

Control Number: 43732



Item Number: 25

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*House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014*

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*

Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

February 11, 2010

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

CHIEF CLERKS OFFICE

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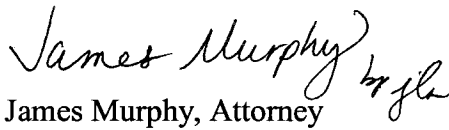
TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

RE: Tall Timbers Utility Company, Inc.
SOAH Docket No. 582-10-0350
TCEQ Docket No. 2009-1381-UCR

Dear Ms. Castañuela:

Enclosed for filing is the Office of Public Interest Counsel's Response to Tall Timbers Utility Company, Inc. dba Liberty Water's Requests for Information to All Other Parties in the above-entitled matter.

Sincerely,



James Murphy, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

SOAH DOCKET NO. 582-10-0350
TCEQ DOCKET NO. 2009-1381-UCR

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IN RE SEWER RATE/TARIFF CHANGE
APPLICATION OF TALL TIMBERS
UTILITY COMPANY, INC., CCN NO.
20694, IN SMITH COUNTY, TEXAS,
APPLICATION NO. 36385-R

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BEFORE THE ~~STATE~~ OFFICE
OF
ADMINISTRATIVE HEARINGS

THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO TALL TIMBERS UTILITY COMPANY, INC. DBA LIBERTY WATER'S REQUESTS FOR INFORMATION TO ALL OTHER PARTIES

I.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1. Provide copies of all documents, tangible items and other demonstrative evidence to be used by the Opposing Party at trial.

Answer: At this time, OPIC does not intend to present a direct case. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 2. Provide copies of all studies, reports, compilations, treatises, contracts, correspondence, photographs, graphs, diagrams, maps, charts, financial statements, invoices, bids, checks, governmental records, test results, audits, and other documents reviewed and relied upon by any witness for the Opposing Party in this cause.

Answer: At this time, OPIC does not intend to call any witnesses. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 3. Provide copies of all documentation in the possession or control of the Opposing Party that demonstrates that Liberty Water cannot provide continuous and adequate sewer service to any portion of its certificated service area subject to this rate change. Please indicate on the document, if not already discernible, which portion of Liberty Water's certificated service area is receiving inadequate service.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 4. Provide copies of all documents, studies, treatises, reports, compilations, computer programs (with associated databases), charts, diagrams, maps, pictures, text books and other tangible materials reviewed by each testifying expert witness for the Opposing Party used or relied upon by that Opposing Party's expert witness in formulating any opinion to be offered at trial by the

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 9. Provide copies of all documentation in the possession or control of the Opposing Party that demonstrate that any component of Liberty Water's proposed capital structure is inappropriate for sewer utility ratemaking purposes in this docket. With respect to each item produced, identify with specificity which component is being challenged and the expert witness that will sponsor that document and this opinion evidence at trial.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 10. Provide copies of all documentation in the possession or control of the Opposing Party that demonstrate that any component of Liberty Water's proposed sewer rate design is inappropriate for utility ratemaking purposes in this docket. With respect to each item produced, identify with specificity which rate design component is being challenged and the expert witness that will sponsor that document and this opinion evidence at trial.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 11. Provide copies of all documentation in the possession or control of the Opposing Party that demonstrate the Party's position on the phase-in of sewer rates. With respect to each item produced, identify with specificity which rate is being challenged and the expert witness that will sponsor that document and this opinion evidence at trial.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 12. Provide copies of all documentation in the possession or control of the Opposing Party that demonstrate that any non-service fee or charge (sewer tariff) proposed by Liberty Water is inappropriate. With respect to each item produced, identify with specificity which fee or charge is being challenged and the expert witness that will sponsor that document and this opinion evidence at trial.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 13. Provide copies of all documentation in the possession or control of the Opposing Party that demonstrate that any component, section or provision of Liberty Water's proposed sewer utility tariff should not be approved in this docket. With respect to each item produced, identify with specificity which tariff component, section or provision is being challenged and the expert witness that will sponsor that document and this opinion evidence at trial.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

