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SOAH DOCKET 473-15-114

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PUBLIC UTILITY COMMISSION
FILING CLERK
OF

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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**COMMISSION STAFF'S RESPONSE TO THE CITY OF DALLAS' APPEAL OF SOAH
ORDER NO. 5**

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's Appeal of SOAH Order No. 5, 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 unilaterally set a new rate on October 9, 2014.⁵ Dallas claims that SRA's setting of the new rate

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.

⁵ *Id.*

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was in violation of their existing contract.⁶

Staff recommended referral of the case to the State Office of Administrative Hearings (SOAH).⁷ 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, 2014.⁸ Staff, SRA, and Dallas timely filed lists of issues for the Commission's consideration of what issues to refer to SOAH.

A prehearing conference for this matter was held on January 6, 2015 at SOAH. ALJ William G. Newchurch presided, and all parties were in attendance. Many of the issues referred in the Commission's Preliminary Order were discussed at length.

On January 9, 2015, ALJ Newchurch issued SOAH Order No. 4 Memorializing and Continuing Prehearing Conference. In the Order, the ALJ made several rulings and set a second prehearing conference for January 22, 2015.¹⁷ On January 20, 2015, SRA filed an appeal to SOAH No. 4 and a separate Motion to Abate the Petition of the City of Dallas for Review of a Decision by the SRA to Set Water Rates. On January 21, ALJ Newchurch granted SRA's motion to abate and abated the case "until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction" pursuant to P.U.C. SUBST. R. 24.131(d). Dallas filed City of Dallas' Response to SRA's Appeal of SOAH Order No. 4 on January 27, 2014. On February 2, 2015, City of Dallas filed its appeal of SOAH Order No. 5.

Staff's Response to City of Dallas' Appeal of SOAH Order No. 5 is filed pursuant to P.U.C. PROC. R. 22.78(a), which makes the deadline for this response February 3, 2015. Therefore, this pleading is timely filed.

II. DISCUSSION AND ANALYSIS

The City of Dallas' appeal of SOAH Order No. 5 should be denied. The City of Dallas appeals the ALJ's decision to abate this case pursuant to P.U. C. Subst. R. 24.131(d). The City of Dallas also appeals the ALJ's decision to abate the case prior to setting interim rates. As will

⁶ *Id.* at 7.

⁷ *Staff's Response to Order No. 1 and Request for Referral to the State office of Administrative Hearings* at 2.

⁸ *Order of Referral* at 1.

¹⁷ *See SOAH Order No. 4 Memorializing and Continuing Prehearing Conference.*

be set out below, the decision of the ALJ in SOAH Order No. 5 is mandated by P.U.C. Subst. R. 24.131(d).

In the Commission's Preliminary Order it referred, among others, the following issues to SOAH:

1. Does the Commission have jurisdiction to consider Dallas' Petition under TEX. WATER CODE ANN. (TWC) §§ 12.013 or 13.043(f)?¹⁸
2. Is the rate set by SRA a rate charged pursuant to a contract?¹⁹
3. Should interim rates be established pursuant to TWC § 12.013 13.043(h)?²⁰

ALJ Newchurch responded to these referred issues, among others, in Order No. 4. The ALJ ruled that the Commission has jurisdiction to Consider Dallas's petition under TWC § 12.013.²¹ The ALJ also concluded that there is no current contractual rate, but stated that if either party contends that the rate currently being charged to Dallas was set pursuant to a contract, he would abate the case so the issue could be resolved by a court of proper jurisdiction, as neither the Commission or SOAH have jurisdiction to determine the parties' obligations under the contract.²² In regard to interim rates, the ALJ ruled that the Commission has the jurisdiction to set interim rates, which the Commission delegated to SOAH by way of referral.²³ ALJ Newchurch also adds that he "may and will" set interim rates pursuant to the process detailed in P.U.C. SUBST. R. 24.29.²⁴

In its Appeal of SOAH Order No. 4, SRA asked that the Commission abate the proceeding so that the contractual issues could be adjudicated in court with appropriate jurisdiction, and that if the matter returns to the Commission, the Commission should determine whether the rate is adverse to the public interest pursuant to P.U.C. SUBST. R. 24.133.²⁵ SRA also filed a Motion to abate claiming that there is a contractual dispute that needs to be resolved in

¹⁸ *Preliminary Order* at 2.

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ *SOAH Order No. 4* at 3 (The ALJ explained that since the Commission had jurisdiction under TWC § 12.013, he saw "no present need" to determine whether the PUC also has jurisdiction under § 13.043.").

²² *Id.* at 4-5.

²³ *Id.* at 6.

²⁴ *Id.*

²⁵ *See SRA's Appeal of SOAH Order No. 4* at 20.

court of proper jurisdiction.²⁶ SOAH Order No. 5 granted SRA's Motion to Abate explaining that the matter must be abated until the contractual dispute is resolved pursuant to P.U.C. SUBST. R. 24.131(d).²⁷

Staff supports the ALJ's decision to abate the proceeding. Pursuant to P.U.C. SUBST. R. 24.131(d), "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."

The City of Dallas also appeals the ALJ's decision not to set interim rates prior to abatement. P.U.C. SUBST. R. 24.29(a) provides that the Commission may set interim rates. The City of Dallas' appeal of the failure to set interim rates prior to abatement should be denied as the failure to set interim rates prior to abatement is within the ALJ's discretion.

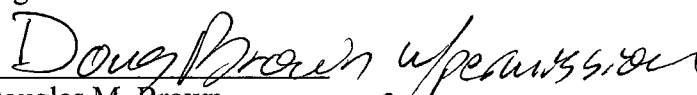
III. CONCLUSION

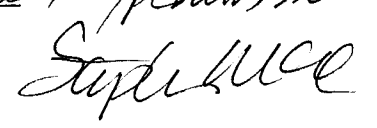
Staff recommends that the City of Dallas's Appeal of SOAH Order No. 5 be denied for the reason stated above.

Respectfully Submitted,

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²⁶ SRA's Motion to Abate at 2.

²⁷ SOAH Order No. 5 Granting Motion to Abate.

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on February 3, 2015 in accordance with P.U.C. Procedural Rule 22.74.

Doug Brown w/permission
Douglas M. Brown
Stephane