



Control Number: 44463



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SOAH DOCKET NO. 473-15-2671.WS  
PUC DOCKET NO. 44463

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PETITION OF BLUEBERRY HILLS  
WATER WORKS, LLC., APPEALING  
FROM THE DECISION OF THE CITY  
OF BEEVILLE TO CHANGE  
WHOLESALE WATER RATES

§  
§  
§  
§

BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

STATE OFFICE  
FILING CLERK

**COMMISSION STAFF'S RECOMMENDATION ON ESCROW  
AGREEMENT**

TO THE HONORABLE STEVEN D. ARNOLD:

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Recommendation on Escrow Agreement and would show the following:

**I. BACKGROUND**

On February 18, 2015, Blueberry Hills Water Works, LLC (Blueberry) filed a petition pursuant to Texas Water Code § 13.043 (TWC) appealing the City of Beeville's (City) wholesale water rate and requesting interim water rates (Petition). The Petition challenges City's decision affecting the amount to be paid for water service that was to be effective on January 1, 2015.

On March 3, 2015, the Public Utility Commission of Texas referred this docket to the State Office of Administrative Hearings (SOAH).

On March 31, 2015, City filed a Plea in Abatement, and on April 10, 2015, Blueberry filed its response. On April 15, 2015, SOAH Administrative Law Judge (ALJ) Arnold issued SOAH order No. 3, abating the proceeding and rescheduling the prehearing conference to consider implementation of interim rates. On May 22, 2015, the ALJ issued Order No. 4, setting interim rates and requiring the establishment of an escrow account pursuant to Tex. Admin. Code § 24.30 (TAC).

Finally, on July 30, 2015, and supplemented on August 12, 2015, City filed a pleading requesting approval of an alternative escrow arrangement in response to SOAH Order No. 4. On August 17, 2015, Staff filed a request for additional time to review the escrow agreement. SOAH

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Order No. 5, granted Staff's request and allowed parties until September 1, 2015, to file responses. Therefore, this pleading is timely filed.

## II. COMMENTS AND RECOMMENDATION

Pursuant to TAC § 24.30(a)(1), when a utility is required to deposit all or part of the rate increase into an escrow account it may do so "under such terms and conditions as determined by the commission." TAC §24.30 requires that the deposit be made into an interest-bearing escrow account with a federally insured financial institution.<sup>1</sup> The Texas Administrative Code does not define escrow account. However, Black's Law Dictionary defines an escrow account as "a bank account, generally held in the name of the depositor and an escrow agent, that is returnable to the depositor or paid to a third person on the fulfillment of specified conditions."<sup>2</sup>

The important aspect of an escrow account is that the legal document or property delivered by a promisor to a third party is held by the third party for a given time or until the occurrence of a condition.<sup>3</sup> Moreover, access to the property or in this matter funds, is legally or contractually restricted. Here, First National Bank of Beeville has agreed to restrict access to the account by requiring an order issued by the Public Utility Commission of Texas (PUC) prior to any withdrawals or dispersals.<sup>4</sup> City stated that it was unable to identify a financial institute willing to serve as an escrow agent due to the projected size of the account.<sup>5</sup> Staff agrees that given the size of the account and the costs and fees associated with a traditional escrow account, which for a good cause showing may be deducted from the account,<sup>6</sup> that all parties are both benefitted and protected under City's proposal.

Based on the attached memorandum of Neal Frederick, Enforcement Analyst with the Oversight & Enforcement Division, Staff recommends that the ALJ find that the proposed

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<sup>1</sup> 16 TAC § 24.30(a)(1)

<sup>2</sup> *Escrow account* under Account, *Black's Law Dictionary* (10th ed. 2014).

<sup>3</sup> *Id.*

<sup>4</sup> *Petition of Blueberry Hills Water Works, LLC. Appealing a Decision by the City of Beeville to Change Wholesale Water Rates*, PUC Docket No. 44463, Letter supplementing Beeville's Request for Approval of Escrow Account at 3 (August 12, 2015).

<sup>5</sup> *Id.* at 1, City of Beeville Letter to PUCT re Beeville Escrow Account (July 30, 2015).

<sup>6</sup> *Application of Suburban Util. Co. for A Water Rate/tariff Change Under Certificate of Convenience & Necessity No. 10835 in Harris County, Texas*, PUC Docket No. 42859, SOAH Order No. 14, at 2 (December 12, 2014).

account satisfies the requirements of TAC § 24.30 and Order No. 4. Staff further recommends that City be ordered to provide all parties with copies of monthly statements and quarterly reports, beginning with the September statement.

### **III. CONCLUSION**

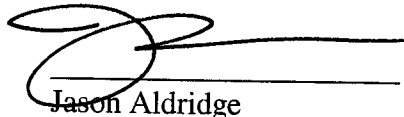
Staff respectfully requests the Administrative Law Judge issue an order consistent with the above recommendations.

**Dated: September 1, 2015**

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Stephen Mack  
Managing Attorney  
Legal Division


A handwritten signature in black ink, appearing to read 'Jason Aldridge', is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on September 1, 2015 in accordance with 16 TAC § 22.74.

  
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Jason Aldridge

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Jason Aldridge, Attorney-Legal Division

**FROM:** Neal Frederick, Enforcement Analyst-Oversight & Enforcement Division

**DATE:** August 17, 2015

**RE:** Docket No. 44463, *Petition of Blueberry Hills Water Works, LLC, Appealing a Decision by the City of Beeville to Change Water Rates*

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### **I. BACKGROUND**

On May 22, 2015, the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) issued Order No. 4, which in part, requires that the City of Beeville (Beeville) place funds in an escrow account in accordance with 16 TAC § 24.30.<sup>1 2</sup> During the pendency of a rate proceeding, a utility may be required to deposit all or part of the rate increase into an interest-bearing escrow account with a federally-insured financial institution, under such terms and conditions as determined by the Public Utility Commission of Texas (Commission).<sup>3</sup> Further, the utility shall file a completed escrow agreement between the utility and the financial institution with the Commission for review and approval.<sup>4</sup>

On July 30, 2015, Beeville filed documents, including its deposit account agreement with The First National Bank of Beeville (FNB) and a deposit receipt establishing the initial deposit for the account labeled “Blueberry Hills Escrow Account” (hereafter, the “Account”), in response to Order No. 4 in the above-captioned proceeding.<sup>5</sup> In its pleading, Beeville stated that the amount of funds to be placed in the Account has averaged \$1,032.42 per month since January 1, 2015.

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<sup>1</sup> 16 Tex. Admin. Code § 24.30 (TAC).

<sup>2</sup> *Petition of Blueberry Hills Water Works, LLC, Appealing a Decision by the City of Beeville to Change Wholesale Water Rates*, Docket No. 44463, SOAH Order No. 4 at 4 (May 22, 2015).

<sup>3</sup> 16 TAC § 24.30(a)(1).

<sup>4</sup> 16 TAC § 24.30(a)(2).

<sup>5</sup> *Petition of Blueberry Hills Water Works, LLC, Appealing a Decision by the City of Beeville to Change Wholesale Water Rates*, Docket No. 44463, Letter to PUCT Re: Beeville Escrow Account (July 30, 2015). (Beeville Letter).

# *Public Utility Commission of Texas*

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## **Memorandum**

On August 12, 2015, Beeville filed a supplement to its July 30, 2015 response. The filing contained a letter from FNB stating that FNB has agreed that withdrawals or transfers from the Account will only be made upon delivery of an order of the Commission authorizing such withdrawals or transfers.<sup>6</sup>

### **II. ANALYSIS**

Pursuant to 16 TAC § 24.30(a)(1), the Commission may require, or not require, that all or part of a rate increase be deposited into an escrow account. Further, the rule provides latitude in setting the terms and conditions.

FNB is a federally insured financial institution. It has been insured by the Federal Deposit Insurance Corporation since January 1, 1934 and is in “active” status.<sup>7</sup>

The Account is an interest bearing account. The “Rate and Fee Schedule” provided in Beeville’s July 30, 2015 response identifies the Account as an interest-bearing account and provides the annual percentage rates and yields for the Account.<sup>8</sup>

The Account restricts withdrawals and transfers. FNB has agreed that withdrawals or transfers from the Account will only be made upon delivery of an order of the Commission authorizing such withdrawals or transfers.<sup>9</sup>

The Account provides an appropriate level of surety given the creditworthiness and financial strength of Beeville. Beeville maintains a Standard and Poor’s (S&P) credit rating of ‘A’,

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<sup>6</sup> *Petition of Blueberry Hills Water Works, LLC, Appealing a Decision by the City of Beeville to Change Wholesale Water Rates*, Docket No. 44463, Letter Supplementing Beeville’s Request for Approval of Escrow Account (Aug. 12, 2015). (Beeville Supplement).

<sup>7</sup> Verified using the following internet resource: <https://research.fdic.gov/bankfind/> FNB’s FDIC No. is 3095.

<sup>8</sup> Beeville Letter at 7.

<sup>9</sup> Beeville Supplement at 3.

# *Public Utility Commission of Texas*

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## **Memorandum**

which is four grades better than S&P's minimum investment-grade crediting of 'BBB-'.<sup>10 11</sup> S&P's 'A' credit rating demonstrates a high level of creditworthiness. A-rated entities are able to issue bonds at low cost and obtain lines of unsecured credit. The 'A' credit rating is a measure of Beeville's financial strength and indicates a low risk of default.

### **III. CONCLUSION AND RECOMMENDATION**

From a financial perspective, the Account and its restrictions, coupled with the financial strength and creditworthiness of Beeville, provide the necessary assurance that the proceeds deposited in the Account will be dispersed in accordance with the outcome of this case. The Account is appropriate in this instance and under these specific circumstances, and should be approved for the purpose required.

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<sup>10</sup> Beeville Letter at 2.

<sup>11</sup> S&P rates bonds and bond issuers from AAA to D. Ratings from AA to CCC may include a plus (+) or minus (-) sign to show relative standing within the major rating categories.