



Control Number: 48937



Item Number: 13

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PUBLIC UTILITY COMMISSION
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OPEN MEETING COVER SHEET

COMMISSIONER MEMORANDUM

MEETING DATE: June 27, 2019

DATE DELIVERED: June 26, 2019

AGENDA ITEM NO.: 27

CAPTION: **Project No. 48937** – Rulemaking to Amend
24.44 Rate-Case Expenses Pursuant to Texas
Water Code § 13.187 and § 13.1871

DESCRIPTION: Memorandum by Chairman Walker

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Public Utility Commission of Texas

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

All Parties of Record (*via electronic transmission*)

FROM: Hannah Turner *HT*
Commission Advising

RE: *Rulemaking to Amend §24.44 Rate-Case Expenses Pursuant to Texas Water Code §13.187 and §13.1871, Project No. 48937, June 27, 2019 Open Meeting, Item No. 27*

DATE: June 26, 2019

Please find enclosed a memorandum by Chairman Walker regarding the above-referenced docket. No other commissioner will file a memorandum in this docket.

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Public Utility Commission of Texas

Memorandum

TO: Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

FROM: Chairman DeAnn T. Walker *ATW*

DATE: June 26, 2019

RE: Open Meeting of June 27, 2019 – Agenda Item No. 27
Project No. 48937 – *Rulemaking to Amend §24.44 Rate-Case Expenses Pursuant to Texas Water Code §13.187 and §13.1871*

I recommend publishing the proposed rule with the changes set forth below.

The proposed rule in subsection (a) does not establish the correct statutory standard for setting rates for a water utility. Section 13.183(a) of the Texas Water Code states the following: “In fixing the rates for water and sewer services, the regulatory authority shall fix its overall revenues at a level that will: (1) permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its *reasonable and necessary* operating expenses; and (2) preserve the financial integrity of the utility.” (Emphasis added) I believe that the rule should comply with the statutory standards; therefore, I propose deleting the portions of the rule that are not consistent with the statutory standard.

- §24.44(a)
 - (a) **Recovery of rate-case expenses.** A utility may recover rate-case expenses, including attorney fees, incurred as a result of filing a rate-change application pursuant to TWC §13.187 or TWC §13.1871, only if the expenses are just, reasonable, and necessary, ~~and in the public interest.~~

The proposed rule in various sections references “the presiding officer.” However, I believe it is more appropriate to reference “the commission.” I believe the proposed use of the term “the commission” is more accurate, especially in instances in which the section references that the commission is deciding an issue. Due to this change, there are some corresponding changes.

- §24.44(c)

Criteria for review and determination of reasonableness. In determining the reasonableness of the rate-case expenses, the commission ~~presiding officer~~ must consider the relevant factors listed in subsection (b) of this section and any other factor shown to be relevant to the specific case. The commission ~~presiding officer~~ must decide whether and the extent to which the evidence shows that: . . . [Remainder omitted for brevity.]

- §24.44(e)(1)

Based on the factors and criteria in subsections (b) and (c) of this section, the commission ~~presiding officer~~ must allow ~~or recommend allowance~~ of recovery of rate-case expenses equal to the amount shown in the evidentiary record to have been actually and reasonably incurred by the requesting utility. The commission ~~presiding officer~~ must disallow ~~or recommend disallowance~~ of recovery of rate-case expenses equal to the amount shown to have been not reasonably incurred under the criteria in subsection (c) of this section. A disallowance may be based on cost estimates in lieu of actual costs if reasonably accurate and supported by the evidence.

- §24.44(e)(3)

If the evidence presented pursuant to subsection (b)(6) of this section does not enable the commission ~~presiding officer~~ to determine the appropriate disallowance of rate-case expenses reasonably associated with an issue with certainty and specificity, then the commission ~~presiding officer~~ may disallow or deny recovery of a proportion of a utility's requested rate-case expenses using the following ratio or an appropriate methodology: . . . [Remainder omitted for brevity.]

I look forward to discussing this matter with you at the open meeting.