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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 RESEVOIR)

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STATE OFFICE OF
ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S RESPONSE TO THE CITY OF DALLAS' MOTION FOR
EXPEDITED COMMISSION ESTABLISHMENT OF INTERIM RATES UNDER P.U.C.
SUBST. R. 24.29(d) AND (e).**

Comes Now the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Commission Staff's Response to the City Of Dallas' Motion For Expedited Commission Establishment of Interim Rates Under P.U.C. SUBST. R. 24.29(d) and (e), and would show the following:

I. BACKGROUND AND DISCUSSION

On October 30, 2014, The City of Dallas (Dallas) filed with the Commission the Original Petition for Review and Request for Interim Rates seeking review from the Commission of a water rate for Lake Fork set by the Sabine River Authority (SRA) and further requesting interim rates.¹ The petition was filed pursuant to TEX. WATER CODE ANN. (TWC) §§ 12.013 and 13.043(f) and P.U.C. SUBST. R. 24.131(a). Dallas asserted it had been in a contract with SRA since 1981 in which SRA provided water from the Lake Fork Reservoir in exchange for Dallas paying for construction and operational costs, as well as making various forms of payments to SRA.² The contract automatically renewed for a 40-year term on November 1, 2014 unless Dallas chose to terminate the contract, which Dallas did not.³ Dallas claimed that it chose to renew the contract and started negotiating with SRA in 2008 to set a new rate.⁴ Dallas explained that the parties were never close to reaching an agreement, and SRA's Board of Directors

¹ *Original Petition for Review and Request for Interim Rates* at 1

² *Id.* at 5

³ *Id.* at 5-6

⁴ *Id.* at 2

unilaterally set a new rate on October 9, 2014.⁵ Dallas claims that SRA's setting of the new rate was in violation of their existing contract.⁶

In Order No. 1 filed on November 5, 2014, the Administrative Law Judge (ALJ) instructed Staff to make a recommendation regarding whether Dallas' petition met the requirements of P.U.C. SUBST. R. 24.130.⁷ Staff recommended that it met the requirements of the rule and recommended referral of the case to the State Office of Administrative Hearings (SOAH).⁸ On November 10, 2014, the ALJ referred the matter to SOAH and requested that interested parties file a list of issues relevant to the case by December 2, 2014.⁹ Staff, SRA, and Dallas timely filed lists of issues for the Commission's consideration of what issues to refer to SOAH. SOAH ALJ William Newchurch set a prehearing conference for January 6, 2015 to establish a procedural schedule and address other preliminary matters.¹⁰

On December 2, 2014, SRA filed a response to Dallas' Petition. In the response, SRA argued that the rate it set on October 9, 2014 comported with the renewal requirements of the 1981 contract by "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.'"¹¹ SRA claimed that Dallas was unwilling to agree to a rate that satisfied that term of the contract.¹² SRA argued, among other things, that the Commission does not have jurisdiction over this contract dispute,¹³ that interim rates are not authorized in this dispute,¹⁴ and that the new rates do not impair Dallas' ability to provide service to its customers.¹⁵

On December 5, 2014, Dallas filed City of Dallas' Motion For Expedited Commission Establishment of Interim Rates Under P.U.C. SUBST. R. 24.29(d) and (e) and requested interim rates be set at the level that the rates were at prior to the November 2, 2014 effective date of the

⁵ *Id.*

⁶ *Id.* at 7

⁷ Order No. 1 Requiring Staff Recommendation

⁸ Staff's Response to Order No. 1 and Request for Referral to the State office of Administrative Hearings at 2

⁹ Order of Referral at 1

¹⁰ SOAH Order No. 3 Setting Prehearing Conference

¹¹ Sabine River Authority's Response to the City of Dallas' Original Petition and Request for Interim Rates at 7

¹² *Id.*

¹³ *Id.* at 8 and 13

¹⁴ *Id.* at 15-16

¹⁵ *Id.* at 14-15

new rates.¹⁶ Dallas asked that if interim rates are set at a level higher than those that were in place prior to November 2, 2014, the amount in excess of the previous rates be placed in escrow pursuant to P.U.C. SUBST. R. 24.29(e)(3).¹⁷ Dallas argued that failure to timely set lower interim rates could result in economic hardship to Dallas and its customers, but would result in no harm to SRA.¹⁸

This Commission Staff's Response to City Of Dallas' Motion For Expedited Commission Establishment of Interim Rates Under P.U.C. SUBST. R. 24.29(d) and (e) is filed pursuant to P.U.C. PROC. R. 22.78(a), which makes the deadline for this response December 12, 2014. Therefore, this pleading is timely filed.

