



Control Number: 44844



Item Number: 35

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**DeAnn T. Walker**  
Chairman  
**Arthur C. D'Andrea**  
Commissioner  
**Shelly Botkin**  
Commissioner  
**John Paul Urban**  
Executive Director



**Greg Abbott**  
Governor

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PUBLIC UTILITY COMMISSION  
TELEPHONE CLERK

***Public Utility Commission of Texas***

TO: DeAnn T. Walker, Chairman  
Arthur C. D'Andrea, Commissioner  
Shelly Botkin, Commissioner  
  
All Parties of Record  
  
FROM: Irene Montelongo  
Director, Docket Management  
  
RE: **Open Meeting of December 20, 2018**  
**PUC Docket No. 44844**  
**SOAH Docket No. 473-16-0122.WS** – *Application of Sunset Water LLC for a Rate/Tariff Change*  
  
DATE: November 20, 2018

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, December 20, 2018, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Wednesday, December 12, 2018.

On September 10, 2015, the Commission referred the proceeding to the State Office of Administrative Hearings. Subsequently, the docket was returned to the Commission.

**If there are no corrections or exceptions, no response is necessary.**

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**PUC DOCKET NO. 44844**  
**SOAH DOCKET NO. 473-16-0122.WS**

<b>APPLICATION OF SUNSET WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>LLC FOR A RATE/TARIFF CHANGE</b>	<b>§</b>	
	<b>§</b>	<b>OF TEXAS</b>

**PROPOSED ORDER**

This Order addresses the application of Sunset Water LLC (Sunset) for authority to increase water rates. Sunset and Commission Staff filed an unopposed agreement that resolves certain issues among the parties in this proceeding. The Commission approves Sunset's change in water rates as modified by the agreement to the extent provided in this Order.

The Commission adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

**Applicant**

1. Sunset is a domestic limited liability company registered with the Texas Secretary of State under file number 801551023.
2. Sunset operates a public water system under Texas Commission on Environmental Quality identification number 1710023.
3. Sunset provides water service under certificate of convenience and necessity number 13224.

**Application**

4. On June 16, 2015, Sunset filed an application for authority to increase water rates and revise the associated water tariff, effective August 15, 2015.
5. Utilizing a test year ending December 31, 2014, Sunset requested an annual revenue requirement increase of \$33,784, for an overall revenue requirement of \$71,560.
6. In the application, Sunset calculated operations and maintenance expense of \$61,774; depreciation expense of \$2,464; income taxes of \$353; other taxes of \$5,395; and return of \$1,574.

7. In the application, Sunset calculated an original cost of plant in service of \$76,757; accumulated depreciation of \$31,486; and net plant in service of \$45,262.<sup>1</sup>
8. Sunset requested a rate of return of 5%.
9. Sunset's current and proposed metered water rates are as follows:

CURRENT RATES		PROPOSED RATES	
Monthly base rate including <u>0</u> gallons Meter Size: <b>RESIDENTIAL</b>		Monthly base rate including <u>0</u> gallons Meter Size: <b>RESIDENTIAL</b>	
5/8" or 3/4"	\$ 13.75	5/8" or 3/4"	\$ 76.98
1"	23.50	1"	192.45
1 1/2"	50.26	1 1/2"	384.90
2"	86.50	2"	615.84
3"	411.90	3"	1,154.70
Other:	not applicable	Other:	not applicable
Gallonge Charge – per 1,000 gallons over the minimum	\$ 1.45	Gallonge Charge – per 1,000 gallons over the minimum	\$ 3.85

10. Sunset proposed to increase one miscellaneous fee, the tap fee, from \$325 to \$350.
11. In Order No. 2 issued on July 16, 2015, the Commission administrative law judge (ALJ) found the application administrative complete and sufficient and allowed implementation of the proposed rates, effective August 15, 2015, subject to a final Commission determination on the reasonableness of such rates.
12. On September 9, 2015, Commission Staff filed a revised request for referral to the State Office of Administrative Hearings (SOAH) based upon its own request for hearing and the more than 10% of affected ratepayers objecting to the increase in water rates.

**Notice**

13. The application included the affidavit of Heather Mask, owner and operator of Sunset, stating that Sunset mailed notice of the proposed rate change to each customer or other affected party on June 12, 2015.
14. On September 28, 2015, Sunset filed a copy of the notice mailed to all ratepayers on June 12, 2015.

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<sup>1</sup> The \$10.00 cost of land in Table III.B. of the application is not carried over to the net book value column.

**Protests**

15. On June 30, 2015, Michael and Nikki McDonald filed a protest and request for a hearing.
16. On July 21, 2018, Nona Gibbins, on behalf of herself and 24 other ratepayers, filed a letter protesting the proposed rates and requested a public hearing.

