s original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility’s customers, unjust or unreasonable rates, or failure to set interim rates could result in unreasonable economic hardship on the utility.

The City has not alleged any “unreasonable economic hardship” on itself or its customers. As noted above, the price set by the Authority for water supplied to the City from Lake Fork Creek Reservoir is but a small fraction of the City’s total operating budget. Merely characterizing the rates as “draconian” is insufficient to establish the necessity for the Commission to take the extraordinary step of modifying rates set pursuant to a written contract.

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<sup>26</sup> *Texas Water Commission v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994, writ denied).

The City seeks to have the Commission impose as an interim rate the rate in effect prior to November 2, 2014. As noted above, the rate in effect prior to November 2, 2014, has not changed – the payment by the City of 74% of the Authority's Lake Fork Creek Reservoir operation and maintenance costs (the Service Charge) is unchanged under the provisions of the 1981 Water Supply Contract. The City's request for interim rates is actually a request that it pay a price of \$0 for water during the renewal term of the Contract.

The City's obligation under the 1981 Water Supply Contract to pay a portion of the Facilities Charge no longer exists; its obligation to pay a portion of the Service Charge is unchanged. Under the provisions of the Contract, the Parties specifically agreed that beginning on November 2, 2014, the City would pay *additional compensation* during the renewal term. The City's request for an interim rate of \$0 for any portion of the renewal term is completely punitive and unreasonable. Under no interpretation of the Contract is the Authority required to give the water away.

## **VI. CONCLUSION AND PRAYER**

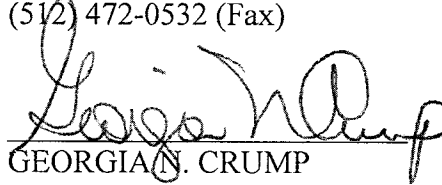
The Petition has failed to allege any facts that would support a finding by the Commission that the amount of compensation set by the Authority is adverse to the public interest. The Commission has no jurisdiction under Chapter 13 of the Texas Water Code because no potable water service is being provided by the Authority, and indeed the Commission has no jurisdiction under any provision of the Texas Water Code to adjudicate the contractual claims brought by the City against the Authority. Pursuant to the Commission's Rules, because of both the contractual claims and the fact that the parties do not agree whether the protested rates were set pursuant to a written contract, this docket must be abated. Interim rates are not appropriate unless and until a finding is made under P.U.C. SUBST. R. 24.133 that the Authority's rate is adverse to the public interest, as contractual rates may not be set aside by the Commission without such a finding.

Therefore, the Authority requests that this matter be dismissed or abated.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900  
Austin, Texas 78701  
(512) 322-5800  
(512) 472-0532 (Fax)



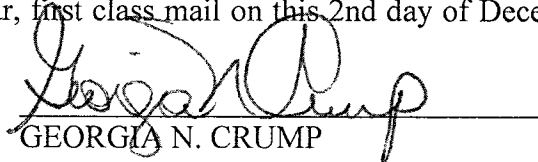
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**ATTORNEYS FOR SABINE RIVER  
AUTHORITY**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was transmitted by e-mail, fax, hand-delivery and/or regular, first class mail on this 2nd day of December, 2014 to the parties of record.



GEORGIA N. CRUMP

**WATER SUPPLY FACILITIES AGREEMENT**

**By and Between**

**SABINE RIVER AUTHORITY OF TEXAS**

**and**

**DALLAS POWER & LIGHT COMPANY  
TEXAS ELECTRIC SERVICE COMPANY  
TEXAS POWER & LIGHT COMPANY**

**acting by and through**

**TEXAS UTILITIES  
GENERATING COMPANY,**

**as their agent,**

**dated as of**

**February 12, 1974**

**WATER SUPPLY  
FACILITIES AGREEMENT**

THE STATE OF TEXAS  
SABINE RIVER AUTHORITY OF TEXAS } KNOW ALL MEN BY THESE PRESENTS:

This Water Supply Facilities Agreement by and between the Sabine River Authority of Texas (hereinafter called the "Authority") and Dallas Power & Light Company, Texas Electric Service Company, and Texas Power & Light Company (hereinafter called collectively "The Corporations"), acting herein by and through Texas Utilities Generating Company (hereinafter called the "Agent"), as their agent:

**WITNESSETH:**

**RECITALS**

1. The Authority is an agency and political subdivision of the State of Texas, being a conservation and reclamation district created and governed by Vernon's Article 8280-133, as amended (the "Act"), pursuant to Article 16, Section 59, of the Texas Constitution.
2. The Corporations and the Agent are Texas Corporations.
3. Pursuant to the Act, and subject to the powers vested by law in the Texas Water Rights Commission, the Authority has jurisdiction over the watershed of the Sabine River in Texas, including Lake Fork Creek, a tributary of the Sabine River.
4. Pursuant to the Act, the Authority proposes to acquire, construct, and own the water supply facilities hereinafter defined, consisting of a dam, reservoir, and related facilities, on Lake Fork Creek in Wood, Rains, and Hopkins Counties, Texas.
5. The Corporations propose to purchase water from the Authority to be supplied from such water supply facilities.

Now, THEREFORE, in consideration of the premises and of the respective agreements hereinafter set forth, the parties hereto agree as follows:

**I. DEFINITIONS**

- 1.01. Agreement — This Water Supply Facilities Agreement.
- 1.02. Annual Operating Budget — Estimates of all direct costs and expenses the Authority expects to incur in operating and maintaining the Facilities during the next succeeding Authority fiscal year following the period covered by the Initial Operating Budget, and which are properly includable in the Service Charge, such estimates to be itemized on an annual basis.
- 1.03. Article — Any subdivision of this Agreement designated with a roman numeral.
- 1.04. Bond Amortization Contract — A contract executed and dated on the same date as this Agreement which provides for payments of Semi-Annual Facilities Charges by The Corporations to amortize the Bonds.
- 1.05. Bond Resolution — Any resolution of the Authority's Board of Directors authorizing the issuance of Bonds.

1.06. Bonds — Any revenue bonds of the Authority authorized, issued, and delivered to finance the acquisition and construction of any portion of the Facilities pursuant to the terms of the Bond Amortization Contract and this Agreement, including initial issues or series of bonds and completion bonds, and any bonds issued to repair, enlarge, extend, or otherwise improve the Facilities, together with any bonds issued to refund any of the foregoing bonds.

1.07. Commencement Date — The date on which the Authority notifies the Agent that it has commenced operation of the Facilities.

1.08. Construction Fund — The segregated account in which the proceeds from the sale of Bonds, except as provided in any Bond Resolution, and interest earned on the investment of proceeds from the sale of Bonds prior to payment of project costs, will be deposited, which proceeds will be used to pay the following:

- (a) the cost of any portion of the Facilities to be purchased;
- (b) the cost of any land, easement, right of way, license, and other interest in real estate acquired by the Authority pursuant to this Agreement, including, without limitation, all legal and other costs and expenses incidental thereto, and all costs and expenses of any relocations;
- (c) the cost of engineering, design, and construction, including all unforeseen and extraordinary construction costs, and all other capital costs of the Facilities;
- (d) the cost of issuance of the Bonds, including legal fees, financial advisory fees, printing costs, and closing expenses.
- (e) the payment of interest on the Bonds during the period of construction, unless otherwise provided in any Bond Resolution.

Any unexpended funds upon completion of the Facilities shall be transferred to the Debt Service Fund.

1.09. Consulting Engineers — URS/Forrest and Cotton, Inc., Consulting Engineers, Dallas, Texas, provided that by mutual agreement between the parties hereto any other engineering firm or company may be substituted as the Consulting Engineers under this Agreement.

1.10. Debt Service Fund — Any fund created by a Bond Resolution for the purpose of paying the principal, interest, redemption costs, if any, and fees of paying agents and trustees on Bonds, if any, and into which the Semi-Annual Facilities Charge shall be deposited.

1.11. Facilities — The water supply facilities consisting of the lands, easements, rights of way, dam, reservoir, and related facilities to be acquired, constructed, and owned by the Authority on Lake Fork Creek, a tributary of the Sabine River, in Wood, Rains, and Hopkins Counties, Texas, with said facilities to be acquired and constructed substantially in accordance with the plan designated as Dam Site B — Scheme II in the "Report on Preliminary Hydrologic Investigation and Cost Study of Reservoir Sites in the Lake Fork Creek Watershed", dated May 1973, by URS/Forrest and Cotton, Inc., Consulting Engineers, Dallas, Texas, and any amendments or supplements thereto, with said Report presently providing for the top of the dam elevation to be at 415.0 feet above mean sea level, with an expected normal pool water surface elevation of 403.0 feet, a normal expected storage capacity of 675,819 acre feet, and a normal expected surface area of 27,690 acres.

1.12. Initial Operating Budget — An estimate of all direct costs and expenses the Authority expects to incur in operating and maintaining the Facilities during the period between the Commencement Date and the end of the Authority fiscal year in which the Commencement Date falls, and which are properly includable in the Service Charge.

1.13. Permits — Any and all necessary permits, licenses, orders, and other governmental approvals from any local, state, or federal agency that may now or hereafter have jurisdiction to authorize the Authority to acquire, construct, provide, operate, and maintain the Facilities.

1.14. Plant — Any power generating plant or plants owned in whole or in substantial part by The Corporations or any other subsidiary corporation substantially owned by Texas Utilities Company.

1.15. Points of Delivery — The points to be agreed upon between the parties where The Corporations will withdraw Water. The Corporations shall provide all works and structures at the Point of Delivery for withdrawing Water from the Facilities, and shall be entitled to withdraw such Water in the amounts specified in this Agreement.

1.16. Section — Any subdivision of this Agreement designated by arabic numerals.

1.17. Semi-Annual Facilities Charge — Any payment which The Corporations are obligated to make to amortize the Bonds pursuant to the Bond Amortization Contract.

1.18. Service Charge — The payment to be made by The Corporations to the Authority to enable the Authority to pay the reasonable and necessary costs and expenses directly associated with the operation and maintenance of the Facilities.

1.19. Trustee — Any corporate trustee named under any trust indenture securing payment of Bonds, as provided in any Bond Resolution.

1.20. Water — Untreated water from the Facilities. The Authority has no duty or responsibility with respect to the treatment, quality, or suitability of the water for The Corporations' purposes.

## II. PERMITS AND APPLICABLE LAWS

2.01. The Authority shall obtain the Permits. The Authority shall not initiate, consent to, or approve any modification of the Permits, or any governmental orders in any proceedings with respect thereto, without first consulting with and obtaining the consent of The Corporations and continuing thereafter to cooperate with The Corporations at their request to the end that their views are fully and fairly presented, and, where practicable, presented directly by The Corporations to the governmental bodies or agencies involved. It is specifically understood and agreed that this Agreement is executed, and the sale of Water to The Corporations hereunder is made, subject to the Permits and the Constitution and statutes of the State of Texas and of the United States of America. The Authority also will cooperate with and assist The Corporations in obtaining any permits required by them in connection with the Facilities, the use of their Water, and the use of the stream beds for the transportation of their Water.

2.02. The Authority shall operate, maintain, and use the Facilities in such manner as will comply with the Permits and applicable laws, including the Sabine River Compact and the Authority's Master Plan of Development, dated January, 1955, and supplement thereto dated November, 1962.

2.03. During the term of this Agreement the Authority shall sell Water to The Corporations at the Points of Delivery in the amounts and in the manner set forth in this Agreement, and particularly Article III.

2.04. The Authority shall not transfer control or operation of the Facilities to any other governmental agency or other entity.

## III. CORPORATIONS PURCHASE OF WATER AND AUTHORITY'S SALE OF WATER

3.01. The Corporations shall, at their own expense, acquire, construct, and provide all necessary works to provide for Water intake and withdrawal at the Points of Delivery to enable



The Corporations to utilize the Water purchased by them under this Agreement. The Corporations also shall have the right to discharge Water withdrawn from the Facilities back into the Facilities provided that, except to the extent allowed by State and/or Federal permits, such Water has not been additionally polluted or contaminated. The Authority agrees to convey to The Corporations any necessary easements and rights of way over or under the Authority's lands to enable The Corporations to withdraw and utilize such Water for its intended purposes.

3.02. In consideration of the payments to be made by The Corporations under the Bond Amortization Contract and this Agreement, The Corporations shall have the right, subject to the provisions of Section 3.05, to withdraw and have the consumptive use of Water from the Facilities as follows:

- (a) an amount equal to 49% of the actual aggregate total available drawdown yield of Water from the Facilities, but not to exceed 80,000 acre feet, during each calendar year; and
- (b) at the option of The Corporations, exercisable by written notice to the Authority on or before the commencement of any calendar year, an additional amount equal to 25% of the actual aggregate total available drawdown yield of Water from the Facilities, but not to exceed 40,000 acre feet, during such calendar year.

3.03. The amount of the actual aggregate total available drawdown yield of Water from the Facilities, and the actual consumptive use of Water from the Facilities by The Corporations during each calendar year, shall be ascertained by the Consulting Engineers, provided that if either party should dispute the accuracy of any amount so ascertained, the matter shall be subject to arbitration as provided in Article XIV.

3.04. The Authority shall have the right, subject to the provisions of Section 3.05, to withdraw, dispose of, and/or transfer, and have the consumptive use of, all Water from the Facilities to which The Corporations are not entitled under Section 3.02 (hereinafter sometimes called "Authority's Water").

3.05. It is specifically agreed that in no event will any party hereto withdraw any Water from the Facilities if such withdrawal would cause the surface level of Water in the Facilities to be lower than 372 feet above mean sea level, and for the purposes of this Article, the term "actual aggregate total available drawdown yield of Water from the Facilities", as used in this Article, shall be construed to exclude the amount of Water required to maintain the surface level of Water in the Facilities at not less than 372 feet above mean sea level.

3.06. The Authority shall have the right to sell up to and including 20,000 acre feet of its Water from the Facilities annually for any price it deems advisable and to dispose of the proceeds from such sale or sales in any way it deems advisable, subject only to the provisions of Section 6.04 requiring the Authority to pay a proportionate part of the Service Charge as specified therein.

3.07. After selling its Water as provided in Section 3.06, the Authority agrees to use its reasonable best efforts to sell an additional amount of its Water from the Facilities, up to and including 23,000 acre feet annually, at the then prevailing rate for water in the general area, but at a price consisting of (a) a "capital component" of not less than \$27.00 per acre foot, plus (b) an "operating component" equal to the amount required to pay a proportionate part of the Service Charge as provided by Section 6.04. 75% of the "capital component" of such price shall be deposited by the Authority to the credit of the Debt Service Fund, and any such actual deposit shall reduce, to the extent thereof, the amount of Semi-Annual Facilities Charges that The Corporations otherwise would be required to deposit therein. 25% of the "capital component" of the Authority's Water sold pursuant to this Section may be used in any manner deemed advisable by the Authority.

3.08. After selling its Water as provided in Section 3.07, and should The Corporations not exercise their option to use all or any part of the 40,000 acre feet of Water annually for which The Corporations have an option under Section 3.02 (b), the Authority agrees to use its reasonable best efforts to sell all or any remaining part of said 40,000 acre feet annually, including any part of such Water which the Authority may be required by law to release or sell from the Facilities, at the then prevailing rate for water in the general area, but at a price of not less than \$27.00 per acre foot. 95% of such price shall be deposited by the Authority to the credit of the Debt Service Fund, and any such actual deposit shall reduce, to the extent thereof, the amount of Semi-Annual Facilities Charges that The Corporations otherwise would be required to deposit therein. 5% of such price may be used in any manner deemed advisable by the Authority.

3.09. It is presently contemplated that The Corporations will use their Water purchased pursuant to this Agreement for purposes related to the generation of electricity at the Plants. It is agreed that The Corporations will not sell or dispose of their Water to any other person, firm, or corporation, municipal or otherwise, other than a subsidiary corporation substantially owned by Texas Utilities Company, except by and through the Authority, as their exclusive agent, as provided in this Section. If The Corporations wish to sell any part of their Water The Corporations shall so advise the Authority in writing, and the Authority agrees to use its reasonable best efforts to sell such Water at the then prevailing rate for Water in the general area. All such sales shall be subject to the prior written approval of The Corporations. The Authority also agrees to sell such Water to any purchaser at any price suggested or approved by The Corporations. 95% of the price received by the Authority from sales made pursuant to this Section shall be deposited by the Authority to the credit of the Debt Service Fund, and any such actual deposit shall reduce, to the extent thereof, the amount of Semi-Annual Facilities Charges that The Corporations otherwise would be required to deposit therein. 5% of such price shall be retained by the Authority as its commission as agent and may be used in any manner deemed advisable by the Authority. No Water shall be sold pursuant to this Section until after the Authority shall have sold all of its Water under Sections 3.06, 3.07, and 3.08.

3.10. Notwithstanding the provisions of Section 3.07, 3.08, and 3.09, The Corporations and the Authority may, by mutual agreement, permit the Authority to sell Water for any price, and use the proceeds from such sale in any manner, which is acceptable to such parties, and in no event shall the Authority be liable or subject to any penalty for its inability or failure to sell any Water as provided in Sections 3.07, 3.08, and 3.09. All sales of Authority's Water shall be made subject to The Corporation's rights to Water set forth in Section 3.02, and particularly with respect to Water for which The Corporations have an option, and all sales of any Water shall be subject to all applicable laws.

#### IV. THE FACILITIES

4.01. As soon as funds for such purposes are available, the Authority shall proceed to acquire, construct, and provide the Facilities.

4.02. The Corporations recognize that the Authority's only assured sources of funds to pay for acquiring, constructing, and providing the Facilities are proceeds from the sale of the Bonds and the payments made by The Corporations, and the Authority's commitments hereunder are subject to the availability of such funds.

4.03. The Authority shall operate the Facilities efficiently and maintain the Facilities in good and safe working order and condition at all times during the period in which this Agreement is in effect, and shall submit to The Corporations such operation and maintenance reports as are reasonably requested by The Corporations.

4.04. The Corporations shall have the right to inspect the Facilities at all reasonable times.

## V. CONTRACTS FOR THE CONSTRUCTION OF THE FACILITIES

5.01. The Authority and The Corporations jointly shall determine what contracts shall be executed for the acquisition and construction of the Facilities. The Authority shall enter into such contracts in form and content as approved by the Authority and the Agent. The Consulting Engineers shall continuously inspect the construction while it is in progress to insure that the construction is performed in accordance with the construction contract or contracts. No change order to any contract which involves an additional expenditure of more than \$25,000 under such change order shall be issued unless and until a representative designated in writing by the Agent shall have approved such change order.

5.02. The Authority shall acquire and construct the Facilities in accordance with all applicable laws, ordinances, governmental rules, and regulations.

5.03. The Authority shall use its diligent and best efforts to complete the acquisition and construction of the Facilities so as to close the dam and commence impoundment of Water on or before January 1, 1979.

5.04. The Consulting Engineers shall file monthly progress reports on the acquisition and construction of the Facilities in such form as shall be reasonably required by the Authority and the Agent. The Authority shall promptly forward copies of such reports to the Agent and to all governmental agencies having jurisdiction in the premises.

## VI. THE SERVICE CHARGE

6.01. The Service Charge, the payments of which shall be deposited by the Authority in a separate fund at its Depository, shall be determined as follows:

(a) The Authority's initial Operating Budget shall indicate and estimate all direct costs and expenses which the Authority expects to incur with respect to the Facilities during the Initial Operating Budget period and which are properly includable in the Service Charge for such period, and shall be established by agreement of the parties hereto, and such amount shall be paid to the Authority by The Corporations in such installments as shall be agreed upon.

(b) The Authority's Annual Operating Budget, based on the Authority's fiscal year, shall indicate and estimate all direct costs and expenses which the Authority expects to incur with respect to the Facilities during the Annual Operating Budget period, and such charges and expenses shall be included in the Service Charge for such period. All payments which the Authority may be required to make to Gulf States Utilities Co., Central Louisiana Electric Co., and Louisiana Power & Light Co. under Section 5.09 of the Power Sales Agreement, dated February 1, 1964, between the Authority and said companies, due to upstream additional dams, shall be a part of and included in the Service Charge, provided, however, that The Corporations shall be permitted to participate in the negotiations to determine such payments, if any. Not less than sixty (60) days prior to the close of each Authority fiscal year after the Commencement Date, the Authority shall submit to the Agent for its review an Annual Operating Budget for the ensuing fiscal year. Within thirty (30) days after receipt of each Annual Operating Budget, the Agent shall notify the Authority in writing as to whether or not it concurs in such Annual Operating Budget. If the Agent notifies the Authority within the aforesaid time limit that it does not concur in the Annual Operating Budget, and the Agent and the Authority are unable to agree on the Annual Operating Budget within thirty (30) days after the Agent receives the Annual Operating Budget, the matter shall be submitted to arbitration for determination. Until such determination is made, The Corporations shall continue to make monthly payments as in the previous budget year. However, if the Agent fails to give such notice within the aforesaid time limit, the Agent shall be deemed to have accepted the Annual Operating Budget.

6.02. Prior to the commencement of each Annual Operating Budget period after the Initial Operating Budget period, The Corporations shall deliver to the Authority such amount of money as will cause the Authority to have on hand in the Service Charge Fund a total amount equal to  $\frac{1}{6}$  of the Annual Operating Budget for the ensuing year. Thereafter, on or before the first day of the second month and each subsequent month of each fiscal year The Corporations shall pay to the Authority the budgeted amount of the Service Charge during the ensuing month, which shall be  $\frac{1}{12}$  of the Annual Operating Budget. It is intended hereby that the Authority shall always have on hand at the beginning of each month an amount equal to  $\frac{1}{6}$  of the then current Annual Operating Budget. The Corporations shall furnish the Authority with additional funds to make payments in emergencies (not otherwise budgeted or provided for) upon approval of The Corporations, and to make any payments required by the second sentence of Section 6.01(b), above.

6.03. The Authority agrees to operate and maintain the Facilities in a prudent, efficient, and economical manner and to take such steps as may be reasonable from time to time to reduce both fixed and variable costs of operation and maintenance of the Facilities, consistent with the proper operation and maintenance of the Facilities.

6.04. The Corporations recognize that the Authority's only assured source of funds to pay the expenses of operation and maintenance of the Facilities will be from the payments of the Service Charges to be made by The Corporations pursuant to this Agreement, and that the Authority shall not be expected or required otherwise to provide for any part of the Service Charge from other sources, unless and until the Authority sells the Authority's Water to other parties. In the event that the Authority sells any such Water during any Authority fiscal year the Authority shall pay from the proceeds of such sale (by giving The Corporations credit, upon receipt of the proceeds of such sale, against the payments for which The Corporations are obligated under Section 6.02 above) a proportionate part of the Service Charge for that fiscal year in the ratio that the volume of such Water so sold bears to 163,000 acre feet, provided that the Authority shall never be required to pay more than 26% of the Service Charge during any fiscal year.

#### VII. MEASURING EQUIPMENT

7.01. The Authority shall furnish and install from Bond proceeds, and operate and maintain, such equipment and devices as are required by law, and any others that are requested by The Corporations, for measuring the inflow into the Facilities and the quantity of water consumed from the Facilities. The Authority and The Corporations shall establish procedures for the operation of such equipment and devices pursuant to the recommendations of the Consulting Engineers.

#### VIII. RECORDS AND BOOKS OF ACCOUNT; AUDIT

8.01. The Authority agrees to keep proper financial and operating records and books of account, pursuant to law and in accordance with generally accepted accounting principles, pertaining to the Authority's performance of its obligations under this Agreement, and such records and books of account shall be open to audit by The Corporations at all reasonable times.

8.02. An audit of the Authority's affairs with respect to the Facilities for each Authority fiscal year shall be prepared by an independent certified public accountant or a firm of independent certified public accountants of recognized integrity and ability. The cost of such audit shall be paid out of the Service Charge. A copy of each such audit shall be supplied to the Agent by the Authority.

#### IX. INSURANCE

9.01. The Authority shall carry such reasonably obtainable insurance as is necessary to pay all claims, damages, and losses for which the Authority could be liable with respect to

the acquisition, construction, existence, ownership, and operation of the Facilities, and shall carry all other reasonably obtainable insurance as requested by the Agent. All insurance premiums shall be paid from and be a part of the Service Charge.

9.02. Subject to the provisions of this Article, if the Facilities, or any portion of any of them, shall be damaged or destroyed by fire, flood, or other casualty, the Authority shall apply the proceeds from any fire, flood, and extended coverages insurance either (i) to repair such damage or destruction so as to restore the Facilities as nearly as possible to the condition thereof immediately prior to such damage or destruction or (ii) to construct or install or otherwise add to the remaining portion of the Facilities improvements substantially equal in value to the portion of the Facilities which was damaged or destroyed, and of a usefulness comparable to that of the destroyed improvements in carrying out the purposes of this Agreement. The insurance proceeds, if any, remaining after application to repair, restoration, or construction as provided in this Section shall be paid into the Service Charge Fund, and The Corporations shall be given pro rata credit therefor against the payments for which The Corporations are obligated under Section 6.02, above, for the next ensuing month or months.

9.03. At the request of the Agent the Authority agrees to issue Bonds in the amount required to repair or restore any portion of the Facilities which may be damaged or destroyed and for which insurance proceeds are not available.

#### X. FORCE MAJEURE

10.01. If, by reason of force majeure, any party hereto shall be rendered unable wholly or partially to carry out any obligations it may have under this Agreement, other than the obligation of The Corporations to make the payments required to be made under the provisions of this Agreement, then if such party shall give notice as soon as practicable and full details thereafter in writing of such force majeure to each affected party within a reasonable time after the occurrence of the event or cause relied on, the obligations of the party giving such notice, so far as it is affected by such force majeure shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

10.02. The term "force majeure" as employed herein, shall mean acts of God; strikes, lockouts, and other industrial disturbances; acts of the public enemy; orders of any kind of the government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraints of government and people; civil disturbances; explosions; breakages or accidents to machinery, pipelines or canals; partial or entire failure of water supply; or inability on the part of any party hereto to carry out its obligations under this Agreement on account of any other cause or causes not reasonably within the control of such party. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

#### XI. COMPLIANCE WITH LAWS

11.01. The parties hereto agree to discharge their respective obligations under this Agreement in compliance with all applicable laws, ordinances, governmental rules, and regulations, and subject thereto.

## XII. TERM

12.01. The term of this Agreement shall commence on the date hereof, and, unless sooner terminated as hereinafter provided, shall remain in effect for forty years after the date of delivery of and payment for the first issue or series of Bonds, and for any period thereafter during which any Bonds are outstanding.

## XIII. TERMINATION

13.01. If any local, state, or federal agency should fail to issue any of the Permits or if any of the Permits should be revoked, modified, or amended, or if any order or ruling should be enacted, promulgated, or issued by any governmental agency having jurisdiction, and the effect of such change, order, or ruling would be to make it impossible or illegal for the Authority to perform its obligations under this Agreement, this Agreement may be terminated by The Corporations or by the Authority by giving written notice to the other parties upon the occurrence of such change, order, or ruling. Also, upon not less than ninety days written notice to the Authority, The Corporations may terminate this Agreement for any reason, within their sole discretion.

13.02. Notwithstanding the foregoing provisions of this Article the obligation of The Corporations to pay each Semi-Annual Facilities Charge pursuant to the Bond Amortization Contract shall not be affected by such termination.

## XIV. ARBITRATION

14.01. Any dispute which is specifically stated to be subject to arbitration under the provisions of this Agreement shall be promptly submitted to an arbitrator mutually agreed to by the Authority and the Agent. Such arbitrator shall proceed to resolve the disputes submitted to him pursuant to the terms of this Article, if the parties hereto can agree on a single arbitrator.

14.02. If the parties hereto cannot agree upon a single arbitrator as provided in Section 14.01, such dispute shall be submitted to arbitration in Dallas, Texas, by a board of three (3) arbitrators upon the written request of the Agent or the Authority, which request shall name one (1) arbitrator. The party receiving such notice shall within ten (10) days thereafter, by notice to the other, name the second arbitrator, or failing to do so, the second arbitrator shall be appointed by the Chief Judge of the United States District Court for the Northern District of Texas on request of the party requesting arbitration in the first instance. The two (2) arbitrators so appointed shall name the third, or failing to do so within ten (10) days after appointment of the second arbitrator, the third arbitrator may be appointed by said Chief Judge upon request of either party; provided that the party making such request shall, at least five (5) days prior to making same, give the other party written notice of the time when and place where such request will be made.

14.03. The arbitrators so appointed shall promptly hear and determine the question submitted pursuant to the procedures established by the Texas General Arbitration Act and shall render their decision with all reasonable speed and dispatch, but in no event later than thirty (30) days after the conclusion of evidence. If within said period a decision is not rendered by the board, or a majority thereof, new arbitrators may be named and shall act hereunder at the election of either The Corporations or the Authority in like manner as if none had been previously named.

14.04. The decision of the arbitrators or of the majority thereof shall be final and binding upon parties hereto as to the question submitted, and a judgment upon an award rendered in such arbitration proceedings may be entered in any court of competent jurisdiction. The

expenses of arbitration, including reasonable compensation to the arbitrators, shall be paid by the Authority from and be a part of the Service Charge.

14.05. Pursuant to Article 224 of Vernon's Texas Civil Statutes, the signatures of counsel for each party to this Agreement are subscribed hereto as evidence that this Agreement was concluded upon the advice of said counsel.

#### XV. NOTICES

15.01. Any notice, request, or other communication under this Agreement shall be given in writing and shall be deemed to have been given by any party to the other parties upon either of the following dates:

(a) The date of the mailing thereof, as shown by the post office receipt if mailed to the other parties hereto by registered or certified mail at the latest address specified by such other party in writing; or

(b) The date of the receipt thereof by such other party if not so mailed by registered or certified mail.

#### XVI. ASSIGNMENT

16.01. The Corporations may at any time, upon notice to the Authority, name a person, firm, or corporation to succeed to the position of the Agent under this Agreement and thereafter serve in the place and stead of the Agent.