II. APPLICABLE RULE

Dallas requested interim rates pursuant to P.U.C. SUBST. R. 24.29(d) and (e). P.U.C. SUBST. R. 24.29 provides:

- . (a) The commission may, on a motion by the commission staff or by the appellant under TWC, §13.043(a), (b), or (f), as amended, establish interim rates to remain in effect until a final decision is made. □
- (b) At any time after the filing of a statement of intent to change rates under Chapter 13 of the TWC the commission staff may petition the commission to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the judge or commission to set interim rates. □
- . (c) At any time during the proceeding, the commission may, for good cause, require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate. □
- . (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

¹⁶ *City Of Dallas' Motion For Expedited Commission Establishment of Interim Rates Under P.U.C. SUBST. R. 24.29(d) and (e)* at 1.

¹⁷ *Id.* at 5

¹⁸ *Id.* at 5-6

an unreasonable economic hardship on the utility. □

- . (e) In making a determination under subsection (d) of this section, the commission may limit its consideration of the matter to oral arguments of the affected parties and may:
 - (1) set interim rates not lower than the authorized rates prior to the proposed increase nor higher □ than the requested rates; □
 - (2) deny interim rate relief; and □
 - (3) require that all or part of the requested rate increase be deposited in an escrow account in □ accordance with §24.30 of this title (relating to Escrow of Proceeds Received under Rate Increase). □
- . (f) The commission may also remand the request for interim rates to the State Office of Administrative Hearings for an evidentiary hearing on interim rates. The presiding officer shall issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission. □
- . (g) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate. □
- . (h) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission in a reasonable number of monthly installments. □
- . (i) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates. □

III. ANALYSIS AND DISCUSSION

First, although Dallas addressed its December 5, 2014 motion for interim rates to the Commission, this matter was referred to SOAH on November 10, 2014.¹⁹ As such, the proper agency to hear Dallas' December 5, 2014 motion for interim rates at this stage in the process is SOAH.

Second, Staff is uncertain that Dallas has satisfied the requirements of P.U.C. SUBST. R. 24.29(d). While Staff agrees that Dallas's Original Petition and Request for Interim Rates was properly filed pursuant to TWC 13.043(f) appellate jurisdiction, Staff is not prepared to make a determination that SRA's new rates are unreasonable or that they place economic hardship on Dallas or its customers based off the limited assertions and evidence contained in Dallas's motions.^{20, 21}

However, P.U.C. SUBST. R. 24.29(d) addresses increases that "could" result in unreasonable rates, or unreasonable economic hardships on the utility or its customers.²² In an abundance of caution and without commenting on the merits of either parties case, Staff can recommend pursuant to P.U.C. SUBST. R. 24.29(d) that interim rates be set equal to the rates that took effect on November 2, 2014. While Staff's recommendation to set interim rates at this level does not lower the rate that Dallas will have to pay throughout the duration of the contested hearing process, P.U.C. SUBST. R. 24.29(h) does allow Dallas to be refunded for any amount paid in excess of the final rate determined by the Commission. The imposition of such interim rates would protect Dallas and its customers for expending unrecoupable funds for rates that may later be deemed to be unreasonable by the Commission.

Lastly, Staff is not prepared to recommend that funds generated by the new rates be placed into an escrow account pursuant to P.U.C. SUBST. R. 24.29(e)(3) based on the limited assertions contained in Dallas' motions.

¹⁹ Order of Referral at 1

²⁰ See P.U.C. SUBST. R. 24.29(d)

²¹ Staff would entertain recommendations for the parties to put on more evidence regarding unreasonableness and economic hardship caused by the new rates.

²² P.U.C. SUBST. R. 24.29(d)

IV. CONCLUSION

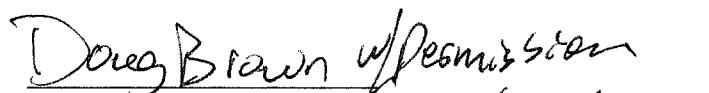
Staff may recommend establishing interim rates consistent with the new rates that took effect on November 2, 2014. Staff anticipates that these issues will be further addressed at the Prehearing Conference scheduled for January 6, 2015 and that further procedures for addressing this issue may be required.

DATE: December 12, 2014

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 12, 2014 in accordance with P.U.C. Procedural Rule 22.74.

Doug Brown w/permission
Douglas M. Brown
Stephane

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