



Control Number: 48342



Item Number: 38

Addendum StartPage: 0

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OPEN MEETING COVER SHEET

MEETING DATE: March 13, 2019

DATE DELIVERED: March 6, 2019

AGENDA ITEM NO.: 22

CAPTION: Docket No. 48342; SOAH Docket No. 473-19-2620.WS -
*Application of Gum Island Utility for
Authority to Change Rates*

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

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Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

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

All Parties of Record

FROM: Mark Hovenkamp
Commission Advising

A handwritten signature in black ink, appearing to be "MH", written over the printed name "Mark Hovenkamp".

RE: *Application of Gum Island Utility for Authority to Change Rates*, Docket
No. 48342, SOAH Docket No. 473-19-2620.WS, Draft Preliminary Order,
March 13, 2019 Open Meeting, Item No. 22

DATE: March 06, 2019

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 13, 2019 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 13, 2019 open meeting.

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**PUC DOCKET NO. 48342
SOAH DOCKET NO. 473-19-2620.WS**

APPLICATION OF GUM ISLAND UTILITY FOR AUTHORITY TO CHANGE RATES	§ § §	PUBLIC UTILITY COMMISSION OF TEXAS
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DRAFT PRELIMINARY ORDER

Gum Island Utility Company filed an application to change its water rates. This preliminary order identifies the issues that must be addressed in this docket.

In the application, Gum Island, a class-B utility, is applying to change its water and sewer rates based on a test year ending on December 31, 2017, adjusted for known and measurable changes. Gum Island provides water service to approximately 29 active connections in Liberty County under certificate of convenience and necessity (CCN) number 12042. Gum Island's last rate increase was approved August 11, 1987. Gum Island is seeking an increase in annual revenues of \$13,293, which is a 158% increase for its water service.

On May 3, 2018, an application for a rate change under Texas Water Code (TWC) 13.1871 was filed referencing certificate of convenience and necessity (CCN) No. 12042 associated with the utility name of Whitewing. However, the holder of CCN No. 12042 is Gum Island Utility Company. On May 25, 2018, Commission Staff filed a recommendation that the administrative law judge (ALJ) find the application deficient and not administratively complete due to the discrepancy in the applicant name and missing information in the application. In Order No. 2 issued on May 30, 2018, the ALJ found the application administratively incomplete and deficient, suspended the effective date of the requested rate change, and ordered Gum Island to file its annual operations report and supplement its application to cure the deficiencies identified by Commission Staff.

On June 28 and July 26, 2018, Gum Island supplemented its application. Gum Island advised that the legal name of the utility applying for the rate change is Gum Island Utility Company and that East Houston Utilities, Inc., doing business as Krebs Utilities, is operating Gum Island Utility. However, Gum Island's application supplement reflects that Gum Island forfeited its charter and its water system assets reverted to the developer of the subdivision Gum Island

served. In Order No. 6 issued on August 8, 2018, the ALJ found that the Commission received 14 protests from affected ratepayers, which is greater than ten percent of Gum Island's 29 affected ratepayers, or 2.9 ratepayers. The ALJ also deemed the application administratively complete, and suspended the effective date of the rate change to 265 days from the date of Gum Island's proposed effective date in the new notice that it must provide after the date of Order No. 6.

In the order of referral issued on February 12, 2019, Gum Island was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by February 22, 2019. Commission Staff timely filed a list of issues. Gum Island did not file a list of issues.

I. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).¹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. What is the legal name of the utility making the application in this docket?
2. If Gum Island Utility Company is no longer authorized to conduct business in this state due to a forfeiture, should the Commission request SOAH to abate the proceeding to allow the proper entity to file an amended application or request SOAH return to the docket for further action by the Commission?
3. Are the customers for which the rate change is requested in this docket located within the service area included in CCN number 12042?
4. What is the legal name of the utility that currently holds CCN number 12042? In answering this issue, please address who owns the equipment and facilities used to provide water service under CCN number 12042. Who operates such equipment and facilities?

¹ Tex. Gov't Code § 2003.049(e)..

5. If the legal name of the entity owning the equipment and facilities used to provide service under CCN number 12042 is not Gum Island Utility Company, should the Commission refrain from issuing a final order in this case until an application to transfer the CCN has been approved?
6. Is there a business or corporate relationship between Whitewing, Gum Island, East Houston Utilities, Inc., and Krebs Utilities? If so, describe the relationship and functions of the various entities in owning and operating the utility serving the customers for which the rate change is requested in this docket.
7. Which entity (or entities) owns the assets used in providing water service to the customers for which the rate change is requested in this docket?
8. Which entity (or entities) employs the individuals who perform the day-to-day operations used in providing water service to the customers for which the rate change is requested in this docket?
9. Which entity (or entities) performs the day-to-day operations used in providing water service to the customers for which the rate change is requested in this docket?
10. If a combination of entities constitutes the utility, which entities should be joined in this proceeding? 16 Texas Administrative Code (TAC) § 22.104(a).
11. Did the utility that is seeking the rate increase file its 2018 annual report? TWC § 13.136; 16 TAC § 24.129.
12. Did the utility provide proper notice of the proposed rate change to each customer or other interested party? TWC § 13.1871(b), (c); 16 TAC § 24.27.
13. What is the appropriate methodology to determine just and reasonable rates in this proceeding?
14. What are the just and reasonable rates for the utility that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory? TWC §§ 13.182, 13.1871(o); 16 TAC § 24.35(d). Do these rates recover the utility's revenue requirement?
 - a. What is the appropriate effective date of the rates fixed by the Commission in this proceeding? TWC § 13.1871

- b. Are the utility's proposed revisions to its tariffs and rate schedules appropriate?
15. What revenue requirement will give the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses while preserving the utility's financial integrity? TWC § 13.183(a)(1) and (2); 16 TAC § 24.43(a).
16. What is the reasonable and necessary cost of providing service? 16 TAC § 24.41.
17. What adjustments, if any, should be made to the utility's proposed test-year data? TWC § 13.185(d)(1); 16 TAC § 24.41(b), (c)(5).
18. What is the appropriate debt-to-equity capital structure of the utility?
19. What is the appropriate weighted cost of capital (also called the overall rate of return), including return on equity and cost of debt for the utility? 16 TAC § 24.41(c)(1).
20. What are the reasonable and necessary components of the utility's invested capital? 16 TAC § 24.41(c)(2).
- a. Is the invested capital allocated from the utility's affiliates, if any, used and useful in providing service to the utility's customers?
21. What is the amount for an allowance for funds used during construction, if any, that is being transferred to invested capital in this proceeding? If such amounts are being transferred, for what facilities and at what rate did the allowance for funds used during construction accrue?
22. What is the original cost of the property used and useful in providing water service to the public at the time the property was dedicated to public use? TWC § 13.185(b); 16 TAC § 24.41(c)(2)(A) and (B). What is the amount, if any, of accumulated depreciation on such property?
23. Is the utility seeking inclusion of construction work in progress? If so, what is the amount sought, and for what facilities is it being sought? Additionally, has the utility proven that the inclusion is necessary to the financial integrity of the utility and that major projects under construction have been efficiently and prudently planned and managed? TWC § 13.185(b); 16 TAC § 24.41(c)(4).
24. Does the utility have any debt? If so, what is the cost of that debt?

25. What is the reasonable and necessary working capital allowance for the utility?
16 TAC § 24.41(c)(2)(C).
26. Does the utility have any water-utility property that was acquired from an affiliate or a developer before September 1, 1976? If so, has such property been included by the utility in its rate base, and has it been included in all ratemaking formulas at the actual cost of the property rather than the price set between the entities? TWC § 13.185(i).
27. Has the utility acquired any water utility property from an affiliate? If so, do the payments, including any interest, for that property meet the requirements of TWC § 13.185(e)?
28. Has the utility financed any of its plant with developer contributions? TWC § 13.185(j), 16 TAC § 24.41(b)(1)(B). What is the amount, if any, of accumulated depreciation on that property?
29. Has the utility included any customer contributions or donations in invested capital? TWC § 13.185(j), 16 TAC § 24.41(c)(2)(B)(v). If so, what is the amount of those customer contributions or donations?
30. What are the utility's reasonable and necessary operations and maintenance expenses? 16 TAC § 24.41(b)(1)(A).
31. What are the utility's reasonable and necessary administrative and general expenses?
32. What is the reasonable and necessary amount for the utility's advertising expense, contributions, and donations? 16 TAC § 24.41(b)(1)(F).
33. Are any expenses, including but not limited to, executive salaries, advertising expenses, rate-case expenses, legal expenses, penalties, and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines, unreasonable, unnecessary, or not in the public interest? TWC § 13.185(h)(3); 16 TAC § 24.41(b)(2)(I).
34. If the utility has a self-insurance plan approved by the Commission or other regulatory authority, what is the approved target amount for the reserve account, and is it appropriate to change that amount? What is the amount of any shortage or surplus for the reserve account, and what actions, if any, should be taken to return the reserve account to the approved target amount?

