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SOAH DOCKET NO. 473-20-1674.WS
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| APPLICATION OF NORTHTOWN | § | BEFORE THE STATE OFFICE |
| ACRES WATER SUPPLY FOR | § | OF |
| AUTHORITY TO CHANGE RATES | § | ADMINISTRATIVE HEARINGS |

COMMISSION STAFF'S STATUS REPORT IN RESPONSE TO SOAH ORDER NO. 3

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Status Report in Response to SOAH Order No. 3 and would show the following:

I. BACKGROUND

On January 18, 2019, Northtown Acres filed an application for authority to change rates pursuant to Texas Water Code (TWC) § 13.1871 and § 13.1872(c)(2) and 16 Texas Administrative Code (TAC) §§ 24.25 - 24.44. On December 18, 2019, the Office of Policy and Docket Management issued an Order of Referral referring this docket to the State Office of Administrative Hearings (SOAH). SOAH Order No. 1, issued December 20, 2019, scheduled a prehearing conference for February 3, 2020. On January 28, 2020, Staff filed a Motion to Abate the proceeding to allow Northtown Acres time to file an application for a sale, transfer, merger (STM).

SOAH Order No. 3, issued February 10, 2020, granted the motions to intervene filed by Mark Parker and Frank Marx, III, granted Staff's request to abate the proceeding, and memorialized the discussion that took place at the prehearing conference. The Order also directed Staff to file a status report addressing the level at which the existing interim rates are set as well as procedural questions related to the abatement of this case and the processing of the STM application by February 19, 2020. Therefore, this pleading is timely filed.

II. INTERIM RATES

Northtown Acres qualifies for an interim rate under 16 TAC § 24.37(d), which grants the Commission the authority to set interim rates if failure to do so "could result in an unreasonable economic hardship on the utility."¹ Without an interim rate, Northtown Acres cannot generate

¹ 16 TAC § 24.37(d).

revenues sufficient to cover the cost of purchasing water from the City of Corsicana (the City). If Northtown Acres cannot purchase water, then the utility cannot provide water service to its customers.

On July 10, 2019, the City notified Northtown Acres that it would be increasing its rates effective November 1, 2019.² Northtown Acres filed a request for interim rates on October 21, 2019, alleging that Northtown Acres would face an economic hardship as a result of the City's rate increase.³ Staff filed a response stating that it was unopposed to the request for interim rates due to the outdated rate structure included in Northtown Acres' current tariff, which was approved in 2009.⁴

Northtown Acres' current approved rates include a minimum monthly charge of \$18.70 for a 5/8" x 3/4" meter, including up to 2,000 gallons of usage. This is the only meter size for which a minimum monthly charge is approved. The current rates also include tiered volumetric charges of \$3.88 per 1,000 gallons (2,001 – 10,000 gallons), \$4.03 per 1,000 gallons (10,001 – 25,000), and \$4.13 per 1,000 gallons (25,001+).⁵ The tiered volumetric charges are set at a level that recovers the cost of purchasing water from the City at its 2009 rates.⁶ The table below includes a comparison of Corsicana's rates in 2009 to its current rates:

| | City Rates Effective 10/1/09 | City Rates Effective 11/1/19 |
|--------------------------------|------------------------------|-----------------------------------|
| Minimum monthly charge | \$292.55 | \$321.80 (includes 1,000 gallons) |
| 0 – 10,000 gallons | \$3.00 | \$3.90 |
| 10,001 – 25,000 gallons | \$3.15 | \$4.05 |
| 25,001+ gallons | \$3.25 | \$4.15 |

Northtown Acres' rates need updating for at least three reasons. First, they do not include minimum monthly charges for meter sizes greater than 5/8" x 3/4" meters even though 23% of

² Northtown Acres Water Supply's Request for Interim Rates at 3 (Oct. 21, 2019).

³ *Id.* at 1.

⁴ Commission Staff's Response to Northtown Acres Water Supply's Request for Interim Rates at 2 (Oct. 28, 2019).

⁵ Northtown Acres Water Supply's Response to Order No. 2 at 13 (Apr. 8, 2019) (Response to Order No. 2).

⁶ *Id.*

Northtown Acres' customers have 1", 1 ½", or 2" meters.⁷ Second, they are not set at a level that recovers the full cost of purchasing water from the City. Third, the cost of purchasing water is recovered through base rates rather than through a dedicated pass-through gallonage charge that is designed to recover the actual cost of purchasing water from the City and no more. Creating a separate pass-through rate, will allow Northtown Acres to obtain Commission-approved increases that are needed to keep pace with increases in the City's rates without filing a full base rate proceeding.⁸

A. Northtown Acres' current interim rates.

In Order No. 7 issued on November 6, 2019, the Commission Administrative Law Judge (ALJ) granted Northtown Acres' request for interim rates at the level recommended by Staff.⁹ The table below shows the interim rates currently in effect:

| | |
|---|---------|
| Minimum monthly charge (including 2,000 gallons of usage) | \$18.70 |
| 2,001 – 10,000 gallons | \$3.88 |
| 10,001 – 25,000 gallons | \$4.03 |
| 25,001+ gallons | \$4.13 |
| Pass-through rate for purchased water | \$4.13 |

These interim rates are Northtown Acres' current, Commission-approved rates along with a new pass-through gallonage rate. Structuring the interim rates in this way provides Northtown Acres with additional revenues in an amount equal to its actual cost of purchasing water from the City. Northtown Acres sold 15,260,000 gallons during the test year¹⁰ and paid \$61,379 for purchased

⁷ Northtown Acres Water Supply's Class B Tariff/Rate Change Application at Schedule I-3 (Jan. 17, 2019) ([32+3+2] / 158 = 0.2341).

⁸ See 16 TAC § 24.25(b)(2)(C)(i) and (F) (allowing for a minor tariff change to increase pass-through costs for the purchase of water).

⁹ Order No. 7 Granting Request for Interim Rates at 1 (Nov. 6, 2019).

¹⁰ Response to Order No. 2 at 39-50.

water.¹¹ Had the interim pass-through rate of \$4.13 per gallon been in place, it would have generated \$63,024.¹²

B. Proposed revised interim rates.

Staff acknowledges that the current interim rates are not perfect because they maintain Northtown Acres' currently approved minimum monthly charge and volumetric charges, which are designed to recover Northtown Acres' purchased water costs at 2009 levels. However, there is no disputing that the City's rates have increased significantly since 2009. And, once the purchased water costs are removed from Northtown Acres' revenue requirement, there is no way to know the appropriate level for the minimum monthly charge and volumetric charges without a full review of Northtown Acres' allowable expenses, rate base, weighted average cost of capital, etc.

Staff also acknowledges the concerns raised by the Intervenors that setting an interim rate could act as a disincentive to Northtown Acres' timely filing of its STM application. To address these concerns, Staff proposes a revised interim rate as follows:

| | |
|---|---------|
| Minimum monthly charge (including 2,000 gallons of usage) | \$20.92 |
| 2,001 – 10,000 gallons | \$3.88 |
| 10,001 – 25,000 gallons | \$4.03 |
| 25,001+ gallons | \$4.13 |
| Pass-through rate for purchased water | \$0.96 |

This interim rate structure increases Northtown Acres' minimum monthly charge to account for the \$29.25 increase in the City's minimum monthly charge from 2009 to today.¹³ It also sets the

¹¹ Northtown Acres Water Supply's Class B Tariff/Rate Change Application at Schedule I-1, line 1 (Jan. 17, 2019).

¹² $4.13 \times (15,260,000 / 1,000) = 63,024$. Staff notes that the current rates charged by the City were not in effect during the test year.

