



Control Number: 47912



Item Number: 9

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PUBLIC UTILITY COMMISSION

OPEN MEETING COVER SHEET

MEETING DATE: March 29, 2018

DATE DELIVERED: March 22, 2018

AGENDA ITEM NO.: 18

CAPTION: Docket No. 47912; SOAH No. 473-18-2475
Ratepayers' Appeal of the Decision by
South Central Calhoun County Water
Control and Improvement District No. 1 to
Change Rates

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

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Governor

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
Commission Advising

RE: Ratepayers' Appeal of the Decision by South Central Calhoun Water Control and Improvement District No. 1 to Change Rates, Docket No. 47912, SOAH Docket No. 473-18-2475.WS, Draft Preliminary Order, March 29, 2018 Open Meeting, Item No. 18.

DATE: March 22, 2018

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 March 29, 2018 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 March 29, 2018 open meeting.

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PUC 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 | § | |

DRAFT PRELIMINARY ORDER

On December 28, 2017, ratepayers of South Central Calhoun County Water Control and Improvement District No. 1 filed a petition to appeal changes in retail sewer rates charged by the district effective November 1, 2017. The petition was filed under section 13.043(b)(4) of the Texas Water Code (TWC). This preliminary order identifies the issues that must be addressed in this matter.

The petitioning ratepayers assert that the rates charged by the district for commercial business service increased to \$50.00 for a main dwelling plus \$25.00 for each additional dwelling from the previous rate of \$43.00 for a main dwelling plus \$15.00 for each additional dwelling.¹ The petitioning ratepayers also assert that the rates charged by the district for residential service increased to \$40 for a main dwelling plus \$20 for each additional dwelling from the previous rate of \$28.00 for a main dwelling plus \$15.00 for additional dwellings.²

On January 26, 2018, Commission Staff recommended that the petition be found administratively complete. On February 26, 2018, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH). The petitioning ratepayers and the district were directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by March 8, 2018. The petitioning ratepayers and Commission Staff timely filed a list of issues. The district filed a list of issues on March 9, 2018.

¹ Ratepayers' Appeal of the Decision by South Central Calhoun County Water Control and Improvement District No. 1 to Change Rates at Exhibit 1.

² *Id.*

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.³ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this proceeding:

1. Did the petition appealing the rate change by the district 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. 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).
3. Do the retail water rates being charged by the district fulfill the requirements of TWC § 13.043(j)?⁴
 - a. Are the rates just and reasonable?
 - b. Are the rates not unreasonably preferential, prejudicial, or discriminatory?
 - c. Are the rates sufficient, equitable, and consistent in application to each class of customers?
4. If the rates being charged by the district meet the requirements of TWC § 13.043(j), must this appeal be dismissed?⁵

³ Tex. Gov't Code Ann. § 2003.049(e) (West 2016).

⁴ 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)).

⁵ 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

If the rates being charged by the district do not meet the requirements of TWC § 13.043(j), address the following issues.

5. Considering only the information available to the district's governing body at the time of its decision, what are the just and reasonable rates for the district 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 the district?
 - b. What is the revenue requirement that would give the district 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 the district's revenue requirement?
6. What are the reasonable expenses incurred by the district 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 the district's board, 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

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.

may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't 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 March 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

BRANDY MARTY MARQUEZ, COMMISSIONER

ARTHUR C. D'ANDREA, COMMISSIONER