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PUC DOCKET NO. 44485
SOAH DOCKET NO. 473-15-3743.WS

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**RATEPAYERS' APPEAL OF THE
DECISION BY THE CITY OF
WILMER TO CHANGE WATER
RATES**

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PUBLIC UTILITY COMMISSION

OF TEXAS
FILING CLERK

ORDER

This Order addresses the ratepayers' appeal of the decision of the city of Wilmer to increase water rates. On May 7, 2015, the Commission referred this docket to the State Office of Administrative Hearings (SOAH) and issued its preliminary order on June 19, 2015. On June 17, 2015, the SOAH ALJ issued a scheduling order requiring direct testimony to be filed by Wilmer by August 26, 2015.¹ Wilmer did not timely file direct testimony by the August 26, 2015 deadline. On October 7, 2015, Commission Staff filed a motion for summary decision. Wilmer did not file a reply to the motion for summary decision, although it indicated that it was not opposed to Staff's motion.² The ALJ granted Commission Staff's motion and determined that Staff is entitled to a decision in its favor as a matter of law.

The Commission deletes ordering paragraph number two because Texas Water Code (TWC) § 13.043(b), (c), and (d) and 16 Texas Administrative Code (TAC) § 24.41(b) govern when a rate-appeal can be referred to SOAH.

The Public Utility Commission of Texas (Commission) adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. The city of Wilmer, Texas (city) is a municipal corporation home-rule city operating under the Texas Constitution and Texas Local Government Code §§ 9.001-.008.
2. The city provides water and sewer services to ratepayers living within and outside the city's corporate city limits.

¹ SOAH Order No. 2

² Commission Staff's Response to the Direct Testimony of Ratepayers (Attachment A) (Oct. 26, 2015).

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3. On November 20, 2014, the City Council adopted Ordinance No. 14-1120A that increased water and sewer rates charged to ratepayers, including ratepayers that live outside the city limits.
4. The rate ordinance was scheduled to take effect on January 1, 2015.
5. The city did not provide notice of this rate increase to its ratepayers living outside the city limits.
6. The city never charged ratepayers living outside the city's corporate limits the rates adopted in the rate ordinance.
7. The rate ordinance provided that the rates for water and/or sewer customers living outside the city's corporate limits who receive water and/or sewer service from the city be double the rates charged for customers living within the city's corporate limits.
8. On February 24, 2015, 12 ratepayers living outside the city's corporate limits filed an appeal of the water rates contained in the rate ordinance with the Commission.
9. At the time of the appeal, the city had 26 customers living outside the city's corporate limits.
10. On May 7, 2015, the Commission referred this matter to the SOAH.
11. On June 17, 2015, SOAH Administrative Law Judge Lilo D. Pomerleau issued Order No. 2, adopting a procedural schedule, which included a deadline for filing prefiled direct testimony and a date for the hearing on the merits.
12. On June 19, 2015, the Commission issued its Preliminary Order.
13. The city failed to timely file direct testimony or file a response to Commission Staff's second or third set of requests for information.
14. On October 7, 2015, Commission Staff filed a motion for summary decision.
15. The city filed no reply to Commission Staff's motion for summary decision.
16. The ratepayers filed a reply which supports Commission Staff's motion for summary decision.

17. There is no evidence to support charging ratepayers who reside outside the city's corporate limits double the rates that the city charges its customers/ratepayers residing within the city limits.
18. The rates adopted in the rate ordinance are unreasonably preferential in favor of ratepayers who reside inside the city's corporate limits, and discriminatory and prejudicial against city ratepayers residing outside the city's corporate limits.
19. The city did not present evidence of reasonable expenses incurred in this matter and did not seek recovery of any rate case expenses.
20. It is reasonable for the city to charge the following water rates to its customers residing outside the city limits:
Base rates (including 0 to 2,000 gallons): \$12.00
Volumetric rate (per 1,000 gallons, after the first 2,000 gallons): \$4.00.

II. Conclusions of Law

1. On September 1, 2014, subject matter jurisdiction over water and wastewater rate cases was transferred to the Commission. Act of May 25, 2013, 83rd Leg., R.S., ch 171 (S.B. 567), § 13, eff. Sept. 1, 2013.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law pursuant to TWC § 13.041 (West 2008 and Supp. 2015) and Texas Government Code, Chapter 2003 (West 2008 and Supp. 2015).
3. The ratepayers of a municipally-owned utility residing outside the corporate limits of that municipality may appeal a decision affecting their water and sewer rates to the utility commission pursuant to TWC § 13.043(b).
4. An appeal under TWC § 13.043(b) must be initiated by filing a petition for review with the utility commission within 90 days after the effective day of the rate change, and the petition must be signed by the lesser of 10,000 or 10% of those ratepayers whose rates have been changed and who are eligible to appeal pursuant to TWC § 13.043(c).

5. Ratepayers met the requirements to appeal under TWC § 13.043(c) by gathering signatures of at least 10% of affected ratepayers pursuant to TWC § 13.043(b), (c).
6. The city bears the burden of proof to establish that the contested rates are just and reasonable pursuant to 16 TAC § 24.12.
7. A utility's rates must be just and reasonable; not be unreasonably preferential, prejudicial, or discriminatory; and be sufficient, equitable, and consistent in application to each class of customers pursuant to TWC § 13.043(j) and 16 TAC § 24.41(i).
8. The city failed to meet its burden of proof to show that the rates established under its rate ordinance are just and reasonable and not unreasonably preferential, prejudicial, or discriminatory pursuant to 16 TAC § 24.41(i).
9. Because the city did not impose the new rates on its ratepayers residing outside the city's corporate limits, a refund is not necessary.
10. Commission Staff is entitled to summary decision because the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, and evidence of record show that there is no genuine issue as to any material fact pursuant to 16 TAC § 22.182.

III. Ordering Paragraphs

In accordance with the above findings of fact and conclusions of law, the Public Utility Commission of Texas issues the following Order:

1. Beginning with the next billing cycle after this Order is issued, the city of Wilmer shall charge the following water rates to its customers living outside its corporate limits:

Base rates (including 0 to 2,000 gallons): \$12.00
Volumetric rate (per 1,000 gallons, after the first 2,000 gallons): \$4.00.
2. All other motions, requests for entry of specific findings of fact and conclusions of law, and other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 6th day of ~~December~~ ^{January} 2016 ~~2015~~.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER