



Control Number: 47912



Item Number: 6

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RATEPAYERS' APPEAL OF THE DECISION BY SOUTH CENTRAL CALHOUN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 TO CHANGE RATES	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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COMMISSION STAFF'S LIST OF ISSUES

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this List of Issues. In support thereof, Staff shows the following:

I. BACKGROUND

On December 28, 2017, ratepayers (Ratepayers) of South Central Calhoun County Water Control and Improvement District No. 1 (WCID No. 1) filed a petition appealing the change in retail water rates by WCID No. 1, effective on November 1, 2017. The appeal was filed pursuant to Tex. Water Code Ann. § 13.043(b) (West 2008 & Supp. 2017) (TWC).

Order of Referral, issued by Commission Advising and Docket Management on February 26, 2018, referred the docket to the State Office of Administrative Hearings and stated that Staff may file a list of issues to be addressed in the docket by March 8, 2018. Therefore, this pleading is timely filed.

II. STAFF'S LIST OF ISSUES

Staff, referencing TWC, 16 Texas Administrative Code (TAC) § 22 Subchapter J and § 24 Subchapter C, and the list of issues in prior water rate appeal cases,¹ has identified the following issues that should be considered by the Commission in this proceeding:

1. Are the retail water rates being charged by WWIC No. 1 just and reasonable? Are the rates unreasonably preferential, prejudicial, or discriminatory? Are the rates sufficient, equitable, and consistent in application to each class of customers? TWC § 13.043(j).

¹ *Ratepayers' Appeal of the Decision by Trophy Club Municipal Utility District No. 1 to Change Rates*, Docket No. 45231, Preliminary Order at 3-5 (Feb. 4, 2016); *Ratepayers' Appeal of the Decision by West Wise Special Utility District to Change Rates*, Docket No. 47288, Preliminary Order at 2-4 (Sept. 29, 2018).

2. 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?²
3. Do the ratepayers of WCID No. 1 have standing to appeal the rate change? TWC § 13.043(b) and 16 TAC § 22.181(d)(1).
4. If the ratepayers of WCID No. 1 do have standing, did their petition appealing the rate change follow the requirements of TWC § 13.043(b), (c), and (d); 16 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 WCID No. 1's rate change? TWC § 13.043(c) and 16 TAC § 24.41(b).
 - d. If the petition appealing the rate change did not follow the requirements of TWC §§ 13.043(b), (c), and (d); 16 TAC §§ 24.41(b), (c), and (d); and 16 TAC § 24.42(a) and (b), must this appeal be dismissed?
5. Considering only the information available to the governing body, what are the just and reasonable rates for WCID No. 1 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 WCID No. 1?
 - b. What is the revenue requirement that would give WCID No. 1 sufficient funds to provide adequate retail water service?
 - c. What is the appropriate allocation of the revenue to customer classes?

² *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 335–36 (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.

- d. What is the appropriate design of rates for each class to recover WCID No. 1's revenue requirement?
6. 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).
7. What are the reasonable expenses incurred by WCID No. 1 in this appeal proceeding? TWC § 13.043(e) and 16 TAC § 24.41(e)(2).
 - a. Should the Commission allow recovery of the reasonable expenses incurred in this appeal proceeding?
 - b. If so, what is the appropriate recovery mechanism?
8. 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).
9. If the Commission establishes rates different than the rates set by WCID No. 1, 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).

III. ISSUES NOT TO BE ADDRESSED

Staff has not identified any issues not to be addressed.

IV. THRESHOLD LEGAL AND POLICY ISSUES

Staff has not identified any threshold legal and policy issues to be addressed.

V. CONCLUSION

Staff respectfully requests that the Commission adopt a preliminary order with the above issues to be addressed.

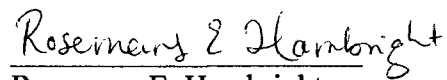
DATED: March 7, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney

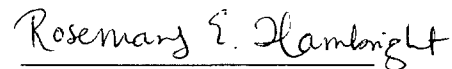


Rosemary E. Hambright
State Bar No. 24101856
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7230
(512) 936-7268 (facsimile)
Rosemary.Hambright@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on March 7, 2018, in accordance with 16 TAC § 22.74.


Rosemary E. Hambright