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OPEN MEETING COVER SHEET

PUBLIC MEETING SECTION
FILING CLERK

MEETING DATE: May 10, 2018

DATE DELIVERED: May 4, 2018

AGENDA ITEM NO.: 20

CAPTION: Docket No. 46556; SOAH Docket No. 473-18-1394.WS -
*Application of Riverside Wastewater
Treatment Plant for Authority to Change
Rates*

ACTION REQUESTED: Discussion and possible action with respect
to Final Order

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Commissioner



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Executive Director

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner

All Parties of Record

FROM: Stephen Journeay
Commission Counsel

RE: **Open Meeting of May 10, 2018**
PUC Docket No. 46556
SOAH Docket No. 473-18-1394.WS – *Application of Riverside Wastewater Treatment Plant for Authority to Change Rates*

DATE: May 4, 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, May 10, 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 Tuesday, May 8, 2018.

On December 12, 2017, this proceeding was referred to the State Office of Administrative Hearings (SOAH). Subsequently, the docket was returned to the Commission and the Office of Policy and Docket Management prepared the proposed order.

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

This proposed order would approve the rates agreed on by Commission Staff and the applicant, but there are several issues that the Commission needs to or may want to address when it considers this proposed order.

The administrative law judge at SOAH admitted several items into evidence at the request of the parties before returning this matter to the Commission. One of these items was the application filed in this matter on November 9, 2016. As discussed in finding of fact 5, Commission Staff recommended that this application was not administratively complete and recommended that the application be dismissed because, in part, the application was based on a stale test year. The ALJ found the application to be deficient and incomplete. The applicant



filed on February 1, 2017 what was essentially a new application that was based on a different test year and proposed different rates as identified in finding of fact 8. This second application was changed again by a filing made on March 31, 2017 as discussed in finding of fact 11.

The Commission should consider admitting the filings made on February 1 and March 31 into evidence during open meeting. The short time left before the upcoming meeting precludes taking this action before the meeting. The original application, which was admitted into evidence, cannot support the requested rate increase, and the proposed order finds that the application is made up of the February 1 and March 31 filings, plus the settlement agreement.

In addition, the tariff attached to the settlement agreement does not correctly identify the utility. The applicant is identified as Riverside Wastewater Treatment Plant. The tariff identifies the utility as Syed Hyder dba Riverside Wastewater Treatment Plant. To address this inconsistency, the proposed order would approve the rates and terms contained in that tariff but would not approve that tariff. Instead, the proposed order would require the applicant to file a tariff with identical rates and terms but with the proper legal name of the utility.

Further, there is a concern that the proper legal name of the utility is not identified in the application, and therefore, in the proposed order. The business records at the Texas Secretary of State include a certificate of formation of Riverside Wastewater Treatment Plant, LLC, which identifies Syed Hyder as the manager of the company. Further, there was no assumed name certificate for Riverside Wastewater Treatment Plant by Syed Hyder. Under the Texas Business Organization Code, the name of a limited liability company must contain a phrase or abbreviation identifying the company as a limited liability company. The proposed order contains findings and conclusions related to this uncertainty of name. The Commission may wish to address this name issue at the open meeting.

Because of the impending effective date of the proposed rates and the special administrative efforts needed to allow the Commission to act at the May 10 open meeting, the proposed order finds these factors as good cause to suspend the 20-day notice requirement in 16 Texas Administrative Code § 22.35(b)(2).

PUC DOCKET NO. 46556
SOAH DOCKET NO. 473-18-3794.WS

APPLICATION OF RIVERSIDE	§	PUBLIC UTILITY COMMISSION
WASTEWATER TREATMENT PLANT	§	
FOR AUTHORITY TO CHANGE	§	OF TEXAS
RATES	§	

PROPOSED ORDER

This Order addresses the application of Riverside Wastewater Treatment Plant to increase the rates charged to its ratepayers for sewer service in Brazos County, Texas. A unanimous agreement was executed that resolves all issues between the parties in this proceeding. The Commission approves Riverside's application, as modified by the agreement and this Order.

