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APPLICATION OF THE CITY OF AUSTIN DBA AUSTIN WATER FOR AUTHORITY TO CHANGE WATER AND WASTEWATER RATES	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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PRELIMINARY ORDER

The City of Austin filed an application under Texas Water Code (TWC) § 13.044(b) and in compliance with the Commission's order on rehearing in Docket No. 42857¹ for authority to change its water and wastewater rates. This preliminary order identifies the issues that must be addressed and the issues that shall not be addressed.

In its order on rehearing in Docket No. 42857, issued on January 14, 2016, the Commission granted the appeal of North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District of the wholesale water rates imposed by the City of Austin by an ordinance adopted by the Austin City Council that set rates for the City's 2012-2013 fiscal year. The Commission also granted the appeal of the North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, and Wells Branch Municipal Utility District of the wholesale wastewater rates imposed by the City of Austin by the same ordinance adopted by the Austin City Council that set rates for the City's 2012-2013 fiscal year.

In granting the appeal, the Commission fixed the districts' water and wastewater rates and, in accordance with TWC § 13.044, ordered the City not to increase wholesale water and wastewater rates applicable to the districts without prior Commission approval. In this case, the City is seeking approval to increase rates to the four districts in Docket No. 42857. Based upon a test year concluding on September 30, 2018 adjusted for known and measurable changes, the City seeks approval of a total annual revenue requirement for the district's water service of \$10,030,804

¹ *Petition of the North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District from the Ratemaking Actions of the City of Austin and Request for Interim Rates in Williamson and Travis Counties*, Docket No. 42857, Order on Hearing (Jan. 14, 2016).

resulting in a water-rate increase of \$3,786,241, and a wastewater revenue requirement of \$4,516,231, resulting in a wastewater-rate increase of \$522,158. On a combined water and wastewater basis, the City seeks an annual revenue requirement of \$14,547,035, resulting in a combined increase of \$4,308,399. The City proposes an effective date of November 1, 2019.

The City filed its application on April 15, 2019. The City was directed and Commission Staff and other interested persons were allowed to file, by May 17, 2019, a list of issues to be addressed in the docket and to identify any issues not to be addressed and any threshold legal or policy issues that should be addressed. On May 22, 2019, North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control & Improvement District No. 10, and Wells Branch Municipal Utility District (the districts) were granted intervention. The City, Commission Staff, and the districts timely filed list of issues. The docket was referred to the State Office of Administrative Hearings (SOAH) on July 22, 2019.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.² After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Is the City's proposed cash-needs method with the additional debt-service coverage methodology appropriate to determine just and reasonable rates in this docket? If not, what is the appropriate methodology to determine just and reasonable rates in this proceeding?
2. Does the City's proposed revenue requirement include any category of cost that in Docket No. 42857 the City agreed should not have been allocated to wholesale customers?³
 - a. If so, what are those categories?
 - b. As to each category identified in issue 2a, are the cost categories included in the City's proposed revenue requirement precluded under any doctrine of estoppel?

² Tex. Gov't Code Ann. § 2003.049(e) (Vernon 2016).

³ Docket No. 42857, Order on Hearing at 9, citing City of Austin Exhibit 13, Rebuttal Testimony of David Anders at 23:8–15; City of Austin Exhibit 4, Direct Testimony of David A. Anders at 51-62.

3. Does the City's proposed revenue requirement in this docket include any category of cost that in Docket No. 42857 the Commission disallowed because it was not a reasonable and necessary cost of providing water and wastewater services to the districts?⁴
 - a. If so, what are those categories?
 - b. As to each category identified in issue 3a, are the cost categories included in the City's proposed revenue requirement precluded under any doctrine of estoppel?⁵
4. Is there any basis under the TWC for the City to recover rate-case expenses in this proceeding, other than those that occurred during the test year? If so, what is the statutory basis?
 - a. If in answer to question 4 a statutory basis to recover rate-case expenses outside the test year is identified, what is the statutory basis and what are the allowed reasonable rate-case expenses?
 - b. If in answer to question 4 a statutory basis to recover rate-case expenses outside the test year is not identified, what are the reasonable rate-case expenses incurred during the test year?
5. What is the City's cost of debt, if any?
 - a. What series or issues of bonds of the City are outstanding?
 - b. For each series or issues of outstanding bonds, what is the annual servicing cost?
 - c. What debt service coverage, if any, is required for each series or issues of outstanding bonds?
 - d. For each series or issues of outstanding bonds, has revenue from water or wastewater service been pledged?
 - e. For each series or issues of outstanding bonds, what contract or contracts have been pledged as security?

⁴ Docket No. 42857, Order on Rehearing at Finding of Fact No. 52.

⁵ *Sysco Food Servs., Inc. v. Trapnell*, 890 S.W.2d 796, 801 (Tex. 1994).

