



Control Number: 46256



Item Number: 1769

Addendum StartPage: 0

**SOAH DOCKET NO. 473-17-1641.WS  
PUC DOCKET NO. 46256**

<b>APPLICATION OF LIBERTY UTILITIES (WOODMARK SEWER) CORP., LIBERTY UTILITIES (TALL TIMBERS SEWER) CORP. AND LIBERTY UTILITIES (SUB) CORP. TO CHANGE RATES FOR SEWER SERVICES IN SMITH COUNTY, TEXAS</b>	<b>§ § § § § § §</b>	<b>BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS</b>
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**JOINT MOTION TO ADMIT EVIDENCE AND REMAND**

COME NOW Liberty Utilities (Woodmark Sewer) Corp., Liberty Utilities (Tall Timbers Sewer) Corp, and Liberty Utilities (Sub) Corp. (“Liberty Utilities” or “Applicants”) and, after conferring with the City of Tyler (“Tyler”), Office of Public Utility Counsel (“OPUC”), Public Utility Commission of Texas Staff (“Staff”) and Intervenor ratepayers represented by Ms. Katherine Carter (“Intervenors”) (collectively, the “Parties”), file this Joint Motion to Admit Evidence and Remand.

**I. BACKGROUND**

On September 2, 2016, Liberty Utilities filed this application to change the sewer rates and tariffs for Liberty Utilities (Tall Timbers Sewer) Corp. (“Liberty Tall Timbers”) and Liberty Utilities (Woodmark Sewer) Corp. (“Liberty Woodmark”). On July 25, 2017, the Parties announced they had reached an agreement in principle on July 24, 2017 resolving all of the issues in this proceeding and indicated that they would file a motion for abatement of the procedural schedule. On July 31, 2017, the Parties filed a motion requesting abatement and interim rates. The Honorable State Office of Administrative Hearings Administrative Law Judge (“ALJ”) granted both requests on August 1, 2017. On November 15, 2017, the Parties filed a Joint Notice of Stipulation, but requested continued abatement while the Parties determined whether volumetric

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rates would be requested as final rates. On June 15, 2018, the Parties determined not to request volumetric rates as final rates. On October 2, 2018, the Parties filed a Joint Notice of Stipulation Addendum and Motion to Set Interim Rates that included the addition of Federal Tax Change Credit Rider (“FTCCR”) provisions. The ALJ issued the Motion to Set Interim Rates on October 5, 2018.

Now, the Parties are prepared to seek final approval of their Unanimous Stipulation and Settlement Agreement as supplemented by the Unanimous Stipulation and Settlement Agreement Addendum. Those changes are addressed herein.

## **II. MOTION TO ADMIT EVIDENCE**

The Unanimous Stipulation and Settlement Agreement and the Unanimous Stipulation and Settlement Agreement Addendum resolve all issues in this proceeding. The Signatories request that the following be admitted into evidence for the limited purpose of supporting and seeking approval for the Stipulation:

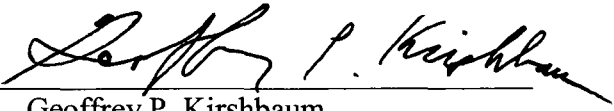
1. *Application of Liberty Utilities (Woodmark Sewer) Corp. (CCN No. 20679), Liberty Utilities (Tall Timbers Sewer) Corp. (CCN No. 20694), and Liberty Utilities (Sub) Corp. to Change Rates for Sewer Services in Smith County, Texas, Docket No. 46256, as filed on September 2, 2016 (AIS Item No. 2), together with its subsequent amendments, errata, and supplementation filings in this docket;*
2. All pre-filed direct, supplemental direct, or rebuttal testimony and exhibits by all parties, including any amendments, errata, and supplements;
3. Joint Notice of Stipulation, including Unanimous Stipulation and Settlement Agreement, filed on November 15, 2017 (AIS Item Nos. 1736-37);
4. Joint Notice of Stipulation Addendum and Motion to Set Interim Rates, including Unanimous Stipulation and Settlement Agreement Addendum, filed on October 2, 2018 (AIS Item No. 1756);
5. Proposed Final Order filed on February 5, 2019, with this Joint Motion to Admit Evidence and Remand;

6. Direct Testimony in Support of Unanimous Stipulation and Settlement Agreement and the Unanimous Stipulation and Settlement Agreement Addendum of Matthew Garlick, President of Liberty Utilities (Tall Timbers Sewer) Corp., Liberty Utilities (Woodmark Sewer) Corp., and Liberty Utilities (Sub) Corp., filed on behalf of the Applicants on February 4, 2019;
7. Affidavit of Matthew Garlick – Phase Two Rates, filed on June 28, 2018 (AIS Item No. 1748) and Affidavit of Matthew Garlick – Supplemental Information Related to Phase Two Rates, filed on July 19, 2018 (AIS Item No. 1753).
8. Liberty Tall Timbers and Liberty Woodmark’s Proof of Notice by Affidavit – Initial Notice, filed on December 21, 2016 (AIS Item No. 1290); Liberty Tall Timbers and Liberty Woodmark’s Proof of Notice by Affidavit – Second Notice, filed on December 21, 2016 (AIS Item No. 1289); Liberty Tall Timbers and Liberty Woodmark’s Proof of Notice by Affidavit – Notice of Prehearing Conference, filed on January 17, 2017 (AIS Item No. 1466); Affidavit of Matthew Garlick – Interim and Phase Two Rate Notices, filed on July 10, 2018 (AIS Item No. 1750); and, affidavit of Matthew Garlick – November 2018 Interim Rates Notices, filed on November 14, 2018 (AIS Item No. 1761).
9. Direct Testimonies in Support of Unanimous Stipulation and Settlement Agreement and the Unanimous Stipulation and Settlement Agreement Addendum of Heidi Graham and Debi Loockerman, Water Utility Regulation Division, filed on behalf of Staff on February 5, 2019.

### **III. MOTION TO REMAND**

As evidenced by the Unanimous Stipulation and Settlement Agreement, as supplemented and modified by the Unanimous Stipulation and Settlement Agreement Addendum, the Signatories have fully and finally resolved all issues in this proceeding and no hearing is necessary. Therefore, the Signatories request that this docket be remanded to the Commission to allow for review of the Stipulation/Addendum and approval of the attached Proposed Final Order.

Respectfully submitted,

By: 

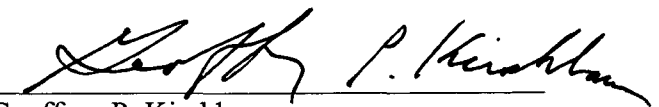
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**ATTORNEYS FOR LIBERTY UTILITIES  
(TALL TIMBERS SEWER) CORP., LIBERTY  
UTILITIES (WOODMARK SEWER) CORP.,  
AND LIBERTY UTILITIES (SUB) CORP.**

#### **CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on February 5, 2019, in accordance with 16 TAC § 22.74.

  
Geoffrey P. Kirshbaum

**P.U.C. DOCKET NO. 46256  
SOAH DOCKET NO. 473-17-1641.WS**

<b>APPLICATION OF LIBERTY</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>UTILITIES (WOODMARK SEWER)</b>	<b>§</b>	
<b>CORP., LIBERTY UTILITIES (TALL</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TIMBERS SEWER) CORP., AND</b>	<b>§</b>	
<b>LIBERTY UTILITIES (SUB) CORP.</b>	<b>§</b>	
<b>FOR A RATE/TARIFF CHANGE</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the application of Liberty Utilities (Woodmark Sewer) Corp. (Liberty Woodmark), Liberty Utilities (Tall Timbers Sewer) Corp. (Liberty Tall Timbers), and Liberty Utilities (Sub) Corp. (LU (Sub) Corp.) (collectively, Liberty Utilities or Applicants), for authority to change their sewer rates. The Applicants, Public Utility Commission of Texas Staff (Staff), the Office of Public Utility Counsel (OPUC), the City of Tyler, Texas (Tyler), and the Intervenor Ratepayers represented by Ms. Katherine Carter (Intervenor Ratepayers)<sup>1</sup> (collectively, the Parties or Signatories) filed a Unanimous Stipulation and Settlement Agreement (Stipulation) and a Unanimous Stipulation and Settlement Agreement Addendum (Addendum) that resolve all issues in this proceeding. The Commission approves changes in rates for Liberty Tall Timbers and Liberty Woodmark consistent with the Stipulation and Addendum to the extent provided in this Order.

**I. Discussion**

**A. The Application**

On September 2, 2016, Liberty Tall Timbers (CCN No. 20694) and Liberty Woodmark (CCN No. 20679) filed a joint application with the Commission and with Tyler requesting

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<sup>1</sup> The Intervenor Ratepayers, represented by Ms. Carter, who were granted party status include Southchase Rentals, LLC, Tom Keith, Tall Oaks Properties, and Kent Rental Properties. SOAH Order No. 4 (AIS Item No. 1501) (Feb. 3, 2017).

authority for sewer rate and tariff changes (Application) pursuant to Texas Water Code (TWC) § 13.1871 applicable to Class B water and sewer utilities.<sup>2</sup> The Application to Tyler was for sewer rate and tariff changes for Liberty Tall Timbers customers inside the Tyler corporate limits. Liberty Tall Timbers and Liberty Woodmark corrected and clarified certain Application items in a filing submitted on October 17, 2016 (Application Supplement). The Application Supplement revised the application notice originally provided on or about September 7, 2016, which had included a proposed effective date of November 1, 2016. On December 21, 2016, the Applicants submitted proof of notice, wherein the Applicants stated that they had provided the corrected notice on or about December 12, 2016. The corrected notice included a new proposed effective date of February 1, 2017.

The test year used in the Application and Application Supplement was the twelve-month period from January 1, 2015 through December 31, 2015, adjusted for certain known and measurable changes. The Application Supplement requested consolidated rates in two phases with an annual revenue requirement of \$3,806,414 in Phase 1, plus an additional \$955,981 annually in Phase 2, bringing the total annual revenue requirement requested to approximately \$4,762,395. This represented revenue increases of \$1,009,792 in Phase 1 and \$955,981 in Phase 2 for a total increase of \$1,965,773 annually following implementation of both rate phases.

After Liberty Tall Timbers and Liberty Woodmark filed the Application Supplement, the Commission ordered the addition of (Sub) Corp. as an applicant. Also, the Tax Cuts and Jobs Act of 2017 (TCJA) was enacted into law,<sup>3</sup> which raised questions regarding how the TCJA should be reflected in rates approved in this proceeding.

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<sup>2</sup> TWC § 13.002(4-b). Liberty Tall Timbers and Liberty Woodmark only provide retail sewer utility service and do not provide retail water utility service.

<sup>3</sup> Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017).

**B. The Settlement Agreement**

The Parties' Stipulation was effective on November 14, 2017, and filed with the Commission the following day. However, the Stipulation required certain implementation actions by the Parties, including but not limited to consideration of whether the Parties would request Commission approval for volumetric sewer rates instead of flat monthly sewer rates.

The Parties' Addendum was effective October 2, 2018. The Addendum describes resolution of the outstanding Stipulation items, reflects TCJA considerations, and reflects the Parties' final agreement on rates. The rates reflected in the Addendum include unconsolidated rates in three phases that, using test year billing determinants and after subtracting revenues estimated to be returned through Federal Tax Change Credit Riders, are estimated to produce annual revenues in the following approximate amounts:

*Liberty Tall Timbers:*

Phase 1	\$1,091,680
Phase 2	\$1,308,250
Phase 3	\$1,371,613

*Liberty Woodmark:*

Phase 1	\$1,543,913
Phase 2	\$1,661,131
Phase 3	\$1,879,991

*Liberty Tall Timbers and Liberty Woodmark Combined Total:*

Phase 1	\$2,635,592
Phase 2	\$2,969,381
Phase 3	\$3,251,604

The Parties all signed the Stipulation and Addendum. The Stipulation and Addendum executed by the Signatories resolve all issues in this proceeding.

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



## II. Findings of Fact

### Applicants

1. Liberty Utilities (Tall Timbers Sewer) Corp. is incorporated under the laws of the State of Texas, is a wholly owned subsidiary of Liberty Utilities (Sub) Corp., and served approximately 2,079 residential and commercial customer connections as of the end of 2015 (the test year).
2. Liberty Utilities (Woodmark Sewer) Corp. is incorporated under the laws of the State of Texas, is a wholly owned subsidiary of Liberty Utilities (Sub) Corp., and served approximately 1,660 residential and commercial customer connections as of the end of 2015 (the test year).
3. Liberty Utilities (Sub) Corp. is incorporated under the laws of the State of Delaware and is a wholly owned subsidiary of Liberty Utilities Co., a Delaware corporation that operates regulated gas, water, sewer and electric utilities in eleven states – Arizona, Arkansas, California, Georgia, Illinois, Iowa, Massachusetts, Missouri, Montana, New Hampshire, and Texas.
4. Liberty Utilities Co. is a subsidiary of Liberty Utilities (Canada) Corp.
5. Algonquin Power & Utilities Corp., a publicly traded member of the Toronto Stock Exchange, ultimately owns all of the Liberty Utilities entities, including the Applicants.
6. Liberty Tall Timbers is authorized under certificate of convenience and necessity (CCN) number 20694 to provide service to the public and to provide retail sewer utility service within its certificated service area and outside that area in accordance with TWC, Chapter 13.

7. Liberty Woodmark is authorized under certificate of convenience and necessity (CCN) number 20679 to provide service to the public and to provide retail sewer utility service within its certificated service area and outside that area in accordance with TWC, Chapter 13.
8. Liberty Tall Timbers and Liberty Woodmark were the original Applicants.
9. LU Sub Corp. was added as an Applicant in response to the Commission's Order on Appeal of SOAH Order No. 2.<sup>4</sup>

**Application/Notice/Interventions**

10. On September 2, 2016, Liberty Tall Timbers and Liberty Woodmark filed an application with the Commission requesting authority for sewer rate and tariff changes.
11. The Application was also filed with Tyler to request sewer rate and tariff changes for Liberty Tall Timbers customers inside the Tyler corporate limits; thus, Tyler was timely served notice of Liberty Tall Timbers' statement of intent to change rates.
12. Liberty Tall Timbers and Liberty Woodmark corrected and clarified certain Application items on October 17, 2016, including the Application notice originally mailed to affected customers on or about September 7, 2016 that included a proposed effective date of November 1, 2016.
13. A corrected Application notice was mailed to affected customers on or about December 12, 2016 that included a new proposed effective date of February 1, 2017.
14. On December 16, 2016, Liberty Tall Timbers and Liberty Woodmark filed affidavits with the Commission attesting that they mailed each of the aforementioned notices to all affected customers. Liberty Tall Timbers filed similar affidavits with Tyler.

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<sup>4</sup> See Order on Appeal of SOAH Order No. 2 (Mar. 14, 2017).

15. The test year used in the Application was the twelve-month period from January 1, 2015 through December 31, 2015, adjusted for certain known and measurable changes.
16. The Application requested consolidated rates in two phases with an annual revenue requirement of \$3,806,414 in Phase 1, plus an additional \$955,981 annually in Phase 2, bringing the total annual revenue requirement requested to approximately \$4,762,395.
17. The Application requested revenue increases of \$1,009,792 in Phase 1 and \$955,981 in Phase 2 for a total increase of \$1,965,773 annually following implementation of both rate phases.
18. On December 6, 2016, the Commission deemed the Application administratively complete in Order No. 7, and on December 9, 2016, Tyler deemed the Application administratively complete. Both the Commission and Tyler suspended the proposed February 1, 2017 effective date of the rate increase for affected customers.
19. Timely motions to intervene in this proceeding were filed by the Office of Public Utility Counsel, Tyler, and the following ratepayers represented by Ms. Katherine Carter: Southchase Rentals, LLC; Tom Keith; Tall Oaks Properties; and Kent Rental Properties.
20. On December 12, 2016, the Commission referred the Application concerning the service area outside Tyler to the State Office of Administrative Hearings ("SOAH"). On December 13, 2016, the Commission issued an Amended Order of Referral to correct the open meeting date that the Commission would consider and possibly adopt a preliminary order in this docket.
21. On December 28, 2016, SOAH Order No. 2 dismissed the Application, but abated the dismissal pending appeal.

22. On January 9, 2017, Liberty Tall Timbers and Liberty Woodmark timely filed Liberty Utilities' Appeal of SOAH Order No. 2 on Motion to Dismiss.
23. On January 17, 2017, Liberty Tall Timbers and Liberty Woodmark filed an affidavit with the Commission attesting that they mailed a notice of the prehearing conference scheduled for January 31, 2017 to all affected customers on or about January 11, 2017.
24. A prehearing conference was held on January 31, 2017, during which the presiding SOAH ALJ found that the notice provided by the Applicants was sufficient, designated the Signatories identified herein (except LU (Sub) Corp.) as parties, and established a procedural schedule (later modified).
25. On March 14, 2017, the Commission issued a preliminary order and an order on appeal of SOAH Order No. 2, reversing the dismissal and instructing the Applicants to add LU (Sub) Corp. as an Applicant.
26. On March 31, 2017, the Applicants amended the Application to make changes conforming to the Commission's directive to include LU (Sub) Corp. as an Applicant. The Applicants also requested: (1) a change to the case style; (2) a new agreed schedule; and (3) extension of the suspension period to modify what would otherwise be the jurisdictional deadline for final action. On April 13, 2017, the SOAH ALJ issued SOAH Order No. 5, granting these requests.
27. On April 12, 2017, Tyler denied the Application concerning Liberty Tall Timbers customers inside Tyler's corporate limits. On May 8, 2017, Applicants timely appealed Tyler's decision to the Commission. On June 30, 2017, the SOAH ALJ issued SOAH Order No. 6, wherein the appeal was consolidated with the outside-Tyler Application docket then in progress.

**Testimony**

28. The Applicants included direct testimony with the Application and filed supplemental direct testimony on February 17, 2017. Certain amendment and errata filings to the Application and direct testimony followed, including but not limited to amendments necessary to add LU (Sub) Corp. as an applicant on March 31, 2017.
29. On May 23, 2017, OPUC, Tyler, and the Intervenor Ratepayers filed direct testimony later followed by certain errata filings.
30. On June 9, 2017, Staff filed direct testimony, followed by supplemental direct testimony on June 12, 2017.
31. On June 30, 2017, the Applicants filed rebuttal testimony followed by certain errata filings.
32. On February 4, 2019, Applicants filed direct testimony in support of the Stipulation and Addendum.
33. On February 5, 2019, Staff filed direct testimony in support of the Stipulation and Addendum.

**Agreement**

34. On July 2, 2017, the Signatories reached a settlement agreement in principle and informed the presiding SOAH ALJ of such settlement on July 25, 2017 at the scheduled start of the hearing on the merits.
35. The Signatories orally moved to abate the proceedings to finalize and implement the terms of the Stipulation.
36. On July 31, 2017, the Signatories filed a joint motion to set interim rates effective August 1, 2017 in accordance with the agreed settlement and further addressed their request for

abatement. The SOAH ALJ granted both requests on August 1, 2017 in SOAH Order No. 10.

37. In accordance with SOAH Order No. 10, Liberty Tall Timbers and Liberty Woodmark filed interim rate sheets on August 1, 2017 reflecting the Stipulation rates. The Applicants provided customers with notice of the agreed three-phase interim rates with their September 2017 bills, which were the first bills that reflected those rates made effective August 1, 2017.
38. On November 15, 2017, the Parties filed a Joint Notice of Stipulation after executing a Unanimous Stipulation and Settlement Agreement on November 14, 2017. However, certain Stipulation terms provided: “Unless the Commission rules that the water service providers [in their sewer service area] are prohibited from sharing volumetric data, the Applicants shall: (1) collect necessary data to design volumetric rates for consideration by the non-Applicant Signatories; and (2) present these volumetric rates to the non-Applicant Signatories for consideration along with the underlying data collected; and (3) prepare replacement tariffs using volumetric rate design.”
39. Applicants prepared a volumetric sewer rate proposal for the Parties to consider, but the Parties conferred on June 15, 2018 and decided not to request implementation of volumetric sewer rates as final rates in place of flat monthly rates. In the Addendum, the Parties agreed that Applicants fulfilled their respective commitments as to volumetric rates set forth in the Stipulation.
40. On June 28, 2018, July 10, 2018, and July 19, 2018, Applicants filed documents demonstrating compliance with the phased rate requirements set forth in former 16 Tex. Admin. Code (TAC) § 24.34(b) (now § 24.75(b)) and the Stipulation, including evidence

of a 30-day “informational” notice to customers provided on June 26, 2018. This also served as a courtesy follow-up notice to customers regarding the three-phase interim rate schedule made effective August 1, 2017.

