



Control Number: 46662



Item Number: 654

Addendum StartPage: 0

PUC DOCKET NO. 46662
SOAH DOCKET NO. 473-17-4964.WS



PETITION OF THE CITIES OF
GARLAND, MESQUITE, PLANO,
AND RICHARDSON APPEALING
THE DECISION BY NORTH TEXAS
MUNICIPAL WATER DISTRICT
AFFECTING WHOLESALE WATER
RATES

§
§
§
§
§
§
§

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

CITY OF KAUFMAN’S MOTION TO INTERVENE

Pursuant to 16 Tex. Admin. Code (TAC) §§ 22.103 and 22.104 the City of Kaufman, Texas (Kaufman) files this Motion to Intervene. In support, Kaufman respectfully shows as follows:

I. BACKGROUND

This docket originated on December 14, 2016, with the filing of the Petition of the Cities of Garland, Mesquite, Plano and Richardson (Petitioners) appealing the decision by North Texas Municipal Water District (the District) affecting wholesale water rates. A preliminary order was issued on June 29, 2017 establishing the framework for Phase One of the docket. On March 15, 2019, administrative law judges (ALJs) from the State Office of Administrative Hearings issued a Proposal for Decision (PFD) regarding Phase One issues, finding that Petitioners met their burden of proof to show, under the Public Interest Rule, that the protested rate is adverse to the public interest and recommending that the Public Utility Commission of Texas (Commission) (1) find the rates charged by the District are adverse to the public interest and (2) order that this case proceed to a cost of service inquiry that will assist the Commission in subsequently setting rates.

On pages 3-4, 78-79, 83-84, and 89-92, the PFD specifically addresses a premium of \$0.05 over the base rate that the District charges to non-member city wholesale contract customers (which the PFD refers to as “non-Member Cities” or “Customer Cities”). The ALJs recommended that the Commission conduct a review of the District’s rates through a cost-of-service proceeding, in part, due to the “Nickel Premium.”¹

¹ Proposal for Decision, p. 92.

(P54)

On February 27, 2020, the Commission determined that the rates protested by Petitioners are adverse to the public interest, initiating Phase Two of this docket for a cost-of-service determination to set rates. On February 28, 2020, an order was issued by the Commission's Office of Policy and Docket Management requesting lists of issues to be considered by the Commission in Phase Two. On March 13, 2020, the District filed its list of issues raising multiple issues related to the District's wholesale contract customers.

II. STANDING TO INTERVENE

Kaufman serves commercial and residential customers in North Texas. Kaufman serves a population of approximately 7,000 with approximately 2,600 connections. As a wholesale contract customer of the District, Kaufman's interests will be directly impacted by any decision of the Commission related to the District's cost-of-service, particularly the \$0.05 premium charge that Kaufman pays to the District as a wholesale contract customer.

Thus, Kaufman has a justiciable interest that may be adversely affected by the outcome of the proceeding and therefore has standing to intervene under 16 TAC § 22.103.

III. TIMING OF MOTION AND GOOD CAUSE

As discussed above in the background section, the procedural posture of this proceeding has been nearly as unique as the questions at issue. Thus, while issues associated with Phase One have been fully contested by Petitioners and the District through discovery, hearing, briefing, and issuance of the PFD related to Phase One, it has not been until a decision regarding Phase One that the issue of the reasonableness of the \$0.05 premium and the District's cost-of-service are now at issue such that Kaufman's distinct justiciable interest is now directly implicated. Accordingly, only now are Kaufman's above-stated justiciable interests ripe for consideration in this proceeding. Consequently, Kaufman would respectfully assert that the provisions of 16 TAC § 22.104(d) are not applicable to Kaufman's participation in Phase Two of this docket.

To the extent further consideration is required of this motion with respect to 16 TAC § 22.104(d), Kaufman is requesting and intends to participate in this proceeding only with respect to Phase Two issues associated with the District's cost-of-service, particularly related to the \$0.05 premium charge or other related issues that may develop impacting Kaufman's interests. Kaufman is not seeking a change or modification of the PFD regarding Phase One or the Commission's determination that this docket proceed to Phase Two. As Phase Two of the

docket is just beginning and no procedural schedule has been established, no party will be prejudiced by Kaufman's participation in the docket from this point forward and there will be no disruption in the proceeding associated with Kaufman's status as a party. Further, Kaufman is the only entity able to fully address the issues associated with the \$0.05 premium charge and the District's cost-of-service as such directly affect Kaufman and its citizens. Accordingly, the public interest supports approval of Kaufman's motion to intervene.

To the extent any finding of good cause is necessary in support of this motion under 16 TAC § 22.104(d), Kaufman has established the reasonableness of such a finding.

IV. AUTHORIZED REPRESENTATIVES

Kaufman hereby designates the following individuals as its authorized representatives for purposes of this proceeding and request that all pleadings, notices, correspondence, or other documents be served upon them:

Kirk D. Rasmussen
Leonard H. Dougal
Craig R. Bennett
Jackson Walker LLP
100 Congress Avenue
Suite 1100
Austin, Texas 78701
(512) 236-2000 (phone)
(512) 391-2120 (fax)
krasmussen@jw.com
ldougal@jw.com
cbennett@jw.com

V. INTENT TO PARTICIPATE JOINTLY

Contemporaneous with this filing and in the coming weeks, it is anticipated that additional wholesale contract customers of the District will request intervention in this proceeding with the intent to jointly participate under the common representation of the above-listed counsel with respect to issues associated with the \$0.05 premium charge to wholesale contract customers of the District.

VI. PRAYER

Kaufman respectfully requests that its motion to intervene be granted with respect to full participation in Phase Two and that it receive such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

JACKSON WALKER LLP
100 Congress Avenue, Suite 1100
Austin, Texas 78701
512-236-2000 (phone)
512-391-2120 (fax)

By: /s/ Kirk Rasmussen
Kirk D. Rasmussen
State Bar No. 24013374
krasmussen@jw.com
Leonard H. Dougal
State Bar No. 06031400
ldougal@jw.com
Craig R. Bennett
State Bar No. 00793325
cbennett@jw.com

**ATTORNEYS FOR THE CITY OF
KAUFMAN**

CERTIFICATE OF SERVICE

In accordance with the Commission's order in Project No. 50664 - *Issues Related to the State of Disaster for Coronavirus*, it is hereby certified that a copy of the foregoing has been filed electronically at the Commission and emailed to parties of record in this proceeding on this the 30th day of March, 2020.

/s/ Kirk Rasmussen
Kirk D. Rasmussen