16.02. Any of The Corporations may assign this Agreement, so far as its interest herein is concerned, in connection with the merger or consolidation of such Corporation, or the transfer of all or substantially all of its assets, or the conveyance or other transfer of its interest in the Plant. If such Corporation should merge into another corporation, or consolidate with, or transfer all or substantially all of its assets to, another corporation, or if such Corporation shall sell, assign, or otherwise transfer its interest hereunder in connection with the sale, assignment, or transfer of its interest in the Plant, the surviving corporation in the merger or its successor corporation or transferee of such assets or of such interest in the Plant, as the case may be, shall succeed to and be substituted for it under this Agreement with the same effect as if such surviving corporation, successor corporation, or transferee had been named as a party herein. However, no such merger, consolidation, transfer of assets or sale, assignment, or transfer shall be effected unless the surviving corporation, successor corporation, or transferee of such assets or of such interest in the Plant shall have irrevocably and unconditionally assumed, in an instrument delivered to the Authority, the due and prompt performance of such Corporation's obligations as a party to this Agreement. Upon the delivery of such instrument of assumption, consolidation, or transfer of such assets or transfer of such interest in the Plant, as the case may be, the withdrawing party shall have no further obligation, except for any obligation for the payment of money theretofore accrued, under this Agreement.

16.03. Except to the extent as permitted under Sections 16.01 and 16.02, above, no party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other parties hereto.

16.04. No Assignment or transfer of this Agreement shall in any way change or affect The Corporations unconditional obligations under the Bond Amortization Contract.

#### XVII. MISCELLANEOUS

17.01. All headings of the Articles and particular Sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part of this Agreement and in no way shall they affect the interpretation of any of the provisions of this Agreement.

17.02. The rights and remedies of the parties set forth in this Agreement shall not be exclusive are in addition to all other rights and remedies of the parties hereto except with respect to controversies which are specifically stated to be subject to arbitration under the provisions of this Agreement.

17.03. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Texas. This Agreement constitutes the sole agreement, and supersedes all other prior agreements, of the parties with respect to the subject matter hereof, except for the Bond Amortization Contract.

17.04. The parties hereto recognize that it may become necessary or advisable to issue additional Bonds to complete, repair, replace, extend, or otherwise improve the Facilities, or to refund any of the Bonds. In the event that such Bonds are issued by the Authority at the request of The Corporations, The Corporations shall be liable for Semi-Annual Facilities Charges as specified in the Bond Amortization Contract and the Bond Resolutions authorizing such Bonds.

17.05. This Agreement may be amended or supplemented by mutual agreement of the parties hereto, but in no event shall any such amendment or supplement change or affect the Bond Amortization Contract.

17.06. The Corporations agree to protect, indemnify, and hold harmless the Authority from any and all claims, damages, and losses, including reasonable attorneys' fees, arising at any time with respect to the acquisition and construction of the Facilities, to the extent any such claims, damages, and losses are not paid from insurance proceeds.

17.07. After the term of this Agreement has expired The Corporations shall have the option thereafter to purchase Water from the Facilities in the quantities to which they were entitled during the term of this Agreement upon such terms and conditions that are mutually agreed upon, and for such price as is prevailing in the general area at that time for contract sales of water of similar quality, quantity, and contract period.

17.08. The payments by The Corporations of Semi-Annual Facilities Charges and Service Charges, and their performance of other obligations expressly imposed upon them hereunder, constitute full consideration for all rights and benefits accruing to The Corporations under this Agreement.

#### XVIII. ENFORCEMENT

18.01. The parties hereto agree to carry out, respect, and enforce their respective covenants and undertakings as provided in this Agreement by all legal and equitable means, and in addition The Corporations shall have the right to enforce their rights by filing mandamus or injunction proceedings in any court of competent jurisdiction against the Authority, its officials and employees, or any appropriate official of the State of Texas.

#### XIX. BENEFITS AND OBLIGATIONS OF THE CORPORATIONS AND THE AGENT

19.01. In entering into this Agreement and in exercising and enjoying the powers, rights, and benefits vested hereunder, the Agent is not acting in its individual and personal capacity but as agent in behalf of The Corporations. Accordingly the Agent does not possess in its own interest the powers, rights, and benefits vested in it or The Corporations hereunder, nor is it personally bound by the obligations assumed by it or The Corporations hereunder. All of the rights, benefits, obligations, agreements, and limitations of the Agent or The Corporations contained in this Agreement accrue, attach, inure to the benefit of, and are binding upon, The Corporations, and each of them, with like force and effect as if they alone were named wherever the Agent is mentioned in this Agreement. However, it is agreed and understood that the Agent may make any agreement or request, give any approval or notice, make any payment, and take any action,



required or permitted hereunder with the same effect as if The Corporations had so done, and the Authority may completely rely on such procedure and understanding. The Agent covenants and represents that it is fully authorized by law and corporate action by The Corporations, and the Agent to act as agent for, and to bind and obligate, The Corporations as provided herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be dated as of the 12th day of February, 1974, and to be executed on the date stated below, in multiple counterparts, each of which shall be considered an original for all purposes; and counsel to each of the parties has signed this Agreement solely for the purpose of evidencing the fact that this Agreement was concluded upon the advice of said counsel.

EXECUTED the 18th day of February, 1974.

SABINE RIVER AUTHORITY OF TEXAS

By E. Q. Meek  
President, Board of Directors

APPROVED:  
John W. Summers  
Executive Vice President and  
General Manager

ATTEST:

Eugene Cowan  
Secretary, Board of Directors  
(SEAL)

SMEAD, ROBERTS, HARBOUR, SMITH,  
HARRIS & FRENCH  
Longview, Texas

By Ernest J. Brittain  
Counsel for Sabine River Authority of Texas  
TEXAS UTILITIES GENERATING COMPANY  
By Ernest J. Brittain  
Executive Vice-President

for and on behalf of, and as agent for:

DALLAS POWER & LIGHT COMPANY  
TEXAS ELECTRIC SERVICE COMPANY  
TEXAS POWER & LIGHT COMPANY

ATTEST: E. J. Donnell  
Secretary  
(SEAL)

WORSHAM, FORSYTHE & SAMPERS  
Dallas, Texas  
By Joe S. Worsham  
Counsel for Texas Utilities Generating Company

**PERMIT TO  
APPROPRIATE STATE WATER**

APPLICATION NO. 3234	PERMIT NO. 2948	TYPE: Regular
Permittee : Sabine River Authority	Address : P. O. Box 579 Orange, Texas 75247	
Received : May 16, 1974	Filed : June 26, 1974	
Granted : August 1, 1974	County : Wood	
Watercourse : Lake Fork Creek, a tributary of the Sabine River	Watershed : Sabine River Basin	

WHEREAS, the Texas Water Rights Commission finds that jurisdiction of the application is established, due notice and publication thereof having been accomplished, and hearing having been held, all in accordance with the Texas Water Code and the Rules and Regulations of the Commission,

Now, THEREFORE, this permit to appropriate State water is issued to Sabine River Authority, subject to the following terms and conditions:

**1. IMPOUNDMENT**

Permittee is authorized to construct, and before acquiring any right hereunder shall construct, a dam and reservoir on Lake Fork Creek and impound therein not to exceed 675,819 acre-feet of water at 403.0 feet above mean sea level. Station 103 + 80 on the centerline of the dam is N 81° 45' W, 3700 feet from the NE corner of the J. M. Stedman Survey, Abstract No. 559, Wood County, Texas, 5 miles west of Quitman, Texas.

