



Control Number: 47912



Item Number: 88

Addendum StartPage: 0

DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

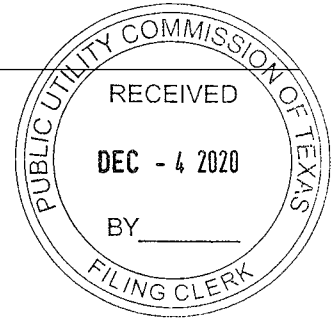
Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas



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

All Parties of Record

FROM: Steven Leary *SL*
Administrative Law Judge

RE: **Open Meeting of January 14, 2021**
Docket No. 47912, SOAH Docket No. 473-18-2475.WS – Ratepayers' Appeal
of the Decision by South Central Calhoun County Water Control and
Improvement District No. 1 to Change Rates

DATE: December 4, 2020

Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.

Enclosed is a copy of the Revised Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, January 14, 2021, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file corrections or exceptions to the Proposed Order on or before Monday, December 21, 2020.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 47912
SOAH DOCKET NO. 473-18-2475.WS

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

REVISED PROPOSED ORDER

This Order addresses the ratepayers' appeal of the decision of South Central Calhoun County Water Control and Improvement District No. 1 (the district) to increase wastewater rates effective November 1, 2017. Commission Staff filed a unanimous agreement on September 21, 2018 that addressed the issues between the parties. The Commission considered this matter at its April 18, 2019 open meeting and remanded the case for further record development concerning the district's requested revenue requirement. On October 16, 2020, Commission Staff filed a second amended unanimous agreement. The Commission grants the ratepayers' appeal, as modified by the second amended agreement, to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

The District—16 Texas Administrative Code (TAC) § 22.102

1. The district was created under article XVI, section 59, of the Constitution of Texas, and chapter 51 of the Texas Water Code (TWC). The district provides residential and commercial wastewater services for compensation to customers in the south central area of Calhoun County.
2. The district provides retail wastewater service to both residential and commercial customers in a small community located within a three-square mile area of Calhoun County, near Port Lavaca, Texas.
3. The district operates and maintains a steel-reinforced-concrete wastewater treatment plant with one lift station and a sanitary-wastewater collection system consisting of sanitary

sewer mains, manholes, and main line cleanouts in order to provide retail wastewater service to its customers. The district built its wastewater facilities in 1992.

4. The district has 295 main-tap connections and 52 additional connections. There are no metered connections; therefore, the district does not have a volumetric rate.
5. The district's board of directors adopted an increase in retail wastewater rates on September 15, 2017. The increased rates became effective on November 1, 2017.
6. The increased rates adopted by the board of directors are 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 charge for commercial customers was set at \$25.00 per month; and the additional connection charge for residential customers was increased from \$14.00 to \$20.00 per month.

The Appeal—TWC § 13.043(b)–(d); 16 TAC §§ 24.101, 24.103

7. On December 28, 2017, a petition was timely filed to appeal the changes in the wastewater rates adopted by the district effective November 1, 2017.
8. Of the district's 256 then-existing ratepayers, 55 ratepayers, or 21% of the then-existing ratepayers, signed the petition to appeal.
9. The ratepayers initially designated Eric Englund as their representative in the proceeding. Beginning April 29, 2018, Windell Durant replaced Mr. Englund as the ratepayers' representative. Mr. Durant assumed a position on the district's board of directors on December 29, 2018, and Mr. Englund replaced Mr. Durant as the ratepayers' representative on June 10, 2020.
10. On January 26, 2018, Commission Staff recommended that the petition be found administratively complete and that it be referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.

Referral to SOAH

11. On February 26, 2018, the Commission referred this proceeding to SOAH.
12. On March 29, 2018, the Commission filed a preliminary order identifying the issues to be addressed in this docket.

13. On April 25, 2018, the SOAH administrative law judge (ALJ) convened a prehearing conference at which the parties appeared. The parties agreed on a procedural schedule and the SOAH ALJ inquired about the parties' willingness to mediate.
14. In SOAH Order No. 2 filed on May 7, 2018, the SOAH ALJ memorialized the prehearing conference, adopted a procedural schedule, referred the case for mediation evaluation, and gave notice of the hearing on the merits, which was set to begin at 9:00 a.m., October 30, 2018.
15. The parties participated in mediation at SOAH over the course of July through September 2018.
16. As a result of the mediation, the parties executed an agreement, effective September 20, 2018, which addressed the issues between the parties.
17. On September 21, 2018, the parties moved for evidence to be admitted, and to have this matter dismissed from the SOAH docket and returned to the Commission for further processing consistent with the terms of the agreement.
18. In SOAH Order No. 4 filed on October 16, 2018, the SOAH ALJ admitted evidence, cancelled the hearing on the merits, remanded the case to the Commission, and dismissed it from the SOAH docket.

