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PROJECT NO. 48937

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RULEMAKING TO AMEND § 24.44 §
RATE-CASE EXPENSES PURSUANT §
TO TEXAS WATER CODE § 13.187 §
AND § 13.1871 §

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

**JOINT INITIAL COMMENTS OF THE WATER IOUS
ON PROPOSED AMENDMENTS TO § 24.44**

These initial comments are jointly filed by the following investor-owned utilities which provide retail water/sewer utility service in Texas: Aqua Texas, Inc., Aqua Utilities, Inc., and Aqua Development, Inc. d/b/a Aqua Texas; SJWTX, Inc. d/b/a Canyon Lake Water Service Company; SouthWest Water Company; Quadvest, L.P., Corix Utilities (Texas) Inc., and Southern Utilities Company (collectively, the “Water IOUs”). The Water IOUs hereby respectfully submit the following joint initial comments on the proposed amendments to 16 Texas Administrative Code (“TAC”) §24.44 (Rate-Case Expenses Pursuant to Texas Water Code § 13.187 and § 13.1871) published for review and comment in Project No. 48937.¹

I. GENERAL COMMENTS

The Water IOUs appreciate the Commission’s efforts on this rulemaking project and support several of the proposed changes to 16 TAC §24.44 reflected in the proposed rule amendments. However, the Water IOUs favor an amended rule like that previously proposed as the Commission Staff’s strawman version for this project (“Strawman”).² The Strawman provided appropriate criteria for evaluating the reasonableness and necessity of rate case expenses, broadly permitted case specific arguments for any disallowances, and properly omitted

¹ 44 Tex. Reg. 3492-3494 (July 12, 2019).

² **Attachment A.** Public Utility Commission of Texas Public Notice of Workshop on Strawman Amendments to 16 Texas Administrative Code (TAC) § 24.44 and Request for Comments (Jan. 10, 2019).

provisions aimed *primarily* at disallowance as opposed to establishing criteria for recovery. Reasonable and necessary rate case expenses should be recoverable as part of the regulatory process.³ While the proposed rule appropriately eliminates the 51% and settlement offer rule provisions that currently stand as potential bars to any rate case expense recovery, some of the proposed rule provisions that were not in the Strawman could unnecessarily invite those kinds of disallowance arguments back into the fold. Thus, the Water IOUs request the Commission adopt the Strawman version of 16 TAC §24.44.

II. SECTION SPECIFIC COMMENTS

(a) Recovery of Rate Case Expenses.

The Water IOUs approve the amendments to 16 TAC §24.44(a) as proposed.

(b) Requirements for claiming recovery of or reimbursement for rate-case expenses.

The Water IOUs approve the amendments to 16 TAC §24.44(b)(1)-(5) as proposed, but are concerned that proposed (b)(6) will be overly burdensome to implement and lead to disallowance disputes under proposed (c) and (e). The water and sewer utility rate case preliminary orders issued by the Commission since assuming economic regulation of those utilities have typically set forth dozens of issues for consideration during the contested case hearing. Prior to even seeing that list of issues and becoming aware of specific issues important to other parties, most water and sewer utility rate case issues are worked on simultaneously by the same team of experts and attorney as they prepare the application and proceed into the hearing process. While there may be some subject specific experts, there are generally not multiple teams of experts and attorneys assigned to distinct issues.

³ See *Oncor Elec. Delivery Co. LLC v. Public Util. Comm'n of Tex.*, 406 S.W.3d 253, 263-72 (Tex. App—Austin 2013, no pet.) (citing *Suburban Util. Corp. v. Public Util. Comm'n of Tex.*, 652 S.W.2d 358, 362-63 (Tex. 1983), a water utility rate case).

In contrast, the level of burden proposed (b)(6) will prompt in terms of time and cost tracking is significant, although that largely depends on how much evidentiary detail the Commission expects. For example, if the Commission expects detailed evidence on time and cost spent by rate case personnel tied to each of forty or more referred issues as opposed to more general evidence demonstrating the time/cost for tasks performed, implementing this rule will be very burdensome and lead to subjective disputes about evidentiary sufficiency seeking disallowance under proposed 16 TAC §24.44(c) and (e). This could actually create more rate case expenses.

The Water IOUs respectfully request the Commission adopt an amended rule akin to the Strawman that minimizes the likelihood of such disputes. The Strawman set of rate case expense evidentiary criteria is appropriately scaled for water and sewer utility cases.

(c) Criteria for review and determination of reasonableness

For the same reasons the Water IOUs believe the Strawman appropriately omitted proposed (b)(6), the Water IOUs submit the Strawman also properly omitted the language published as proposed (c). The first sentence of proposed (c) is acceptable. However, the Water IOUs have the same concerns about (c)(6) as with (b)(6) and the two sections are effectively tied together in a way that is set up to invoke the disallowance provisions in proposed (e). Further, the second sentence that includes (c)(1) through (c)(6) is duplicative and unnecessary in light of the items listed in proposed (b).⁴ The Strawman did not include proposed (c) language and the Water IOUs respectfully request the Commission adopt that version.

⁴ Even if (c)(1)-(5) are retained, (c)(6) should be removed.

(d) Unamortized rate-case expenses

The Water IOUs are not necessarily opposed to (d) and recognize it is currently part of 16 TAC §24.44. Yet, the Water IOUs question this provision's utility and it is not in the electric utility rate-case expense rule, 16 TAC § 25.245.

(e) Calculation of allowed or disallowed rate-case expenses

For the same reasons the Water IOUs believe the Strawman appropriately omitted proposed (b)(6) and (c), the Water IOUs submit the Strawman also properly omitted the language published as proposed (e). This section is heavily geared toward disallowances set up with the language in proposed (b)(6) and (c). Proposed (e)(3) specifically provides for rate case disallowances tied to the result of the case if evidence of rate-case expenses associated with an issue is not viewed as sufficient under proposed (b)(6). This would invoke shades of the 51% and settlement offer rules that both the strawman and published versions of the proposed rule properly eliminate. Further, the rule would require evidence of actual cost incurrence for recovery, but unfairly permits cost estimates for disallowances. The Commission should not adopt proposed 16 TAC §24.44(e) as part of these amendments and should replace the entire proposed rule with the Strawman version.

III. CONCLUSION

In sum, the Water IOUs respectfully request the Commission adopt a revised 16 TAC § 24.44 in line with the Strawman version of the rule. Alternatively, the Water IOUs request adoption of the published rule amendments without further change. The Water IOUs remain hopeful that the final rule that results from this process will improve the ratemaking process for Texas water and sewer utilities and remove unjust prohibitions on recovery of rate case expenses.

Respectfully submitted,

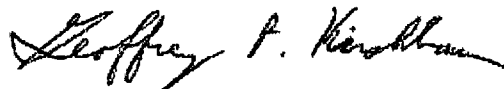
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SERVICE COMPANY, SOUTHWEST WATER
COMPANY, QUADVEST, L.P., CORIX
UTILITIES (TEXAS) INC., AND SOUTHERN
UTILITIES COMPANY**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on the Public Utility Commission of Texas on August 12, 2019 in accordance with P.U.C. Procedural Rule 22.74.



Geoffrey P. Kirshbaum

2019 JAN 29 PM 4:16
PUBLIC UTILITY COMMISSION
FILING CLERK

**PUBLIC UTILITY COMMISSION OF TEXAS
PUBLIC NOTICE OF WORKSHOP ON STRAWMAN AMENDMENTS TO 16 TEXAS
ADMINISTRATIVE CODE (TAC) §24.44 AND REQUEST FOR COMMENTS**

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding Project Number 48937, *Rulemaking to Amend §24.44 Rate-Case Expenses Pursuant to Texas Water Code §13.187 and §13.1871*, on Tuesday, January 29, 2019, at 10:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. For discussion at the workshop, staff developed a strawman rule that proposes an amendment to 16 TAC §24.44 that would provide a list of acceptable evidentiary information that a utility, which has the burden to prove the reasonableness of rate-case expenses, may file in support of recovering such expenses. The staff strawman rule proposes to delete §24.44(b), which precludes utilities from recovering rate-case expenses when the commission-approved rate following a contested case hearing generates less than 51% of the applicant's requested revenue requirement. Additionally, the staff strawman rule proposes to delete §24.44(c), which limits the recovery of rate-case expenses following a written settlement offer.

The strawman can be found on the commission's interchange filer system under Project No. 48937. Written comments on the strawman rule may be filed by submitting 16 copies to the commission's filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice. All responses should reference Project Number 48937.

Questions concerning the workshop or this notice should be referred to Tammy Benter, Division Director, Water Utility Regulation Division, (512) 936-7165, Elisabeth English, Engineering Specialist, Water Utility Regulation Division, (512) 936-7224, or Justine Tan, Attorney, Legal Division, (512) 936-7163. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1.

**ISSUED IN AUSTIN, TEXAS ON THE 9th DAY OF JANUARY 2019 BY THE
PUBLIC UTILITY COMMISSION OF TEXAS
ADRIANA A. GONZALES**

Attachment

A

§24.33. Rate-case Expenses Pursuant to ~~Texas Water Code §13.187 and §13.1871.~~

(a) 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.

(b) A utility requesting recovery of its rate-case expenses has the burden to prove the reasonableness of such rate-case expenses. A utility seeking recovery of rate-case expenses must submit information that sufficiently details and itemizes all rate-case expenses, including, but not limited to, evidence verified by testimony or affidavit, showing:

(1) the nature and difficulty of the work done;

(2) the time and labor expended;

(3) the fees or other consideration paid for the services rendered;

(4) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials;

(5) the nature and scope of the rate case, including

(A) the size of the utility and number and type of customers served;

(B) the amount of money or value of property or interest at stake;

(D) the amount and complexity of discovery; and

(E) the occurrence and length of a hearing.

~~(b) — A utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51% of the increase in revenue that would have been generated by a utility's proposed rate.~~

~~(e)~~ A utility may not recover any rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.

~~(c)~~ Unamortized rate-case expenses may not be a component of invested capital for calculation of rate-of-return purposes.