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SOAH DOCKET NO. 473-20-1674.WS
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APPLICATION OF NORTHTOWN
ACRES WATER SUPPLY FOR
AUTHORITY TO CHANGE RATES

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

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PUBLIC UTILITY COMMISSION
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SOAH ORDER NO. 4
SETTING EFFECTIVE DATE; ADDRESSING INTERIM RATES;
SETTING APPLICATION DEADLINE; CONTINUING ABATEMENT

This proceeding was abated to allow Northtown Acres Water Supply (Northtown Acres) to transfer the utility's certificate of convenience and necessity (CCN) to the current operators through a sale, transfer, merger (STM) application. However, because there is no date certain by which the STM application will be completed and interim rates are in place, an abatement of this case raises several concerns. Accordingly, the Administrative Law Judges (ALJs) required status reports from the parties regarding the potential length of the abatement, the effective date, and the existing interim rates.¹ Status reports were filed by Northtown Acres, staff (Staff) of the Public Utility Commission of Texas (Commission), and ratepayer Mark Parker.

I. EFFECTIVE DATE

Staff requests that once the STM application is filed, the effective date be suspended until the STM application is accepted by the Commission,² after which another proposed effective date would be required, triggering an additional 265-day suspension period.³ Northtown Acres, however, agrees to extend its proposed effective date to February 19, 2021, to accommodate the estimated time it will need to complete the STM process. The ALJs do not address Staff's request at this time because Northtown Acres' agreement regarding the suspension period may render it unnecessary. Accordingly, based on Northtown Acres' commitment, the proposed effective date is extended to **February 19, 2021**.

¹ SOAH Order No. 3 (Feb. 10, 2020).

² See 16 Tex. Admin. Code (TAC) § 24.33(b)(2).

³ 16 TAC § 24.33(c).

II. INTERIM RATES

Northtown Acres requested interim rates to cover an increase in its purchased water charges from the City of Corsicana (City).⁴ The utility's current rate structure, set in 2009, embeds purchased water costs in base rates and does not adjust when those costs increase. In its initial request, Northtown Acres stated that interim rates were necessary to preserve the integrity of its water system because the City's purchased water rate increase scheduled for November 1, 2019, would cause the utility's expenses to exceed its revenues. Staff did not oppose Northtown Acres' request for interim rates, but recommended modifications.⁵ The Commission ALJ granted Northtown Acres' request and set interim rates as proposed by Staff.⁶

Mr. Parker filed a motion to rescind the existing interim rates, contending that the correct procedures were not followed and that there has been confusion due to several filings with various proposed rate increases and formulas.⁷ His status report further states that the interim rates are higher than the proposed rate increase and eliminate Northtown Acres' incentive to move forward.⁸ Ratepayer Frank Marx, III raises similar concerns.⁹ After reviewing the procedural history of the interim rates in this case, the ALJs find no indication that the current interim rates were set without following the proper process.

Northtown Acres requests that the current interim rates be maintained, or alternatively, that interim rates be set to recover at least half of its proposed increase in total revenues.¹⁰ The proposed alternative interim rates would recover the increased costs from the City and a portion of Northtown Acres' increased expenses.¹¹

⁴ Northtown Acres Request for Interim Rates (Oct. 21, 2019).

⁵ Commission Staff's Response to Northtown Acres Water Supply's Request for Interim Rates (Oct. 28, 2019).

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

⁷ Mark Parker Motion to Abate and Rescind Interim Rate Increase at 2 (Feb. 3, 2020).

⁸ Mark Parker Status Report in Response to SOAH Order No. 3 at 2 (Feb. 18, 2020).

⁹ Letter of Frank Marx, III Opposing Interim Rates (Feb. 3, 2020); Frank Marx Response to Northtown Acres Response to SOAH Order No. 3 (Feb. 25, 2020). SOAH Order No. 3 did not allow for responses to other parties' filings. Northtown Acres' March 2, 2020 objection is noted and the Administrative Law Judges (ALJs) consider Mr. Marx's February 25 filing only for purposes of showing his position on interim rates.

¹⁰ Northtown Acres Response to SOAH Order No. 3 at 3 (Feb. 19, 2020).

¹¹ *Id.*

Staff states that Northtown Acres qualifies for interim rates because failing to set them could result in an unreasonable economic hardship on the utility.¹² The current interim rates add a pass-through charge for Northtown Acres' purchased water costs to its rates, which already include purchased water costs at 2009 levels.¹³ Staff indicates that it cannot precisely remove the purchased water costs from base rates without a full review of Northtown Acres' cost of service. Staff also identifies several structural problems with Northtown Acres' existing rate design, including a fixed charge for only a single meter size.¹⁴ Nevertheless, Staff proposes to modify the current interim rates to increase the 2009 rates by the amount that purchased water costs have increased since 2009. Mr. Parker does, and Mr. Marx does not, oppose Staff's proposed revisions.¹⁵

There is no dispute that Northtown Acres' purchased water costs have increased since 2009. The ALJs are persuaded that failure to set interim rates could result in an unreasonable economic hardship on the utility.¹⁶ However, the current interim rates over-recover Northtown Acres' purchased water costs and should be revised.

Although the ALJs are concerned with the instability setting new interim rates might cause, they are also concerned with retaining excessively high interim rates during the abatement. In setting interim rates, the ALJs are mindful that interim rates are subject to refund or surcharge to the extent that they differ from the rates ultimately approved by the Commission.¹⁷ The longer the interim rates are in effect, the larger the refund or surcharge. While Staff's revised interim rates are tailored to recover the increase in purchased water costs since 2009, it has been a decade since Northtown Acres' rates have been set and other costs will also have changed. The ALJs find that setting the rates to recover at least half of the proposed increase in total revenues, as proposed by

¹² See 16 TAC § 24.37(d).

¹³ Commission Staff's Status Report in Response to SOAH Order No. 3 at 4 (Feb. 19, 2020).

¹⁴ Northtown Acres' proposed rates eliminate these defects. See Notice of Proposed Rate Change (Jan. 17, 2019).

¹⁵ Commission Staff's Status Report at 5. Mr. Marx also separately requested that Staff's revised interim rates be put in place. Frank Marx Response to Northtown Acres Response to SOAH Order No. 3 (Feb. 25, 2020).

¹⁶ See 16 Tex. Admin. Code (TAC) § 24.37(d).

¹⁷ 16 TAC § 24.27(h)-(i).

Northtown Acres, will reduce the likelihood that the utility will operate at a deficit and may reduce the need for significant refunds or surcharges.

However, the ALJs do not adopt Northtown Acres' proposed rates because they retain the structural defects identified by Staff. Northtown Acres only charges for a 5/8" x 3/4" meter size, but 23% of its connections are 1", 1½", or 2" meters.¹⁸ It also includes 2,000 gallons in its fixed rate, but incurs a charge for purchased water for every 1,000 gallons. Northtown Acres noted that it did not have sufficient time to negotiate with Staff regarding the interim rates. Given the duration the interim rates may be in effect, the ALJs find it is appropriate to address the structural problems with the rates before adopting revised interim rates.

Accordingly, **on or before March 31, 2020**, Northtown Acres and Staff **SHALL** propose revised interim rates that address the existing structural problems, particularly the inclusion of 2,000 gallons of usage in the minimum monthly charge, establishing a monthly charge for all meter sizes served, and a pass-through charge that recovers the purchased water costs. In their joint proposal, Staff and Northtown Acres shall provide schedules showing that the revenues generated by their proposal match those of Northtown Acres' alternative proposal.¹⁹ The filing shall also indicate that the proposal has been provided to the intervenors and whether there is agreement by the intervenors. Intervenors may file responses to the proposed revision by April 3, 2020.

III. DEADLINE FOR STM APPLICATION

Northtown Acres states that it is making diligent efforts to prepare and file an STM application, which it plans to file by mid-April. The continued abatement of this proceeding and resetting of interim rates at the level Northtown Acres requested are contingent on the utility making diligent efforts to prepare and file an STM application. Accordingly, the ALJs conclude that it is appropriate to set a deadline for filing the STM application.

¹⁸ Northtown Acres Water Company, Application at 8, Sch. I-3 (Jan. 17, 2019).

¹⁹ The ALJs acknowledge that the revised rate structure may impact customer usage.

It is therefore **ORDERED** that Northtown Acres **SHALL** file an STM application by **May 6, 2020**. Northtown Acres shall file proof of compliance with this requirement simultaneous with such filing. The failure to timely file an STM application may be grounds for reconsideration of the abatement and interim rates. Northtown Acres shall thereafter report the status of its STM application at least every two months, showing the progress of its STM application.

It is **FURTHER ORDERED** that this matter remains **ABATED** until February 19, 2021, or otherwise ordered.

SIGNED March 5, 2020.



CHRISTIAAN SIANO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



CASSANDRA QUINN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS