



Control Number: 47625



Item Number: 23

Addendum StartPage: 0

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COMMISSIONER MEMORANDUM

MEETING DATE: May 10, 2018

DATE DELIVERED: May 9, 2018

AGENDA ITEM NO.: 21

CAPTION: Docket No. 47625 - Application of Cypresswood Estates Water System for a Pass-Through Rate Change

ACTION REQUESTED: Discussion and possible action with respect to the Final Order.

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Wassdorf, Petrus

23

DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner



Greg Abbott
Governor

John Paul Urban
Executive Director

Public Utility Commission of Texas

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

All Parties of Record (*via electronic transmission*)

FROM: Petrus Wassdorf 
Commission Advising

RE: *Application of Cypresswood Estates Water System for a Pass-Through Rate Change*; Docket No. 47625, Proposed Order, May 10, 2018 Open Meeting, Item No. 21.

DATE: May 9, 2018

Please find enclosed a memorandum regarding questions concerning the proposed order that are proposed by Chairman Walker in the above-referenced docket. No other commissioner will file a memorandum in this docket.

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Public Utility Commission of Texas

Memorandum

TO: Commissioner Arthur C. D'Andrea
FROM: Chairman DeAnn T. Walker 
DATE: May 9, 2018
RE: Open Meeting of May 10, 2018 – Agenda Item No. 21
Docket No. 47625 - *Application of Cypresswood Estates Water System for a Pass-Through Rate Change*

At the open meeting on January 25, 2018, the Commission remanded this docket to the Administrative Law Judge (ALJ). As part of the remand, the ALJ was ordered to approve an interim rate of \$26.36 that would allow Cypresswood Estates Water System (Cypresswood) to recover the San Jacinto River Authority (SJRA) charges on a going forward basis. In addition, the parties were ordered to determine the total amount of arrearages owed to SJRA and propose a temporary surcharge to recover that amount. The total amount of arrearages was subsequently calculated to be \$70,624.71, including approximately \$7,200 in legal fees accrued by SJRA and charged to Cypresswood. The total amount of arrearages divided among the 157 customers and recovered over a one-year period resulted in a surcharge of \$37.43 per month per customer. Commission Staff recommended that the legal fees not be collected by Cypresswood, because Commission Staff argued that legal fees should not be considered an actual cost that can be passed through to customers under 16 Texas Administrative Code (TAC) § 24.21(b)(2)(C). Therefore, Commission Staff recommended a surcharge of \$33.58. However, the \$37.43 is being charged as a surcharge and, as such, the pass-through provision does not apply. Instead, the Commission's rule regarding surcharges, 16 TAC § 24.21(b)(2)(G), applies.

After reviewing 16 TAC § 24.21(b)(2)(G), I would allow Cypresswood to collect the requested surcharge of \$37.43. The legal fees in this case are a type of cost that is properly collected in a surcharge. The SJRA legal fees are an actual cost incurred by SJRA and charged to Cypresswood, because Cypresswood had not been paying the invoices from SJRA. The only mechanism in which Cypresswood can obtain the funds to pay SJRA the past due amounts, including the legal fees, is through the rates set in this proceeding. Therefore, the legal fees should be included in the rates charged to the customers.

Additionally, the proposed notice and tariff included with Cypresswood's amended application include inconsistent and inaccurate descriptions of the rates. These descriptions should be consistent both with each other and with statute and Commission rules. References to the \$26.36 pass-through rate should be referred to as the "San Jacinto River Authority (SJRA) pass-through rate." References to the \$37.43 surcharge should be referred to as "San

Jacinto River Authority (SJRA) surcharge.” Further, the proposed tariff should be modified to reflect that the \$26.36 pass-through rate was authorized on January 31, 2018 and has no end date. The tariff should also be modified to reflect that the \$37.43 surcharge is authorized from June 1, 2018 through May 31, 2019.

Below are recommended modifications to the proposed order based upon the above discussion as well as other issues:

The last sentence of finding of fact 1 should be deleted, because it is duplicative of the first sentence of finding of fact 3.

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.~~

The following conclusions of law should be added to reflect conclusions that the Texas Water Code requires the Commission to make:

4. Both the pass-through rate, collecting the current SJRA charges, and the surcharge, collecting the arrearages, are just and reasonable as required by TWC § 13.182.
5. The rates provided for in this order and any rates that Cypresswood currently charges fix Cypresswood’s revenue at a level that provides a reasonable opportunity to earn a reasonable return on invested capital, and preserves the financial integrity of Cypresswood as required by TWC § 13.183(a).

The following conclusions of law should be added to reflect under what basis in Commission rules Cypresswood may collect the rates:

6. Cypresswood may recover the costs charged by SJRA pursuant to 16 TAC § 24.21(b)(2)(C) through (F).
7. Cypresswood may surcharge past due costs pursuant to 16 TAC § 24.21(b)(2)(G).

Ordering paragraph 2 should be modified to reflect the \$37.43 surcharge, modify the effective date, and to clarify the costs that the surcharge is recovering.

2. Cypresswood shall implement a ~~\$33.58~~\$37.43 per connection per month surcharge ~~to recover SJRA costs~~, effective June 1, 2018 through May 31, 2019, to recover all arrearages owed by Cypresswood to SJRA.

Ordering paragraph 4 should be modified to clarify that the SJRA pumpage fee of \$26.36 is collecting the actual, current costs incurred by Cypresswood from SJRA on a going forward basis and renumbered to reflect the deletion of ordering paragraph 3.

3. The SJRA pumpage fee of \$26.36 per connection per month- that was approved on January 31, 2018 to collect fees charged by SJRA to Cypresswood on a going forward basis. is granted final approval.

New ordering paragraphs should be added as follows:

7. Cypresswood must provide notice to all customers for the final pass-through charge of \$26.36 and the \$37.43 surcharge to be sent no later than May 24, 2018. The notice for both rates shall include an effective date of June 1, 2018, and the surcharge shall be authorized until May 31, 2018.
8. In all instances, the \$26.36 pass-through rate should be called the "San Jacinto River Authority (SJRA) pass-through rate."
9. In all instances, the \$37.43 surcharge should be called the "San Jacinto River Authority (SJRA) surcharge."

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.