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

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PUBLIC UTILITY COMMISSION  
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PETITION OF THE CITY OF DALLAS  
FOR REVIEW OF A DECISION BY  
THE SABINE RIVER AUTHORITY

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BEFORE THE STATE COMMISSION  
OF  
ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 8  
ESTABLISHING INTERIM RATES**

On March 26, 2015, the Public Utility Commission of Texas (PUC or Commission) issued an order on appeal of State Office of Administrative Hearings (SOAH) Order No. 5. The PUC concluded that it and the Administrative Law Judge (ALJ), thorough referral, currently have authority to set interim rates in this case. Texas Water Code § 12.013(e). It also concluded that one of its rules provides for its setting interim rates in this case. 16 Tex. Admin. Code § 24.29(d). The PUC remanded this matter to the ALJ to give the ALJ an opportunity to consider whether interim rates should be established.

Using the process set out in 16 Texas Administrative Code § 24.29(d) and (e), the ALJ heard oral arguments from the parties on April 2, 2015, regarding whether an interim rate should be established. Under § 24.29(d),

[i]nterim 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 an unreasonable economic hardship on the utility.

The parties have entered into a water supply contract that addresses the amount the City of Dallas (Dallas) will pay Sabine River Authority (SRA) during the renewal term.<sup>1</sup> After negotiations broke down, SRA unilaterally began charging the current rate, \$0.5613 per 1,000 gallons, on a take-or-pay basis.

<sup>1</sup> Petition, ex. A at 21.

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The Texas Constitution prohibits any law impairing the obligation of contracts.<sup>2</sup> Dallas filed a declaratory judgement action in Travis County District Court on January 30, 2015, seeking a determination that the rate set by SRA was not set pursuant to the contract. If the court finds SRA is charging a rate not set by contract, the PUC may set the rate. Tex. Water Code § 12.013. If the court finds that SRA is charging a rate set by contract, the PUC may change that rate after finding that the rate adversely affects the public interest. A Texas agency does not violate the constitutional limitation on contract impairment when it reviews rates under authority granted by the legislature if the agency first finds that the rates adversely affect the public interest by being unreasonably preferential, prejudicial, or discriminatory.<sup>3</sup> Given the above legal complexities, the parties agree that resolution of their dispute could take several years.

With so many legal hurdles and unknowns ahead, the ALJ cannot reasonably, legally conclude at this preliminary stage that the rate SRA currently charges Dallas is unjust or unreasonable. Nor can he find that the rate imposes an unreasonably economic hardship on Dallas or its customers.

However, the ALJ finds that the current rate could result in Dallas paying an unjust and unreasonable rate because the PUC may ultimately set a lower rate. Importantly, setting an interim rate, even if it is the rate SRA currently is charging, allows the ALJ to order SRA to place rate collections into escrow during the interim, which will ensure that Dallas can be repaid if it is ultimately determined that Dallas was overcharged. 16 Tex. Admin. Code § 24.29(e)(3). Further, setting the rate SRA is charging as the interim rate and requiring escrow may encourage the parties to resolve their dispute. These factors lead the ALJ to conclude that he should set the rate SRA currently charges as the interim rate and require escrow.

Accordingly, the ALJ orders that the rate SRA currently charges Dallas will be the interim rate to be in effect until this case is finally decided, namely \$0.5613/1,000 gallons, on a take-or-pay basis. The interim rate is retroactively effective from November 2, 2014, when the

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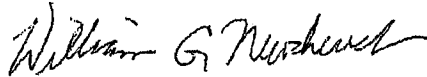
<sup>2</sup> Tex. Const. art. I, § 16.

<sup>3</sup> See *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App --Austin 1994, writ denied)

rate SRA is charging took effect. Tex. Water Code § 12.013(e) & (f). Further, Dallas' motion to require SRA to deposit all collections under the above rate since November 2, 2014, into an escrow account, in accordance with 16 Texas Administrative Code § 24.30, is granted.

The parties have stipulated that Dallas also pays SRA an undisputed service charge under the contract that is separate and apart from the above rate. The service charge is not subject to this interim-rate order or to escrow.

**SIGNED April 2, 2015.**



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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**