



Control Number: 48980



Item Number: 34

Addendum StartPage: 0

RECEIVED

APPLICATION OF FRIO CANON
WATER, LLC FOR AUTHORITY TO
CHANGE RATES

§
§
§
§
§

2019 OCT 11 AM 9:44
PUBLIC UTILITY COMMISSION
OF TEXAS

**JOINT MOTION TO ADMIT EVIDENCE
AND PROPOSED NOTICE OF APPROVAL**

COMES NOW the Staff of the Public Utility Commission of Texas (“Staff”) and Frio Canon Water, LLC (“Frio Canon”) (collectively, the “Parties”) to jointly file this Motion to Admit Evidence and Proposed Notice of Approval, including proposed findings of fact, conclusions of law, and ordering paragraphs. In support thereof, the Parties show the following:

I. BACKGROUND

On December 14, 2018, Frio Canon filed an application for authority to change rates. On June 4, 2019, the Administrative Law Judge (ALJ) issued Order No. 6 establishing a deadline of October 11, 2019 for the Parties to file a joint proposed notice of approval, including joint proposed findings of fact, conclusions of law, and ordering paragraphs. This pleading, therefore, is timely filed.

II. MOTION TO ADMIT EVIDENCE

The Parties jointly request that the following evidence be admitted into the record of this proceeding:

1. Frio Canon’s Application for a Class B Rate/Tariff Change, filed on December 14, 2018;
2. Frio Canon’s Supplementation filed on February 12, 2019;
3. Notice of Proposed Rate Change, filed on April 10, 2019;
4. Revised Affidavit of David Dalglish, officer for Frio Canon, attesting that revised notice was mailed to each customer or affected party on or about April 12, 2019, filed on May 22, 2019;

5. Frio Canon's Response to Staff's First Request for Information (RFI) and Requested Discovery, filed on June 14, 2019;
6. Frio Canon's Response to Staff's 1st RFI, filed on July 8, 2019;
7. Frio Canon's Supplemental Information, filed on July 11, 2019;
8. Frio Canon's Response to Staff's Request for Admission and 2nd RFI, filed on August 16, 2019;
9. Frio Canon's Supplemental Responses, filed on August 27, 2019;
10. Frio Canon's Supplemental Responses, filed on September 6, 2019; and
11. Staff's Recommendation on Final Disposition, including the attached Staff memorandum and tariff, filed on September 13, 2019.

III. PROPOSED NOTICE OF APPROVAL

The attached Proposed Notice of Approval would approve the amended application of Frio and thus effectuate the water rate increase and associated tariff revisions held under Frio Canon's water CCN No. 13145. The Parties have reviewed and agree to the Proposed Notice of Approval attached hereto.

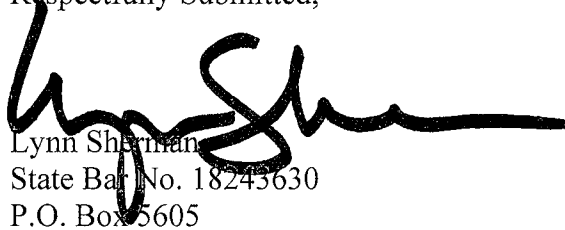
This docket was processed in accordance with applicable statutes and Commission rules. Notice of the amended application was provided to interested persons. Frio Canon and Staff are the only parties to this proceeding. No hearing on the merits is necessary in this proceeding. The Parties respectfully request that the ALJ approve the amended application and adopt the attached Proposed Notice of Approval.

IV. CONCLUSION

Staff has reviewed the supplemented application and recommends that it be approved. The Parties respectfully request that the ALJ approve the application, as supplemented, using the tariff attached to Staff's Recommendation on Final Disposition and consented to by Frio Canon, grant

the admittance of the evidence specified herein and adopt the attached proposed notice of approval.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Lynn Sherman', written over the printed name.

Lynn Sherman
State Bar No. 18243630
P.O. Box 5605
Austin, Texas 78763
(512) 431-6515
lsherman@h2otx.com

ATTORNEY FOR FRIO CANNON WATER, LLC

1294

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via email and mail on this 11th day of October, 2019, to the following:

Sarah D. McDaniel
Attorney – Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7289
(512) 936-7268 (facsimile)
sarah.mcdaniel@puc.texas.gov

Roy Kircher
15115 Glen Heather Drive
Austin, Texas 78734


Lynn Sherman

Handwritten signature or scribble.

DOCKET NO. 48980

**APPLICATION OF FRIO CANON
WATER, LLC FOR AUTHORITY TO
CHANGE RATES**

§
§
§
§
§

**PUBLIC UTILITY COMMISSION

OF TEXAS**

NOTICE OF APPROVAL

This Notice of Approval addresses the application of Frio Canon Water Company, LLC (“Frio Canon”) for authority to change rates. The Commission approves Frio Canon’s change in water rates and associated tariff, as modified by this Notice of Approval.

I. Findings of Fact

The Commission adopts the following findings of fact.

Applicant

1. Frio Canon is a domestic limited liability company registered with the Texas Secretary of State on July 11, 2007, under file number 800842404.
2. Frio Canon owns and operates a public water system under Texas Commission on Environmental Quality identification number 1930023.
3. Frio Canon provides water service under certificate of adjudication and necessity number 13145 in Real County.
4. Frio Canon provides retail water service to approximately 16 taps or connections.

Application

5. On December 14, 2018, Frio Canon filed a Class B Rate/Tariff Application for authority to change water rates and revise its associated water tariff and proposed an effective date of January 31, 2019.
6. On January 3, 2019, the Commission issued Order No. 1, requiring Frio Canon to file information and supporting documentation regarding its business entity (e.g., legal and assumed name(s), form of business, parent company(ies), primary business interests, and affiliated companies), among other procedural matters, to which Frio Canon responded with a filing containing the requisite business entity information on January 18, 2019.

7. On February 1, 2019, the Commission issued Order No. 2, finding the application to be incomplete and providing Frio Canon with an opportunity to cure, which it did via filings on February 12, 2019; February 13, 2019; and on March 8, 2019.
8. On March 22, 2019, the administrative law judge issued Order No. 3 finding the Application to be administratively complete and suspending the effective date for Frio Canon's requested rates for 265 days or until the issuance of an order setting final rates.
9. On April 8, 2019, the administrative law judge issued Order No. 4, finding the notice of proposed rate change sent by Frio Canon to its ratepayers to be incomplete and deficient and providing Frio Canon with an opportunity to cure, which it did via a new notice of proposed rate change sent to customers on April 12, 2019.
10. On May 13, 2019, the administrative law judge issued Order No. 5, finding the affidavit attesting to the date on which notice was provided to be incorrect and providing Frio Canon with an opportunity to cure, which it did via the filing of a correct affidavit on May 22, 2019.
11. On June 4, 2019, the administrative law judge issued Order No. 6, finding the notice provided to customers to be sufficient; setting a procedural schedule; and reestablishing the effective date for Frio Canon's requested rates.

Notice of Application

12. On April 10, 2019, Frio Canon filed a copy of the notice of proposed rate changes to be mailed to all of its ratepayers.
13. On April 12, 2019, Frio Canon forwarded the notice of proposed rate changes to all of its ratepayers.
14. On May 22, 2019, Frio Canon filed the affidavit of David L. Dalgleish, an Officer for Frio Canon, attesting that the notice of proposed rate changes was, in fact, forwarded to all Frio Canon ratepayers on April 12, 2019.
15. At least 15 days have passed since the completion of all notice requirements.

Ratepayer Protests

16. Roy Kircher, who is a Frio Canon ratepayer, filed a protest in this docket on December 31, 2018. Mr. Kircher filed additional protests on March 25, 2019 and April 17, 2019.
17. No other ratepayer protests have been filed in this docket.
18. A single protesting ratepayer is *less than* 10% of the 15+ ratepayers that Frio Canon serves.
19. The Commission did not receive complaints from the lesser of 1,000 or 10% of the ratepayers of Frio Canon.

Evidentiary Record

20. In Order No. ____ issued on _____, 2019, the ALJ admitted into the record (1) Frio Canon's Application for a Class B Rate/Tariff Change, filed on December 14, 2018; (2) Frio Canon's Supplementation filed on February 12, 2019; (3) Notice of Proposed Rate Change, filed on April 10, 2019; (4) Revised Affidavit of David Dalglish, officer for Frio Canon, attesting that revised notice was mailed to each customer or affected party on or about April 12, 2019, filed on May 22, 2019; (5) Frio Canon's Response to Staff's First Request for Information (RFI) and Requested Discovery, filed on June 14, 2019; (6) Frio Canon's Response to Staff's 1st RFI, filed on July 8, 2019; (7) Frio Canon's Supplemental Information, filed on July 11, 2019; (8) Frio Canon's Response to Staff's Request for Admission and 2nd RFI, filed on August 16, 2019; (9) Frio Canon's Supplemental Responses, filed on August 27, 2019; (10) Frio Canon's Supplemental Responses, filed on September 6, 2019; and (11) Staff's Recommendation on Final Disposition, including the attached Staff memorandum and tariff, filed on September 13, 2019.