recovered through rates, i.e., included in the revenue requirement or surcharged. With respect to each item produced, identify with specificity which expenses and the expert witness that will sponsor that document and this opinion evidence at trial.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 20. Provide copies of all documentation in the possession or control of the Opposing Party that identify each person or entity that the Opposing Party asserts is an "affiliate interest" of Liberty Water as the term is defined by Texas Water Code, §13.002(2). With respect to each item produced, identify with specificity which person or entity is the "affiliate interest" and the expert witness that will sponsor that document and this opinion evidence at trial.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 21. Provide copies of all documentation in the possession or control of the Opposing Party that identify each individual payment to an affiliate interest of Liberty Water for "costs of any services, or any property, right or thing, or for interest expense" per Texas Water Code, §13.185(e). With respect to each item produced, identify with specificity each the "affiliate transaction" and the expert witness that will sponsor that document and this opinion evidence at trial.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 22. Provide copies of all documentation in the possession or control of the Opposing Party that identify each individual payment to an affiliate interest of Liberty Water for "costs of any services, or any property, right or thing, or for interest expense" per Texas Water Code, §13.185(e) that the Opposing Party asserts should not be recoverable through rates. With respect to each item produced, identify with specificity each the "affiliate transaction" and the expert witness that will sponsor that document and this opinion evidence at trial.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 23. Provide copies of all documentation in the possession or control of the Opposing Party that identify any sewer utility cost of service allocations proposed by Liberty Water that the Opposing Party believes are incorrect or otherwise inappropriate for ratemaking purposes in this docket. With respect to each item produced, identify with specificity each the challenged allocation and the expert witness that will sponsor that document and this opinion evidence at trial.

Answer: At this time, OPIC has not made this contention. Therefore, no items have been identified that are responsive to the request.

REQUEST FOR PRODUCTION NO. 24. Provide copies of all documentation in the possession or control of the Opposing Party that identify any sewer utility rate base allocations proposed by Liberty Water that the Opposing Party believes are incorrect or otherwise inappropriate for ratemaking purposes in this docket.

(c) the legal theories and, in general, the factual bases of the responding party's claims or defenses (the responding party need not marshal all evidence that may be offered at trial);

Answer: OPIC has no claims or defenses developed in this matter. Any recommendations that OPIC makes to the State Office of Administrative Hearings or the Commission will be based on applicable law and the evidentiary record developed through the contested case hearing process. Therefore, any opinion of OPIC's would be given following the conclusion of the hearing on the merits.

(e) the name, address, and telephone number of persons having knowledge of relevant facts, and a brief statement of each identified person's connection with the case;

Answer: OPIC presently is unaware of any persons that have knowledge of relevant facts other than the parties, the City of Tyler, and those persons identified in Applicant's application file, which is a public record and readily accessible at the TCEQ Chief Clerk's Office.

(f) for any testifying expert:

(1) the expert's name, address, and telephone number;

(2) the subject matter on which the expert will testify;

(3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;

(4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:

(A) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and

(B) the expert's current resume and bibliography;

Answer: OPIC presently does not intend to call any expert witnesses.

(i) any witness statements described in Rule 192.3(h);

Answer: OPIC presently is unaware of any witness statements other than those equally available statements contained in the Chief Clerk's file on this matter at the TCEQ.

REQUEST FOR ADMISSION NO. 6. Admit that all of Liberty Water's collection system capacity is used and useful to public service.

Admit _____

Deny _____

Detailed reasons why party cannot admit or deny: Based upon a reasonable inquiry, the information known or easily obtainable is insufficient to enable OPIC to admit or deny.

REQUEST FOR ADMISSION NO. 7. Admit that public utility plant required to be constructed to maintain compliance with TCEQ and or USEPA rules, is *de facto* "used and useful" for ratemaking purposes under Water Code Chapter 13, Subchapter F.

Admit _____

Deny _____

Detailed reasons why party cannot admit or deny: Based upon a reasonable inquiry, the information known or easily obtainable is insufficient to enable OPIC to admit or deny.

REQUEST FOR ADMISSION NO. 8. Admit that public utility plant required to be constructed to maintain compliance with TCEQ and or USEPA rules, is *de jure* "used and useful" for ratemaking purposes under Water Code Chapter 13, Subchapter F.