Intervenors—16 TAC §§ 22.103–22.105

19. No motions to intervene were filed this proceeding.

The Agreement

20. Representatives of the parties participated in mediation on July 13, 2018 and the mediation was extended by agreement of the parties to August 13, 2018. During this time, the parties reached an agreement in principle.
21. On August 17, 2018, Commission Staff filed a joint motion to abate the procedural schedule for 30 days in order to finalize terms for the agreement.
22. On September 18, 2018, Commission Staff filed a second joint motion to abate the procedural schedule until September 21, 2018 to finalize terms for the agreement.
23. The district's board approved the agreement on August 24, 2018.

24. On September 21, 2018, Commission Staff filed the agreement, addressing the issues raised among the parties.
25. On April 18, 2019, the Commission considered the agreement and a memorandum filed by Commissioner Botkin.
26. In an Order filed on May 3, 2019, the Commission remanded this proceeding to the Office of Policy and Docket Management to allow the parties an opportunity to provide additional information to address the Commission's concerns regarding the \$62,533 included in the district's revenue requirement for anticipated repairs or replacements.
27. The \$62,533 included expenses for drying field sludge removal and the repair or replacement of the following assets: clarifier, chlorinator, Ebara grinder pump, two lift station pumps, and a lift station control board.
28. In Order No. 4 filed on September 12, 2019, the Commission ALJ adopted a procedural schedule setting deadlines for the district to supplement the record and for Commission Staff to file a final recommendation and joint proposed order.
29. On June 3, 2020, Commission Staff filed a final recommendation summarizing the evidence in the record related to each repair or replacement and recommending the appropriate amount and method of recovery based on the Commission's May 3, 2019 Order.
30. On June 29, 2020, the parties filed an amended agreement adopting Commission Staff's recommended revenue requirement.
31. On October 16, 2020, the parties filed a second amended agreement to correct the settled revenue requirement.
32. Under the second amended agreement, the parties agreed that the district may charge the following rates: a residential rate of \$28.21 per month for the main connection and \$14.10 per month for an additional connection and a commercial rate of \$35.26 per month for the main connection and \$17.63 per month for an additional connection.

33. Under the second amended agreement, the parties agreed that the district may recover \$24,129.50 for expenses to replace a chlorinator and repair a lift station control board through a surcharge of \$3.41 per main connection per month for a 24-month period.
34. Under the second amended agreement, the parties agreed that of the \$62,533 in repair and replacement expenses originally sought by the district to be included in its revenue requirement, the district will recover \$7,859 of expenses that were known with a reasonable degree of certainty and likely to recur each year, or on a periodic basis that allows for an appropriate normalization of the expense, through the revenue requirement.
35. Under the second amended agreement, the parties agreed that the district should recover expenses for repairs or replacements that were known with a reasonable degree of certainty but are not likely to recur through a surcharge.
36. Under the second amended agreement, the district committed to take certain actions to initiate a rate study and to improve communications with its customers.
37. Under the second amended agreement, the parties agreed that the district could recover rate-case expenses of \$40,617.66 through a surcharge of \$5.74 per customer over a 24-month period.
38. Under the second amended agreement, the district agreed to submit semi-annual reports to the Commission tracking the surcharge.
39. The agreed rates are just and reasonable and are not unreasonably discriminatory, preferential, or prejudicial. The agreed rates are sufficient, equitable, and consistent in application to each class of customers.
40. The agreed rates will preserve the financial integrity of the district.

Revenue Requirement (Cash-Needs Basis) —TWC § 13.043(e); 16 TAC § 24.41(b)

41. In this case, the district seeks to prove the reasonableness of its appealed rates using the cash-needs method. The revenue requirement for a utility that uses the cash basis of accounting may include operations and maintenance expenses, debt service, payment in lieu of taxes, and plant extension, replacement and improvements, if all such costs are related to its actual cost of providing service. The use of the cash-needs method is appropriate in this case.

42. The components of the district's agreed revenue requirement are \$100,444 in operations and maintenance expenses and \$7,859 in plant extension, replacement and improvement expenses.
43. The district's test year for the rate increase effective November 1, 2017, was from January 1, 2016 to December 1, 2016.
44. The rates adopted by the district on September 15, 2017 generate \$153,240 in annual revenue.
45. At the time the district voted to increase rates, the 2017 approved budget was \$100,444. However, at the time the district voted to increase rates, it also anticipated repairs of at least \$62,533 that were not included in its 2017 approved budget.
46. The November 2017 appealed rates charged by the district do not provide for a return on investment.
47. The agreed rates will recover an annual revenue requirement of \$108,303.

Operation, Maintenance, and Administrative Expenses

48. The total amount of operation, maintenance, and administrative expenses shown in the district's 2017 approved budget was \$100,444, and this amount should be included in the utility's revenue requirement for this proceeding.
49. Under the second amended agreement, the district will recover \$7,859 of the \$62,533 originally included in the district's revenue requirement for anticipated repairs or replacements through base rates and \$24,129.50 through a surcharge. These expenses are known and measurable.
50. Under the second amended agreement, the district will not recover the full \$62,533 included in the district's settled revenue requirement for anticipated repairs or replacements because not all of these expenses were both recurring and known and measurable at the time the district voted to increase the rates.

Debt Service

51. The district does not have any loan arrangements or other debt instruments.

Rate Design

52. The district's wastewater rates are flat rates per month, which vary by customer type (residential or commercial) and how many additional connections exist. Commercial businesses such as motels, hotels, and recreation vehicle parks that require multi-unit-use wastewater facilities are charged the current commercial rate for the main connection. There are 285 residential connections and 10 commercial connections.
53. The additional residential connection rate applies to any additional structure, typically a smaller structure like a recreational vehicle, tiny home, or laundry room. There are 22 additional residential connections. Each additional-connection service at a residence is charged one-half of the residential rate.
54. The additional commercial rate applies to any additional rooms or recreational-vehicle space whether occupied or not. There are 30 additional commercial connections. Each additional-connection service at a commercial location is charged one-half of the commercial rate.

Refund or Surcharge—TWC § 13.043(e); 16 TAC § 24.101(e)(4)

55. The district's reasonable rate-case expenses should be recovered through a rate-case expenses surcharge. The surcharge should be applied equally to all present and future wastewater service customers. The surcharge should be calculated by dividing \$40,617.66 by the total number of current customers (295 residential-main and commercial-main connections), and then dividing the result by 24. The surcharge should be collected for 24 months or until the total amount of \$40,617.66 is collected, whichever occurs first.
56. The parties agreed that the district will not be required to provide a refund to customers to reflect the difference between the rates adopted on September 15, 2017 and the rates approved in this Order.

Rate-Case Expenses—TWC § 13.043(e); 16 TAC § 24.101(e)(2)

57. The district's reasonable rate-case expenses are in the amount of \$40,617.66.
58. The district will not recover any rate-case expenses incurred in connection with this proceeding after the original agreement was filed on September 21, 2018.

Evidentiary Record

59. On September 21, 2018, Commission Staff filed a joint request to admit evidence and to dismiss the case from the SOAH docket and return it to the Commission.
60. In SOAH Order No. 4 filed on October 16, 2018, the SOAH ALJ admitted the following evidence into the record: (a) answers of the district to Commission Staff's first set of requests for information filed on May 2, 2018; (b) the supplemental response to Commission Staff's first set of requests for information filed on June 6, 2018; (c) the direct testimonies of Natasha Martin, Alan Gino Aguirre, Debbie McClanahan, and Scott P. Mason on behalf of the district filed on June 18, 2018; (d) answers of the district to Commission Staff's second set of requests for information filed on June 27, 2018; (e) a copy of the signed agreement; (f) Commission Staff's witness testimony of Heidi Graham in support of the agreement filed on September 21, 2018; and (g) the supplemental direct testimony of Natasha Martin supporting the final rate-case expenses filed by the district on August 31, 2018.
61. In Order No. 2 filed on February 12, 2019, the Commission ALJ admitted into the record of evidence in this proceeding the supplemental direct testimony of Alan Gino Aguirre supporting the agreement and providing supplemental materials filed by the district on September 21, 2018.
62. On June 29, 2020, the parties filed a joint supplemental motion to admit evidence.
63. In Order No. 13 filed on September 23, 2020, the Commission ALJ admitted the following additional evidence into the record of this proceeding: (a) the district's supplemental briefing filed on October 11, 2019; (b) supplemental direct testimonies of Scott P. Mason, P.E., Tamera Atkins, Natasha Martin, and all attachments, filed on October 11, 2019; (c) the district's response to Commission Staff's third request for information filed on February 6, 2020; (d) Commission Staff's final recommendation filed on June 3, 2020; and (e) the amended agreement and all attachments filed on June 29, 2020.
64. On October 16, 2020, the parties filed a joint supplemental motion to admit evidence.
65. In Order No. 15 filed on November 6, 2020, the Commission ALJ removed the amended settlement agreement and all attachments filed on June 29, 2020 from the evidentiary

record and admitted the second amended settlement agreement and attachments into the record of this proceeding.

Interim Rates—TWC §§ 12.013, 13.041(c-1), 13.043(h); 16 TAC §§ 24.37, 24.101(e)(6)

66. The Commission did not establish interim rates in this proceeding.

Informal Disposition

67. More than 15 days have passed since the completion of any required notice provided in this docket.

68. No person filed a protest or motion to intervene.

69. The ratepayers, the district, and Commission Staff are the only parties to this proceeding.

70. No hearing is needed.

71. This docket does not contain any remaining contested issues of fact or law.

72. Commission Staff recommended approval of the rates contained in the second amended agreement.

73. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC § 13.043(b) and 16 TAC § 24.101.
2. The district is a retail public utility as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. SOAH had authority over this proceeding under Texas Government Code § 2003.049.
4. This docket was processed in accordance with the requirements of the TWC, the Administrative Procedure Act,¹ and Commission rules.
5. Under 16 TAC § 24.12, the district bears the burden of proof to establish that the contested rates are just and reasonable.

¹ Tex Gov't Code §§ 2001.001–.903.

6. The ratepayers' petition was timely filed under TWC § 13.043(c) and 16 TAC § 24.101(b) and meets the 10% ratepayer-signature threshold established under TWC § 13.043(c) and 16 TAC §§ 24.101(d) and 24.103(b).
7. Under TWC § 13.043(e), the Commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings.
8. In an appeal under TWC § 13.043, the Commission must use a methodology that preserves the financial integrity of the retail public utility.
9. Under 16 TAC § 24.25(b)(2)(G)(i), a surcharge is defined as an authorized rate to collect revenues over and above the usual cost of service.
10. Under TWC § 13.043(e), the Commission may allow the district to impose surcharges to recover lost revenues and rate-case expenses.
11. The rates approved in this Order are just and reasonable and are not unreasonably discriminatory, preferential, or prejudicial. The agreed rates are sufficient, equitable, and consistent in application to each class of customers.
12. The rates approved in this Order will preserve the financial integrity of the district in compliance with TWC § 13.043.
13. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission grants the ratepayers' appeal, and adjusts the district's rates, to the extent provided in this Order.
2. The Commission approves the following rates: a residential rate of \$28.21 per month for the main connection and \$14.10 per month for an additional connection, and a commercial

rate of \$35.26 per month for the main connection and \$17.63 per month for an additional connection.

3. The Commission approves a monthly surcharge of \$3.36 per main connection to recover \$23,777 spent to replace a chlorinator and a monthly surcharge of \$0.05 per main connection to recover \$352.50 spent to repair a lift station control board. Beginning with the next billing cycle after the date of this Order, the district may collect the total monthly surcharge of \$3.41 per main connection for 24 months or until \$24,129.50 is collected, whichever occurs first.
4. Beginning with the next billing cycle after the date of this Order, the district must recover its rate-case expenses through a \$5.74 monthly surcharge as follows:
 - a. the surcharge must be applied equally to all present and future utility customers; and
 - b. the surcharge must be collected for 24 months or until the amount of \$40,617.66 is collected, whichever occurs first.
5. Beginning with the next billing cycle after the date of this Order, the district must submit semi-annual reports to the Commission in Docket No. 49410, *Compliance Docket of South Central Calhoun County Water Control and Improvement District Regarding Semi-Annual Surcharge Collection Reports Related to Docket No. 47912* that contain the following:
 - a. the number of customers charged the rate-case expense surcharge authorized in this Order;
 - b. the amount collected to date by the rate-case expense surcharge authorized by this Order; and
 - c. the remaining balance of rate-case expenses.
6. No later than 15 days after the filing of each of the district's reports described in ordering paragraph 5, Commission Staff must file its comments regarding the district's report. Any responses to Commission Staff's comments must be filed no later than 15 days after Commission Staff's comments are filed.

7. The district may not seek to recover rate-case expenses other than those approved in this Order.
8. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
9. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

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