Application

21. Frio Canon's current metered water rates and those proposed in the Application are as follows:

CURRENT RATES			PROPOSED RATES		
Monthly base rate including _____ o gallons			Monthly base rate including _____ o gallons		
Meter Size: RESIDENTIAL			Meter Size: RESIDENTIAL		
5/8" or 3/4"	\$	35.00	5/8" or 3/4"	\$	60.98
1"	\$	70.00	1"	\$	152.45
1 1/2"	\$	140.00	1 1/2"	\$	304.90
2"	\$	280.00	2"	\$	487.84
3"	\$		3"	\$	
Other:	\$		Other:	\$	
GALLONAGE CHARGE:			GALLONAGE CHARGE:		
TIER	VOLUME	CHARGE per 1000 gals.	TIER	VOLUME	CHARGE per 1000 gals.
Tier 1	0 to 8,000 gals.	\$ 2.50 /1000 gals.	Tier 1	0 to Total Use	\$ 6.85 /1000 gals.
Tier 2	8,001 to 15,000 gals.	\$ 3.50 /1000 gals.	Tier 2	to gals.	\$ /1000 gals.
Tier 3	>15,001	\$ 4.50 /1000 gals.	Tier 3	to gals.	\$ /1000 gals.
Tier 4	to gals.	\$ /1000 gals.	Tier 4	to gals.	\$ /1000 gals.
Tier 5	to gals.	\$ /1000 gals.	Tier 5	to gals.	\$ /1000 gals.

22. Frio Canon has proposed no changes to its tap fees or other miscellaneous fees.
23. In the Application, Frio Canon used a test year ending December 31, 2017 (*i.e.*, a 2017 test year).
24. In the Application, Frio Canon requested an annual revenue requirement of \$40,096, which is an increase of \$31,021 over the 2017 test year.
25. In the Application, Frio Canon calculated the following expenses (adjusted to the 2017 test year): operations and maintenance expenses of \$17,653; depreciation of \$6,022; income taxes of \$0.00; and other taxes of \$0.00.
26. In the Application, Frio Canon calculated its return on invested capital (adjusted to the 2017 test year) to be \$16,421.
27. In the Application, Frio Canon estimated that the rates proposed for its standard meter sizes (*i.e.*, 5/8" and 3/4") would generate its requested revenue requirement of \$40,096, based on usage by 20 customers.
28. In the Application, Frio Canon calculated a rate base of \$164,210 for the 2017 test year, based on: an original cost of plant in service of \$226,990; accumulated depreciation of \$60,730; and developer contributions in aid of construction of \$2,050.
29. In the Application, Frio Canon proposed a rate of return of 10%.

Agreed Rates and Tariff

30. On September 13, 2019, after conducting its technical review of the application and additional information filed by Frio Canon, Commission Staff filed its Recommendation on Final Disposition, recommending approval of the following proposed metered water rates for Frio Canon in this docket:

Staff's Recommended Rates	
Meter Size	Minimum charge includes zero (0) gallons
5/8" or 3/4"	\$65.20
1"	\$163.00
1 1/2"	\$326.00
2"	\$521.60
Gallage Charge \$6.95	

31. Frio Canon agrees with Commission Staff's recommendation and likewise recommends approval of these rates.
32. The rates proposed by Commission Staff use a test year ending in December 31, 2018 (i.e., a 2018 test year), since it contains Frio Canon's most current information.
33. Commission Staff based its rate analysis on usage by 16 customers, rather than the 20 customers assumed by Frio Canon in the Application,¹ because 16 was the actual customer count during the 2018 test year.
34. Commission Staff recommends an annual revenue requirement of \$35,906, which is less than the \$40,096 revenue requirement proposed in the Application.
35. Frio Canon agrees to the revenue requirement proposed by Commission Staff.

¹ As pointed out on Page 2 of the Commission Staff memo attached to "Commission Staff's Recommendation on Final Disposition", filed September 13, 2019, Frio Canon initially "elected [in its Application] to set a rate at a lower revenue requirement and a higher customer count [than currently exists] to minimize rate shock and to provide a more favorable economic environment".

36. In its rate analysis, Commission Staff calculated the following expenses (adjusted to the 2018 test year): operations and maintenance expenses of \$15,904 (a reduction of \$1,794); depreciation of \$6,052; income taxes of \$2,040; and other taxes of \$98.
37. In its rate analysis, Commission Staff calculated Frio Canon's return on invested capital (adjusted to the 2018 test year) to be \$11,863, which is less than the \$16,421 (adjusted to the 2017 test year) calculated by Frio Canon.
38. Frio Canon agrees to the return on invested capital proposed by Commission Staff.
39. In its rate analysis, Commission Staff calculated a rate base of \$167,554 for the 2018 test year, based on: an original cost of plant in service of \$227,631; accumulated depreciation of \$61,554; and a \$500 reduction in the amount of developer contributions in aid of construction for a customer paid tap fee.
40. Commission Staff recommends a rate of return for Frio Canon of 7.08%, which is significantly less than the 10% proposed in the Application.
41. Frio Canon agrees to the rate of return proposed by Commission Staff.
42. Frio Canon has incurred \$9,729 in rate case expenses.
43. Commission Staff recommends approval for Frio Canon to impose a surcharge of \$10.13 per connection (based on 16 connections) for five (5) years to recover its rate case expenses.
44. Commission Staff recommends that the tariff attached to "Commission Staff's Recommendation on Final Disposition" be effective 30 days after the order approving the rates is issued, and Frio Canon agrees.

Informal Disposition

45. More than 15 days have passed since completion of the notice provided in this docket.
46. Frio Canon and Commission Staff are the only parties to this proceeding.
47. No party requested a hearing and no hearing is necessary.
48. Commission Staff recommended approval of the application with Staff's recommended rates.
49. The decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Frio Canon is a retail public utility as defined in Texas Water Code (TWC) § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59) and a public utility as defined in TWC § 13.002(23) and 16 TAC § 24.3(51).
2. At the time the Application was filed and declared administratively complete, Frio Canon was a Class C Utility, as then defined by TWC § 13.002(4-c) and 16 TAC § 24.3(17) and then governed by TWC § 13.1872, as each referenced statute and rule then read.
3. Frio Canon filed its Application under TWC § 13.1871; as a result, 16 TAC § 24.3(17) requires it to be subject to all requirements applicable to Class B utilities filing an application under TWC § 13.1871.
4. The Commission has jurisdiction to consider the Application under TWC §§ 13.041, 13.1871 and 13.1872, as well as the other provisions of Subchapter F of TWC, Chapter 13, using the procedures set forth in 16 TAC, Chapter 24, Subchapter B, as each referenced statute and rule read at the time the Application was filed and declared administratively complete.
5. Frio Canon gave proper notice of the application in accordance with TWC § 13.1871 and 16 TAC § 24.27.
6. The 10% threshold in TWC § 13.1871(i) to require a hearing on the application was not met.
7. This docket was processed in accordance with the requirements of the TWC, the Administrative Procedure Act, and Commission rules.
8. Under TWC § 13.1872 and 16 TAC § 24.49, the Commission may adjust the rates of a Class C utility, like Frio Canon, without the need for a hearing.
9. The requirements for informal disposition in 16 TAC § 22.35 have been met.
10. The rates approved in this case are just and reasonable, comply with the ratemaking provisions in TWC chapter 13, and are not unreasonably discriminatory, preferential, or prejudicial.
11. The rates approved in this case are based on Commission Staff's recommended original cost of property, less depreciation, used and useful to Frio Canon's provision of service in accordance with TWC § 13.185.
12. The application does not constitute a major rate proceeding as defined by 16 TAC § 22.2(27).

13. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission approves the changes in Frio Canon's water rates as modified by Staff's Recommendation and this Notice of Approval.
2. The Commission approves the tariffs attached to the Commission Staff's final recommendation filed on September 13, 2019.
3. Within ten days of this Notice of Approval, Commission Staff must file a clean record copy of the tariff approved herein and its appropriate effective date for Central Records to stamp *Approved*.
4. The Commission approves a surcharge of \$10.93 per connection per month for five (5) years, which Frio Canon may assess to recover its rate case expenses.
5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted in this herein.

Signed at Austin, Texas the ____ day of _____ 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE