

Control Number: 43674



Item Number: 51

Addendum StartPage: 0

PETITION OF THE CITY OF § BEFORE THE STATE OFFICE
DALLAS FOR REVIEW OF A §
DECISION BY THE SABINE RIVER § OF
AUTHORITY TO SET WATER §
RATES (LAKE FORK RESERVOIR) § ADMINISTRATIVE HEARINGS

REQUEST FOR APPROVAL OF ESCROW AGREEMENT

TO THE HONORABLE JUDGE NEWCHURCH:

In SOAH Order No. 8, the Administrative Law Judge (“ALJ”) ordered that the rate currently charged by the Sabine River Authority (“SRA”) to the City of Dallas (“Dallas”) be the interim rate to be in effect until this case is finally decided. In this same order, the ALJ also granted Dallas’s request that the SRA be required to deposit all collections of the interim rate since November 2, 2014, into an escrow account in accordance with 16 Texas Administrative Code § 24.30.

The referenced rule requires: (1) the institution holding the escrow account to be a federally-insured financial institution; (2) the account to be an interest-bearing account; and (3) the completed escrow agreement between the utility and the financial institution to be filed with the Commission for review and approval.¹

Since the issuance of Order No. 8, the SRA has negotiated the terms and conditions of the Escrow Agreement with a federally-insured financial institution, namely the First Financial Trust & Asset Management Company, N.A. (“Escrow Agent”). The Escrow Agent has approved the form and substance of the attached Escrow Agreement.

The SRA has not received any payments of the interim rates from Dallas; the Escrow Agreement requires Dallas to make such payments to the Escrow Agent. Because Dallas will be a party to the Escrow Agreement, the SRA has provided Dallas an opportunity to review the

¹ 16 Tex. Admin. Code § 24.30(a) (P.U.C. SUBST. R. 24.30(a)).

negotiated Escrow Agreement and provide comments thereto. SRA is authorized by Dallas to represent to the ALJ that Dallas approves the form of the Escrow Agreement attached hereto.


The Escrow Agreement, attached hereto as Attachment A, is provided for the Commission's review and approval. The PUC Staff is being provided with a copy of the Escrow Agreement with this pleading. Upon final approval by the Commission, the Escrow Agreement will be dated and contact and account information will be added, and the Escrow Agreement will be executed by the SRA, Dallas, and the Escrow Agent.

Wherefore, premises considered, the SRA respectfully requests the ALJ review and approve the Escrow Agreement as attached hereto.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE
& TOWNSEND, P.C.**

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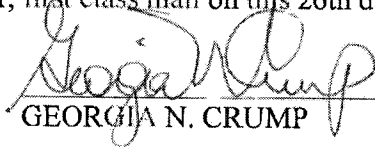
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ATTORNEYS FOR SABINE RIVER
AUTHORITY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by e-mail, fax, hand-delivery and/or regular, first class mail on this 26th day of June, 2015, to the parties of record.



GEORGIA N. CRUMP

ESCROW AGREEMENT

This Escrow Agreement is entered into this ____ day of June, 2015, among the Sabine River Authority of Texas, a Texas governmental agency ("SRA") and the City of Dallas, a Texas home rule municipal corporation ("Dallas") and First Financial Trust & Asset Management Company, N.A. a national banking association ("Escrow Agent"), on the terms and conditions more particularly described herein.

RECITALS

WHEREAS, Dallas has petitioned the Public Utility Commission of Texas ("PUC") in PUC Docket No. 43674 and State Office of Administrative Hearings ("SOAH") Docket No. 473-15-1149.WS for a review of the rates charged by SRA to Dallas under a water supply contract during the renewal term thereof ("Case");

WHEREAS, on April 2, 2015, the Administrative Law Judge in the Case issued SOAH Order No. 8 ("Order No. 8") ESTABLISHING INTERIM RATES and ordering that (a) SRA place all collections of the interim rate since November 2, 2014, and (b) all future collections of the interim rate be paid by Dallas, into an escrow account in accordance with 16 Texas Administrative Code §24.30, which requires that the terms and conditions of an escrow agreement be approved by the PUC;

WHEREAS, this Escrow Agreement has been prepared to implement said Order No. 8 of the Case;

NOW, THEREFORE, in consideration of the premises, the parties hereby agree as follows:

ARTICLE I TERMS AND CONDITIONS

1.1 Establishment of Fund. Dallas will cause to be deposited with the Escrow Agent the sum of FOURTEEN MILLION SIXTY-EIGHT THOUSAND THREE HUNDRED SEVENTY-SIX AND NO/100 DOLLARS (\$14,068,376.00) as the initial deposit, representing payment for seven (7) months of interim rates, namely November 2, 2014, through June 1, 2015, as determined by Order No. 8. Thereafter, Dallas will cause to be deposited all future interim rate payments due SRA, in the amount of TWO MILLION NINE THOUSAND SEVEN HUNDRED SIXTY-EIGHT AND NO/100 DOLLARS (\$2,009,768.00) on a monthly basis, as invoiced to Dallas by SRA (such sums, additions, interest, and earnings, or the balance thereof remaining from time to time being referred to herein as the "Fund").

