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DeAnn T. Walker
Chairman
Arthur C. D'Andrea
Commissioner



Greg Abbott
Governor


2018 APR 19 PM 12:42

John Paul Urban
Executive Director

Public Utility Commission of Texas

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

All Parties of Record

FROM: Gabriel P. Soto 
Administrative Law Judge

RE: **Open Meeting of April 27, 2018**
Docket No. 47625 – *Application of Cypresswood Estates Water System for a Pass-Through Rate Change*

DATE: April 19, 2018

Enclosed is a copy of a revised proposed order in the above-referenced docket. The Commission is currently scheduled to consider this docket at an open meeting to begin at 9:30 a.m. on Friday, April 27, 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 10:00 a.m. Monday, April 23, 2018.

On January 25, 2018, this docket was considered in open meeting and remanded to Docket Management for the administrative law judge to order an interim rate in the amount of \$26.36 per connection per month and to instruct the parties to take certain steps to move Cypresswood to a more fiscally viable state. The issue of meter installation was removed from further consideration.

Cypresswood has since filed an amended application with information on the total fees owed to the San Jacinto River Authority (SJRA) through February 21, 2018. The amounts in arrears include pumpage fees and various penalties. However, Cypresswood has also incurred legal fees. Commission Staff confirms that the requested surcharge of \$37.43 per connection, per month for one year was calculated correctly.

Commission Staff noted that legal fees are not typical of costs allowed to be recovered in a pass-through charge and expressed concerns with allowing them in this instance. However, given the circumstances facing Cypresswood, Commission Staff calculated a surcharge of \$33.58 per connection, per month for one year that will allow recovery of penalties, but not the legal fees.



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The revised proposed order affirms the \$26.36 pass through fee implemented on an interim basis on February 1, 2018 and presents the surcharge amount recommended by Commission Staff. Should the Commission decide to approve a surcharge of \$37.43, the tariff and notice would need to be updated and ordering paragraphs will need to be revised.

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

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DOCKET NO. 47625

APPLICATION OF CYPRESSWOOD	§	PUBLIC UTILITY COMMISSION
ESTATES WATER SYSTEM FOR A	§	
PASS-THROUGH RATE CHANGE	§	OF TEXAS

REVISED PROPOSED ORDER

This Order addresses the amended application of Cypresswood Estates Water System for approval of a pass-through rate change to recover fees imposed on the utility by the San Jacinto River Authority (SJRA) for the utility's participation in SJRA's Groundwater Reduction Plan. The Commission approves the amended application, in part, and denies the application, in part.

I. Background

A. The Application

On January 26, 2018, the Commission voted to remand the docket to the administrative law judge (ALJ) to order an interim rate in the amount of \$26.36 per connection per month and determine the total amount due to the SJRA, including past-due payments, penalties and interest.

B. Interim Rate and Amended Application

On January 31, 2018, the ALJ approved an interim pass-through rate \$26.36 per connection per month and the parties were further ordered to determine the total amount due to the SJRA, including past-due payments, penalties, and any interest owed in order for Cypresswood to file an amended application.

Thereafter, Cypresswood filed an amended application on March 19, 2018, including an invoice of the total amount owed and a proposed rate to provide for the ongoing fees and the recovery of all arrears. In addition to interest and penalties, Cypresswood requested that approximately \$7,200 in legal fees charged by the SJRA be included in a new surcharge.

C. Staff recommendation

On April 9, 2018, Commission Staff recommended that the Commission approve a surcharge of \$33.58 per connection per month, but noted that including recovery of legal fees would increase the surcharge to \$37.43 per connection per month, as requested in Cypresswood's

amended application. Commission Staff stated that legal fees being sought by Cypresswood for a pass-through rate had not previously been considered as one of the types of pass-through costs permitted under 16 TAC § 24.21(b)(2)(C).¹ Commission Staff also recommended final approval of the SJRA GRP pumpage fee of \$26.36 per connection per month effective February 1, 2018 and that Cypresswood be required to issue a new notice to customers indicating the water pumpage fee and the approved surcharge.

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

II. Findings of Fact

Procedural History

1. On September 20, 2017, Cypresswood filed an application to add a pass-through fee clause to its current tariff to pass-through the utility's cost for the San Jacinto River Authority's Groundwater Reduction Plan. The SJRA pumpage fee of \$2.64 was effective September 1, 2017.
2. Cypresswood's current tariff that has been in effect since 1991 authorizes a \$15.00 monthly flat rate for System 1 and a \$10.00 monthly flat rate for System 2.
3. The pass-through pumpage fee charged by SJRA of \$2.64 per 1,000 gallons, was effective September 1, 2017. Cypresswood proposed to pass through the annual cost, based on historical gallons pumped from the well and the new effective rate, as a flat monthly rate of \$26.36 per connection.
4. The applicant holds certificate of convenience and necessity (CCN) No. 12498 and serves 157 unmetered connections.
5. On September 25, 2017, a notice was issued establishing an October 11, 2017 deadline for Commission Staff to file a recommendation on the application and notice, and to propose a procedural schedule.
6. On October 10, 2017, Commission Staff recommended that the application be denied. In the alternative, Commission Staff recommended that Cypresswood recover the SJRA fees

¹ Commission Staff's Final Recommendation at 1 (April 9, 2018).

from customers as a surcharge for one-year period and that Cypresswood be required to install meters and request a metered rate along with a pass-through provision based on a gallonage charge. Commission Staff's recommendation took into account that Cypresswood's use of a monthly flat rate to recover a gallonage rate cost may result in overrecovery of the gallonage charges billed by SJRA and provides no incentive to conserve.

7. On December 13, 2017, Cypresswood filed a response to Commission Staff's recommendation stating that Cypresswood is owned by the Estate of Drew Spencer and the Estate is attempting to find a buyer for the system as there are no funds in the estate to make substantial improvements. The fees owed to SJRA are currently past due. Cypresswood stated that it "commits to including a provision in any sale that requires the installation and meters and implementation of a gallonage charge by August 31, 2018."² Cypresswood added that should they not find a buyer within the next 60 days, Cypresswood plans to file for approval to relinquish its CCN.³
8. On January 5, 2018, Notice was issued docketing the proceeding.
9. On January 5, 2018, a proposed order was filed.
10. On January 26, 2018, an Order remanding the proceeding to the ALJ was issued authorizing the implementation of an interim rate.
11. On January 31, 2018, an Order approving an interim rate and providing further instruction was issued.
12. On February 15, 2018, Commission Staff filed a proposed procedural schedule setting a deadline for the applicant to file an amended application.
13. On February 22, 2018 an Order adopting a procedural schedule was issued.

² Cypresswood Estates Water System's Notice of Appearance of Counsel, Motion for Leave, and Response to Commission Staff's Recommendation at 1 (Dec. 13, 2017).

³ *Id.* at 2.

The Amended Application

14. On March 19, 2018, Cypresswood filed an amended application seeking to recover past fees owed to the SJRA, including penalties and interest. In addition to late fee and finance fee penalties, a non-compliance fee, and an inspection fee, Cypresswood requested that approximately \$7,200 in legal fees charged by the SJRA be included in a new surcharge. Cypresswood proposed a surcharge of \$37.43.
15. On April 9, 2018, Commission Staff recommended approval of a \$33.58 per connection per month surcharge, excluding legal fees, as an extraordinary measure to protect the financial integrity of the utility.

Informal Disposition

16. The only parties to this application are Commission Staff and Cypresswood.
17. No party requested a hearing.

III. Conclusions of Law

1. Cypresswood is a retail public utility as defined in Texas Water Code § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.003(59).
2. The Commission has jurisdiction over the amended application under TWC § 13.041(a).⁴
3. This docket was processed in accordance with the requirements of the Administrative Procedure Act (APA),⁵ the TWC and Commission rules.

IV. Ordering Paragraphs

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

1. The Commission approves the amended application, in part.

⁴ Tex. Water Code Ann. § 13.041(a) (West 2008 & Supp. 2017) (TWC).

⁵ Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001- .902 (West 2016 & Supp. 2017).

2. Cypresswood shall implement a \$33.58 per connection per month surcharge to recover SJRA costs, effective May 1, 2018 through April 30, 2019.
3. The Commission denies the recovery of the legal fees in a pass-through charge.
4. The SJRA pumpage fee of \$26.36 per connection per month approved on January 31, 2018 is granted final approval.
5. Cypresswood shall issue a new notice to customers indicating the approved water pumpage fee and surcharge for past due SJRA fees.
6. The tariff sheets attached to this Order are approved.
7. All other motions and any other requests for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the _____ day of April 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER