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PUC DOCKET NO. 47288
SOAH DOCKET NO. 473-17-5910.WS

**RATEPAYERS' APPEAL OF THE
DECISION BY WEST WISE SPECIAL
UTILITY DISTRICT TO CHANGE
RATES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

2017 SEP 20 PM 2:30
PUBLIC UTILITY COMMISSION
FILED CLERK

PRELIMINARY ORDER

On June 15, 2017, some of the ratepayers of West Wise Special Utility District filed a petition with the Commission to appeal the decision by the West Wise board of directors to increase retail water rates under Texas Water Code (TWC) § 13.043(b).¹ The petition states that the ratepayers were notified of the rate increase by West Wise on April 1, 2017 and that the appealed, increased rates went into effect on May 1, 2017.² However, West Wise states that the effective date of the rate increase was March 16, 2017.³

West Wise asserts that 1,013 ratepayers are affected by its board's decision to increase rates.⁴ The notice that West Wise provided to the ratepayers stated that rates increased as shown in the tables below.⁵

	New residential rates	Old residential rates
Base (monthly) rate – 5/8" x 3/4"	\$74.68	\$45.00
Base (monthly) rate – ≥1"	\$199.15	\$120.00
0 to 10,000 gallons	\$6.06 per thousand gallons	\$3.65 per thousand gallons
≥10,001 gallons	\$7.80 per thousand gallons	\$4.70 per thousand gallons

¹ Ratepayers' Appeal of the Decision by West Wise Special Utility District to Change Retail Water Rates (June 15, 2017).

² *Id.* at 1.

³ West Wise's Statement of Review of Petition Signatures at 1 and 25, Exhibit B (July 21, 2017).

⁴ *Id.* at 2.

⁵ *Id.* at 28, Exhibit C.

	New commercial rates	Old commercial rates
Base (monthly) rate – 5/8" x 3/4"	\$117.73	\$70.00
Base (monthly) rate – minimum 1"	\$201.83	\$120.00
Base (monthly) rate – minimum 2"	\$605.49	\$360.00
Base (monthly) rate – minimum 4"	\$1,850.12	\$1,100.00
All gallons	\$13.46 per thousand gallons	\$8.00 per thousand gallons

On August 29, 2017, this proceeding was referred to the State Office of Administrative Hearings (SOAH). West Wise and its ratepayers were ordered, and other interested parties were invited, to file a list of issues to be addressed in this proceeding. West Wise and Commission Staff timely filed separate lists of issues on September 12.

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 SOAH.⁶ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Are the retail water rates being charged by West Wise Special Utility District just and reasonable?⁷ Are the rates unreasonably preferential, prejudicial, or discriminatory? Are the rates sufficient, equitable, and consistent in application to each class of customers?

⁶ Tex. Gov't Code Ann. § 2003.049(e) (West 2016).

⁷ See TWC § 13.043(j) (West 2008 & Supp. 2016); see also *Tex. Water Comm'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)).

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?⁸
3. Did the petition appealing the rate change by West Wise follow 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? TWC § 13.043(c) and 16 TAC § 24.41(b).
 - b. What number of ratepayers had their rates changed? TWC §§ 13.043(c) and (d) and 16 TAC § 24.41(d).
 - c. Did the lesser of 10,000 or 10% of those ratepayers file valid protests to West Wise's rate change? TWC § 13.043(c) and 16 TAC § 24.41(b).
 - d. If the petition appealing the rate change did not follow the requirements of TWC §§ 13.043(b), (c), and (d); 16 TAC §§ 24.41(b), (c), and (d); and 16 TAC §§ 24.42(a) and (b), must this appeal be dismissed?
4. Considering only the information available to West Wise's governing body at the time of its decision, what are the just and reasonable rates for West Wise that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory? TWC § 13.043(e) and (j) and 16 TAC §§ 24.41(e) and (i).
 - a. What is the appropriate methodology to determine just and reasonable rates for West Wise?
 - b. What is the revenue requirement that would give West Wise sufficient funds to provide adequate retail water service?
 - c. What is the appropriate allocation of the revenue to customer classes?

⁸ See *Tex. Water Comm'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.

- d. What is the appropriate design of rates for each class to recover West Wise's revenue requirement?
5. Should the Commission establish or approve interim rates to be in effect until a final decision is made? TWC § 13.043(h) and 16 TAC §§ 24.41(e)(6) and (h).
6. What are the reasonable expenses incurred by West Wise in this proceeding? TWC § 13.043(e) and 16 TAC § 24.41(e)(2).
 - 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? TWC § 13.043(e) and 16 TAC § 24.41(e)(3).
8. If the Commission establishes rates different than the rates set by West Wise's board, should the Commission order refunds or allow surcharges to recover lost revenues? If so, what is the appropriate amount and over what time period should the refund or surcharge be in place? TWC § 13.043(e) and 16 TAC § 24.41(e)(4) .

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 Tex. Gov't Code Ann. § 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 29th day of September 2017.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER

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