Admit _____

Deny _____

Detailed reasons why party cannot admit or deny: Based upon a reasonable inquiry, the information known or easily obtainable is insufficient to enable OPIC to admit or deny.

REQUEST FOR ADMISSION NO. 9. Admit that no sewer rate is *de jure* "unreasonable" if it was set following the ratemaking methodologies and criterion in Water Code Chapter 13, Subchapter F.

Admit _____

Deny _____

Detailed reasons why party cannot admit or deny: Based upon a reasonable inquiry, the information known or easily obtainable is insufficient to enable OPIC to admit or deny.

REQUEST FOR ADMISSION NO. 10. Admit that no sewer rate is *de facto* "unreasonable" if it was set following the ratemaking methodologies and criterion in Water Code Chapter 13, Subchapter F.

Admit _____

Deny _____

Detailed reasons why party cannot admit or deny: Based upon a reasonable inquiry, the information known or easily obtainable is insufficient to enable OPIC to admit or deny.

REQUEST FOR ADMISSION NO. 11. Admit that sewer rates must be set according the ratemaking methodologies and criterion in Water Code Chapter 13, Subchapter F.

INTERROGATORY NO. 5. Identify each requested item of tax that you believe should be disallowed in ratemaking and explain why you hold this opinion.

Answer: At this time, OPIC takes no position on this issue. OPIC will not make such a determination until all of the evidence is heard in this matter.

INTERROGATORY NO. 6. Identify each individual component in Liberty Water's proposed capital structure you believe should not be included in ratemaking formulas in this docket and explain why you hold this opinion.

Answer: At this time, OPIC takes no position on this issue. OPIC will not make such a determination until all of the evidence is heard in this matter.

INTERROGATORY NO. 7. Identify each rate of return on each component of Liberty Water's proposed capital structure you believe should not be included in ratemaking formulas in this docket and explain why you hold this opinion.

Answer: At this time, OPIC takes no position on this issue. OPIC will not make such a determination until all of the evidence is heard in this matter.

INTERROGATORY NO. 8. Identify each individual element of Liberty Water's proposed rate design or rate design methodology you believe is not appropriate for ratemaking in this docket and explain why you hold this opinion.

Answer: At this time, OPIC takes no position on this issue. OPIC will not make such a determination until all of the evidence is heard in this matter.

INTERROGATORY NO. 9. Identify all alternative rate design methodologies you believe are more appropriate for use in this docket. Explain why you hold this opinion.

Answer: At this time, OPIC takes no position on this issue. OPIC will not make such a determination until all of the evidence is heard in this matter.

INTERROGATORY NO. 10. Identify each individual affiliate transaction you believe should not be approved and recovered through rates in this docket. Explain all reasons why you hold this opinion for each transaction identified.

Answer: At this time, OPIC takes no position on this issue. OPIC will not make such a determination until all of the evidence is heard in this matter.

INTERROGATORY NO. 11. Identify each cost of service allocation proposed by Liberty Water that you believe should not be approved. Explain why you hold this opinion for each identified allocation. Identify every alternative allocation methodology you believe is more appropriate for use in this docket. Explain why you hold this opinion for each identified alternative allocation.

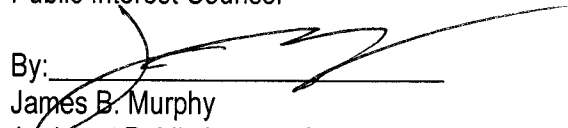
Answer: At this time, OPIC takes no position on this issue. OPIC will not make such a determination until all of the evidence is heard in this matter.

INTERROGATORY NO. 16. Identify the sewer rates you believe that Liberty Water should have and explain how those rates will recover all reasonable and necessary operating expenses, taxes, depreciation on used and useful utility plant dedicated to public service and provide a reasonable opportunity to earn a fair return on that same plant while maintaining the utility's financial integrity. Identify each component of your cost of service that these rates are recovering.

Answer: At this time, OPIC takes no position on this issue. OPIC will not make such a determination until all of the evidence is heard in this matter.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By: 
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(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2010, a true and complete copy of the Office of Public Interest Counsel's Response to Requests for Information to All Other Parties was served to all persons listed on the service list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


James B. Murphy

CHIEF CLERKS OFFICE

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