**2. USE**

- (a) Permittee is authorized to divert from the proposed Lake Fork Creek Reservoir, 44,940 acre-feet of water per annum for municipal use and 120,000 acre-feet of water per annum for industrial use, and to use the bed and banks of Lake Fork Creek and the Sabine River to transport this water from Lake Fork Creek Reservoir to specified points of diversion as approved by the Commission.
- (b) Permittee is authorized to divert and use not to exceed 300 acre-feet of water from Lake Fork Creek for initial construction of the dam.

**3. DIVERSION**

Permittee is authorized to divert water in amounts and for uses set out above only from such points and only by such means and at such rates as will hereafter be specified and approved by the Commission.

**4. TIME LIMITATIONS**

Construction or installation of all works herein authorized or required will be in accordance with plans approved by the Commission and will be commenced within two years and completed five years from date of issuance of this permit unless extended by the Commission.

**5. SPECIAL CONDITIONS**

- (a) The permittee will provide the facilities necessary to pass water through the dam at all times, including during the period of construction and initial filling of the reservoir.

To provide for downstream domestic, livestock, and natural streamlife needs, the permittee will make sufficient releases from the reservoir in a manner approved by the Commission to maintain a minimum flow of 2.0 cfs at the USGS streamflow gaging station at State Highway 37, 5.0 miles downstream from the dam.

- (b) The permittee will install and maintain a continuous lake-level measuring station for Lake Creek Reservoir and maintain the following records:

- (1) Reservoir content;
- (2) Discharges through Lake Fork Creek Dam.

All records will be compiled monthly and reported to the Commission annually and at other times as required.

- (c) The permittee shall pass its proportional part of water required to maintain a minimum flow of the Sabine River at stateline in accordance with the Sabine River Compact.


This permit is issued subject to all superior and senior water rights in the Sabine River Basin.


Permittee agrees to be bound by the terms, conditions and provisions contained herein and such agreement is a condition precedent to the granting of this permit.

All other matters requested in the application which are not specifically granted by this permit are denied.

This permit is issued subject to the rules and regulations of the Texas Water Rights Commission and to its right of continual supervision.

TEXAS WATER RIGHTS COMMISSION


  
Joe D. Carter, Chairman

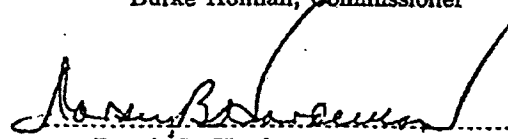
  
Burke Holman, Commissioner

Date Issued:

September 26, 1974

ATTEST:

  
Audrey Strandtman, Secretary

  
Dorsey B. Hardeman, Commissioner

WSC&C

EXHIBIT "K"

APPLICATION FOR AN AMENDED OR REVISED PERMIT NO. 2948  
AS APPROVED BY THE TEXAS WATER COMMISSION, AND AS REQUIRED  
BY THE WATER SUPPLY CONTRACT AND CONVEYANCE BETWEEN THE  
SABINE RIVER AUTHORITY OF TEXAS, THE CITY OF DALLAS, TEXAS,  
AND TEXAS UTILITIES GENERATING COMPANY, AS AGENT

Oct. 1, 1981

WATER PURCHASE AGREEMENT

STATE OF TEXAS :  
COUNTIES OF WOOD, RAINS : KNOW ALL MEN BY THESE PRESENTS:  
AND HOPKINS :

This Water Purchase Agreement is made as of the day and year hereinafter set forth by and between the SABINE RIVER AUTHORITY OF TEXAS (hereinafter called the "Authority"), and DALLAS POWER & LIGHT COMPANY, TEXAS ELECTRIC SERVICE COMPANY, and TEXAS POWER & LIGHT COMPANY (hereinafter collectively called the "Corporations"), acting herein by and through TEXAS UTILITIES GENERATING COMPANY as their agent (hereinafter called the "Agent")

WITNESSETH:

## RECITALS

1. The Authority is an agency and political subdivision of the State of Texas, being a conservation and reclamation district created and governed by Vernon's Article 8280-133, as amended (the "Act"), pursuant to Article 16, Section 59, of the Texas Constitution.

2. The Corporations and the Agent are Texas corporations.

3. Pursuant to the Water Supply Facilities Agreement between the Authority and the Corporations dated February 18, 1974, the Authority has acquired and constructed certain water supply facilities hereinafter defined consisting of a dam, reservoir, and related facilities on Lake Fork Creek in Wood, Rains and Hopkins County, Texas.

NOW, THEREFORE, in consideration of the premises and of the respective agreement hereinafter set forth, the parties hereto agree as follows:

## L. DEFINITIONS

L01. Agreement: This Water Purchase Agreement.

L02. Article: Any subdivision of this Agreement designated with a roman numeral.

L03. Bond Amortization Contract: A contract executed and dated February 18, 1974, which agreement provides for payments of Semi-Annual Facilities Charges by the Corporations to amortize the Bonds.

L04. Bond Resolution: Any resolution of the Authority's Board of Directors authorizing the issuance of Bonds.

L05. Bonds: Any revenue bonds of the Authority authorized, issued, and delivered to finance the acquisition and construction of any portion of the Facilities pursuant to the terms of the Bond Amortization Contract and this Agreement, including initial issues or series of bonds and completion bonds, and any bonds issued to repair, enlarge, extend, or otherwise improve the Facilities, together with any bonds issued to refund any of the foregoing bonds.

L06. Facilities: The water supply facilities consisting of the lands, easements, rights-of-way, dam, reservoir, and related facilities to be or presently acquired, constructed, and owned by the Authority on or adjacent to Lake Fork Creek, a tributary of the Sabine River, in Wood, Rains, and Hopkins Counties, Texas, such facilities constructed substantially in accordance with the plan and report prepared for presentation at public hearing before the Texas Water Rights Commission, entitled "Lake Fork Dam and Reservoir on Lake Fork Creek, Sabine River Basin," dated June, 1974, by URS, Inc., Consulting Engineers, Dallas, Texas, and any amendments or supplements thereto.

L07. Facilities Agreement: The Water Supply Facilities Agreement entered into by and between the Authority, the Corporations, and the Agent dated February 18, 1974.

L08. Points of Delivery: The points on the Reservoir to be agreed upon between the parties where the Corporations will withdraw Water. The Corporations shall provide all works and structures at the Points of Delivery for withdrawing Water from the Reservoir, and shall be entitled to withdraw such Water in the amounts specified in this Agreement, and in the Water Supply Contract and Conveyance.

L09. Reservoir: The Lake Fork Reservoir, including all lands and flowage and floodage easements acquired in connection therewith.

L10. Section: Any subdivision of this Agreement designated by arabic numerals.

L11. Water: Untreated water from the Reservoir. The Authority has no duty or responsibility with respect to the treatment, quality, or suitability of the water for the Corporations' purposes.

L12. Water Supply Contract and Conveyance: The agreement entered into by and between the Authority, the Corporations, and the City of Dallas as of October 1, 1981.

## II. SALE OF WATER

2.01. The Authority agrees to sell to the Corporations, and the Corporations agree to purchase from the Authority, 20,000 acre feet of water during each contract year in accordance with the terms and conditions of this Agreement.

2.02. The Corporations shall have the right to construct, operate and maintain electric generating facilities located on the Reservoir, and to use the Water purchased for the operation of such facilities, or such Water, measured at the Reservoir, may be released or withdrawn from the Reservoir for their use in connection with the operation of electric generating facilities located elsewhere.

2.03. The Corporations may designate, subject to the Authority's approval, which approval shall not be unreasonably withheld, the point or points on the Reservoir at which the Corporations wish to withdraw Water. The Corporations shall also have the right to discharge Water withdrawn from the Reservoir back into the Reservoir at a point or points designated by them, also subject to the Authority's approval, which approval shall not be unreasonably withheld, provided that, except to the extent allowed by State and/or Federal permits, such Water has not been additionally polluted or contaminated, and further provided that any such discharge shall not cause the water in the Reservoir to exceed the standards of water quality established for the Reservoir from time to time by the Texas Department of Water Resources.