35. What are the utility's reasonable and necessary expenses, if any, for pension and other post-employment benefits?
36. Has the utility made any payments to affiliates?
- a. For affiliate transactions that affect the cost of service, are these transactions reasonable and necessary? TWC § 13.185(e).
 - b. For all affiliated transactions affecting the cost of service, what are the costs to the affiliate of each item or class of items in question, and is the price for each transaction no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations? TWC § 13.185(e).
37. Is the method used to allocate costs attributable to the utility's affiliates appropriate and in accordance with the TWC?
- a. Are all of the allocated costs attributable to the utility's affiliates reasonable and necessary to provide service to the utility's customers?
38. What is the reasonable and necessary depreciation expense? For each class of property, what are the proper and adequate depreciation rates (including service lives and salvage values) and methods of depreciation? TWC § 13.185(j); 16 TAC § 24.41(b)(1)(B).
39. Are any tax savings derived from liberalized depreciation and amortization, investment tax credits, or similar methods? If so, are such tax savings apportioned equitably between customers and the utility, and are the interests of present and future customers equitably balanced?
40. What is the reasonable and necessary amount, if any, for assessment and taxes other than federal income taxes? 16 TAC § 24.41(b)(1)(C).
41. What is the reasonable and necessary amount for the utility's federal income tax expense? TWC § 13.185(f); 16 TAC § 24.41(b)(1)(D).
- a. Is the utility a member of an affiliated group that is eligible to file a consolidated income tax return? TWC § 13.185(f).

- b. If so, have income taxes been computed as though a consolidated return had been filed and the utility had realized its fair share of the savings resulting from the consolidated return? TWC § 13.185(f).
 - c. If not, has the utility demonstrated that it was reasonable not to consolidate returns? TWC § 13.185(f).
42. What is the reasonable and necessary amount of the utility's accumulated reserve for deferred federal income taxes, unamortized investment tax credits, contingency reserves, property insurance reserves, contributions in aid of construction, customer deposits, and other sources of cost-free capital? What other items should be deducted from the utility's rate base?
43. Did the utility properly account for the effects of the Tax Cuts and Jobs Act of 2017? Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017)?
44. What is the reasonable and necessary amount for municipal franchise fees, if any, to be included in rates?
45. What regulatory assets, if any, are appropriately included in the utility's rate base? If such assets are included in rate base, what is the appropriate treatment of such assets?
46. What is the appropriate allocation of costs and revenues among the utility's rate classes?
47. What is the appropriate rate design for each rate class? 16 TAC § 24.43
48. In designing rates, should the utility use the current number of connections as of the date of the application as opposed to using the number of test-year-end connections?
49. What are the utility's expenses incurred in this rate proceeding that are just, reasonable, necessary, and in the public interest? 16 TAC § 24.44. Does that amount include any prospective rate-case expenses to be incurred after the Commission's final order? Should the utility be able to recover its reasonable and necessary rate-case expenses from ratepayers? If so, how should such expenses, if any, be recovered by the utility?
50. If a refund or surcharge results from this proceeding, how and over what period of time should that be made? TWC § 13.1871.

51. Has the utility met the requirements for a request for interim relief in the form of interim rates?

If so, what are the appropriate levels of the interim rates? 16 TAC § 24.37.

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 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 § 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 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER