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DOCKET NO. 47912

RATEPAYERS' APPEAL OF THE
DECISION BY SOUTH CENTRAL
CALHOUN COUNTY WATER
CONTROL AND IMPROVEMENT
DISTRICT NO. 1 TO CHANGE RATES

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BEFORE THE
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS

**SOUTH CENTRAL CALHOUN COUNTY WATER CONTROL AND IMPROVEMENT
DISTRICT NO. 1'S SUPPLEMENTAL BRIEFING
PER ORDER NO. 4 AND MAY 3 ORDER**

South Central Calhoun County Water Control and Improvement District No. 1 ("District") files this Supplemental Briefing pursuant to Public Utility Commission of Texas ("Commission") Order No. 4 and the Commission's May 3, 2019 Order ("May 3 Order"). In its May 3 Order, the Commission questioned the \$62,533 in expenses that Commission Staff had previously approved and recommended be included in rates that the District is charging its customers. The Commission has requested the District to supplement the record and/or to provide additional briefing and citations to the existing record to support these expenses. South Central is doing both. The briefing provided herein sets out the applicable standards that justify these expenses. Written testimony filed today in this docket also supplements the record.

BACKGROUND

The District Board of Directors ("Board") increased the rates on September 15, 2017. It is that Board action that is challenged in this proceeding. The rates increased as follows: the commercial rate increased from \$43.00 to \$50.00 per month for the main connection, the residential rate increased from \$28.00 to \$40.00 per month for the main connection, the additional connection rate for commercial customers was set at \$25.00 per month, and the additional connection rate for residential was increased from \$14.00 to \$20.00 per month.

On December 28, 2017, the District's ratepayers filed a petition to appeal changes in the sewer rates charged by the District effective November 1, 2017 ("Petition"). Upon the filing of a petition that meets the requirements under state law, the Public Utility Commission ("PUC") becomes a jurisdictional party to rate appeal proceedings.

The Commission referred the Petition to SOAH on February 26, 2018.¹ PUC Staff, the District, and the Ratepayers' Representative agreed to mediation. The Parties participated in mediation on July 13, 2018 before SOAH mediators, and the mediation was extended by agreement of the Parties to August 13, 2018. This allowed the Parties time to finalize the terms of the settlement agreement. The District, PUC Staff, and the Ratepayers' Representative settled the rate appeal filed by the customers on September 21, 2018.²

A portion of the expenses included in the rates were challenged by the Commission at its Open Meeting on April 19, 2019. After that meeting, the Commission issued the May 3 Order questioning \$62,533 of the District's expenses.

As agreed in the settlement, the District appointed the Ratepayers' Representative to the District Board to fill a vacancy. No other Ratepayers' Representative has been selected.

The Administrative Law Judge issued Order No. 3 directing the Commission Staff to file comments and a procedural schedule regarding processing the appeal.

Commission Staff filed comments on September 11, 2019 regarding further processing of the appeal and seeking supplementation of the record.

¹ *Ratepayers' Appeal of the Decision by South Central Calhoun County Water Control and Improvement District No. 1 to Change Rates*, Docket No. 47912, Order of Referral (Feb. 26, 2018).

² Docket No. 47912, Joint Motion to Admit Evidence and Request that the Docket be Dismissed from SOAH Docket and Returned to the Commission (Sept. 21, 2018).

The Administrative Law Judge issued Order No. 4 directing the District to supplement the record as detailed in Commission Staff's comments.

This Supplemental Briefing is filed along with written testimony by three District witnesses: District Board President Tamera Atkins, District Engineer Scott Mason, and District Counsel Natasha Martin.

APPLICABLE STANDARD

As the Commission itself noted in its May 3 Order, the following standards apply to its review of a water district's rates:

- Pursuant to Texas Water Code (TWC) § 13.181(a), the district is exempt from many of the ratemaking requirements applicable to water utilities.³
- Pursuant to TWC § 13.043(e), the district's rates may be based only on information available to the district at the time the rate increase was made.⁴
- TWC § 13.043(j) requires rates to be just and reasonable, not unreasonably preferential, prejudicial, or discriminatory; and sufficient, equitable, and consistent in application to each class of customer.⁵
- TWC § 13.043(j) also requires the Commission to use a methodology that preserves the financial integrity of the district.⁶

In its May 3 Order, the Commission concluded that, in order for the amounts to be included in rates, those amounts "must be known with a reasonable degree of certainty" and "be apt to prevail in the future, i.e., likely to recur each year or on a normalized basis for costs that recur on

³ Docket No. 47912, Order at 1 (May 3, 2019).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

a periodic basis.”⁷ The Commission also proposed that, if it concluded some expenses were non-recurring, it may allow a modified settlement that would allow the utility to recover those costs through a surcharge.