2.04. The Corporations shall, at their own expense, acquire, construct, and provide all necessary facilities for withdrawal and discharge of Water, pursuant to this Agreement. The Authority and the Corporations each agree to provide easements to each other, at no cost, over and across each of their lands for the construction of each other's facilities, including pumping, discharging, dikes and canals, power lines, roads, pipelines and appurtenances, but no such facilities shall interfere with facilities constructed by the party granting the easements. The location of all facilities for withdrawal of Water, the easements and other facilities described in this paragraph shall be subject to the approval of the party granting such easements.

2.05. The amount of Water sold to the Corporations will include Water deemed lost to the Reservoir through forced evaporation, if the Corporations use the Reservoir for cooling, and for which the Corporations will pay in the same manner as for other Water actually withdrawn and used. Water utilized by the

Corporations strictly for cooling will not be considered "sold" for purposes of this Article to the extent such Water is returned to the Reservoir. The amount of Water consumed by forced evaporation by generating facilities located on the Reservoir shall be calculated as follows, or in such other fashion as may be mutually acceptable:

$$\begin{array}{l} \text{Water consumed} \\ \text{(in gallons/KWH)} = \frac{0.56 \text{ gal./KWH} \times \text{rate (BTU/KWH)}}{10,000 \text{ BTU/KWH}} - 0.23 \text{ gal./KWH} \end{array}$$

The Corporations shall furnish to the Authority annually the calculated forced evaporation figures and will make available to the Authority such related data as may be reasonably requested to verify such calculations.

2.06. In no event shall Corporations withdraw any Water from the Reservoir if such withdrawal would cause the surface level of the Water in the Reservoir to be lower than 372 feet above mean sea level.

2.07. The Authority makes no warranty, express or implied, as to the suitability or quality of the Water.

### III. RATES AND COMPENSATION

3.01. The Corporations agree to pay to the Authority, at the times and in the manner prescribed, the sum of Five Hundred Fifty Thousand Dollars (\$550,000.00) during each contract year, beginning on the date of this Agreement, whether Water is actually taken by the Corporations or not. The said sum of \$550,000 per contract year shall be payable in twelve (12) equal monthly installments of Forty-Five Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$45,833.33); the first installment being due and payable on the first day of the month following the date of this Agreement, and a like installment being due and payable on the first day of each month thereafter (except that the monthly installment due on the first day of the last month of each contract year shall be Forty-Five Thousand Eight Hundred Thirty-Three and 37/100 Dollars (\$45,833.37).

3.02. Notwithstanding the foregoing, any such payments otherwise falling due between October 1, 1981 and the date of issuance of the revised or amended Permits, as provided in the Water Supply Contract and Conveyance, shall be made by the Corporations when due to Republic National Bank in Dallas to be held by it as Escrow Agent on the terms and conditions hereinafter set forth. All monies paid to said Escrow Agent by the Corporations shall be invested in interest-bearing



deposits or obligations, at the best obtainable rate of interest, and such interest shall be accumulated and added to the monies so paid. Upon approval and issuance of the Permits by the Texas Water Commission, the Escrow Agent shall pay over to the Authority the amounts paid into escrow by the Corporations, together with all accumulated interest thereon; provided, however, if this Agreement shall be terminated pursuant to Section 11.01 below, the Escrow Agent shall repay such monies, together with all accumulated interest thereon, to the Corporations.

3.03. The Corporations agree to pay to the Authority a proportionate part of the Service Charge as determined in accordance with Article VI of the Facilities Agreement in the ratio of 20/163. Payments by the Corporations to the Authority for such proportionate part of the Service Charge shall be made monthly, in addition to, but on the same date as, the payments provided for in Section 3.01.

#### IV. MEASURING EQUIPMENT

4.01. The Corporations, at their own cost and expense, shall furnish, install, operate and maintain at the point or points of delivery, measuring equipment, properly equipped with meters and devices of standard types for measuring accurately the quantity of Water diverted under this Agreement, with a capacity to measure the quantity of water diverted within generally accepted industry standards for accuracy, or as established by the American Water Works Association. Said meter shall be calibrated annually. The Corporation shall notify the Authority in advance of the annual meter calibration, and the Authority shall have the right to be present and witness such calibration. Such measuring equipment shall be approved by the Authority and the Corporations, but shall remain the property of the Corporations.

4.02. During any reasonable hours, the Authority shall have access to such measuring equipment so installed. The Authority may, at its option and expense, install and maintain such measuring equipment as it deems proper to check and determine the accuracy of the Corporations' measuring equipment.

#### V. TITLE TO AND RESPONSIBILITY FOR WATER

5.01. Title to, possession and control of water shall remain in the Authority to the point or points of delivery, where title to, possession, and control shall pass to the Corporations.

5.02. As between the parties hereto, the Authority shall be in exclusive control and possession of the Water and solely responsible for any damages or

Injuries caused thereby until the same shall have been delivered to the Corporations at the point or points of delivery, at which point the Corporations shall be in exclusive control and possession thereof and solely responsible for any injuries or damages caused thereby.

#### VI. TERM

6.01. The term of this Agreement shall commence on the date of this Agreement, and, unless sooner terminated as hereinafter provided, shall continue until January 1, 2014.

#### VII. FORCE MAJEURE

7.01. If, by reason of force majeure, any party hereto shall be rendered unable wholly or partially to carry out any obligations it may have under this Agreement, other than the obligation of the Corporations to make the payments required to be made under the provisions of this Agreement, then if such party shall give notice as soon as practicable and full details thereafter in writing of such force majeure to each affected party within a reasonable time after the occurrence of the event or cause relied on, the obligations of the party giving such notice, so far as it is affected by such force majeure shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

7.02. The term "force majeure" as employed herein, shall mean acts of God; strikes, lockouts, and other industrial disturbances; acts of the public enemy; orders of any kind of the government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraints of government and people; civil disturbances; explosions; breakages or accidents to machinery, pipelines or canals; partial or entire failure of water supply; or inability on the part of any party hereto to carry out its obligation under this Agreement on account of any other cause or causes not reasonably within the control of such party. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

#### VIII. COMPLIANCE WITH LAWS

8.01. The parties hereto agree to discharge their respective obligations under this Agreement in compliance with all applicable laws, ordinances, governmental rules, and regulations, and subject thereto.

#### IX. NOTICES

9.01. Any notice, request, or other communication under this Agreement shall be given in writing and shall be deemed to have been given by any party to the other parties upon either of the following dates:

(a) The date of the mailing thereof, as shown by the post office receipt if mailed to the other parties hereto by registered or certified mail at the latest address specified by such other party in writing.

(b) The date of the receipt thereof by such other party if not so mailed by registered or certified mail.

#### X. ASSIGNMENT

10.01. The Corporations may at any time, upon notice to the Authority, name a person, firm or corporation to succeed to the position of the Agent under this Agreement and thereafter serve in the place and stead of the Agent.

10.02. The Corporations may assign this Agreement and their rights hereunder to any successor in interest, or to any other subsidiary of Texas Utilities Company, without the consent of the Authority, but will not resell the Water to a third party without the express written consent of the Authority.

10.03. No assignment or transfer of this Agreement shall in any way change or affect the obligations of the Corporations under the terms of this Agreement or the Bond Amortization Contract.

#### XL TERMINATION

11.01. In the event of the termination of the Water Supply Contract and Conveyance pursuant to Section 4.03 thereof, this Agreement shall likewise be terminated without further action by the Corporations, and if so terminated, same shall become null and void, and of no force and effect.

