



Control Number: 47058



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OPEN MEETING COVER SHEET

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MEETING DATE: June 29, 2017

DATE DELIVERED: June 22, 2017

AGENDA ITEM NO.: 5

CAPTION: Docket No. 47058; SOAH Docket No. 473-17-4369.WS -
*Ratepayers' Appeal of the Decision by the
San Patricio County Municipal Utility
District No. 1 to Change Rates.*

ACTION REQUESTED: Discussion and possible action with respect
to a Draft Preliminary Order

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Public Utility Commission of Texas

TO: Commissioner Kenneth W. Anderson, Jr.
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: David Hrnir *DH*
Commission Advising

RE: *Ratepayers' Appeal of the Decision by the San Patricio County Municipal Utility District No. 1 to Change Rates, Docket No. 47058, SOAH Docket No. 473-17-4369.WS, Draft Preliminary Order, June 29, 2017 Open Meeting Agenda Item No. 5*

DATE: June 22, 2017

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the June 29, 2017 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the June 29, 2017 open meeting.

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PUC DOCKET NO. 47058
SOAH DOCKET NO. 473-17-4369.WS

RATEPAYERS' APPEAL OF THE	§	PUBLIC UTILITY COMMISSION
DECISION BY THE SAN PATRICIO	§	
COUNTY MUNICIPAL UTILITY	§	OF TEXAS
DISTRICT NO. 1 TO CHANGE RATES	§	

DRAFT PRELIMINARY ORDER

Robert S. Hunter, as the owner of Camp Stryker RV Park, filed a petition to appeal the change in rates charged to Camp Stryker by San Patricio County Municipal Utility District (MUD) No. 1 for water and sewer service. Camp Stryker alleges that the MUD increased Camp Stryker's cost per gallon by more than 1,000 percent. Camp Stryker also complains that the MUD has limited the number of RV pads that can be at the RV park. This preliminary order identifies the issues that must be addressed in this docket.

This appeal was filed on April 12, 2017, and the Commission's administrative law judge found the appeal administratively complete on May 26, 2017. The Commission referred the docket to SOAH on May 31, 2017.

In the order of referral, Camp Stryker and San Patricio County MUD were directed, and Commission Staff and other interested persons were allowed, to file by June 13, 2017, a list of issues to be addressed in the docket and also to identify any issues not to be addressed and any threshold legal or policy issues that should be addressed. Camp Stryker and Commission Staff each timely filed a list of issues. San Patricio County MUD did not file a list of issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).¹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

¹ Tex. Gov't Code Ann. § 2003.049(e) (West 2016).

1. Are the rates being charged by San Patricio County MUD No. 1 to Camp Stryker RV Park just and reasonable?² Are the rates unreasonably preferential, prejudicial, or discriminatory? Are the rates sufficient, equitable, and consistent in application to each class of customers?
2. If the rates are just and reasonable, are not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of customers, must this appeal be dismissed?³
3. Does the petition appealing the rate change by San Patricio County MUD satisfy the requirements of TWC § 13.043(b), (c), and (d); 16 Texas Administrative Code (TAC) § 24.41(b), (c), and (d); and 16 TAC § 24.42(a) and (b)?
 - a. Was the petition filed within 90 days after the effective date of the rate change?
 - b. What number of ratepayers had their rates changed?
 - c. Did the lesser of 10,000 or 10% of those ratepayers whose rates had been changed and who are eligible to appeal the rate change file valid protests to San Patricio County MUD's rate change?
4. Considering only the information available to the governing body, what are the just and reasonable rates for San Patricio County MUD that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory?
 - a. What is the appropriate methodology to determine just and reasonable rates for San Patricio County MUD?

² See Tex. Water Code § 13.043(j) (West 2008 & Supp. 2016) (TWC); see also *Tex. Water Com'n v. City of Fort Worth*, 875 S.W.2d 332, 335-36 (Tex. App.—Austin 1994) (applying TWC § 13.043(j) in an appeal under § 13.043(f)).

³ See *Tex. Water Com'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994). In the *Fort Worth* case, the Austin Court of Appeals found that “the Commission made no finding as to the reasonableness of rates . . . , which is the initial inquiry under § 13.043(j) defining the scope of agency review.” *Id.* at 335. The Court ruled that the scope of appellate review under § 13.043(f) requires an initial determination under § 13.043(j). *Id.* at 336. However, the Water Code does not limit the application of subsection (j) to appeals under § 13.043(f). Therefore, the same initial inquiry under subsection (j) must be made in this appeal under § 13.043(b) before the Commission can reset rates.

- b. What is the revenue requirement that would give San Patricio County MUD sufficient funds to provide adequate retail water service?
 - c. What is the appropriate allocation of the revenue to customer classes?
 - d. What is the appropriate design of rates for each class to recover San Patricio County MUD's revenue requirement?
5. Should the Commission establish or approve interim rates to be in effect until a final decision is made?
6. What are the reasonable expenses incurred by San Patricio County MUD in this proceeding under TWC § 13.043(e)?
 - a. Should the Commission allow recovery of these reasonable expenses?
 - b. If so, what is the appropriate recovery mechanism?
7. What is the appropriate effective date of the rates fixed by the Commission in this proceeding?
8. If the Commission establishes rates different from the rates set by San Patricio County MUD, should the Commission order refunds or allow surcharges to recover lost revenues? If so, what is the appropriate amount of the refund or surcharge, and over what time period should the refund or surcharge be in place?
9. May San Patricio County MUD restrict the number of connections at Camp Stryker to 10 connections?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code Annotated § 2003.049(e).

II. Effect of Preliminary Order

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances

dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of June 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER

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