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OPEN MEETING COVER SHEET

MEETING DATE: December 14, 2017

DATE DELIVERED: December 7, 2017

AGENDA ITEM NO.: 23

CAPTION: Docket No. 47662; SOAH No. 473-18-0847
Petition of Texas Parks and Wildlife
Department Appealing a Decision by City of
Goliad to Change Water and Sewer Rates

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

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CLERK

Public Utility Commission of Texas

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

All Parties of Record

FROM: Carsi Mitzner *CM*
Commission Advising

RE: *Petition of Texas Parks and Wildlife Department Appealing a Decision by City of Goliad to Change Water and Sewer Rates*, Docket No. 47662, SOAH Docket No. 473-18-0847.WS, Draft Preliminary Order, December 14, 2017 Open Meeting, Item No. 23.

DATE: December 7, 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 December 14, 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 December 14, 2017 open meeting.

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PUC DOCKET NO. 47662
SOAH DOCKET NO. 473-18-0847.WS

PETITION OF TEXAS PARKS &	§	PUBLIC UTILITY COMMISSION
WILDLIFE DEPARTMENT TO	§	
APPEAL A DECISION BY THE CITY	§	OF TEXAS
OF GOLIAD TO CHANGE WATER	§	
AND SEWER RATES	§	

DRAFT PRELIMINARY ORDER

Texas Parks and Wildlife Department (TPWD) filed a petition under Texas Water Code (TWC) § 13.043(b)(3) for the review of a decision by the City of Goliad to increase its retail water and wastewater rates. This preliminary order identifies the issues that must be addressed.

TPWD is a ratepayer residing outside the corporate limits of the City of Goliad. Goliad announced rate increases for its water and wastewater utility services on June 29, 2017, and TPWD appealed the rate increases to the Commission on October 2, 2017. On November 6, 2017, this proceeding was referred to the State Office of Administrative hearings (SOAH).

TPWD and Goliad were directed and Commission Staff and other interested persons were allowed to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by November 22, 2017. Goliad and Commission Staff timely filed a list of issues; TPWD filed a list of issues on November 27, 2017.

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.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. Did the petition appealing the rate change by Goliad 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 the rate change? TWC § 13.043(c) and 16 TAC § 24.41(b).
2. Are the retail water rates being charged by Goliad 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?³
3. 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?⁴
4. Considering only the information available to Goliad at the time of its decision, what are the just and reasonable rates for Goliad 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 Goliad's out-of-city customers?

² See TWC § 13.043(j) (West 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)).

³ See TWC § 13.043(g) (West 2016).

⁴ 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.

- b. What is the revenue requirement that would give Goliad 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 Goliad'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 Goliad 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 Goliad, 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 Texas Government 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 _____ day of _____ 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

BRANDY MARTY MARQUEZ, COMMISSIONER

ARTHUR C. D'ANDREA, COMMISSIONER

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