11.02. In the event the Corporations shall fail to make any payment required to be made under the terms of this Agreement when due, the Authority shall have the right, but shall not be obligated, if such failure shall continue for a period of thirty (30) days after written notice to the Corporations, to suspend delivery of Water hereunder, cancel and terminate this Agreement without prejudice to any

other remedy available to it, or to continue the delivery of Water to the Corporations and to charge interest on the unpaid installments from the date when due until paid at the highest rate of interest allowed by applicable law.

#### XII. RELEASE OF WATER

12.01. Upon request by a municipality, the Authority shall have the right to sell, and the Corporations agree to release and relinquish to the Authority for sale, for municipal use, up to and including 3,500 acre feet of Water annually out of the quantity agreed to be sold to the Corporations under the terms of Section 2.01 hereof. Such right must be exercised prior to January 1, 1990, and shall be subject to the terms of Sections 12.02 and 12.03 hereof.

12.02. Any such sale may be made upon such terms and conditions as may be determined to be appropriate by the Authority.

12.03. The Authority may, at any time, make its written request to the Corporations to release such Water, specifying the quantity to be released, and the release shall be effective thirty (30) days after the date of such written request. In such event, the annual payments for Water under the terms of Section 3.01 of this Agreement shall be reduced by an amount equal to \$27.50 times the number of acre feet which the Authority requests the Corporations to release. If any such release of Water is effective on any day other than the anniversary date of this Agreement, then the reduction in payments shall be made beginning with the calendar month following the date on which such release becomes effective and shall be prorated for the month during which such release becomes effective. The Authority may make more than one request, provided the total amount released shall not exceed 3,500 acre feet annually.

#### XIII. RENEWAL

13.01. After the term of this Agreement has expired the Corporations shall have the option thereafter to purchase Water from the Facilities in the quantities to which they were entitled during the term of this Agreement upon such terms and conditions that are mutually agreed upon and for such price as is prevailing in the general area at that time for contract sales of water of similar quality, quantity, and contract period.

#### XIV. MISCELLANEOUS

14.01. All headings of the Articles and particular Sections of this Agreement have been inserted for convenience of reference only and are not to be

considered a part of this Agreement and in no way shall they affect the interpretation of any of the provisions of this Agreement.

14.02. The rights and remedies of the parties set forth in this Agreement shall not be exclusive and are in addition to all other rights and remedies of the parties hereto, except that nothing contained in this Agreement shall impair or in any manner alter the obligations and responsibilities imposed upon the Corporations by the terms of the Water Supply Contract and Conveyance; the Facilities Agreement; the Bond Amortization Contract; the Bond Resolutions; and all Trust Indentures entered into by and between the Authority and the Republic National Bank of Dallas, of Dallas, Texas, as Trustee, with respect to Bonds issued in accordance with the Bond Amortization Contract.

14.03. This Agreement may be amended or supplemented by mutual agreement of the parties hereto, but in no event shall any such amendment or supplement change or affect the Bond Amortization Contract.

14.04. This Agreement shall be subject to the approval and continuing jurisdiction of the Texas Department of Water Resources, or its successor agency, and to its rules and regulations, specifically including Rule 156.02.50.003-006.

EXECUTED as of the 1st day of October, 1981.

SABINE RIVER AUTHORITY OF TEXAS

By Olin V. Jefferson  
President, Board of Directors

APPROVED:

Sam I. Giffin  
Executive Vice President and  
General Manager

APPROVED AS TO FORM:

ERJ  
Earl Roberts, Jr. -- Attorney for  
Sabine River Authority of Texas

ATTEST:

John H. Butler  
Secretary, Board of Directors

TEXAS UTILITIES GENERATING COMPANY

By 277 Kan

for and on behalf of, and as agent for:

DALLAS POWER & LIGHT COMPANY  
TEXAS ELECTRIC SERVICE COMPANY  
TEXAS POWER & LIGHT COMPANY

ATTEST:

Pat B. O'Brien  
Secretary

822140

SRA/Dallas/Tx0

FILE COPY

WATER SUPPLY CONTRACT AND CONVEYANCE

BY AND AMONG

CITY OF DALLAS, TEXAS,

SABINE RIVER AUTHORITY OF TEXAS, AND

TEXAS UTILITIES GENERATING COMPANY

DATED AS OF OCTOBER 1, 1981





4. The Authority has acquired, constructed and owns the water supply facilities hereinafter defined, consisting of a dam, Reservoir, lands, and related facilities on Lake Fork Creek in Wood, Rains, and Hopkins Counties, Texas. The location of Station 103 + 80 on the centerline of the dam which impounds the Water creating Lake Fork Creek Reservoir is N 81°45' W, 3700 feet from the NE corner of the J. M. Stedman Survey, Abstract No. 559, Wood County, Texas, approximately 5 miles west of Quitman, Texas. Attached hereto and made a part hereof is a certified copy of the Project Boundary Map, dated July, 1974, prepared by the Consulting Engineers for the Authority, and approved by the Authority on July 31, 1974.

5. The Corporations have heretofore entered into a Water Supply Facilities Agreement, dated February 12, 1974, by the terms of which the Corporations were granted the right to withdraw and have consumptive use of certain Water from the Lake Fork Reservoir, not to exceed 120,000 acre feet per calendar year, in exchange for the agreement by the Corporations to pay all Semi-Annual Facilities Charges to retire all bonds issued for the financing of the Lake Fork Dam and Reservoir Project, and the payment to the Authority of the Service Charge, enabling the Authority to pay the reasonable and necessary costs and expenses directly associated with the operation and maintenance of the Facilities.

6. Upon completion of impoundment, the Reservoir will have a normal pool level at elevation 403.0 feet above mean sea level, with a surface area of approximately 27,690 acres. The Reservoir storage capacity at the normal pool level will amount to approximately 675,819 acre feet of Water. The dependable yield of the Reservoir, with drawdown limited to an elevation of 372.0 feet above mean sea level, such limited drawdown restriction being based upon use of the Reservoir as a cooling pond for electric power generation, is approximately 1,000,000 acre feet annually (1990 conditions). The dependable yield is expected to decrease by the year 2030 to

approximately 163,025 acre feet annually.

7. The City of Dallas desires to acquire certain Municipal and other water use rights in Lake Fork Reservoir, for its own use as a water supply agency, with rights to use, sell and convey same in any manner permitted by law; and the Authority, the Corporations and TUGCO desire to convey such rights to the City of Dallas, in accordance with the terms and conditions hereinbelow set out, so that the City shall have such water use rights to 74% of the dependable yield of Water from the Reservoir annually, not to exceed 120,000 acre feet per calendar year, based on estimated year 2030 yield and the constraints on Reservoir drawdowns as outlined in paragraph 6 above. Actual yield shall be adjusted from time to time based on Reservoir surveys by consulting engineers.

NOW, THEREFORE, in consideration of the premises and of the respective agreements and the conveyance hereinafter set forth, the parties hereto contract as follows:

#### I. DEFINITIONS AND EXHIBITS

1.01. Agreement: This Water Supply Contract and Conveyance, including the attached Exhibits.

1.02. Annual Operating Budget: Estimates of all direct costs and expenses the Authority expects to incur in operating and maintaining the Facilities during the next succeeding Authority fiscal year following the period covered by the Initial Operating Budget, and which are properly includable in the Service Charge, such estimates to be itemized on an annual basis.

1.03. Article: Any subdivision of this Agreement designated with a roman numeral.

1.04. Bond Amortization Contract: The contract dated February 18, 1974, providing for payments of Semi-Annual Facilities