41. The Stipulation required the Parties to complete additional discussions and implementation actions. Further, intervening events occurred after the Stipulation was executed, such as the TCJA. Therefore, the Parties developed the Addendum executed on October 2, 2018 as a supplement to the Stipulation to finally resolve their settlement agreement.
42. On October 2, 2018, the Parties filed a Joint Notice of Stipulation Addendum and Motion to Set Interim Rates. On October 5, 2018, the SOAH ALJ issued SOAH Order No. 17, approving the agreed upon interim rates, which retained the same flat monthly sewer rates from the Stipulation, but added Federal Tax Change Credit Rider (FTCCR) rate reductions to address estimated federal tax expense savings from the TCJA without addressing any excess deferred federal income taxes. The new interim rates were jointly requested pursuant to the Addendum and approved to be effective September 1, 2018. The Applicants provided customer notices for the new interim rates with November 2018 bills.
43. On February 5, 2019, the Signatories filed a joint motion to admit evidence and remand the proceeding to the Commission.
44. On \_\_\_\_\_, 2019, SOAH issued Order No. \_\_\_\_\_, admitting evidence, remanding the proceeding to the Commission, and dismissing the SOAH docket.
45. In light of the unique Stipulation and Addendum terms, the Parties have agreed to several extensions of the jurisdictional deadline to complete this case. The presiding SOAH ALJ granted the latest such request on January 15, 2019, in SOAH Order No. 15 and extended the jurisdictional deadline to March 14, 2019.

46. The agreement is a “black-box” settlement for all revenue-requirement issues concerning Liberty Tall Timbers and Liberty Woodmark retail sewer utility rates except as provided in this Order.

**Revenue Requirement and Rates**

47. The Signatories agreed that Liberty Tall Timbers and Liberty Woodmark should implement the retail sewer utility rates established in the tariffs and rate schedules included in Exhibits A-1 (for Liberty Tall Timbers) and Exhibit B-1 (for Liberty Woodmark) attached to the Addendum. The Signatories further agreed that these should be the governing sewer utility rates, terms, treatments, and conditions for Liberty Tall Timbers ratepayers both inside and outside Tyler and for all Liberty Woodmark ratepayers, subject to certain other provisions in the Stipulation/Addendum. LU (Sub) Corp. is not included on the settlement tariffs because the Signatories agreed not to implement a consolidated tariff for Liberty Tall Timbers and Liberty Woodmark.
48. In the Addendum, Liberty Tall Timbers and Liberty Woodmark agreed to add FTCCR rate provisions. Those rates were approved as part of the interim rates effective September 1, 2018. The Signatories agreed that implementation of the FTCCR rates by Liberty Tall Timbers and Liberty Woodmark, respectively, fully address the federal tax expense savings issues until its respective next rate case so long as the FTCCR remains in effect. Conversely, the Signatories agreed that if the corporate tax rate reductions in the TCJA are modified in whole, or in part, before the next Liberty Tall Timbers or Liberty Woodmark rate case, each respective utility may apply to modify the FTCCR. The FTCCR does not address the return to customer of any excess deferred federal income taxes, which may be addressed in the next Liberty Tall Timbers or Liberty Woodmark rate case.



49. The rates reflected in the Addendum include unconsolidated rates in three phases that, using test year billing determinants and after subtracting revenues estimated to be returned through Federal Tax Change Credit Riders, are estimated to produce annual revenues in the following approximate amounts:

*Liberty Tall Timbers:*

Phase 1	\$1,091,680
Phase 2	\$1,308,250
Phase 3	\$1,371,613

*Liberty Woodmark:*

Phase 1	\$1,543,913
Phase 2	\$1,661,131
Phase 3	\$1,879,991

*Liberty Tall Timbers and Liberty Woodmark Combined Total:*

Phase 1	\$2,635,592
Phase 2	\$2,969,381
Phase 3	\$3,251,604

**Rate Case Expenses**

50. Evidence in the record shows that Liberty Tall Timbers and Liberty Woodmark have incurred well over \$300,000 in reasonable and necessary rate case expenses in this docket.
51. The Signatories agreed that, effective August 1, 2017, Liberty Tall Timbers and Liberty Woodmark shall be allowed to recover \$300,000 in rate case expenses through a surcharge of \$3.59 per Liberty Tall Timbers and Liberty Woodmark connection per month over two years or until \$300,000.00 is recovered.
52. It is appropriate to limit recovery of rate case expenses as the Signatories have agreed.

**Volumetric Rate Consideration**

53. The Signatories agreed not to implement volumetric rates after considering a proposal for same developed by the Applicants, but the Signatories agreed in the Addendum that Applicants fulfilled their respective commitments as to volumetric rates set forth in the Stipulation.

**No Refunds/Credits**

54. The Signatories agreed that Liberty Utilities would not be required to issue any refunds or credits, nor would the Applicants apply any surcharge, for any difference between the interim rates in effect between August 1, 2017 and volumetric rates that might have been put into effect for use in their place going forward.<sup>5</sup> The Signatories further agreed in the Stipulation that Applicants will keep all revenue collected under the agreed interim rate schedule.

**Agreements Related to Future Rate Filings**

55. The Signatories agreed that Liberty Tall Timbers and Liberty Woodmark's next rate case(s) will be submitted utilizing a test year ending no sooner than July 31, 2020, unless otherwise required by the Commission, Commission Rule, or statute.
56. The Signatories agreed that they retain the right to litigate all rate base or return issues in future Liberty Tall Timbers or Liberty Woodmark rate cases. For future Texas Water Code (TWC) § 13.1871 rate filings, Liberty Tall Timbers agreed to present both Tyler and Commission Staff a complete listing of all assets proposed to be included in rate base for review 60 days prior to such filing. A list of Liberty Woodmark assets must be submitted to Tyler only if consolidation between Liberty Tall Timbers and Liberty Woodmark is

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<sup>5</sup> However, per the Addendum, the Signatories agreed not to implement volumetric rates.

proposed. Liberty Woodmark will be required to present a list of assets to Commission Staff if separate rate cases are submitted.

57. The Signatories agreed that the corporate cost allocations and the methodologies set forth in the Cost Allocation Manual (CAM) filed with the Application are reasonable and appropriate (subject to review and verification of costs by the Signatories in future rate cases), including the capitalization of Indirect Overhead (INDOH). The Signatories agree to other terms related to the CAM and INDOH.

**Customer Assistance Program**

58. Liberty Tall Timbers and Liberty Woodmark agreed to establish a low-income customer assistance program (CAP) in conference with the Signatories. As reflected in the Addendum, the CAP documents that resulted from that consultation process are included in Addendum Exhibit C. Liberty Utilities also agreed to other CAP-related terms described in the Stipulation.

**Tyler Commitments Related to TCEQ Permit Applications**

59. Tyler agreed to withdraw its hearing requests and comments challenging TCEQ permit applications filed by Liberty Tall Timbers and Liberty Woodmark. As reflected in the Addendum, Tyler withdrew those hearing requests and comments following the Stipulation.

**Applicant Commitments Related to Future WWTP Expansions**

60. The Signatories agreed that, before expanding either the Liberty Tall Timbers or Liberty Woodmark wastewater treatment plants in the future, the Liberty Utilities entity planning the expansion will submit to Tyler a written request for a proposal for sale of wholesale treatment capacity service from Tyler. The request shall contain sufficient information to

allow Tyler to prepare a proposed wholesale agreement. Liberty Utilities will make any such request for wholesale treatment capacity service at least three (3) months prior to submission of a permit amendment application or other formal action to authorize the proposed expansion. Failure to make such a request will result in the associated expansion project being deemed imprudent in any subsequent Liberty Tall Timbers or Liberty Woodmark rate case as applicable (depending on which entity failed to make the request prior to expansion).

**Miscellaneous Tariff Issues**

61. Tyler and Liberty Utilities disagree over Liberty Tall Timbers tariff provisions regarding developer Contributions in Aid of Construction (CIAC) relating to extensions of service to new development. There are certain terms included in the Stipulation related to this dispute. Liberty Tall Timbers and Tyler conferred about this issue, but, as the Addendum reflects, ultimately decided to defer the issue for resolution outside the context of this dockets.
62. Tyler agreed that tariff language it requested to address the use of the appropriate plumbing code throughout Tyler's ETJ and plat approval processes was included in the Stipulation tariffs. Tyler agreed to this language as retained in the Addendum tariffs.

**Consistency of the Stipulation with the Texas Water Code and Commission Requirements**

63. Considered in light of the Liberty Utilities' application, responses to discovery requests, and information exchanged through confidential privileged settlement negotiations, the Stipulation is the result of compromise from each party, and these efforts, as well as the overall result of the Stipulation and Addendum, support the reasonableness and benefits of the terms of the Stipulation and Addendum.

64. The rates, terms, and conditions of the tariff resulting from the Stipulation and Addendum are just and reasonable and consistent with the public interest when the benefits of avoiding an expensive contested case hearing are considered.
65. The Signatories believe that a resolution of this docket pursuant to the terms of the Unanimous Stipulation and Settlement Agreement, together with the Addendum, is reasonable and in the public interest, that settlement will conserve resources and mitigate controversy, that the terms and conditions of the Stipulation/Addendum are fair, just and reasonable, and that the Stipulation/Addendum resolve all issues related to the Application.

**Informal Disposition**

66. More than 15 days have passed since completion of the notice provided in this docket.
67. The decision is not adverse to any party in this proceeding.
68. The Commission finds that no hearing is necessary.

**III. Conclusions of Law**

1. Liberty Tall Timbers and Liberty Woodmark are “utilities,” “public utilities”, and “sewer utilities” as defined in TWC § 13.002(23) and 16 TAC § 24.3(51), (75), and (76).
2. Liberty Tall Timbers and Liberty Woodmark are “retail public utilities” as defined in TWC § 13.002(19) and 16 TAC §24.3(59).
3. The Commission has jurisdiction to consider the application of Liberty Tall Timbers and Liberty Woodmark for a rate increase and to conduct both formal and informal ratemaking hearings for areas outside of Tyler pursuant to TWC §§ 13.041, 13.181, and 13.1871 using procedures set forth in 16 TAC, Chapter 24. Tyler had jurisdiction to consider Liberty Tall Timbers’ application for the portion of its area that is inside Tyler pursuant to TWC

§ 13.083. The Commission had jurisdiction to consider the appeal from Tyler's decision under TWC § 13.043 and former 16 TAC § 24.41 (now § 24.101).

4. This docket was processed in accordance with the requirements of the Texas Water Code, the Texas Administrative Procedure Act, and Commission rules.
5. Proper notice of the application was given by Liberty Tall Timbers and Liberty Woodmark as required by TWC §§ 13.083, 13.1871; former 16 TAC §§ 24.22 (now §24.27) and former 24.28 (now § 24.35); and Texas Government Code §§ 2001.051 and 2001.052.
6. Proper notice of the three-phase interim rates now approved as final, including FTCCR rate provisions, was provided in accordance with former 16 TAC §§ 24.29 (now §24.37) and 24.34 (now § 24.75).
7. This docket contains no remaining contested issues of fact or law.
8. The Stipulation, taken as a whole, is a just and reasonable resolution of all issues it addresses, results in just and reasonable rates, terms and conditions, is consistent with the relevant provisions of TWC, Chapter 13, is consistent with the public interest, and should be approved.
9. The rates agreed to in the Addendum based on additional agreements in the Stipulation are just and reasonable, comply with the ratemaking provisions in TWC, Chapter 13, and are not unreasonably discriminatory, preferential, or prejudicial. Further, the rates are sufficient, equitable, and consistent in application to each class of consumers.
10. The rates resulting from the Stipulation and Addendum are just and reasonable, and consistent with TWC, Chapter 13.
11. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

#### IV. Ordering Paragraphs

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

1. The Liberty Utilities' applications seeking authority to (a) change its rates and tariff, and (b) for other related relief are approved consistent with the above findings of fact and conclusions of law, the Stipulation, and the Addendum.
2. Rates, terms, and conditions consistent with the Stipulation and the Addendum are approved.
3. The proposed tariffs submitted with the Addendum as Exhibit A-1 and Exhibit B-1, provided with this Order, are approved to be effective as final rates on the first day of the month following Commission approval. However, Liberty Tall Timbers and Liberty Woodmark may file updated tariffs to reflect the recent 16 TAC, Chapter 24 rule numbering changes that took effect October 17, 2018.
4. No Applicant is required to issue any refunds or credits for the difference between its requested rates in effect between February 1, 2017 and the effective date for final rates pursuant to this Order.
5. The FTCCR rates reflected in the Addendum tariff exhibits fully address federal tax expense savings issues for Liberty Tall Timbers and Liberty Woodmark until each utility's next respective rate case so long as the FTCCR rates remain in effect. If the corporate tax rate reductions in the TCJA are modified in whole, or in part, before the next Liberty Tall Timbers or Liberty Woodmark rate case, each respective utility may apply to modify its FTCCR. The approved FTCCRs do not address the return to customer of any excess

deferred federal income taxes, which may be addressed in the next Liberty Tall Timbers or Liberty Woodmark rate case.

6. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Stipulation or Addendum. Entry of this Order shall not be regarded as a binding holding or precedent as to the appropriateness of any principle or methodology underlying the Stipulation or Addendum.
7. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted are denied.

SIGNED at Austin, Texas, the \_\_\_\_ day of February, 2019.

**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