



Control Number: 43674



Item Number: 18

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OPEN MEETING COVER SHEET

MEETING DATE: December 18, 2014

DATE DELIVERED: December 11, 2014

AGENDA ITEM NO.: 30

CAPTION: Docket No. 43674; SOAH Docket No. 473-15-1149 - Petition of the City of Dallas for Review of a Decision by the Sabine River Authority to Set Water Rates (Lake Fork Reservoir)

ACTION REQUESTED: Discussion and possible action with respect to Preliminary Order

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Executive Director



Public Utility Commission of Texas

TO: Chairman Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: Hannah Turner, Commission Advising *HT*

RE: December 18, 2014 Open Meeting Agenda Item No. 30
Draft Preliminary Order, P.U.C. Docket No. 43674; SOAH Docket No. 47345-1149.WS – *Petition of the City of Dallas for Review of a Decision by the Sabine River Authority to Set Water Rates (Lake Fork Reservoir)*

DATE: December 11, 2014

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the December 18, 2014 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the December 18, 2014 open meeting.

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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)	§ § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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DRAFT PRELIMINARY ORDER

On October 30, 2014, the city of Dallas filed an original petition for review of wholesale water rates set by the Sabine River Authority for the Lake Fork Reservoir, along with a request for interim rates. On December 2, 2014, the Sabine River Authority filed a response to Dallas’s petition.

Dallas has purchased water from the Sabine River Authority pursuant to a written agreement entered into in 1981.¹ When the initial term of the agreement ended on November 1, 2014, the agreement was automatically renewed for an additional 40-year term.² The agreement provides that compensation for the renewal term is to be determined by mutual agreement between the Sabine River Authority and Dallas, 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.”³ The parties were unable to agree on the amount of compensation the Sabine River Authority would receive under the agreement’s renewal term, and on October 9, 2014, the Board of Directors of the Sabine River Authority set a rate that became effective November 2, 2014.⁴

¹ Original Petition for Review and Request for Interim Rates at 1 (Oct. 30, 2014); Sabine River Authority’s Response to City of Dallas’s Original Petition and Request for Interim Rates at 5 (Dec. 2, 2014).

² Petition at 5-6; Response at 6.

³ Petition at 2; Response at 7.

⁴ Petition at 7; Response at 7-8.

In its petition, Dallas asserts that the rate adopted by the Sabine River Authority on October 9, 2014 violates the terms of the agreement, in part because the parties did not negotiate the rate.⁵ Dallas requests that the Commission set interim rates pending the determination of final rates in this proceeding.⁶ The Sabine River Authority states that Dallas was unwilling to agree to a price that took into account prevailing prices in the area, and at the time, for contract water, and that the Sabine River Authority determined it needed to act to have the compensation set by the start of the renewal period.⁷ The Sabine River Authority also asserts that the Commission has no authority over Dallas's claims of breach of contract.⁸

On November 10, 2014, the Commission issued an order referring this docket to the State Office Administrative Hearings (SOAH) and requesting that interested parties file lists of issues to be addressed in this proceeding. On December 2, 2014, Dallas, the Sabine River Authority, and Commission Staff timely filed lists of issues.

On December 5, 2014, Dallas filed a motion for expedited Commission establishment of interim rates pursuant to P.U.C. SUBST. R. 24.29(d) and (e), requesting that the Commission consider its motion at the December 18, 2014 open meeting.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.⁹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Does the Commission have jurisdiction to consider Dallas's petition under Texas Water Code (TWC) §§ 12.013 or 13.043(f)?

⁵ Petition at 7-8.

⁶ Petition at 9.

⁷ Response at 7.

⁸ Response at 8.

⁹ Tex. Gov't Code Ann. § 2003.049(e) (West 2008 & Supp. 2014).

2. If the Commission has jurisdiction under TWC § 12.013, does Dallas's petition meet the requirements of P.U.C. SUBST. R. 24.44, 16 Tex. Admin. Code § 24.44?
3. If the Commission has jurisdiction under TWC § 13.043(f), does Dallas's petition meet the requirements of P.U.C. SUBST. R. 24.130, 16 Tex. Admin. Code § 24.130?
4. Is the rate set by the Sabine River Authority a rate charged pursuant to a written contract?
 - a. If so, has Dallas met its burden of proof under P.U.C. SUBST. R. 24.136, 16 Tex. Admin. Code § 24.136, by demonstrating that the rate set by the Sabine River Authority 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), 16 Tex. Admin. Code § 24.133(a)?
 - i. If the rate 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 P.U.C. SUBST. R. 24.134(a), 16 Tex. Admin. Code § 24.134(a)?
 - ii. If the rate does affect the public interest, what are the bases for determining that the rate adversely affects the public interest, as required by P.U.C. SUBST. R. 24.134(e), 16 Tex. Admin. Code § 24.134(e)?
 - b. If the rate is not charged pursuant to a written contract, has the Sabine River Authority met its burden of proof under P.U.C. SUBST. R. 24.136, 16 Tex. Admin. Code § 24.136, by showing that its cost of service supports imposition of the rate pursuant to P.U.C. SUBST. R. 24.131(c) and 24.135, 16 Tex. Admin. Code §§ 24.131(c) and 24.135?
5. Should interim rates be established pursuant to TWC § 13.043(h)? If so, what is the appropriate interim rate?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any

limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under TEX. GOV'T CODE ANN. § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the _____ day of December 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER