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

PETITION OF THE CITY OF
DALLAS FOR REVIEW OF A
DECISION BY THE SABINE RIVER
AUTHORITY TO SET WATER
RATES (LAKE FORK RESERVOIR)

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

SABINE RIVER AUTHORITY'S LIST OF ISSUES

Pursuant to the Order of Referral of the Public Utility Commission ("PUC" or "Commission") issued November 10, 2014, requesting a list of issues to be addressed in this docket, Sabine River Authority ("Authority") files this List of Issues.

I. ISSUES TO BE DETERMINED

A. Jurisdiction.

Petitioner, City of Dallas, has asserted jurisdiction under several provisions of the Texas Water Code, while also framing its Petition as a breach of contract action. The Commission has no authority to construe contracts or to determine whether the contractual provisions have been followed.

Neither does the Commission have jurisdiction of the Petition under Texas Water Code § 13.043(f). The Authority is not a retail public utility,¹ nor does it provide potable water

¹ Tex. Water Code § 13.002(19) (West 2008 & Supp. 2014): "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 providing *potable water service* or sewer service, or both, for compensation." (Emphasis added.)

service, which is a requirement in order to meet the definition of “water service” as used in § 13.043(f).²

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.³ 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 Agreement, which cannot be understood as a just or reasonable price. Therefore, the Petition is insufficient and the fundamental issues of the Commission’s jurisdiction must be addressed.

B. Rates Charged Pursuant to Written Agreement.

Petitioner’s complaint is based upon its allegations that the Authority has violated the terms of the written agreement between the parties, arguing that the Authority’s action in setting a rate “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 PUC Subst. R. Sec.

² Tex. Water Code § 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.” (Emphasis added.)

Tex. Water Code § 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.” (Emphasis added.)

³ P.U.C. SUBST. R. 24.44(a)(4) and (5).

24.131(c).”⁴ Petitioner adds 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.⁵

The Authority set the rate for the renewal term of the 1981 Water Supply Contract in accordance with the specific terms of the 1981 Water Supply Contract. Clearly, the Authority and the Petitioner disagree as to whether the rates were set pursuant to a written contract, therefore, the Commission’s rules require the proceeding to be abated until any contract dispute is resolved elsewhere.⁶ The issue may be presented to the ALJ, but since there is no doubt of the existence of a dispute, the matter must be abated.

C. Public Interest.

Only if the parties agree that the protested rates are charged pursuant to a written contract does the inquiry then proceed to determine whether the protested rates adversely affect the public interest. This inquiry is to take place pursuant to the Commission’s rules, specifically P.U.C. SUBST. R. 24.132 and 24.133. In accordance with those rules, the Commission must determine whether the Petitioner has met its burden of proving that any of the public interest criteria set forth in Rule 24.132(a) have been violated.

D. Issues to be Addressed.

In accordance with the foregoing, the following issues should be addressed:

1. Does the Commission have jurisdiction to consider the Petition under Texas Water Code §§ 12.013 or 13.043(f)?
2. If the Commission has jurisdiction under Texas Water Code § 12.013, does the City’s Petition meet the requirements of P.U.C. SUBST. R. 24.44?

⁴ Original Petition for Review and Request for Interim Rates at 8 (Oct. 30, 2014).

⁵ *Id.* at 8-9.

⁶ P.U.C. SUBST. R. 24.131(d): “If the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, the administrative law judge shall abate the proceedings until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction.”

3. Do the City and the Authority agree as to whether the rate complained of is a rate charged pursuant to a written contract?
4. If the rate complained of is a rate charged pursuant to a written contract, has the City met its burden of proof under P.U.C. SUBST. R. 24.136, by demonstrating that the rate adversely affects the public interest by violating at least one of the public interest criteria listed in P.U.C. SUBST. R. 24.133(a)?

II. ISSUES NOT TO BE ADDRESSED

Petitioner has made numerous allegations that the Authority has violated the terms of the 1981 Water Supply Agreement. The Commission has no jurisdiction to construe the Agreement or to adjudicate the parties' performance thereunder. Therefore, there should be no consideration by the ALJ of the allegations of breach of contract by Petitioner. Further, coupled with the Petitioner's assertions that the rate was not set pursuant to a written agreement, the allegations and the Commission's rules require the proceeding to be abated in order that such issues may be resolved in a proper forum.

Petitioner has requested the imposition of interim rates that would be punitive and significantly unfair to the Authority by setting \$0 as the amount of compensation to be paid by the City during the renewal term, or such portion of the renewal term as any interim rates would be in effect, a result that clearly was not the intent of the parties in entering into the 1981 Water Supply Agreement. Petitioner has not alleged any facts that would form a reasonable basis for its entitlement to renew the 1981 Water Supply Agreement at a rate of \$0, nor has it claimed any unreasonable financial harm to itself if the interim rates are not established.

In addition, it is improper to change rates charged pursuant to a written contract in the absence of a finding that the protested rates adversely affect the public interest. Imposing interim rates prior to such a finding moots the two-step review that is required by the Commission's rules. Interim rates should not be ordered under Texas Water Code § 12.013, as

this statute provides for interim rates only during the pendency of any rate proceeding. If this matter is abated, as it should be under P.U.C. SUBST. R. 24.131(d), there will no longer be a rate proceeding pending at the Commission, and interim rates would be unauthorized. Texas Water Code § 13.043(h) also does not authorize the Commission to set interim rates in this docket, because that section is tied to § 13.043(f) and, as noted above, the Commission does not have jurisdiction under Texas Water Code § 13.043(f) because no potable water is being supplied.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Sabine River Authority respectfully requests that the Commission issue a Preliminary Order that identifies the issues to be addressed and not to be addressed in a manner consistent with this filing, and for such other relief as to which it has shown itself to be entitled.

Respectfully submitted,

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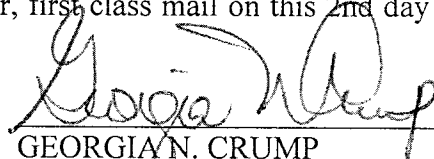
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ATTORNEYS FOR THE SABINE RIVER
AUTHORITY

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