



Control Number: 44707



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RECEIVED

APPLICATION OF CRYSTAL SPRINGS WATER COMPANY, INC. FOR A PASS THROUGH RATE CHANGE (38013-R)

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PUBLIC UTILITY COMMISSION: 33

PUBLIC UTILITY COMMISSION OF FILING CLERK

TEXAS

COMMISSION STAFF'S RESPONSE TO NOTICE SETTING DEADLINE FOR STAFF'S RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Response to Notice Setting Deadline for Staff's Recommendation. In support of this Response, Staff shows the following:

I. BACKGROUND

On May 5, 2015, Crystal Springs Water Co., Inc. (Applicant) filed an application with the Public Utility Commission of Texas (Commission) to implement a pass through rate change due to an increase in fees imposed by Porter Special Utility District's GRP Plan.¹ The Application included a "Porter SUD Joint GRP update" letter from Porter Special Utility District (SUD).² The most recent tariff available to Staff reveals three pass through clauses in the tariff: Lone Star Ground Water Conservation District (Montgomery County); San Jacinto River Authority (Montgomery County); and Bluebonnet Ground Water Conservation District (Walker County). Porter SUD is not named in the pass through clauses.

May 7, 2015, Commission Advising and Docket Management (CADM) issued a Notice Setting Deadline for Staff's Recommendation directing Staff to file a recommendation on the administrative completeness of the application and notice, and to propose a procedural schedule, if appropriate, on or before May 27, 2015. On May 27, 2015, Staff filed a recommendation that the application be found deficient. On June 2, 2015, The Commission issued a Notice Finding Application Deficient (Notice), and listed the following deficiencies:

¹ Application of Crystal Springs Water Co., Inc. for a Pass Through Rate Change (Application) at 1.

² Id. at 3

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- Applicant failed to submit sufficient documentation to support its claim that Lone Star Conservation District increased their rate.
- Applicant failed to submit updated information indicating who is charging the pass through fees or clarifying what pass through clauses are effective in its tariff.
- Application failed to indicate which of its subdivisions will be subject to the pass through rate changes.

The Notice also required the Applicant to submit the information requested in order to cure the deficiencies in the application by June 29, 2015. Applicant subsequently provided information which revealed that there had been no increase in the fees due from Lone Star GCD, but instead, the increase was for the GRP fee that was administered by Porter SUD.³ Applicant also stated that under its existing tariff “there is an error that needs to be corrected. San Jacinto River Authority GRP Plan needs to be removed, and replaced with Porter SUD.”⁴ Applicant also submitted information indicating which subdivisions would be affected.⁵ The Notice also required Staff to file a recommendation on the administrative completeness of the application and notice and to propose a new procedural schedule, if appropriate, by July 29, 2015. On July 24, 2015, Staff filed Staff’s Request for an Extension of the Deadline for Staff’s Recommendation because of the complexity of the GRP agreements and investigating prior tariff filings. On July 29, 2015, the Commission granted an extension to August 12, 2015, therefore this filing is timely.

II. STAFF’S RECOMMENDATION THAT APPLICATION FOR IMPLEMENTATION OF A WATER USE FEE PREVIOUSLY APPROVED BY THE COMMISSION SHOULD BE REJECTED.

Crystal Springs filed this application as an implementation of a previously approved provision for a water use fee. 16 TAC § 24.21 (h)(4) is the main rule that discusses implementation of a pass through for a water use fee. That section applies to “a utility that wishes to revise utility billings to its customers pursuant to an approved ... water use fee provision shall take the following actions....” The implementation of an increase in a water use fee is a minor tariff change but only

³ *Revised Tariff filed by Crystal Springs* at 1.

⁴ *Id.*

⁵ *Id.* at 5-6 (exhibit “B”).

if it is for a “water use fee previously approved by the commission.”⁶ Staff recommends that the Commission reject the requested tariff change pursuant to 16 TAC § 24.21(f) because the tariff change applied for is not in compliance with 16 TAC § 24.21(b)(2)(A)(iii) and 16 TAC § 24.21(h)(4). The reason why it is non-compliant is that there is no water use fee pass through provision in the tariff that relates to this implementation attempt. The provision in Applicant’s existing tariff relates to a different agreement than the one Applicant is attempting to implement. Specifically, Crystal Springs Notice of Implementation of Pass Through Clause asserts that the pass through clause had been approved in 2006 and affirmed in 2009.⁷ However, in response to the deficiency notice issued by the Commission on June 2, 2015, the Applicant attached an agreement between Crystal Springs and Porter SUD that was executed in 2011, as the agreement that the increase related to.⁸ Therefore, the increase being implemented cannot relate to the provision Applicant claims was put into its tariff in 2006.

As detailed in the attached memo from Fred Bednarski III, of the Water Utilities Division, Staff has reviewed the application and recommends that the application be rejected because it is not an application for implementation of a water use fee provision previously approved by the Commission. In an attempt to show that the current provision in Applicant’s tariff related to the increase in the Porter SUD fee, Crystal Springs provided a copy of an agreement showing that in 2008 Porter SUD and San Jacinto River Authority agreed to jointly administer a program for which the water use fee was charged.⁹ Crystal Springs contended that the water use fee provision in its tariff that named San Jacinto River Authority was an error and should have named Porter SUD instead.¹⁰ However, even that agreement would have been after the 2006 date on which the Applicant claimed the original pass through provision was added to its tariff. Furthermore, in the present application Crystal Springs provided a letter dated October 28, 2014 from Porter SUD to support its claim that the rate charged by the GRP had increased.¹¹ Applicant also provided the

⁶ 16 TAC § 24.21(b)(2)(A)(iii)

⁷ *Application of Crystal Springs Water Company, Inc. for a pass-through rate change* at 3.

⁸ *Revised Tariff filed by Crystal Springs* at 10-19

⁹ *Agreement for Joint Development of Water Resources Assessment Plan, is attached hereto and was provided to Staff by Applicant.*

¹⁰ *Revised Tariff filed by Crystal Springs* at 1

¹¹ *Revised Tariff filed by Crystal Springs* at 8.

agreement that the October 28, 2014 letter related to.¹² That agreement was a new GRP agreement that is only between Porter SUD and Crystal Springs and contains no reference to San Jacinto River Authority. Therefore, the applicant cannot simply substitute the Porter SUD for San Jacinto River Authority and implement a change in a water use fee for an agreement that has not been approved by the Commission. Both 16 TAC § 24(h)(4) and § 21.24(b)(2)(A)(iii) require the tariff to include a previously approved pass through provision before an implementation of a change in that water use fee can be implemented. In order to recover this increase in water use fees, Applicant needs to have a provision in its tariff that relates directly to the increase sought to be passed through.¹³

III. PROPOSED PROCEDURAL SCHEDULE

Staff recommends that the Commission adopt the following procedural schedule:

Deadline for Applicant to file a response to Commission Staff's Response to Notice Setting Deadline for Staff Recommendation	September 14, 2015
Deadline for Staff's Reply to Applicant's Response	October 14, 2015

¹² *Id.* at 10-20.

¹³ *See*, 16 TAC § 24.21(h)(2). *See also*, 16 TAC §§ 24.21(b)(2)(A)(viii) and 24.21(k)(2)(C)&(D).

IV. CONCLUSION

Staff requests that an order be entered consistent with this recommendation.

DATE: August 12, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division

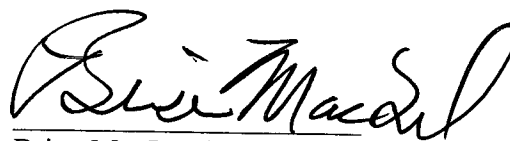


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DOCKET NO. 44707

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on August 12, 2015 in accordance with 16 TAC § 22.74.



Brian MacLeod, Attorney

PUC Interoffice Memorandum

To: Brian MacLeod
Legal Division

Thru: Tammy Benter, Director
Debi Loockerman, Team Lead
Water Utilities Division

From: Fred Bednarski III, Financial & Managerial Review Specialist
Water Utilities Division

Date: August 12, 2015

Subject: **Docket No. 44707;** *Application of Crystal Springs Water Co., Inc. to Implement a Pass Through Rate Change*

On May 22, 2015, Crystal Springs Water Co., Inc. (Applicant) filed an application to implement a groundwater reduction plan fee charged by Porter Special Utility District (SUD) in Montgomery County, CCN No. 11373.

Pursuant to 16 Texas Admin. Code §§ 24.8, 24.21 (TAC), staff reviewed the information submitted in this application and found the application deficient. Specifically, the Applicant's current tariff does not include a pass through provision for a groundwater reduction plan (GRP) fee for Porter SUD. In result we requested the following information:

- A copy of the Crystal Springs Water Company's agreement with Porter SUD indicating the GRP fees required,
- Verification of the continued validity of the San Jacinto River Authority Ground Water Reduction Fee, in the alternative, confirmation that the fee should be removed from the tariff,
- Copies of paid remittance advices to Porter SUD for the new GRP rate,
- A list of systems subject to each pass through fee addressed by this application and included on the Applicant's tariff,
- A copy of the Applicant's most recent approved tariff.

Staff has since reviewed the supplemental information filed by the applicant on July 3, 2015. The applicant indicated that "Under our existing tariff, there is an error that needs to be corrected. San Jacinto River Authority GRP Plan needs to be removed, and replaced with Porter SUD. Crystal Springs Water Company does not collect any additional fees for the River authority."

After reviewing the GRP Participation Agreements, prior tariffs and prior records, we determined that Crystal Springs Water Co., Inc. originally signed a GRP agreement with San Jacinto River Authority and Porter SUD in regards to the Lone Star Water Conservation District in June 2008. In March 2011 Crystal Springs Water Company then entered into a new GRP Plan agreement in regards to the Lone Star Water Conservation District that is only between Porter SUD and Crystal Springs Water Company. The previously approved tariff is not in error, but the Applicant has not applied for a new pass through provision to address the change from one contract to another with different parties and provisions. Therefore, staff recommends dismissal of this application pursuant to 16 TAC § 24.21(b)(2)(a)(iii) since the GRP fee increase requested is not subject to a pass through clause previously approved by the commission. Crystal Springs

Water Co., Inc. must file a rate application to obtain approval of the new GRP fee pass through provision pursuant to the Texas Water Code § 13.187 and 16 TAC § 24.21(h) and amend their tariff accordingly.

**AGREEMENT FOR JOINT DEVELOPMENT OF
WATER RESOURCES ASSESSMENT PLAN**

This AGREEMENT FOR JOINT DEVELOPMENT OF WATER RESOURCES ASSESSMENT PLAN, hereinafter "Agreement", is entered into by and between the San Jacinto River Authority, hereinafter "SJRA", and Porter Special Utility District, hereinafter "Water System Owner" for the joint development of a Water Resources Assessment Plan.

RECITALS

WHEREAS, the State of Texas has established that a regional approach for planning and developing water resource projects is the best way to meet local needs and manage the State's resources; and

WHEREAS, the SJRA was created by the Legislature to manage the water resources of the San Jacinto River Basin; and

WHEREAS, the Lone Star Groundwater Conservation District, hereinafter "LSGCD" has established a District Regulatory Plan to reduce groundwater production in Montgomery County; and

WHEREAS, the SJRA and Water System Owner are interested in exploring options to ensure that adequate water supplies are available for their respective services areas and to meet the requirements of the LSGCD; and

WHEREAS, the Water Resources Assessment Plan required by LSGCD's District Regulatory Plan, hereinafter "WRAP", will provide an assessment of existing water supply facilities, future water demands, and strategies to meet those demands.

NOW, THEREFORE, SJRA and Water System Owner in consideration of the mutual covenants, obligations, and benefits provided herein, agree as set forth above and hereinafter.

Article I - General Provisions

- 1.1 The SJRA intends to develop and submit a WRAP, Parts I and II, which will include Water System Owner's intended service area and associated water demands to meet the requirements of the LSGCD District Regulatory Plan.
- 1.2 Water System Owner agrees that its projected water demands will be included in the SJRA's WRAP, however this Agreement does not obligate Water System Owner to participate in any future plan or in the development of any regional surface water treatment plant and transmission system with the SJRA.

- 1.3 This Agreement does not constitute a water supply agreement between the SJRA and the Water System Owner and does not obligate the SJRA to participate in any future plan with the Water System Owner.
- 1.4 SJRA may include additional groundwater users in the WRAP.
- 1.5 The Effective Date of this Agreement shall be the date of execution by the SJRA as indicated below.
- 1.6 This Agreement shall be binding on the Water System Owner upon execution.
- 1.7 This Agreement shall expire upon approval of the WRAP by LSGCD, unless extended by both parties.

Article 2 - Responsibilities

- 2.1 SJRA will administer the development of the WRAP, including contracting for any professional services with third parties as required.
- 2.2 Water System Owner will provide necessary information and input in a timely manner to SJRA as needed for the development of the WRAP.
- 2.3 SJRA will provide a draft WRAP to Water System Owner prior to submittal to LSGCD. Water System Owner may provide comments prior to preparation and subsequent submittal of a final WRAP to LSGCD.

Article 3 - Fee

- 3.1 Water System Owner shall pay SJRA a lump sum fee for the development of the WRAP, Parts I and II based on the following tiered structure. For Water System Owners that own two or more separate water systems, the fee shall be applied per system up to the cap described below.

<u>Total 2008 Projected Annual Water Demand</u>	<u>Fee</u>
Greater than 600,000,000 gallons	\$9,000
Less than or Equal to 600,000,000 gallons	\$3,000
Cap for Owners of Multiple Systems	\$9,000

- 3.2 Water System Owner shall pay SJRA the full amount specified above not later than June 15, 2008.
- 3.3 If such fee is not timely paid, SJRA may terminate this Agreement and exclude Water System Owner from the SJRA's WRAP.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed.

By: Richard J. Tramm

June 12, 2008
Date

Printed Name: Richard J. Tramm

Title: General Manager

SAN JACINTO RIVER AUTHORITY

By: Reed Eichelberger
Reed Eichelberger, P.E.
General Manager

6/23/08
Date