¹³ Northtown Acres is paying \$351 a year to the City that is not recovered in rates. $(321.80 - 292.55) \times 12 = 351$. Schedule I-3 of Northtown Acres' application shows that it served 158 connections during the test year. Spreading this unrecovered amount evenly among customers comes out to \$2.22 per connection. $(351 / 158) + 18.70 = 20.92$.

pass-through charge to account for the \$0.90 per 1,000 gallon difference between the City's 2009 volumetric charges that are recovered through Northtown Acres' approved volumetric rates and the City's volumetric rates as of November 2019.¹⁴ The formula used to calculate the pass-through rate is $0.90 / (1 - 0.6)$. Staff has conferred with counsel for Northtown Acres who indicated that Northtown Acres will be filing a separate interim rate proposal. Staff has also conferred with Mark Parker who indicated that he is opposed to this revised interim rate, and Frank Marx who indicated that he is unopposed to this revised interim rate.

III. EFFECTIVE DATE

Northtown Acres' proposed effective date of August 15, 2019, has been suspended until May 6, 2020, under 16 TAC § 24.33(a)(2).¹⁵ On January 28, 2020, Staff filed a Motion to Abate to allow Northtown Acres time to file an application for sale, transfer, merger (STM). Under 16 TAC § 24.239, an STM application must be filed and noticed at least 120 days before the effective date of the transaction proposed in the application; the 120-day period begins on the more recent of the date the applicant mails direct notice or the date the applicant publishes notice if notice by publication is required.¹⁶ Even if Northtown Acres filed its STM application today, the application cannot be approved by May 6, 2020, due to the 120-day requirement. Accordingly, Staff proposes that Northtown Acres agree to a day-for-day extension of the effective date starting on the day the abatement is granted and ending on the date the STM application is filed.¹⁷

Once the STM application is filed, Staff requests that the Honorable Administrative Law Judges suspend the August 15, 2019, effective date pursuant to 16 TAC § 24.33(b)(2), which reads as follows:

Regardless of, and in addition to, any period of suspension ordered pursuant to subsection (a) of this section, the commission may suspend the effective date of a change in rates requested pursuant to TWC §13.187 or §13.1871

¹⁴ The revised interim rate also accounts for six percent line loss. According to Schedule II-1(a) at line 2, Northtown Acres purchased 16,224,000 gallons from the City during the test year. According to Northtown Acres' System Usage Reports, Northtown Acres sold 15,260,000 gallons during the test year. $(16,224,000 - 15,260,000) / 16,224,000 = 0.0594$.

¹⁵ Order No. 6 Addressing Sufficiency, Establishing Procedural Schedule, and Suspending Effective Date at 1 (Jul. 19, 2019).

¹⁶ 16 TAC § 24.239(a).

¹⁷ This approach would require Northtown Acres to file its STM application on or before May 6, 2020, which gives Northtown Acres two full months to prepare the application.

if the utility does not have a certificate of convenience and necessity or a completed application pending with the commission to obtain or to transfer a certificate of convenience and necessity until a completed application to obtain or transfer a certificate of convenience and necessity is accepted by the commission;¹⁸

The suspension under 16 TAC § 24.33(b)(2) would not count toward the 265-day suspension under 16 TAC § 24.33(a)(2) and would last until Northtown Acres' STM application is deemed administratively complete.¹⁹ Once the STM application is found to be administratively complete, Northtown Acres must issue new notice of the proposed rate increase sought in this docket along with a new effective date that is at least 35 days after the notice is mailed to customers.²⁰

The requirement that Northtown Acres issue new notice is consistent with the interpretation of 16 TAC §§ 24.33(b)(1) and (c) set forth in the memorandum issued by Chairman Walker in Docket No. 47897.²¹ In that case, the application for authority to change rates was initially deemed administratively incomplete, the proposed effective date was suspended under TWC § 13.1871(e) and 16 TAC § 24.33(b)(1), and the applicant submitted a revised application with additional information.²² The revised application was found administratively complete, and the Commission ALJ suspended the proposed effective date of the rate change for 265 days under TWC § 13.1871(g) and 16 TAC § 24.33(a)(2).²³ However, the applicant did not provide customers with an updated statement of intent to change rates with a new proposed effective date.²⁴ Reading 16 TAC §§ 24.33(b)(1) and (c) together, Chairman Walker concluded that the applicant was required to provide an updated statement of intent with a new proposed effective date before the Commission could process the case.²⁵

¹⁸ 16 TAC § 24.33(b)(2).