1.2 Treatment of Fund. The monies constituting the Fund shall be deposited in a segregated, interest-bearing account pursuant to the terms of this Escrow Agreement. Such account shall be styled "Dallas Lake Fork Escrow Account – Sabine River Authority."

1.3 Investment of Fund. The Fund shall be invested and reinvested by the Escrow Agent in compliance with the investment policy approved by SRA and otherwise in accordance with the Texas Government Code, Title 10, Chapter 2256 (the "Public Funds Investment Act"), until disbursed as provided in this Escrow Agreement. Escrow Agent will provide monthly statements to SRA and Dallas reflecting the market value of the investments, as well as receipts, disbursements, and transactions executed on behalf of the Fund. Escrow Agent shall have the right to liquidate any investments held in order to make required disbursements under this Escrow Agreement. Escrow Agent shall have no liability for any loss sustained as a result of any investment made pursuant to the instructions of this Escrow Agreement or as a result of any liquidation of any investment prior to its maturity. Escrow Agent acknowledges receipt of the current SRA investment policy. In the event such policy is amended or revised by the SRA during the term of this Escrow Agreement, the SRA shall promptly notify Escrow Agent of same, and Escrow Agent shall promptly thereafter make any necessary changes to the investment of the Fund in order to remain in compliance with the amended or revised SRA investment policy.

1.4 Escrow Procedure and Payment Instruction. The Fund shall be held and disbursed in accordance with the terms of this Escrow Agreement as set out below. SRA and Dallas each acknowledge that Escrow Agent is authorized to use the following funds transfer instructions to disburse funds without a verifying call-back as set forth in Section 3.2. If distribution is in accordance with this Section 1.4, no call-back as provided in Schedule 1 is required.

If to SRA:

Bank Name:

Bank Address:

ABA Number:

Account Name:

Account Number:

Telephone Number:

If to Dallas:

Bank Name:

Bank Address:

ABA Number:

Account Name: _____
Account Number: _____
Telephone Number: _____

NOTWITHSTANDING ANY OTHER PROVISION HEREOF, THE FUND SHALL BE DISBURSED ONLY UPON THE ESCROW AGENT'S RECEIPT OF A WRITTEN ORDER ISSUED BY THE PUC OR A COURT OF COMPETENT JURISDICTION, SPECIFICALLY INSTRUCTING PAYMENT OF THE FUND TO ONE OR BOTH OF SRA AND DALLAS AS SPECIFICALLY PROVIDED IN SUCH WRITTEN ORDER, OR UPON RECEIPT OF WRITTEN INSTRUCTIONS FOR DISBURSEMENT SIGNED BY BOTH SRA AND DALLAS.

1.5 Termination. This Escrow Agreement shall terminate upon the disbursement of the balance of the Fund in accordance with the provisions of Section 1.4 hereof.

ARTICLE II PROVISIONS AS TO ESCROW AGENT

2.1. Limitation of Escrow Agent's Capacity.

A. This Escrow Agreement expressly and exclusively sets forth the duties of Escrow Agent with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Escrow Agreement against Escrow Agent. This Escrow Agreement constitutes the entire agreement between the Escrow Agent and the other parties hereto in connection with the subject matter hereof, and no other agreement entered into between the parties, or any of them, shall be considered as adopted or binding, in whole or in part, upon the Escrow Agent notwithstanding that any such other agreement may be referred to herein or deposited with Escrow Agent or the Escrow Agent may have knowledge thereof, and Escrow Agent's rights and responsibilities shall be governed solely by this Escrow Agreement.

B. Escrow Agent acts hereunder as a directed depository of the Fund only, and is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of this Escrow Agreement or any part thereof, or for the form of execution thereof, or for the identity or authority of any person executing or depositing such subject matter. Escrow Agent shall be under no duty to investigate or inquire as to the validity or accuracy of any document, agreement, instruction or request furnished to it hereunder believed by it to be genuine, and Escrow Agent may rely and act upon, and shall not be liable for acting or not acting upon, any such document, agreement, instruction or request. Escrow Agent shall in no way be responsible for notifying, nor shall it be its duty to notify, any party hereto or any other party

interested in this Escrow Agreement of any payment required or maturity occurring under this Escrow Agreement or under the terms of any instrument deposited herewith.

