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APPLICATION OF NORTHTOWN ACRES WATER SUPPLY FOR AUTHORITY TO CHANGE RATES § PUBLIC UTILITY COMMISSION OF TEXAS

PRELIMINARY ORDER

Northtown Acres Water Supply filed an application to change its water rates. This Preliminary Order identifies the issues that must be addressed in this docket.

Northtown Acres, a Class D utility,¹ is applying under Texas Water Code (TWC) § 13.1871 to change its water rates based on a test year ending on December 31, 2017, adjusted for known and measurable changes. Northtown Acres provides water service to approximately 158 active connections in Navarro county under certificate of convenience and necessity (CCN) number 11704. Northtown Acres is seeking an increase in annual revenues of \$40,289, which is a 27% increase for its water service.

Northtown Acres filed its application on January 18, 2019, initially proposing March 1, 2019 as the effective date for the new rates. On February 19, 2019, Commission Staff filed a recommendation that the Commission administrative law judge (ALJ) find the application administratively incomplete due to deficient notice and an incomplete application. In Order No. 2 filed on February 20, 2019, the ALJ found the application administratively incomplete, suspended the effective date of the proposed rate change, and ordered Northtown Acres to cure the deficiencies. On April 8, 2019, Northtown Acres filed supplemental information; however, in Order No. 4 filed on May 28, 2019, the ALJ found the application remained incomplete due to defective notice. Northtown Acres then filed the revised notice sent to customers regarding the proposed rate change; however, in Order No. 5 filed on June 18, 2019, the ALJ found the revised notice was also deficient and ordered Northtown Acres to issue notice in accordance with the order.

¹ At the time the application was filed, Northtown Acres was classified as a Class C utility in accordance with Texas Water Code § 13.002(4-c). Subsequently, SB 700, which passed during the 86th Legislative Session and took effect on September 1, 2019, increased the number of water utility classifications from three to four; amended TWC §§ 13.002, 13.1871, and 13.1872 accordingly; and added TWC § 13.18715.

Commission Staff filed its third supplemental sufficiency recommendation on July 18, 2019 and recommended that the application and notice be deemed administratively complete. In Order No. 6 filed on July 19, 2019, the ALJ found proofs of notice sufficient and the application administratively complete and suspended the effective date for the new rates for no more than 265 days from August 15, 2019 under TWC § 13.1871(g) and 16 Texas Administrative Code (TAC) § 24.33(a)(2) or until the issuance of an order setting final rates.

On October 16, 2019, Commission Staff filed a request for referral to the State Office of Administrative Hearings (SOAH) consistent with 16 TAC § 24.35(c)(2), which requires the Commission to set an application for hearing if it receives protests from the lesser of 1,000 or 10% of the affected ratepayers during the first 90 days after the effective date of the rate change. As of the date of the referral request, more than 70 ratepayer protests were filed. This satisfied the 10% threshold of the 158 active connections listed at the end of the test year in Northtown Acres' application.

On October 21, 2019, Northtown Acres filed a request for interim rates under TWC § 13.1871(s) and 16 TAC § 24.37. Commission Staff did not oppose the request but recommended modifications to the interim rates if they were approved. In Order No. 7 filed on November 6, 2019, the ALJ granted Northtown Acres' request, at the rates recommended by Commission Staff.

In the order of referral to SOAH filed on December 18, 2019, Northtown Acres was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in this docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by January 2, 2020. Commission Staff timely filed 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 SOAH.² After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

² Tex. Gov't Code § 2003.049(e).

1. What is the legal name and all assumed names, if any, of the applicant in this proceeding? If the utility has an assumed name, provide a currently valid certificate of assumed names.
2. What is the corporate form of the utility making the application in this proceeding (e.g., corporation, partnership, sole proprietorship)? What is the charter or authorization number, the date the business was formed, and the dates any changes were made?
3. What is the proper legal name of the utility that currently holds CCN number 11704? In answering this issue, please identify who owns the equipment and facilities used to provide water service under CCN number 11704. Who operates such equipment and facilities?
4. If a combination of entities constitutes the entity seeking the water rate change, which entities should be joined in this proceeding in accordance with 16 TAC § 22.104(a)?
5. Did the utility seeking the rate increase file its 2019 annual report as required by TWC § 13.136 and 16 TAC § 24.129?
6. Did the utility provide proper notice of the proposed rate change to each customer or other interested party as required by TWC § 13.1871(b) and (c) and 16 TAC § 24.27?
7. What is the appropriate methodology to determine just and reasonable rates in this proceeding?
8. 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 under TWC §§ 13.182 and 13.1871(o) and 16 TAC § 24.35(d)? Do these rates recover the utility's revenue requirement?
9. 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 as required by TWC § 13.183(a)(1) and (2) and 16 TAC § 24.43(a)?
10. Are the utility's proposed revisions to its tariffs and rate schedules appropriate?
11. What is the reasonable and necessary cost of providing service consistent with 16 TAC § 24.41?
12. What adjustments, if any, should be made to the utility's proposed test-year data in accordance with TWC § 13.185(d)(1) and 16 TAC § 24.41(b) and (c)(5)?

