



Control Number: 45711



Item Number: 5

Addendum StartPage: 0

**PUC DOCKET NO. 45711
SOAH DOCKET NO. 473-16-3113.WS**

**PETITION OF KEMPNER WATER §
SUPPLY CORPORATION TO REVISE §
RATES FOR WHOLESALE WATER §
SERVICE IN THE CITY OF §
LAMPASAS §**

PUBLIC UTILITY COMMISSION 2016 MAR 23 PM 1:21

OF TEXAS PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S LIST OF ISSUES

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this List of Issues. In support thereof, Staff would show the following:

I. BACKGROUND

On March 9, 2016, Kempner Water Supply Corporation (Petitioner) petitioned the Commission to find that the rates and certain terms described in a wholesale water supply contract between Petitioner and the City of Lampasas, Texas (Respondent) adversely affect the public interest and are not just and reasonable and are discriminatory, and to set interim rates until such time that the Commission may revise the price and certain terms.

On March, 14, 2014, this proceeding was referred to SOAH and the Order of Referral required the interested parties to file with the Commission a list of issues to be addressed in this docket by March 24, 2014.

II. LIST OF ISSUES

The applicable provisions of the rules for this type of case are 16 Tex. Admin. Code §§ 24.130 to 24.138 (TAC). Staff has identified the following issues to be addressed in this proceeding:

1. Does the Commission have jurisdiction over this matter?
2. Has the Petitioner stated a claim to which the Commission can grant relief?
3. Is there relevant law or Commission rules that allow the Commission to hear an appeal or complaint by a wholesale service provider for the rate charged to a wholesale customer?
4. Has the Petitioner satisfied the sufficiency requirements of 16 TAC § 24.130?
5. Is the rate in question charged pursuant to a contract?

6. If so, has the Petitioner met its burden of proof under 16 TAC § 24.136, by demonstrating that the rate in question affects the public interest by violating at least one of the public interest criteria listed in 16 TAC 24.133(a)?

- a. the protested rate impairs the seller's ability to continue to provide service, based on the seller's financial integrity and operational capability;
- b. the protested rate impairs the purchaser's ability to continue to provide service

to its retail customers, based on the purchaser's financial integrity and operational capability;

- c. the protested rate evidences the seller's abuse of monopoly power in its provision of water or sewer service to the purchaser. In making this inquiry, the commission shall weigh all relevant factors. The factors may include:

- (i) the disparate bargaining power of the parties, including the purchaser's alternative means, alternative costs, environmental impact, regulatory issues, and problems of obtaining alternative water or sewer service;
- (ii) the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates;
- (iii) the seller changed the computation of the revenue requirement or rate from one methodology to another;
- (iv) where the seller demands the protested rate pursuant to a contract, other valuable consideration received by a party incident to the contract;
- (v) incentives necessary to encourage regional projects or water conservation measures;
- (vi) the seller's obligation to meet federal and state wastewater discharge and drinking water standards;
- (vii) the rates charged in Texas by other sellers of water or sewer service for resale;

7. If the rate is not charged pursuant to a contract, has the Petitioner met its burden of proof under 16 TAC § 24.136, by showing that its cost of

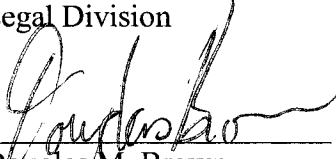
service supports imposition of the rate pursuant to P.U.C. SUBST. R. 24.131(c) and 24.135?

8. Should interim rates be established? If so, what is the appropriate interim rate?

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
Legal Division

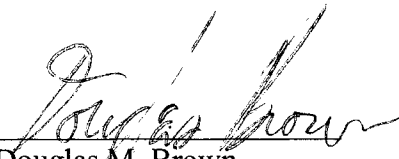


Douglas M. Brown
Attorney Legal Division
State Bar No. 24048366
(512) 936-67203
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this March 24, 2016 in accordance with 16 TAC § 22.74.



Douglas M. Brown