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

I. Findings of Fact

Riverside Wastewater Treatment Plant

1. Riverside owns facilities in Brazos County, Texas that are used to collect, transport, and treat sewage.
2. As of December 31, 2015, Riverside provides sewer service to 126 ratepayers in Brazos County. A portion of the subdivision to which Riverside provides sewer service is located in the City of Bryan, Texas.
3. Riverside provides sewer service to an area in Brazos County under certificate of convenience and necessity number 20740.

Procedural History

4. On November 9, 2016, Riverside filed an application requesting authority to increase its rate for sewer service and change its tariff. The application requests an increase in Riverside's revenue requirement of \$149,901, a 530% increase, based on a test year ending December 31, 2014. The application requested an increase in rates from \$20.20 per month to \$78.04 per month but did not include a proposed effective date.

5. Riverside's rate increase affects ratepayers in Riverside's certificated service area in Brazos County.
6. In Order No.1 issued on November 14, 2016, the Commission administrative law judge (ALJ) required Commission Staff to comment on the administrative completeness of Riverside's application and address other procedural matters.
7. In a filing made on December 7, 2016, Commission Staff recommended that Riverside's application was not administratively complete and requested that the application be dismissed, in part because the applicant used a stale test year.
8. On December 7, 2016, Riverside filed a letter regarding its application.
9. In Order No. 2 issued on December 12, 2016, the ALJ found the application deficient and incomplete and suspended the effective date of Riverside's proposed rates.
10. On February 1, 2017, Riverside filed an update to its application, including changing its test year to the 2015 calendar year and amending several schedules. The update requested an increase in rates to \$74.16 based on an increase in revenue requirement of \$133,600, a 654% increase. The update did not include an effective date for the proposed rate.
11. On February 28, 2017, Commission Staff filed its second recommendation on administrative completeness in which it recommended that Riverside's application be found deficient again, in part because there was no effective date on the proposed notice.
12. In Order No. 3 issued on March 3, 2017, the ALJ deemed Riverside's application deficient and incomplete.
13. In its response to Order No. 3 filed on March 31, 2017, Riverside filed amendments to its application to correct and update information regarding its revenue requirement, expense for materials, expense for professional services, reconciliation of its plant in service approved in a prior rate case, and accumulated depreciation. This filing also included an effective date of June 5, 2017 for the proposed rate.
14. On April 28, 2017, Staff filed its third recommendation on administrative completeness in which it recommended that Riverside's application be found deficient again because of improper notice of the rate increase.

15. On May 1, 2017, Riverside filed a revised notice showing a rate increase to \$78.04 per month with an effective date of June 26, 2017.
16. In Order No. 4 issued on May 1, 2017, the ALJ deemed Riverside's application deficient and incomplete.
17. On May 22, 2017, Riverside filed a notice of increase in rates to \$78.04 with an effective date of June 26, 2017, an affidavit that the notice had been mailed and hand delivered to customers on May 16, 2017, and a letter to customers stating that existing customers would only be charged \$38 per month while new customers would be charged \$52 per month.
18. On May 30, 2017, Jessica Borden filed a ratepayer protest.
19. On June 1, 2017, Staff filed a request for an extension of time to provide its recommendation on administrative completeness and a motion to suspend the effective date of Riverside's proposed rates.
20. In Order No. 5 issued on June 5, 2017, the ALJ granted Commission Staff's request for an extension of time and suspended the proposed effective date of June 26, 2017 for Riverside's proposed rates.
21. On June 23, 2017, Commission Staff filed a second request for an extension of time to provide its recommendation on administrative completeness.
22. In Order No. 6 issued on June 23, 2017, the ALJ granted Commission Staff an extension of time to provide its recommendation on administrative completeness.
23. On July 7, 2017, Commission Staff filed a third request for an extension of time to provide its recommendation on administrative completeness, in part to provide Riverside time to file a revised notice form.
24. In Order No. 7 issued on July 10, 2017, the ALJ granted Commission Staff an extension of time to provide its recommendation on administrative completeness.
25. On July 27, 2017, Riverside filed an affidavit that it had provided notice of its proposed rate increase by mail and door notice on July 21, 2017. The notice was for an increase in rates to \$52.00 per month with an effective date of August 29, 2017 and included a letter to customers regarding the increase in rates.