13. What is the appropriate debt-to-equity capital structure of the utility?
14. 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, consistent with 16 TAC § 24.41(c)(1)?
15. What are the reasonable and necessary components of the utility's invested capital in accordance with 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?
16. 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?
17. 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 under TWC § 13.185(b) and 16 TAC § 24.41(c)(2)(A) and (B)? What is the amount, if any, of accumulated depreciation on such property?
18. Is the utility seeking inclusion of construction work in progress in accordance with TWC § 13.185(b) and 16 TAC § 24.41(c)(4)? If so, what is the amount sought and for what facilities? 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?
19. Does the utility have any debt? If so, what is the cost of that debt?
20. What is the reasonable and necessary working capital allowance for the utility under 16 TAC § 24.41(c)(2)(C)?
21. 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 as required by TWC § 13.185(i)?

22. Has the utility acquired any water property from an affiliate? If so, do the payments, including any interest, for that property meet the requirements of TWC § 13.185(e)?
23. Has the utility financed any of its plant with developer contributions under TWC § 13.185(j) and 16 TAC § 24.41(b)(1)(B)? What is the amount, if any, of accumulated depreciation on that property?
24. Has the utility included any customer contributions or donations in invested capital consistent with TWC § 13.185(j) and 16 TAC § 24.41(c)(2)(B)(v)? If so, what is the amount of those customer contributions or donations?
25. What are the utility's reasonable and necessary operations and maintenance expenses under 16 TAC § 24.41(b)(1)(A)?
26. What are the utility's reasonable and necessary administrative and general expenses?
27. What is the reasonable and necessary amount for the utility's advertising expense, contributions, and donations under 16 TAC § 24.41(b)(1)(F)?
28. 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 in violation of TWC § 13.185(h)(3) and 16 TAC § 24.41(b)(2)(I)?
29. 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?
30. What are the utility's reasonable and necessary expenses, if any, for pension and other post-employment benefits?
31. Has the utility made any payments to affiliates?
 - a. For affiliate transactions that affect the cost of service, are these transactions reasonable and necessary under 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 consistent with TWC § 13.185(e)?
- 32. Is the method used to allocate costs attributable to the utility's affiliates appropriate and in accordance with the TWC?
 - a. Are all the allocated costs attributable to the utility's affiliates reasonable and necessary to provide service to the utility's customers?
- 33. 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 in accordance with TWC § 13.185(j) and 16 TAC § 24.41(b)(1)(B)?
- 34. 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?
- 35. What is the reasonable and necessary amount, if any, for assessment and taxes other than federal income taxes under 16 TAC § 24.41(b)(1)(C)?
- 36. What is the reasonable and necessary amount for the utility's federal income tax expense under TWC § 13.185(f) and 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 under 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 as required by TWC § 13.185(f)?
 - c. If not, has the utility demonstrated that it was reasonable not to consolidate returns consistent with TWC § 13.185(f)?
- 37. 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?

38. 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).
39. What is the reasonable and necessary amount for municipal franchise fees, if any, to be included in rates?
40. 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?
41. What is the appropriate allocation of costs and revenues among the utility's rate classes?
42. What is the appropriate rate design for each rate class consistent with 16 TAC § 24.43?
43. 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?
44. What are the utility's expenses incurred in this rate proceeding that are just, reasonable, necessary, and in the public interest under 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?
45. If a refund or surcharge results from this proceeding, how and over what period of time should the refund or surcharge be made consistent with TWC § 13.1871?
46. What is the appropriate effective date of the rates fixed by the Commission in this proceeding under TWC § 13.1871?

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 21st day of January 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER