



Control Number: 47863



Item Number: 44

Addendum StartPage: 0

PUC DOCKET NOS. 46662, 47863, 49043, 50382



PETITION OF THE CITIES OF § BEFORE THE
GARLAND, MESQUITE, PLANO, AND §
RICHARDSON APPEALING THE §
DECISION BY NORTH TEXAS § PUBLIC UTILITY COMMISSION
MUNICIPAL WATER DISTRICT §
AFFECTING WHOLESALE WATER §
RATES § OF TEXAS

**JOINT REPORT TO THE COMMISSION AND AGREED MOTION TO WITHDRAW
APPEALS AND DISMISS PROCEEDINGS WITH PREJUDICE**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Consistent with the directive of the Public Utility Commission (“*Commission*”) that the parties attempt to resolve these proceedings by agreement,¹ the Cities of Garland, Mesquite, Plano and Richardson (“*Petitioning Cities*”) and the Cities of Allen, Farmersville, Forney, Frisco, McKinney, Princeton, Rockwall, Royse City, and Wylie (the *Petitioning Cities* and the Cities of Allen, Farmersville, Forney, Frisco, McKinney, Princeton, Rockwall, Royse City, and Wylie collectively referred to hereinafter as the “*Member Cities*”), and the North Texas Municipal Water District (“*District*”), each a party to the 1988 Amendatory Contract, the underlying contract that gave rise to the *Petitioning Cities*’ petition, are pleased to report that they have resolved all of the outstanding issues in these proceedings by agreement.

To give effect to the parties’ settlement, the *Member Cities* and the *District* request that the Commission permit withdrawal of the *Petitioning Cities*’ appeal of the *District*’s 2016-17 rates in Docket No. 46662 and issue an order dismissing with prejudice Docket No. 46662. Promptly upon that dismissal order in Docket No. 46662 becoming final and non-appealable, the *Petitioning Cities* will unilaterally withdraw their appeals of the *District*’s 2017-18, 2018-19, and 2019-20 rates,

¹ Order (Apr. 17, 2020) (“The Commission determined that before the Commission issues its preliminary order for phase II, the parties should attempt to resolve this proceeding by agreement.”).

respectively, and further request a Commission order dismissing with prejudice the proceedings in Docket Numbers 47863, 49043, and 50382.

I. BACKGROUND

The District charges wholesale water rates pursuant to a 14-party contract. The District and the above-listed Member Cities are the only parties to that contract.

On December 14, 2016, the Petitioning Cities appealed the District's 2016-17 rates in Docket No. 46662.² On June 29, 2017, the Commission issued a preliminary order and referred the proceeding to the State Office of Administrative Hearings ("**SOAH**").³ On March 15, 2019, the SOAH Administrative Law Judges issued their proposal for decision.⁴ On April 17, 2020, before taking action on the proposal for decision, the Commission ordered the parties to attempt to resolve the proceeding by agreement.⁵

On December 15, 2017, December 20, 2018, and December 19, 2019, the Petitioning Cities appealed the District's 2017-18, 2018-19, and 2019-20 rates in Docket Nos. 47863, 49043, and 50382, respectively.⁶ Those proceedings have been abated pending Commission processing of Docket No. 46662, and no party has presented its direct case in these subsequent proceedings.

II. REQUEST FOR WITHDRAWAL AND DISMISSAL

The Petitioning Cities seek dismissal with prejudice of Docket Nos. 46662 and the conditional dismissal of Docket Numbers 47863, 49043, and 50382 pursuant to Section

² Original Petition Appealing Wholesale Water Rates (Dec. 14, 2016).

³ Preliminary Order (Jun. 29, 2017).

⁴ Proposal for Decision – Public Interest Phase (Mar. 15, 2019).

⁵ Order (Apr. 17, 2020) ("The Commission determined that before the Commission issues its preliminary order for phase II, the parties should attempt to resolve this proceeding by agreement.").

⁶ Original Petitions Appealing Wholesale Water Rates (Dec. 15, 2017; Dec. 20, 2018; Dec. 19, 2019).

22.181(d)(10),⁷ which include withdrawal of an application consistent with Section 22.181(g) as among the permissible grounds for dismissal.⁸ In relevant part, Section 22.181(g) provides:

22.181(g)(1): A party that initiated a proceeding may withdraw its application without prejudice to refile of same, at any time before that party has presented its direct case. A party may agree to withdraw its application with prejudice.

22.181(g)(3): A request to withdraw an application with or without prejudice after a proposed order or proposal for decision has been issued, may be granted only upon a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

The Member Cities and the District agree that there is good cause for the Commission to grant the Petitioning Cities' motion to withdraw its applications in the above-referenced proceedings for the reasons that follow.

A. Good Cause Exists for the Commission to Allow Withdrawal of Docket No. 46662

Sections 22.181(g)(3) governs the request for withdrawal of the Petitioning Cities' appeal of the District's 2016-17 rates in Docket No. 46662 because a proposal for decision⁹ has been issued. Those rules permit withdrawal upon the Commission's finding of good cause. In determining good cause, the Commission will weigh the importance of the matter being addressed to the Commission's jurisprudence and the public interest.

Regarding the public interest, after multiple years of litigation, the parties to the contract underlying the appealed rates have agreed to amend its rate-setting provisions. Each of the governing bodies of the 13 Member Cities have approved the amendment to the contract and a settlement agreement, as has the Board of Directors of the District. The Member Cities and the District have resolved all outstanding issues related to this appeal. Permitting withdrawal of the

⁷ 16 Tex. Admin. Code § 22.181(d)(10) (TAC).

⁸ *Id.*

⁹ Proposal for Decision – Public Interest Phase (Mar. 15, 2019).

rate appeal filed by the Petitioning Cities in Docket No. 46662 and dismissing the proceeding will give effect to the contract amendment and settlement agreement, will resolve a longstanding regional dispute between the parties to the contract, and will avoid the additional expenditure of public funds for a costly rate proceeding and judicial appeals.

The Commission's grant of the requested withdrawal will not affect the Commission's jurisprudence. The issues considered by the Commission in phase one of this proceeding are fact specific in nature and are not the subject of a final order,¹⁰ such that the settlement of the outstanding issues between the parties to the contract and the dismissal of this wholesale water rate appeal should not impact other pending or future wholesale water rate appeals.

An agreed form of proposed final order permitting the withdrawal of the Petitioning Cities' application in Docket No. 46662 and the dismissal of the docket with prejudice is attached hereto.

B. Petitioning Cities' Conditional Withdrawal of Docket Nos. 47863, 49043, and 50382

Section 22.181(g)(1) permits the Petitioning Cities to unilaterally withdraw their appeals of the District's 2017-18, 2018-19, and 2019-20 rates in Docket Nos. 47863, 49043, and 50382, respectively, because no party has presented its direct case in those proceedings. To the extent that the Commission permits withdrawal of Docket No. 46662 and dismisses that proceeding, once the dismissal order in Docket No. 46662 becomes final and non-appealable, the Petitioning Cities will immediately unilaterally withdraw their petitions in Docket Nos 47863, 49043, and 50382, with prejudice.

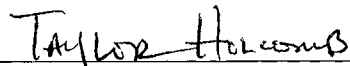
¹⁰ 16 TAC § 24.313(b) ("If the commission determines the protested rate adversely affects the public interest, the commission will remand the matter to the State Office of Administrative Hearings for further evidentiary proceedings on the rate. The remand order is not a final order subject to judicial review.").

III. CONCLUSION AND REQUEST FOR RELIEF

The Member Cities and the District request that the Commission find that good cause exists to permit withdrawal of the Petitioning Cities' application in Docket No. 46662 and issue an order dismissing with prejudice the proceedings in Docket No. 46662. Upon that order becoming final and non-appealable, the Petitioning Cities will immediately withdraw their applications in Docket Nos. 47863, 49043, and 50382, and the Member Cities and the District request that the Commission issue an order dismissing those dockets.

Date: October 29, 2020

Respectfully submitted,



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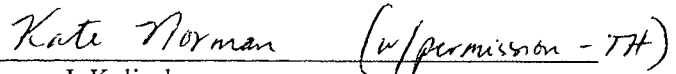
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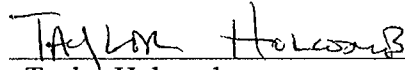
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CERTIFICATE OF SERVICE

I certify that a copy of this petition was hand-delivered, sent via overnight mail, sent via certified mail return receipt requested, sent via U.S. first class mail, or sent via fax to all parties of record on October 29, 2020.


Taylor Holcomb

**PUC DOCKET NO. 46662
SOAH DOCKET NO. 473-17-4964.WS**

**PETITION OF THE CITIES OF
GARLAND, MESQUITE, PLANO,
AND RICHARDSON APPEALING
THE DECISION BY NORTH TEXAS
MUNICIPAL WATER DISTRICT
AFFECTING WHOLESALE WATER
RATES**

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PUBLIC UTILITY COMMISSION

OF

TEXAS

ORDER

On December 14, 2016, the cities of Garland, Mesquite, Plano, and Richardson (collectively, the Petitioning Cities) appealed the wholesale water rates charged by the North Texas Municipal Water District (District) for the 2017 fiscal year.¹ On June 29, 2017, the Commission referred the proceeding to the State Office of Administrative Hearings (SOAH). The ALJs granted motions for intervention filed by the cities of Princeton, Rockwall, Wiley, McKinney, Royse City, Forney, Frisco, Allen, and Farmersville (collectively, the non-Petitioning Cities). The Petitioning Cities and the non-Petitioning Cities (collectively, the Member Cities) and the District are the only parties to the contract by which the District charges the rates at issue.

After conducting a hearing on the phase one issues, the SOAH ALJs filed a proposal for decision on March 15, 2019. At its open meeting on April 17, 2020, the Commission determined that before taking action on the proposal for decision in phase one or issuing its preliminary order for phase two, the parties should attempt to resolve this proceeding by agreement.

On October 29, 2020, the Member Cities and the District jointly reported that the parties have resolved this proceeding by agreement. To give effect to the parties' agreement, the Petitioning Cities have requested that the Commission permit withdrawal of their appeal and issue an order dismissing with prejudice Docket No. 46662.

¹ Original Petition Appealing Wholesale Water Rates (Dec. 14, 2016).

I. LEGAL STANDARD

The Petitioning Cities seek dismissal with prejudice of Docket No. 46662 pursuant to Section 22.181(d)(10), which includes withdrawal of an application consistent with Section 22.181(g) as among the permissible grounds for dismissal. Section 22.181(g)(3) governs the request for withdrawal because a proposal for decision has been issued. In relevant part, Section 22.181(g)(3) permits withdrawal of an application after a proposal for decision has been issued “only upon a finding of good cause by the commission.” In determining good cause under Section 22.181(g)(3), “the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.”

II. FINDING OF GOOD CAUSE

The Commission finds that there is good cause to grant the Petitioning Cities request to withdraw their appeal. Each of the governing bodies of the 13 Member Cities has agreed to resolve this proceeding by agreement, as has the Board of Directors of the District. The Member Cities and the District have resolved all outstanding issues related to this appeal. Granting withdrawal of the appeal and dismissing the proceeding will give effect to the parties’ agreement, will resolve a longstanding regional dispute between the parties to the contract, and will avoid the additional expenditure of public funds for a costly rate proceeding and judicial appeals. The Commission granting the requested withdrawal will not affect the Commission’s jurisprudence because the issues considered by the Commission in phase one of this proceeding are fact specific in nature and are not the subject of a final order, such that permitting withdrawal and dismissing this docket should not impact other pending or future wholesale water rate appeals.

III. DISMISSAL OF PROCEEDING

The agreed motion to withdraw is granted and Docket No. 46662 is dismissed with prejudice to refiling of same.

Signed at Austin, Texas the _____ day of _____ 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER