



Control Number: 43674



Item Number: 14

Addendum StartPage: 0

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

2014 DEC -2 PM 2:50
FILED
PUBLIC UTILITY COMMISSION
FILING CLERK

**PETITION OF THE CITY OF DALLAS
FOR REVIEW OF A DECISION BY
THE SABINE RIVER WATER
AUTHORITY**

§
§
§
§
§

PUBLIC UTILITY COMMISSION

CITY OF DALLAS' LIST OF ISSUES

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Comes now the City of Dallas ("Dallas"), Petitioner in the above styled matter, pursuant to Order No. 1 files this List of Issues and for such list respectfully shows the Commission the following:

I. Introduction

This case is an appeal of a decision the City of Dallas claims to be a wrongful decision of the Board of Directors of Sabine River Authority of Texas ("SRA") purporting to set rates between the City and SRA. This Commission has jurisdiction over the dispute pursuant to Tex. Water Code. §13.043(f) and §12.013.

In 1981, Dallas and SRA entered into the first of a series of agreements related to the assignment and conveyance of water from the Lake Fork Reservoir for use by Dallas for municipal and resale purposes. *See* October 1, 1981 Water Supply Contract and Conveyance ("the Lake Fork Contract," or "Contract"), a copy of which is attached to the Dallas petition filed October 30, 2014. The Lake Fork Contract's initial term ended and the contract would have expired on November 1, 2014, with 40-year automatic renewals unless Dallas elected not to

renew the Agreement. The Lake Fork Contract was renewed for another 40-year term under the Contract's automatic renewal provisions.

The Lake Fork Contract required Dallas to pay 100% of the construction cost for the Lake Fork Reservoir by retiring all bonds issued for the financing of the Lake Fork Dam and Reservoir Project and by reimbursing the bond principal and interest and trustee's fees paid by Texas Utilities Generating Company¹ before the execution of the Lake Fork Contract. Additionally, the Lake Fork Contract required Dallas to pay 74% of the "Service Charge" (the reasonable and necessary costs and expenses directly associated with the operation and maintenance of the Lake Fork facilities) each year since the execution of the Agreement in 1981.

In exchange for Dallas paying for all the cost of constructing the reservoir and also paying annually 74% of the cost to operate and maintain the reservoir, the Lake Fork Contract required SRA to supply up to 74% of the water available on a firm yield basis in Lake Fork reservoir to Dallas². In addition, the Agreement provided that "[t]he amount of compensation that [SRA] 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 [SRA], 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." Additionally, the Contract provided that if Dallas and SRA could not agree on a rate, then an interim rate would be set by the Commission (now PUC), and that parties would ultimately settle up based on a "the amount of compensation finally determined."

¹ And Predecessor Corporations to Texas Utilities Generating Company

² The 74% calculation was as of 1981. Even though the parties' recalculated the firm annual yield of Lake Fork reservoir under different operating conditions and the additional yield was split 50/50, the parties agreed to continue the original 74%/26% original yield share calculation in assigning annual financial responsibility for the Lake Fork operating budget.

For years, the parties cooperated and worked together on the agreements described below. Starting in approximately 2008, Dallas and SRA began negotiations regarding the rate that Dallas would pay in the first renewal term of the Lake Fork Contract. The parties did not come to agreement on any rate in addition to the Service Charge provided in the Contract. On October 9, 2014, the Board of Directors of the SRA took unilateral action to purportedly set a rate for Dallas to apply over the next 40 years of the Lake Fork Contract. This action by SRA is referred to below as the October 9, 2014 Action.

II. Issues to be Addressed:

1. Does the Commission have jurisdiction to consider Dallas' Original Petition for Review and Request for Interim Rates ("Dallas' Petition") under Texas Water Code, §§12.013 and 13.043(f)?
2. Does Dallas' Petition meet the requirements of P.U.C. SUBST. R. 24.130, 16 Tex. Admin. Code §24.130?
3. If the Commission does not establish interim rates pursuant to PUC SUBST. R. §24.29(e), 16 Tex. Admin. Code §24.29(e) at the time of entry of the Preliminary Order, what interim rates should be established pursuant to TWC §13.043(h)?
3. Is the October 9, 2014 Action of the Sabine River Authority Board of Directors a violation of the Water Supply Contract and Conveyance between the parties?
4. Is the October 9, 2014 Action of the Sabine River Authority a rate set pursuant to a written contract?
5. If the October 9, 2014 Action of the Sabine River Authority is not a rate charged pursuant to a written contract, has the Sabine River Authority met its burden of proof under PUC SUBST. R. §24.136, 16 Tex. Admin. Code §24.136 by showing that its cost of service supports imposition of the charge pursuant to PUC SUBST. R. §24.131(c) and 24.135, 16 Tex. Admin. Code §24.131(c) and 24.135?
6. If the October 9, 2014 Action of the Sabine River Authority is a rate set pursuant to a written contract, has Dallas met its burden of proof under PUC SUBST. R. 24.146, 16 Tex. Admin. Code §24.136, by demonstrating that the charge sought to be imposed adversely affects the public interest by violating at least one of the public interest criteria listed in PUC Subst. R. 24.133(a), 16 Tex. Admin. Code §24.133(a)?

