

Control Number: 43674



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Addendum StartPage: 0

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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 §
RESERVOIR) §

BEFORE THE PUBLIC UTILITY
PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION OF TEXAS

**CITY OF DALLAS REPLY TO STAFF AND SABINE RIVER AUTHORITY
RESPONSES TO APPEAL OF ORDER NO. 5**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Comes now the City of Dallas ("City" or "Dallas") and files this Reply to the PUC Staff and Sabine River Authority ("SRA") Responses to Dallas' Appeal of Order No. 5 and for its response respectfully shows the following:

I. PROCEDURAL BACKGROUND

On January 21, 2015, the Administrative Law Judge (ALJ) signed SOAH Order No. 5 abating the proceeding without setting interim rates. The ALJ said in Order No. 5 that he had no discretion in granting the abatement without setting interim rates and cancelled the prehearing conference set for January 22, 2015.¹ Dallas filed its appeal on February 2, 2015. On February 9, 2015, both SRA and Staff filed responses to the appeal.

II. REPLY TO PUC STAFF

In its reply filed on February 9, 2015, Staff recited the history of the issue and the filings of the parties and made its concluding recommendation that the appeal should be denied because the failure to set interim rates was within the ALJ's discretion.² If the ALJ's ruling had been made pursuant to PUC Subst. R. 24.29(f), it would be correct that the decision would have been

¹ Order No. 5. "The applicable law concerning abatement is clear and grants the ALJ no discretion."

² Staff Response at 4.

a matter of his discretion. However the ALJ did not make a ruling on what the interim rate should be. The ALJ's ruling was based on his perception of PUC Subst. R. 24.131(d) as reflected in the Staff's Response.³ Thus, Staff is simply incorrect to say that the Dallas Appeal should be overruled because the ALJ's decision was within his discretion. The ALJ did not rule that way. The issue is squarely whether either the buyer or the seller (in this case the SRA as seller) should be able to grind orderly proceedings to a halt by making claims that are disputed, such as whether the rate in this case is charged pursuant to contract. The ALJ found in SOAH Order No. 4 that the rate claimed by SRA was not a rate set pursuant to Contract. The appeal of SOAH Order No. 4 was deemed denied. PUC Subst. R. 24.29(d) does not say when the abatement must occur. The Commission has an obligation to set its policy and interpret its rules so that this dispute is handled in an orderly and fair way.

III. REPLY TO SRA.

SRA's response is mostly a diatribe against the City, rather than any discussion of the issue presented in this appeal. The issue in this appeal is whether, given the circumstances of this case, the ALJ should first set interim rates before abating the proceeding for many months, if not years, while the parties seek a court determination. The Commission has jurisdiction under Tex. Water C. §12.013(d) to set interim rates. SRA goes out of its way to identify the number of times it has opposed the setting of interim rates in this proceeding.⁴ SRA fails in this pleading to inform the Commission that it has also steadfastly protested the Commission's jurisdiction. In the SRA appeal of Order No. 4, which was deemed "denied," the SRA also protested the SOAH Order No. 4 in which the ALJ held that he had jurisdiction and authority to enter an order setting

³ Staff Response at II. Discussion and Analysis, at 2.

⁴ SRA Response at 5- 6, in which SRA identifies its request to abate the proceeding in no less than 6 places.

interim rates. The only citation in SRA's response is to Docket No. 43801.⁵ SRA neglects to note that in the ALJ's motion on the abatement in Docket No. 43801, he noted that no party opposed the abatement.⁶ It also appears that the motion to abate in that case was made at pre-hearing conference, as there is no written motion. Finally, SRA points out that Dallas did file a Petition for Declaratory Relief on the question of whether the rate sought by SRA is a rate set pursuant to contract. It is significant that SRA does not state it failed to file its own petition seeking declaratory relief, all of which is just further evidence of the SRA's intent to delay this process. SRA does not state how the dispute gets resolved in its scenario, much less what it has done to resolve the dispute.

IV. DISCUSSION

All the City is seeking is the Commission to implement its policy in a manner that is fair to all parties in this type of dispute. In an electrical rate dispute⁷, the U.S. Supreme Court found that the establishment of interim rates protects all parties' interests during a rate dispute:

Interim ratesetting appears well suited to accommodating that dual goal [of ensuring both that power is sold at the lowest possible rates consistent with sound business principles and that federal hydroelectric programs recover their own costs and do not require subsidies from the federal treasury]. That process protects consumers by subjecting proposed rates to initial review before they are made effective, and by allowing for refunds if the rates are ultimately disapproved. It protects the Government by allowing it to collect rate increases that are necessary for recovery of its costs, without having to wait for time-consuming final review. It helps eliminate the possibility that delay in implementation of rate increases,

⁵SECOND PETITION OF TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12 APPEALING CHANGE OF WHOLESALE WATER RATES IMPLEMENTED BY WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY, CITY OF BEE CAVE, TEXAS HAYS COUNTY, TEXAS AND WEST TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 5, Docket No. 43081, SOAH Docket 473-15-0218.WS.

⁶ *Ibid*, SOAH Order No. 4 at 2.

⁷ The electrical rate dispute was not subject to the procedural structure of water rate appeals set out in Commission rules, and also did not involve a contract where the parties agreed that interim rates would be set by the Commission.

particularly in a period of high inflation, will cause the Government constantly to be playing catchup in its attempt to secure an appropriate rate.

United States v. City of Fulton, 475 U.S. 657, 668 (1986).

Here, SRA and Staff have conflicting responses seeking to justify denying this appeal. Staff says the ALJ exercised his discretion while SRA claims the ALJ did not have discretion. In fact, the Rule in question does not have the words “immediate” or “immediately” in the instructions for when abatement needs to occur, especially in light of the delays sought and hurdles SRA has created and attempted to create in this process. Dallas’ position has been clear and consistent: no abatement should occur prior to the decision on interim rates. The Commission has clear authority in this proceeding to establish interim rates under Sections 12.013(e) and 13.043(h) of the Texas Water Code and P.U.C. Subst. R 24.29(a) and (d) and 24.41(h). Nothing in those sections requires an abatement before interim rates are set. There has not been a decision on interim rates. The failure to consider and have the ALJ consider interim rates leaves the Parties to this dispute to other undefined devices and means to address interim rates pending a decision on what are reasonable and equitable charges for the next 40 years...a decision that could be several years away.

V. PRAYER

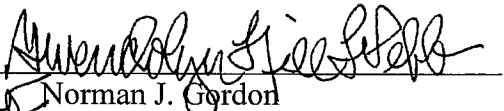

Wherefore, premises considered, the City of Dallas prays that the Commission take up its Appeal, and upon consideration grant the Appeal, and Order the ALJ to consider and decide the issue of interim rates prior to abating the case.

Respectfully submitted,

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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, U.S. mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the mailing list below on this 10th day of February, 2015.

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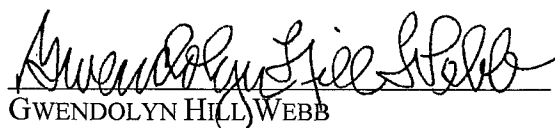
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