26. On July 28, 2017, Commission Staff filed its fourth recommendation on administrative completeness, recommending that Riverside's application and notice be found sufficient.
27. In Order No. 8 issued on August 2, 2017, the ALJ deemed Riverside's application and notice complete and sufficient and adopted a procedural schedule. In addition, the ALJ suspended the proposed effective date for no more than 265 days.
28. On August 16, 2017, the following 15 ratepayers filed protests: Hilario and Elvira Rico, Adriano Franados, Maria Torres, Carlos and Debra Rico, Tonisha Galan, Amy Brown, Francis Willis, Cheryl Willis, Hynek Hejl, Sandra Becerra, Debbie Henderson, Karen Piper, Sharon Zoch, Margaret Jeffcoat, and Jose Luis Fendes.
29. On December 1, 2017, Commission Staff filed a request for referral to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.
30. On December 12, 2017, the Commission issued an order referring this proceeding to SOAH.
31. In SOAH Order No. 1 issued on December 18, 2017, the SOAH ALJ noticed a prehearing conference.
32. On December 19, 2017, Commission Staff filed a notice of change of counsel.
33. On December 21, 2017, Commission Staff filed a joint request to change the date for the prehearing conference.
34. In SOAH Order No. 2 issued on January 2, 2018, the SOAH ALJ rescheduled the prehearing conference.
35. On January 4, 2018, Commission Staff filed a proposed list of issues to be addressed in this proceeding.
36. On January 25, 2018, the Commission issued its preliminary order.
37. On February 13, 2018, a prehearing conference was held.
38. No parties other than Commission Staff and Riverside were admitted as parties to this proceeding.

39. In SOAH Order No. 4 issued on February 14, 2018, the SOAH ALJ memorialized the prehearing conference and established a procedural schedule.
40. On March 14, 2018, Riverside filed proof that it had provided notice to its ratepayers on January 19, 2018 that a prehearing conference had been set for February 13, 2018. Riverside's notice also provided information on how to intervene in this proceeding.

Notice

41. Riverside delivered notice of its application to its ratepayers on July 21, 2017.
42. Riverside provided notice that a prehearing conference had been set to its ratepayers on or about January 19, 2018.

Evidentiary Record

43. On March 19, 2018, Riverside and Commission Staff filed a joint motion to admit evidence and remand this proceeding to the Commission, with attachments including an agreement that resolved all issues between Riverside and Commission Staff, an agreed proposed tariff, and a proposed final order. Commission Staff also filed the memorandum of Andrew Novak and Patricia Garcia in support of the agreement.
44. In SOAH Order No. 6 issued on March 21, 2018, the SOAH ALJ admitted the following evidence into the record, dismissed the SOAH docket, and remanded this proceeding to the Commission:
 - a. Riverside's application to change its sewer rates and tariff, filed on November 9, 2016;
 - b. Riverside's proof of notice, filed on July 27, 2017.
 - c. Riverside's affidavit regarding providing notice of a prehearing conference, filed on March 14, 2018;
 - d. the unanimous settlement agreement, including attachments, filed on March 19, 2018; and
 - e. the memorandum of Andrew Novak and Patricia Garcia of Commission Staff in support of the agreement, filed on March 19, 2018.

Description of the Agreement

45. The agreement includes three attachments: an agreed tariff with the agreed rates, a proposed order, and a memorandum of Andrew Novak and Patricia Garcia of Commission Staff in support of the agreement.
46. The parties agreed that Riverside cannot collect any rate-case expenses.

Consideration of the Agreement

47. Riverside's annual revenue requirement is \$154,013, including fixed costs totaling \$133,600.92.
48. Commission Staff's recommended adjustments result in a recommended total annual revenue requirement of \$167,701.
49. Riverside charges a flat, monthly rate to each of its ratepayers.
50. Before entry of this order, Riverside's approved monthly rate was \$20.20.
51. The signatories agreed that Riverside should be permitted to charge a monthly rate of \$52.00 to each of its ratepayers.
52. The monthly rate of \$52.00 is projected to collect less than Riverside's annual revenue requirement, but is also a substantial increase to Riverside's prior rate.
53. The agreed rate of \$52.00 per month was the rate increase for which Riverside's ratepayers last received notice.
54. The rates, terms, and conditions of the tariff resulting from the agreement are just and reasonable.
55. The tariff does not identify the same entity that is identified in the application as the utility.
56. The official records of the Texas Secretary of State contain a certificate of formation for Riverside Wastewater Treatment Plant, LLC that identifies Syed Hyder as the manager of the company.
57. The official records of the Texas Secretary of State do not contain a certificate for an assumed name of Riverside Wastewater Treatment Plant for Syed Hyder.

Good Cause Waiver

58. The last notice of intent that Riverside sent to its ratepayers had an effective date of the proposed change in rates as August 29, 2017, which the Commission ALJ suspended to May 21, 2018.
59. The Commission has an open meeting scheduled for May 10, the only meeting scheduled before the end of the suspension.
60. The need to address the agreement before the end of the suspension period and the additional administrative processing required for this order that delayed its issuance is good cause to waive the 20-day notice requirement in 16 Texas Administrative Code § 22.35(b)(2) and consider the petition at the Commission's next regularly scheduled open meeting on May 10, 2018.

II. Conclusions of Law

1. Riverside is a retail public utility as defined in Texas Water Code (TWC) § 13.002(19) and 16 TAC § 24.3(59).
2. Riverside is a utility, a public utility, and a water and sewer utility as defined in TWC § 13.002(23) and a utility and a water and sewer utility as defined in 16 TAC § 24.3(75) and (76).
3. Riverside provides retail sewer service as defined in TWC § 13.002(2) and 16 TAC § 24.3(60).
4. Riverside is a class C utility as defined in TWC § 13.002(4-c) and is permitted under TWC § 13.1872(c)(2) to request that the Commission change its rates under the process set forth in TWC § 13.1871.
5. The Commission has jurisdiction to consider Riverside's application under TWC §§ 13.041, 13.181 through 13.185, 13.1871, and 13.1872 using the procedures set forth in 16 TAC §§ 24.12 through 24.36.
6. Riverside's application consists of its filing made on February 1, 2017, the correction filed on March 31, 2017, and the agreement filed on March 19, 2018, including attachments.

7. Riverside's notice of its application complied with the requirements of TWC § 13.1871 and 16 TAC §§ 24.22 and 24.28.
8. The Commission may not authorize a rate increase greater than the \$52.00-per-month charge that was noticed to ratepayers.
9. This docket was processed in accordance with the requirements of the TWC, the Administrative Procedure Act, chapter 2001 of the Texas Government Code, and Commission rules.
10. Riverside's rates approved in this proceeding are just and reasonable, comply with the ratemaking provisions of chapter 13 of the TWC, and, applying equally to all of Riverside's ratepayers, are not unreasonably discriminatory, preferential, or prejudicial.
11. This application does not constitute a major rate proceeding, as defined by 16 TAC § 22.2(27).
12. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.
13. The name of a limited liability company doing business in Texas must contain the phrase *limited liability company*, *limited company*, or an abbreviation of one of those phrases. Tex. Bus. Org. Code § 5.055(a).
14. The Commission may take official notice of the business records of the Texas Secretary of State.

III. Ordering Paragraphs

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

1. The Commission approves Riverside's application to change its sewer rates and tariff, as modified by the agreement and 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 of this Order.

3. Riverside shall file before the effective date identified in ordering paragraph 2 a tariff identical to the tariff attached to the settlement agreement except that it shall include the proper legal name of the utility.
4. Riverside may not seek rate-case expenses related to this docket.
5. Entry of this Order does not indicate the Commission's endorsement of any principle or methodology that may underlie the agreement. 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 agreement.
6. All other motions and any other requests for general or specific relief, if not expressly granted in this Order, are denied.

SIGNED AT AUSTIN, TEXAS the _____ day of May, 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

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