- a. If the October 9, 2014 Action of the Sabine River Authority is a rate which does not affect the public interest, what are the bases for determining that the rate does not adversely affect the public interest as required by PUC SUBST. R. §24.134(a), 16 Tex. Admin. Code §24.134(a)?
 - b. If the October 9, 2014 Action of the Sabine River Authority is a rate charged pursuant to a written contract and affects the public interest, what are the bases for determining that the rate adversely affects the public interest as required by PUC SUBST. R. §24.134(e), 16 Tex. Admin. Code §24.134(e)?
7. If the October 9, 2014 Action of the Sabine River Authority is a rate set pursuant to a written contract, and adversely affects the public interest, has the Sabine River Authority met its burden of proof under PUC SUBST. R. §24.136, 16 Tex. Admin. Code §24.136 by showing that its cost of service supports imposition of the charge pursuant to PUC SUBST. R. §24.131(c) and 24.135, 16 Tex. Admin. Code §24.131(c) and 24.135?
 8. What final rates should be set for Dallas' water stored in Lake Fork reservoir?

III. Conclusion and Prayer

WHEREFORE, PREMISES CONSIDERED, Dallas requests that the Commission address the Preliminary Issues identified above, find that the purported Lake Fork water rate set by SRA for Dallas' Lake Fork water on October 9, 2014:

1. Is not a rate charged pursuant to a written contract, and therefore does not require a public interest determination; and,
2. Additionally, Dallas requests that the Commission consider City of Dallas' Original Petition and Order the State Office of Administrative Hearings to conduct a contested case hearing to determine the appropriate cost of service rates for Dallas' Lake Fork water.

Respectfully submitted,

Ileana N. Fernandez
Executive Assistant City Attorney
Christopher D. Bowers
First Assistant City Attorney
Office of the City Attorney
City of Dallas
1500 Marilla Street, 7BN
Dallas, Texas, 75201
214-670-3519
214-670-0622 (fax)
Chris.Bowers@dallascityhall.com
Ileana.Fernandez@dallascityhall.com

Gwendolyn Hill Webb
Webb & Webb, Attorneys At Law
211 East Seventh Street, Suite 712
Austin, Texas 78701
512-472-9990
512-472-3183 (fax)
g.hill.webb@webbwebblaw.com

Norman J. Gordon
Merwan N. Bhatti
**Mounce, Green, Myers, Safi, Paxson &
Galatzan, A Professional Corporation**
100 N. Stanton, Suite 1000
El Paso, Texas 79901
915-532-2000
915-541-1548 (fax)
Gordon@mgmsg.com
Bhatti@mgmsg.com

By: 
For Norman J. Gordon

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, US mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the mailing list below on this 2nd day of December, 2014.

FOR THE ADMINISTRATIVE LAW JUDGE:

Honorable William G. Newchurch
Administrative Law Judge
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701
Phone: 512-475-4993
Fax: 512-322-2061
Via Electronic Upload

FOR THE SOAH DOCKET CLERK:

Ms. Monica Luna, Docketing Clerk
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701
Phone: 512-475-4993
Fax: 512-322-2061
Via Electronic Upload

FOR THE PUBLIC UTILITY COMMISSION:

1701 N. Congress Avenue, 7th Floor
PO Box 13326
Austin, Texas 78711-3326
Via Electronic Upload & Hand Delivery

PUBLIC UTILITY COMMISSION STAFF:

Stephen Mack
Douglas M. Brown
Public Utility Commission of Texas
Attorney-Legal Division
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
(512) 936-7203
(512) 936-7268 (fax)
Douglas.Brown@puc.texas.gov

FOR RESPONDENT, SABINE RIVER AUTHORITY:

Georgia N. Crump
Martin C. Rochelle
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
512-322-5800
512-472-0532 (fax)
gcrump@lglawfirm.com
mrochelle@lglawfirm.com


GWENDOLYN HILL WEBB