2.2 Authority to Act.

A. Escrow Agent is hereby authorized and directed by the undersigned to deliver the subject matter of this Escrow Agreement only in accordance with the provisions of Article I of this Escrow Agreement.

B. Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, certificate, receipt, authorization, power of attorney or other paper or document which Escrow Agent in good faith believes to be genuine and what it purports to be.

C. Escrow Agent may consult with legal counsel in the event of any dispute or question as to the construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in accordance with the advice of such counsel. Escrow Agent's costs for such consultation shall be reimbursed as provided in Section 2.3.

D. In the event of any disagreement between any of the parties to this Escrow Agreement, or between any of them and any other person, resulting in adverse claims or demands being made in connection with the matters covered by this Escrow Agreement, or in the event that Escrow Agent, in good faith, is in doubt as to what action it should take hereunder, Escrow Agent may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, Escrow Agent shall not be or become liable in any way or to any person for its failure or refusal to act, and Escrow Agent shall be entitled to continue so to refrain from acting until (i) the rights of all interested parties shall have been fully and finally adjudicated by a court of competent jurisdiction, or (ii) all differences shall have been adjudged and all doubt resolved by agreement among all of the interested persons, and Escrow Agent shall have been notified thereof in writing signed by all such persons. Notwithstanding the foregoing, Escrow Agent may in its discretion obey the order, judgment, decree or levy of any court, whether with or without jurisdiction, or of any agency of the United States or any political subdivision thereof, or of any agency of the State of Texas or of any political subdivision thereof, and Escrow Agent is hereby authorized in its sole discretion, to comply with and obey any such orders, judgments, decrees or levies. The rights of Escrow Agent under this sub-paragraph are cumulative of all other rights which it may have by law or otherwise.

E. In the event that any controversy should arise among the parties with respect to this Escrow Agreement, or should the Escrow Agent resign and the SRA fails to select another Escrow Agent to act in its stead, the Escrow Agent shall have the right to institute a bill of interpleader in any court of competent jurisdiction to determine the rights of the parties.

2.3 Compensation. Escrow Agent shall be entitled to payment of a fee for service hereunder calculated at the rate of 5/6th of one (1) basis point per month applied to the average daily balance of the Fund during each full month (and prorated for each partial month) prior to the termination of this Escrow Agreement. In addition, Escrow Agent shall be entitled to receive reimbursement for its attorney's fees incurred in the negotiation of this Escrow Agreement along with its reasonable costs and expenses incurred hereunder (including those reasonable attorney's fees and expenses incurred to its counsel). Escrow Agent may debit the Fund for payment of those amounts due Escrow Agent hereunder, and shall provide written notice to SRA and Dallas that it has done so. Dallas and SRA agree that at the time of the termination of this Escrow Agreement pursuant to Section 1.1 the responsibility for the fees and costs of the Escrow Agent will be divided evenly between Dallas and SRA.

2.4 Indemnification. To the extent permitted by law, the SRA and Dallas hereby jointly and severally agree to indemnify and hold Escrow Agent, its affiliates and their officers, employees, successors, assigns, attorneys and agents (each an "Indemnified Party") harmless from all losses, costs, claims, demands, expenses, damages, penalties and attorney's fees suffered or incurred by any Indemnified Party or Escrow Agent as a result of anything which it may do or refrain from doing in connection with this Escrow Agreement or any litigation or cause of action arising from or in conjunction with this Escrow Agreement or involving the subject matter hereof or Escrow Funds or monies deposited hereunder or for any interest upon any such monies, including, without limitation, arising out of the negligence of Escrow Agent; provided that the foregoing indemnification shall not extend to the gross negligence or willful misconduct of Escrow Agent. This indemnity shall include, but not be limited to, all costs incurred in conjunction with any interpleader which the Escrow Agent may enter into regarding this Escrow Agreement.

2.5 Miscellaneous.

A. Escrow Agent shall have no obligation to make any disbursement, investment, or other use of the Fund until and unless it has collected funds. Escrow Agent shall not be liable for collection items until the proceeds of the same in good funds have been received.

B. Escrow Agent may resign at any time by giving written notice to the SRA, whereupon the SRA will immediately appoint a successor Escrow Agent. Until a successor Escrow Agent has been named and accepts its appointment or until another disposition of the subject matter of this Escrow Agreement has been agreed upon by all parties hereto, Escrow Agent shall be discharged of all of its duties hereunder save to keep the subject matter whole.

C. All representations, covenants, and indemnifications contained in this Article II shall survive the termination of this Escrow Agreement.

ARTICLE III GENERAL PROVISIONS

3.1 Discharge of Escrow Agent. Upon the delivery of all of the Fund pursuant to the terms of this Escrow Agreement, the duties of Escrow Agent shall terminate and Escrow Agent shall be discharged from any further obligation hereunder.

3.2 Escrow Instructions. Attached hereto as Schedule 1 (the "Security Schedule") is a list of authorized signatories (with signature identification) and authorized call-back persons for each of the parties to this Escrow Agreement (other than the Escrow Agent). In the event funds transfer instructions or other disbursement instructions or directions are given in writing, whether by telecopier or otherwise, which differ from the funds transfer instructions to disburse funds that are set out in Section 1.4, the Escrow Agent shall seek confirmation of such instructions or directions by telephone call-back to the person or persons designated on the Security Schedule, and the Escrow Agent may rely upon the confirmation of anyone purporting to be the person or persons so designated. The authorized signatures and the persons and telephone numbers for call-backs may be changed only in a writing actually received and acknowledged by the Escrow Agent, and in the case of an addition of an authorized signatory, accompanied by an incumbency certificate with signature identification certified by an existing authorized signatory. If the Escrow Agent is unable to contact any of the authorized representatives identified in the Security Schedule for call-back confirmation, the Escrow Agent is hereby authorized to seek confirmation of such instructions by telephone call-back to any one or more of the party's officers. Such officer shall deliver to the Escrow Agent a fully executed incumbency certificate certified by an existing authorized signatory, and the Escrow Agent may rely upon the confirmation of anyone purporting to be such officer.

3.3 Notice. Any payment, notice, request for consent, report, or any other communication required or permitted in this Escrow Agreement shall be in writing and shall be deemed to have been given when personally delivered to the party hereunder specified or when placed in the United States mail, registered or certified, with return receipt requested, postage prepaid and addressed as follows:

If to Escrow Agent:

FIRST FINANCIAL TRUST & ASSET MANAGEMENT COMPANY, N.A.
400 Pine Street, Suite 300
Abilene, TX 79601
Attn: Kirk Thaxton, President & CEO

If to Dallas:

Attn: _____

If to SRA:

Attn: _____

Any party may unilaterally designate a different address by giving notice of each such change in the manner specified above to each other party. Notwithstanding the foregoing, no notice to the Escrow Agent shall be deemed given to or received by the Escrow Agent unless actually delivered to an officer of the Escrow Agent having responsibility under this Escrow Agreement.

3.4 Governing Law. This Escrow Agreement is being made in and is intended to be construed according to the laws of the State of Texas. It shall inure to and be binding upon the parties hereto and their respective successors, heirs and assigns.

3.5 Construction. Words used in the singular number may include the plural and the plural may include the singular. The section headings appearing in this instrument have been inserted for convenience only and shall be given no substantive meaning or significance whatsoever in construing the terms and conditions of this Escrow Agreement.

3.6 Amendment. The terms of this Escrow Agreement may be altered, amended, modified or revoked only by an instrument in writing signed by the parties to this Escrow Agreement.

3.7 Force Majeure. Escrow Agent shall not be liable to either or both of the other parties to this Escrow Agreement for any loss or damage arising out of any acts of God, strikes, equipment or transmission failure, war, terrorism, or any other act or circumstance beyond the reasonable control of Escrow Agent.

3.8 Written Agreement. This Escrow Agreement represents the final agreement between the parties, and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

EXECUTED as of the dates set forth below.

City of Dallas, Texas,
A Texas municipal corporation

Date: _____

By: _____
Name: _____
Title: _____

Sabine River Authority of Texas,
A Texas governmental agency

Date: _____

By: _____
Name: _____
Title: _____

First Financial Trust & Asset Management Company, N.A., Escrow Agent, hereby accepts its appointment as Escrow Agent as described in the foregoing Escrow Agreement, subject to the terms and conditions set forth therein.

FIRST FINANCIAL TRUST & ASSET
MANAGEMENT COMPANY, N.A.

Date: _____

By: _____
Name: _____
Title: _____

Schedule 1

SECURITY SCHEDULE

**Telephone Number(s) for Call-Backs and
Person(s) Designated to Confirm Funds Transfer Instructions and
Execute Instructions, and Other Documents in Connection with this
Escrow Agreement**

If to Dallas:

<u>Name</u>	<u>Telephone Number</u>	<u>Signature Identification</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

If to SRA:

<u>Name</u>	<u>Telephone Number</u>	<u>Signature Identification</u>
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

Telephone call-backs shall be made to SRA and Dallas if joint instructions are required pursuant to this Escrow Agreement.