



Control Number: 47161



Item Number: 69

Addendum StartPage: 0

# Public Utility Commission of Texas

## Commissioner Memorandum

RECEIVED  
2020 DEC 16 AM 10:12  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**TO:** Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

**FROM:** Chairman DeAnn T. Walker *D/W*

**DATE:** December 16, 2020

**RE:** December 17, 2020 Open Meeting – Item No. 5  
Docket No. 47161 – *Application of Kerr County Water Systems, LLC for Authority to Change Rates*

I recommend that the Commission make the following changes to the proposed order in this proceeding. Additionally, the changes identified in the Commissioner memorandum filed on July 17, 2019 should be incorporated to the extent those changes are still applicable and should be harmonized with the following recommended changes to the order.

The second sentence of the order's introductory paragraph should be modified to better reflect the administrative-law context in which the Commission operates. In general, an agreement between the parties does not resolve issues without Commission approval.

“Kerr County Water and Commission Staff, the only two parties to this proceeding, filed a second amended agreement ~~that resolves certain issues between themselves~~ parties to this proceeding.”

Proposed findings of fact 13, 41, 42, 44, and 46 through 51 should be deleted because they are either unnecessary or duplicative of findings already in the order. Subsequent findings of fact should be renumbered accordingly.

13. ~~On April 6, 2018, Commission Staff filed an agreement by Kerr County Water to waive the 265-day limit to the suspension period in Texas Water Code (TWC) § 13.1871.~~
41. ~~On December 14, 2018, the parties filed a joint motion to admit evidence and remand the proceeding to the Commission.~~
42. ~~On January 16, 2019, the signatories filed a supplemental joint motion to correct inconsistencies in the December 14, 2018 joint motion.~~
44. ~~On May 18, 2020, the parties filed a supplemental joint motion to admit evidence.~~
46. ~~In Order No. 6 filed on July 23, 2020, the ALJ expressed the belief that a number of exhibits previously admitted in evidence should be struck, and required the~~

~~parties to move for admission of a new and error-free set of exhibits to support a final order.~~

- ~~47. On August 13, 2020, the parties filed an amended agreement with attachments and a new joint motion to admit evidence.~~
- ~~48. In Order No. 7 filed on September 9, 2020, the ALJ denied the motion to admit new evidence and directed the parties to again attempt to move for admission of a clearly identified and relevant set of exhibits to support issuance of a final order in this matter.~~
- ~~49. On September 30, 2020, the parties filed a second amended agreement, including attachments, and a motion to admit the evidence.~~
- ~~50. In Order No. 8 filed on October 6, 2020, the ALJ identified a problem in the proposed tariff offered by the parties and directed the parties to, by October 20, 2020, address the problem in the proposed tariff and, if necessary, file a correct tariff.~~
- ~~51. On October 20, 2020, the parties filed a corrected proposed tariff.~~

Proposed finding of fact 52(b) should be modified for clarity and brevity. The internal references below reflect the findings in the proposed order and will need to be changed to reflect the corresponding renumbered findings.

52. In Order No. 9 filed on October 21, 2020, the ALJ: . . .
  - (b) struck from the evidentiary record of this proceeding the following documents described in findings of fact 43 and 45 except for the application, including the proof of notice, filed on July 3, 2017, that had previously been admitted into evidence: (i) the unanimous agreement, including attachments, filed on January 16, 2019; (ii) the memoranda of Leila Guerrero, Emily Sears, and Jolie Mathis of the Commission's Water Utilities Division in support of the unanimous agreement filed on January 16, 2019; (iii) Commission Staff's report containing requested information and all attachments thereto filed on March 5, 2020 except the memorandum of Leila Guerrero (pages 3-4), Attachment LG-1 (pages 9-10), and Attachment LG-1 (page 26) filed on March 5, 2020; (iv) the memorandum of Debi-Looekerman attached to the parties' joint response to Order No. 4 and supplemental motion to admit evidence filed on May 18, 2020; and (v) the revised attachment LG-1 attached to the parties' joint response to Order No. 4 and supplemental motion to admit evidence filed on May 18, 2020.

Proposed finding of fact 61 describes Kerr County Water's agreement not to seek to recover any rate-case expenses incurred in this proceeding; however, that agreement is not documented in the evidentiary record. Therefore, proposed finding of fact 61 should be modified.

61. Kerr County Water ~~did not agree not to seek to recover and will not collect~~ any rate-case expenses incurred in this proceeding and did not request to defer the recovery of such expenses to a future proceeding that it incurred or will incur regarding this application.

Proposed finding of fact 68 should be modified for consistency with previous decisions of the Commission in contested proceedings subject to informal disposition.

68. ~~All the parties signed the agreement. Commission Staff recommended approval of the application as amended by the second amended agreement.~~

Conclusions of law 3 and 7 should be modified for accuracy.

3. At the time Kerr County Water filed its application, it was a cClass C utility as defined in former TWC § 13.002(4-c) and 16 TAC § 24.3(17).
7. Kerr County Water met its burden of proof under TWC § 13.184(c) and 16 TAC § 24.12 to show that the ~~proposed~~ rate change is just and reasonable.

Proposed ordering paragraphs 2 and 3 should be modified for consistency with previous decisions of the Commission.

2. The Commission approves the tariff, including its rates and terms, provided as attachment A to the clarification in response to Order No. 8 and revised tariff filed by the parties on October 20, 2020. The approved tariff is effective the first day of the month following the date this Order is signed.
- ~~3. The rates and terms included in the tariff provided as Attachment A to the clarification in response to Order No. 8 and revised tariff filed by the parties on October 20, 2020 are approved, effective the first day of the month following the date this Order is signed.~~

Finally, I propose delegating to the Office of Policy and Docket Management staff the authority to modify the order to conform to the *Citation and Style Guide for the Public Utility Commission of Texas* and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I look forward to discussing this matter with you at the open meeting.