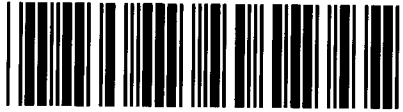


Control Number: 43674



Item Number: 41

Addendum StartPage: 0

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

RECEIVED
2015 MAR -6 PM 1:58
PUBLIC UTILITY COMMISSION
FILING CLERK

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 COMMISSION OF TEXAS

**CITY OF DALLAS' ORAL ARGUMENT OF APPEAL OF SOAH ORDER NO. 5 AT
COMMISSION MEETING**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Comes now the City of Dallas ("City" or "Dallas") and files this, its Oral Argument of Appeal of SOAH Order No. 5 at Commission Meeting that was presented before the Public Utility Commission of Texas ("PUC") during the Open Meeting Agenda on Friday, March 6, 2015 in support of Item No. 24.

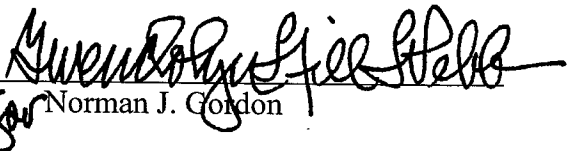
41

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: 
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, U.S. mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the mailing list below on this 6th day of March, 2015.

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

**SOAH DOCKET 473-15-1149.WS
PUC DOCKET 43674**

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

**Presentation by the City of Dallas
March 6, 2015**



APPEAL OF SOAH ORDER NO. 5

- ▶ Provisions of the Agreement
- ▶ Procedural History
- ▶ Statutes
- ▶ Rules
- ▶ Other Actions
- ▶ SRA Positions
- ▶ Other Commission cases
- ▶ Recent Case
- ▶ Impacts

Agreement between City and SRA

- ▶ Sec. 6.01
 - Initial term ended November 1, 2014
 - Automatic renewal for 40 years, or until November 1, 2054
- ▶ Sec. 6.02
 - Compensation for renewal term (exclusive of service charge) shall be determined by mutual agreement of the parties
 - Taking into account such price as prevailing in the general area at the time for like contract sales of water of similar quality, quantity and contract period.
 - In the event the City and SRA are unable to agree on the amount of such compensation prior to the expiration of such term, the Texas Water Commission may establish interim compensation to be paid by the City to SRA.

Provisions of the Agreement(2)

- ▶ **Sec. 9.09 This Agreement shall be subject to the approval and continuing jurisdiction of the Texas Department of Water Resources, including the Texas Water Commission or its successor agency**

Procedural history of this case

- ▶ City notified by letter dated October 14, 2014 that SRA board had set a rate
- ▶ City filed this appeal on October 30, 2014
- ▶ Preliminary Order December 18, 2014
- ▶ Prehearing conference rescheduled for January 22, 2015
- ▶ Prehearing conference cancelled by SOAH Order No. 5

Statutes

- ▶ Texas Water Code Sec. 12.013
- ▶ (e) *The utility commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.*
- ▶ (f) The utility commission may order a refund or assess additional charges from the date a petition for rate review is received by the utility commission of the difference between the rate actually charged and the rate fixed by the utility commission, plus interest at the statutory rate.

Statutes

- ▶ Texas Water Code Sec. 13.041
- ▶ (c-1) In addition to the powers and duties of the State Office of Administrative Hearings under Title 2, Utilities Code, *the utility commission may delegate* to an administrative law judge of the State Office of Administrative Hearings the responsibility and *authority to issue interlocutory orders related to interim rates* under this chapter.

Statutes

- ▶ Texas Water Code Sec. 13.043
- ▶ (h) *The utility commission may, on a motion by the utility commission or by the appellant under Subsection (a), (b), or (f), establish interim rates to be in effect until a final decision is made.*

Rules

- ▶ **PUC SUBST. R. 24.131**
- ▶ (d) If the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, *the administrative law judge shall abate the proceedings until the contract dispute over whether the protested rate is charged pursuant to a written contract has been resolved by a court of competent jurisdiction.*

Rules

PUC SUBST. R. 24.29

- ▶ (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.*

Laws and Rules

▶ **The legislative intent is clear:**

The Legislature intended the PUC to set interim rates during a dispute over water rates like this one.

Other Actions

- ▶ SRA has filed no lawsuit to get the issue decided by a court of competent jurisdiction
- ▶ City filed lawsuit seeking judicial declaration that SRA's new rate was not established pursuant to the contract in Travis County on January 30, 2015
- ▶ SRA has not answered (answer due March 9)

SRA Positions

- ▶ SRA contends PUC does not have jurisdiction
 - City's Petition filed under TWC Chapters 12 and 13
 - ALJ found jurisdiction under Chapter 12 and reserved decision under Chapter 13
- ▶ SRA contends its unilateral new rate is charged pursuant to a written contract
- ▶ SRA contends interim rates should not be set at all.
- ▶ SRA has delayed resolution of the interim rate issue for more than four months

Other Commission Cases

- ▶ SRA cited to only Docket 43081
 - But Order says no party opposed the motion to abate
- ▶ No other cases found where the timing of abatement was contested
- ▶ No prior contested case at PUC (since 9/1/14)

Recent Case took 6 years

- ▶ *Canyon Regional Water Authority* (286 S.W.3d 397) (3 cases at SOAH)
 - Amended Petition with TCEQ 11/15/02
 - No Interim Order
 - Abatement Order 1/13/04
 - Partial Summary Judgment in District Court 12/17/04
 - District Court Final Judgment 8/14/06
 - Court of Appeals decision 10/30/08
 - = *6 years without interim rates*

Impacts

- ▶ SRA seeks additional \$24.1 million this year and more in subsequent years
- ▶ If timing is similar to *Canyon* case, City may pay SRA an additional \$150 million
 - without any agreement when ultimate rates are set
 - without any proof that SRA needs more money
- ▶ City requests PUC to order ALJ to set interim rate, subject to refund or surcharge on final order