¹⁹ 16 TAC § 24.8(d) ("Applications under subchapter H of chapter 24 are not considered filed until the commission makes a determination that the application is administratively complete.").

²⁰ 16 TAC § 24.33(c).

²¹ *Application of Forest Glen Utility Company for Authority to Change Rates*, Docket No. 497897, Open Meeting of May 25, 2018 – Agenda Item No.2, Memorandum from Chairman DeAnn T. Walker at 1-2 (May 24, 2018). Staff notes that this memo was issued before the renumbering of 16 TAC Chapter 24, and therefore cites to 16 TAC § 24.26 rather than 16 TAC § 24.33.

²² *Id.* at 1.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 1-2.

Although the Chair's analysis was in relation to an effective date suspension under 16 TAC § 24.33(b)(1), it is applicable to a suspension under section (b)(2) as well because it relied in part on 16 TAC § 24.33(c). Subsection (c) is applicable to any suspension ordered under 16 TAC § 24.33(b).²⁶ Therefore, Staff believes that Northtown Acres is required to issue a new notice with an updated effective date once it receives an order deeming its STM application administratively complete. Once the new notice is issued, Staff can request a 265-day suspension of the new effective date under 16 TAC § 24.33(a)(2).

Staff has conferred with counsel for Northtown Acres who indicated that Northtown Acres' status report will address the extension of the effective date.

IV. EXPECTED LENGTH OF THE ABATEMENT

Staff is not in a position to provide regulatory certainty about how long it will take to process Northtown Acres' STM application once it is filed. However, Staff can offer some insight into the procedures used to process an STM, which can be used to inform the decision about when it is appropriate to lift the abatement of the rate case.

Staff will have 30 days from the date the STM application is filed to make a recommendation on administrative completeness.²⁷ Once the Commission deems Northtown Acres' STM application administratively complete and accepted for filing, the applicant will have about 45 days to notice customers and file proof of notice.²⁸ If no hearing is requested by an intervenor or Staff, the Commission will have 120 days from the date notice was completed to administratively approve the transaction and allow it to proceed.²⁹

The order approving the transaction will include a complete set of findings of fact and conclusions of law supporting a finding that: (1) the transferee has the financial, managerial, and technical capability to provide continuous and adequate service to the area that is the subject of the transaction, and (2) the proposed transaction meets the criteria for amending a certificate of

²⁶ 16 TAC § 24.33(c) ("If the commission suspends the effective date of a requested change in rates pursuant to subsection (b) of this section...").

²⁷ 16 TAC § 24.8(a).

²⁸ Neither the TWC nor the Commission rules establish a timeframe in which notice must be provided, so this is a deadline that is included in Staff's recommended procedural schedule that is filed with its recommendation on the administrative completeness of the application.

²⁹ 16 TAC § 24.239(a).

convenience and necessity (CCN) set forth in TWC § 13.246(c) and 16 TAC § 24.227(d). These findings address the substantive factual and legal questions at issue in an STM.³⁰ Therefore, the procedural steps that follow the issuance of this order—reviewing closing documentation for sufficiency, preparing a final CCN map and final tariff, etc.—are primarily administrative in nature. Thus, Staff believes that it would be appropriate to lift the abatement and resume Northtown Acres’ rate case once the order approving the transaction has been issued. Following the timeline laid out above, this can take approximately 195 days.³¹

V. CONCLUSION

Staff respectfully requests the entry of an order consistent with the foregoing status report.

Dated: February 19, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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³⁰ See 16 TAC § 24.239(j) (listing the criteria used to evaluate whether the proposed transaction is in the public interest).

³¹ $30 + 45 + 120 = 195$. This timeline does not account for a scenario where the application is not found administratively complete after Staff’s initial review and Northtown Acres needs time to cure the deficiencies in the application.

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on February 19, 2020, in accordance with 16 TAC § 22.74.


Eleanor D'Ambrosio