The District points out that, as a water district, it is a governmental entity created pursuant to Article XVI, Section 59, of the Texas Constitution. As a governmental entity, the District seeks only to recover the costs it actually incurs in serving its customers. A district may adopt and enforce all necessary “charges”⁸ for providing or making service available.⁹ A water control and improvement district board may alter those charges for maintenance and operation.¹⁰ These provisions make clear why the ratemaking standards applicable to private, for-profit entities do not apply to the District. It is also why the Commission does not have original jurisdiction over the District’s rates and is given considerable flexibility in reviewing rates when ratepayers appeal the district’s rates. TWC § 13.043(e) allows the Commission to set rates at the original effective date or at some other date and to either order refunds or allow a surcharge to recover lost revenues. Preserving the financial integrity of a water district is paramount.

INFORMATION AVAILABLE

Information on the \$62,533 in expenses was made available to the Board at the time of the rate increase. A chart of those expenses and citations to the record showing information available to the Board is provided below. There are citations to the existing record and supplements to the record filed today.

⁷ *Id.* at 1-2.

⁸ See TWC § 13.002(17) (defining “rate” to include a “charge” for water or sewer service).

⁹ TWC § 49.212.

¹⁰ TWC § 51.303(3).

	Repair or Replacement	Date of Proposal, Invoice or Report	Cost	Record Cite (Existing or Supplemental)
1	Clarifier Rehabilitation	1/14/2015 PEECO Proposal (updated from 2012 proposal)	\$58,500 (\$21,955 repair cost from 2012)	Existing – Aguirre Supp., Ex. 38 at p. 2-3.
2	Chlorinator Replacement	5/9/2016 PEECO Proposal	\$6,281	Existing – Aguirre Supp., Ex. 27 at p. 2, paras. 6, 10, 11. Existing – Aguirre Supp., Ex. 28 at p. 2, paras. 8 - 11. Existing – Aguirre Supp., Ex. 38 at p. 2-3.
3	Ebara Grinder Pump	12/31/2016 Depreciation Report	\$6,433.25	Existing – Mason Direct, Ex. 14, Asset no. 20.
4	2 lift pumps at Alamo Beach	06/16/2017 PEECO Invoice for one pump (Board knew that 2 more were needed)	\$16,512	Existing – District's Response to Commission Staff's Second Set of Requests for Information, Response to RFI 2-4 at p. 7, see also WCID-Staff 2-4(A).
5	Drying field Sludge Removal	Informal Estimate	\$11,000 (approximate cost)	Supp – Atkins Direct, at pp. 4-5; <i>see also</i> Ex. 45.
6	Control Board at Lift Station	Informal Estimate	\$352.50 (invoice after 9/15/17)	Supp – Atkins Direct, at p. 5; <i>see also</i> Ex. 45.
7	Roof on blowers damaged	not included in rates		Supp – Atkins Direct, at p. 5; <i>see also</i> Ex. 45.

In the May 3 Order, the Commission questioned the 2012 proposal for the clarifier work. However, there was a 2015 proposal before the Board when it took its action. That proposal was for even more than the 2012 work, but the Board took action on the less expensive proposal to save District funds. The 2016 proposal for the chlorinator replacement was also questioned as out of date. Regarding the Drying Field Sludge Removal, the Board had an informal anticipated estimate for the cost to remove the sludge at the time it voted.¹¹ The Board correctly budgeted for the sludge removal to be performed in 2018. The Board knew that the Control Board would have to be repaired at the time it voted to increase the rates, but again, had an informal anticipated estimate. The final cost of the repair came after the Board vote.¹² These anticipated costs were known to the Board and considered by the Board to ensure that the District could make necessary repairs and continue to provide service. The replacement of the Blower roof was not included in the rate increase as there was no estimate for the cost to recover in the rates.¹³ Hurricane Harvey repairs were noted by the Board as that damage happened less than 3 weeks before the Board vote.¹⁴ As such, the information available to the Board for these expenses reflected known costs that the District would incur.

RECURRING COSTS OR NORMALIZED BASIS

District witness Scott Mason testifies to the \$62,533 in expenses that are likely to recur each year or on a normalized basis.¹⁵ After visiting the plant, Mr. Mason testified that the system is aging and continuous repair is expected. “The District’s system is aging and additional repairs

¹¹ See Direct Testimony of Tamera Atkins (Atkins Direct), District Ex. 42 at pp. 4-5.

¹² See Atkins Direct at 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Supplemental Direct Testimony of Scott Mason (Mason Supp.), District Ex. 40 at p. 6.

and maintenance expenses like those incurred in 2017 will be continuing for many years.”¹⁶ Mr. Mason testifies that the replacements can all be normalized and the amount of time between replacements is generally based on service and maintenance frequency.¹⁷ Mr. Mason also testifies that the drying field sludge removal is a recurring cost.¹⁸

FINANCIAL INTEGRITY OF THE DISTRICT

The Commission must preserve the financial integrity of the district in a rate appeal. The District has taken steps to ensure that its financial integrity is preserved and that it can continue to provide service to its customers. The District has been incurring additional expenses, including rate case expenses associated with this proceeding, during the two years that the rates have been in effect. The district’s expenses caused the District to have a deficit last year of \$58,688.¹⁹ Due to these additional rate case expenses, the District could not afford to make all of the repairs and replacements on the \$62,533 list.²⁰ To address these additional expenses, the District plans to implement yet another modest rate increase before the end of the calendar year. Under a Section 13.043 rate appeal, Subsection (e) provides that the rates established by the Commission “remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the commission determines that a financial hardship exists.” Thus, if the District approves another rate increase, as provided in Chapter 13, the rates that the Commission approves will be effective only from November 1, 2017 until the rate is changed again, likely at the end of 2019.

¹⁶ See Direct Testimony of Scott Mason, District Ex. 11 at 8.

¹⁷ See Mason Supp. at p. 6.

¹⁸ *Id.*

¹⁹ See Atkins Direct at p. 6.

²⁰ *Id.* at 6-7.

Although another rate increase is necessary, the District respectfully requests that the Commission allow recovery of the \$62,533 in expenses through the rates currently charged to date and not reduce the rates in the event it concludes that some of the expenses are not recurring. In particular, the Commission questioned in Order No. 3 whether the \$21,995 expense for the clarifier was a recurring expense. If allowed to be recovered as a surcharge, the District's witness Tamera Atkins, is testifying that a two-year surcharge would be appropriate for recovery of that expense.²¹

Additionally, more costs are on the horizon that will make it difficult for the District to operate and maintain the system if the Commission does not allow recovery of the \$62,533 in expenses through rates. District engineer Scott Mason testifies that he anticipates at least \$175,000 in repair and rehabilitation costs due to the age of the plant.²² The Board anticipated costs in 2017 were well below this number. Simply allowing the District to keep the rates it has in place would be appropriate rather than requiring a rate reduction and a future surcharge to recover that amount. As District witness Ms. Atkins testifies, requiring a refund of rates accompanied by a surcharge would impose a financial hardship on the District.²³ Since the September 15, 2017 rate increase, the District's recurring operating expenses it actually incurs in serving its customers have gone up.²⁴ Based on the Commission's standard set forth in the May 3 Order, a further rate increase is justified, and a reduction to the current rates would put the District in jeopardy. Pursuant to its authority under subsection (e), the Commission can and should move forward with the rate increase.

²¹ *Id.* at 8.

²² See Mason Supp. at p. 5.

²³ See Atkins Direct at p. 7.

²⁴ *Id.*

In establishing new rates, the District is mindful of the directives the Commission has included in its May 3 Order. Its new rates are based on information available to the District that the District believes fully satisfies those directives. In addition, pursuant to the initial settlement with PUC Staff, the District intends to participate with the Commission to receive contractor assistance for Board training and a rate study. The District is committed to ensuring that its rates comply with Commission standards in all respects.

CONCLUSION

The District seeks to take all reasonable steps necessary to maintain the financial integrity of the system and continue to provide continuous and adequate service. The District had provided information that it believes was available to the Board at the time the rates increased, and a breakdown of recurring or normalized expenses for the \$62,533 in expenses. The District respectfully requests that the Commission allow parties to modify the settlement, as necessary, so that the District may recover all expenses detailed in the District's testimony in its rates as recurring or normalized expenses. If the Commission concludes that some expenses were non-recurring, the District respectfully requests that the Commission allow a modified settlement that would allow the utility to recover those costs through a surcharge. The District requests such further relief to which it is entitled.

Respectfully submitted,

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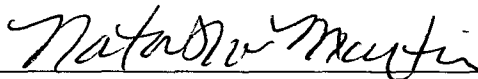
CERTIFICATE OF SERVICE

I certify that a copy of this document was served on the following parties of record on October 11, 2019 via Email or PUC Filing.

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