**Referral to SOAH**

17. On September 10, 2015, the Commission referred this case to SOAH based upon over 10% of the affected ratepayers filing protests against the rates. Commission Staff also requested a hearing. The order of referral included a prehearing scheduled for October 13, 2015, required Sunset to provide notice of the prehearing conference no later than September 25, 2015, and required Sunset to file an affidavit of proof of notice with the Commission on or before September 30, 2015.
18. On September 24, 2015, Commission Staff filed a list of issues.
19. On October 8, 2015, the Commission issued a preliminary order.
20. On October 13, 2015, SOAH conducted a prehearing conference at which Sunset and Commission Staff discussed the possibility of working together toward a settlement and agreed to provide the SOAH ALJ with a status update or an agreed procedural schedule if all parties could not agree to the terms of a settlement.
21. From November 23, 2015 to December 9, 2016, Commission Staff filed status updates regarding the progress of finalizing a settlement agreement.
22. On December 30, 2016, Commission Staff filed a final status update and requested clarification as to which parties were expected to sign the agreement. Commission Staff contended, during preparation of the settlement documents, that it along with Sunset worked mostly with Nona Gibbons as a representative of the protestants and clarification was needed so that a complete settlement package could be provided to the SOAH ALJ.
23. In SOAH Order No. 1 issued on January 30, 2017, the SOAH ALJ named Commission Staff and Sunset as the only parties to this proceeding.
24. On July 2, 2018, Commission Staff and Sunset filed a joint motion to admit evidence and remand the proceeding to the Commission. On the same date, Commission Staff and

Sunset also filed an agreement with an attached proposed order, an agreed tariff, and a Commission Staff memorandum in support of the agreement.

25. In SOAH Order No. 2 issued on July 5, 2018, the SOAH ALJ dismissed the SOAH docket, remanded the case to the Commission, and admitted the following evidence into the record: (a) Sunset's application and attachments filed on June 16, 2015; (b) supplemental notice documents filed on September 28, 2018; (c) Commission Order No. 2, finding the application complete and sufficient filed on July 16, 2015; (d) the order of referral of this docket to SOAH filed on September 10, 2015; (e) Commission Staff's status update and request for clarification filed on December 30, 2017; (f) SOAH Order No. 1, naming parties filed on January 30, 2018; (g) the agreement and attachments filed on July 2, 2018; and (h) Commission Staff's memorandum in support of the agreement filed with the agreement on July 2, 2018.

**Agreement**

26. Under the agreement, the following rates apply:

Meter Size	Minimum charge includes zero (0) gallons
5/8" or 3/4"	\$ 41.25
1"	\$ 103.13
1 1/2"	\$ 206.25
2"	\$ 330.00
3"	\$ 618.75
Gallage Charge: \$2.50 for each additional gallon over the minimum	

27. The agreement reflects rates that are less than the rates noticed to customers.
28. Under the agreement, Sunset's annual revenue requirement is \$40,965.
29. Under the agreement, Sunset will implement the retail water utility rates contained in Section 1.0 of the tariff included as attachment A to the agreement.
30. The tariff in attachment A to the agreement contains the water utility rates, terms, treatments, and conditions for each Sunset ratepayer for the public water system and service area specified in the tariff.
31. Under the agreement, Sunset will not seek to recover and will not collect any rate-case expenses that it incurred or will incur regarding this application.

32. Under the agreement, Sunset will refund all rates collected in excess of the above rates over the same length of time they were collected.

**Informal Disposition**

33. More than 15 days have passed since completion of the notice provided in this docket.
34. The only parties to this proceeding are Commission Staff and Sunset.
35. This docket does not contain any remaining contested issues of fact or law.

**II. Conclusions of Law**

1. The Commission has jurisdiction to consider Sunset's application under Texas Water Code (TWC) §§ 13.041, 13.181, 13.182, 13.184, and 13.1871.
2. Sunset is a public utility as defined in TWC § 13.002(23).
3. Sunset is a class C utility as defined in TWC § 13.002(4-b) and 16 Texas Administrative Code (TAC) § 24.3(17).
4. Sunset gave proper notice of the application in accordance with TWC § 13.1871 and 16 TAC § 24.27.
5. The 10% threshold in TWC § 13.1871(i) to require a hearing on the application was met.
6. SOAH exercised jurisdiction over the application under TWC § 13.041(c-1) and Texas Government Code § 2003.049.
7. The Commission processed the application in accordance with the requirements of the TWC, the Administrative Procedure Act,<sup>2</sup> and Commission rules.
8. In compliance with TWC § 13.183, and based on the findings of fact above Sunset's overall revenues permit Sunset a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public over and above its reasonable and necessary operating expenses.
9. An overall rate of return of 5% will not yield Sunset more than a fair return on the invested capital used and useful in rendering service in accordance with TWC § 13.184.

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<sup>2</sup> Administrative Procedure Act, Tex. Gov't Code §§ 2001.001—.902.

10. The rates approved in this case are based on original cost of property, less depreciation, used and useful to Sunset's provision of service in accordance with TWC § 13.185.
11. The rates approved in this case are just and reasonable, comply with the ratemaking provisions in TWC chapter 13, and are not unreasonably discriminatory, preferential, or prejudicial.
12. The application does not constitute a major rate proceeding as defined by 16 TAC § 22.2(27).
13. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

### III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves Sunset's change in water rates as modified by the agreement to the extent provided in this Order.
2. The rates and terms included in the tariff provided as attachment A to the agreement are approved, effective the first day of the month following the date this Order is signed.
3. Sunset must not seek to recover and must not collect any rate-case expenses that it incurred or will incur related to this docket.
4. Sunset must refund any money collected in excess of the approved rates for the period that the proposed rates were collected.
5. Within 30 days of the completion of refunds, Sunset must file a final report including a sworn affidavit, attesting that the refunds were completed in accordance with this Order. The final report must include a billing register or similar document with account numbers and total amounts refunded to each account with a summary of the total amount refunded to customers.
6. Within 10 days of the date of this Order, Commission Staff must file a clean record copy of the tariff and appropriate effective date for Central Records to stamp *Approved*.



7. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
8. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted in this Order.

**Signed at Austin, Texas the \_\_\_\_\_ day of December 2018.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**