- f. For each such contract, who are the parties to the contract, and what rate, formula, or methodology is specified in each such contract related to the amount paid for water or wastewater service and the amount pledged to the bond?
6. What is the City's reasonable and necessary cost to procure the water it supplies to the districts?
7. What is the total cost to run the City's water and wastewater systems?
 - a. What are the City's reasonable and necessary operations and maintenance expenses for its facilities and systems?
 - b. What are the utility's reasonable and necessary administrative and general expenses?
 - c. What is the reasonable and necessary amount for the City's advertising expense, contributions, and donations?
 - d. If the City has a self-insurance plan, what is the reserve amount, and is it appropriate to change that amount? What is the amount of any shortage or surplus for the reserve account for the self-insurance plan?
 - e. What are the City's reasonable and necessary expenses, if any, for pension and other post-employment benefits?
 - f. Are any expenses, including but not limited to, executive salaries, advertising expenses, legal expenses, penalties, criminal penalties or fines, and civil penalties or fines, unreasonable, unnecessary, or not in the public interest?
8. What is the reasonable and necessary cost of providing water and sewer service to the districts?
9. What are the City's water and sewer utility annual gross revenues?
10. What are the City's water and sewer utility net revenues?
11. Are there established priority of rights to water supplied by the City's water utility? If, so what priority do the districts have for water supplied by the City's water utility?
12. Is there any penalty or rate adjustment if the City cannot deliver all the water or treat all the wastewater requested by the districts?
13. What is the annual revenue obligation of each of the City's wholesale customers?

14. What entities, if any, other than the districts, purchase wholesale water or wastewater services from the City?
 - a. Under what terms, including the rate, do any such entities take water or wastewater services from the City?
 - b. What is the gross amount of revenues, if any, received from such entities by the City on an annual basis?
 - i. Is any of such revenue pledged to support any bonds issued by the City? If so, how much is pledged and for which series or issues of bonds?
 - ii. How is this revenue accounted for in determining the City's rates for water and wastewater services?
 - iii. Is any such revenue used to offset the districts' payments?
15. How is the cost responsibility to run, operate, and maintain the City's water and wastewater system allocated, if at all:
 - a. Between the districts and any other entities that purchase wholesale from the City?
 - b. Between the districts and retail customers of the City?
16. Does the City allocate between water and wastewater for each component of its cost for providing service to the districts? If so, is the cost properly allocated?
17. Has the City's water or sewer utility made any payments to other City departments (e.g., general fund transfers)?
18. What facilities and systems, if any, are dedicated exclusively to the provision of water or wastewater services to the districts?
19. What is the appropriate allocation of the revenue requirement:
 - a. Between the City's wholesale customers?
 - b. Between the City's wholesale customers and its retail customers?
20. Are the City's proposed wholesale water and wastewater rates based upon the actual cost of providing the water and wastewater services to each petitioner?

21. What are the just and reasonable rates that are sufficient, equitable, and consistent in application to the districts and that are not unreasonably preferential, prejudicial, or discriminatory?
22. In establishing the proposed rates, did the City design rates for the districts consistent with ratemaking principles?
 - a. What is the appropriate fixed charge?
 - b. What is the appropriate volumetric charge?
23. Are the City's proposed post-test year adjustments reasonable and necessary?
24. Are the City's proposed revisions to its tariffs and rate schedules appropriate?
25. What is the appropriate effective date of the rates fixed by the Commission in this proceeding?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by Section II of this Order, by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Issues Not to be Addressed

The Commission identifies the following issues that need not be addressed in this proceeding for the reasons stated.

1. Whether the Commission may order a refund.

Upon the Commission's setting of final rates for water and wastewater services that the City may charge to the districts, under 16 TAC § 24.37(g)-(h) the districts are entitled to a refund if any amounts were over-collected by the City.⁶

2. Whether TWC § 13.044 violates Article I, § 16 of the Texas Constitution and or Article 1, § 10, cl. 1 of the United States Constitution by impairing the obligation of contract.

⁶ Docket No. 42857, Order on Rehearing at Conclusion of Law 14.

Agencies have no power to determine the constitutionality of statutes.⁷ The Commission must apply the statutes as written.⁸ Further, no court has determined that TWC § 13.044 is void because it impermissibly impaired the obligation of contract.

- 3. The validity or boundaries of the City; the City's authority to enter into and execute contracts or to issue bonds or other public securities; the validity or enforceability of an assessment, tax, or tax lien imposed by the City, bonds or other public securities issued by the City, or contracts the proceeds of which are pledged to secure public securities issued by the City; the pledge or encumbrance of a tax, revenue, receipts, or property to secure the bonds to finance its water system infrastructure needed to serve the districts; or the legality and validity of the bonds or each expenditure or proposed expenditure of money relating to the bonds issued by the City to finance its water system infrastructure needed to serve the districts.**

Included in the above issues not to be addressed are any related, subordinate issues. The Commission's authority in this matter is found in TWC §§ 13.042(d) and 13.044. Section 13.044 obligates the Commission to ensure that rates for water service are just and reasonable. This section does not authorize this Commission to rule on the above issue not to be addressed.

Further, whether any of the City's contracts, if pledged for the payment of any public securities, are valid and enforceable is not contestable before the Commission after being approved by the attorney general and registered with the comptroller.⁹ The remaining issues related to issuance of bonds are solely within the jurisdiction of the courts under Texas Government Code § 1205.021.

⁷ *Id.*, Order on Rehearing, Conclusion of Law No. 6A.

⁸ *Id.*

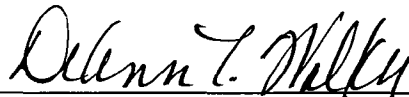
⁹ Tex. Gov't Code § 1202.006, *Petition of the Cities of Garland, Mesquite, Plano, and Richardson Appealing the Decision by North Texas Municipal Water District Affecting Wholesale Water Rates*, Docket No. 46662, Preliminary Order at 25-26 (Jun. 29, 2017).

III. Effect of Preliminary Order

The Commission's discussion and conclusions in this order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, this order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the 8th day of August 2019.

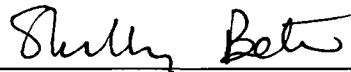
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