

1 City is only including those expenses that are incremental to the costs already
2 included in the City's rates. This approach seeks to recover in rate case expense only
3 those costs that will be incurred based on a decision to use outside consultants and
4 counsel or that require in-house expenses that would not have been incurred but for
5 rate case preparation and participation. In other words, the City is not including the
6 time and salary of in-house employees as recoverable rate case expenses.

7 **Q. WHAT METHODS DOES THE RATE CASE TEAM EMPLOY TO**
8 **MITIGATE COSTS ASSOCIATED WITH THE FILING OF THE RATE**
9 **CASE?**

10 A. Cost control is particularly important to the City, which has an obvious incentive to
11 keep costs low to benefit customers, who are also taxpayers. Lloyd Gosselink
12 worked with the City to outline an engagement with specific parameters regarding the
13 rates to be charged. My Attachment TRU-2 shows the hourly rates that are being
14 charged for the outside lawyers and paralegals on the team. Additionally, the partners
15 at Lloyd Gosselink utilize associates and paralegals with lower rates to perform work
16 that is capable of being done by attorneys or support staff at their respective
17 experience levels. This ensures that the work is performed at the least and most
18 effective cost possible for the City.

19 **Q. PLEASE DESCRIBE THE CITY'S PROCESS FOR HIRING CONSULTANTS**
20 **FOR THE RATE CASE PROCEEDING.**

21 A. At the outset of the case preparation, Mr. Brocato reviewed what subject areas and
22 issues would require outside assistance. In some cases, outside assistance is
23 necessary because in-house resources lack the necessary specialization or depth of
24 experience. In others, outside consultants may be selected to provide independence.

1 For example, I was retained to provide independence on the issue of rate case
2 expenses incurred by the City in this proceeding.

3 **Q. PLEASE DESCRIBE YOUR COMPENSATION AS AN OUTSIDE**
4 **CONSULTANT.**

5 A. I bill by the hour, as is common and accepted practice in the legal industry.
6 Additionally, the City reimburses consultants for hotels and travel expenses. To
7 minimize these expenses, however, the City instructs its outside lawyers and
8 consultants to avoid luxury and unnecessary expenses when traveling. To-date, I
9 have been able to conduct my evaluation without the necessity of incurring travel
10 expenses.

11 **Q. PLEASE DESCRIBE THE BILLING PROCESS USED BY LLOYD**
12 **GOSSELINK.**

13 A. The billing process used by Lloyd Gosselink is similar to that utilized by myself,
14 most other attorneys, and most consultants that keep time and submit invoices based
15 on hourly rates. Each timekeeper is responsible for keeping track of time spent on a
16 matter and for inputting that time and the nature of the work in the appropriate billing
17 system. My experience is that attorneys and other timekeepers take this responsibility
18 very seriously. The attorneys carefully review each invoice to ensure that matters are
19 properly billed, the amount of time spent on each task is reasonable, all time-keepers
20 are approved by the City, and all expenses are appropriately included. The attorneys
21 will then correct any mistakes and the invoice is adjusted accordingly. At this point,
22 the bills are sent to the City where they are again subjected to review.

1 **Q. HOW DOES THE CITY TRACK ALL OF ITS RATE CASE EXPENSES?**

2 A. Lloyd Gosselink has elected to establish 13 billing categories to be used by its
3 attorneys and consultants rendering opinions in this case. Each attorney or consultant
4 codes his or her time spent on this case according to one or more of the following
5 categories:

- 6 • Administration/Case Management/Settlement;
- 7 • Policy;
- 8 • Revenue Requirement;
- 9 • Operations and maintenance or "O&M" Expense;
- 10 • Payroll;
- 11 • Employee Benefits;
- 12 • Miscellaneous Accounting;
- 13 • Rate Base;
- 14 • Debt Service Coverage/Return;
- 15 • Consumption;
- 16 • Cost Allocation;
- 17 • Rate Design;
- 18 • Depreciation; and
- 19 • Rate Case Expenses.

20 **VII. OPINIONS AND CONCLUSIONS**

21 **Q. IN YOUR OPINION, WAS IT REASONABLE AND NECESSARY FOR THE**
22 **CITY TO RETAIN OUTSIDE LEGAL COUNSEL AND OTHER**
23 **RESOURCES TO PREPARE AND PROSECUTE THIS CASE?**

24 A. Yes. The Commission has relatively little recent history in considering municipal
25 water and sewer utility rate cases. The Commission only recently re-acquired

1 jurisdiction over water and sewer rates (effective September 1, 2014).¹⁴ Thus, there is
2 very little authority specifically governing municipal utility rate approval. This has
3 contributed to the complex challenges faced by the City and its rate case team. In
4 many ways, however, this rate case resembles other rate cases that are commonly
5 heard by the Commission. This is particularly true with regard to the planning,
6 process, and effort that must be undertaken to develop, prepare, and file the required
7 materials and prosecute the case. While the City has some in-house regulatory
8 expertise, it does not have sufficient legal and consulting resources to properly and
9 timely plan and prepare the required case materials. In my experience, most utilities,
10 whether they are municipal or investor-owned, require substantial external resources
11 when prosecuting a rate case such as this one. It is the common practice in Texas to
12 engage outside counsel to prosecute rate case proceedings.

13 **Q. WAS IT REASONABLE FOR THE CITY TO SELECT LLOYD GOSSELINK**
14 **AS ITS OUTSIDE COUNSEL?**

15 **A.** Yes. Lloyd Gosselink is a highly experienced and respected law firm with particular
16 expertise in administrative law, the regulation of utilities, the representation of
17 municipalities, and rate case and other litigation before administrative agencies. In
18 my opinion, Lloyd Gosselink is well positioned to zealously represent the City in an
19 efficient and professional manner.

¹⁴ The Texas Legislature changed the jurisdiction over water and sewer rate appeals under the TWC from the Commission to the Texas Water Commission in 1985 and then reversed that decision in 2013.

1 **Q. PLEASE SUMMARIZE YOUR OPINIONS REGARDING THE RATE CASE**
2 **TEAM.**

3 A. In my opinion, the rate case team that Lloyd Gosselink has assembled is experienced
4 and well-qualified to serve the City in this matter. The attorneys and support staff
5 have diverse skills, experience, and billing rates, all of which allow Lloyd Gosselink
6 to staff this case in a lean and reasonable manner. The team's approach in this case is
7 well designed and consistent with the approach I have seen other utilities use in rate
8 cases. It is a responsible and reasonable way to prepare and prosecute this case.

9 **Q. ARE THE BILLING PROCESSES AND CATEGORIES UTILIZED BY**
10 **LLOYD GOSSELINK IN THIS CASE REASONABLE?**

11 A. Yes. In my opinion Lloyd Gosselink's billing processes and categories are
12 reasonable. The cost-control and billing measures that the firm has put in place
13 reflect prudent management of the fees and expenses incurred in connection with this
14 rate case. Furthermore, the 13 billing categories that the attorneys are using in this
15 rate case adequately and reasonably describe billing tasks in a level of detail that
16 comports with Commission policy in other rate cases. These categories cover the
17 substantive issues that should be reasonably expected in a rate case like this one, and
18 they allow the Commission and intervenors to assess rate case expenses by issue.
19 Additionally, the categories are not so detailed that they disclose client confidences or
20 burden the utility with unnecessary administrative costs. More specific substantive
21 issues could, and probably will, arise during the course of this case. In my opinion, at
22 this point in the process it is difficult to anticipate which, if any, of these substantive
23 issues are or could become suitable for separate tracking. The rate case team will

1 continue to describe the time spent on individual tasks, so that more billing categories
2 may be added or refined, if necessary, as the case proceeds.

3 **Q. DO THE CITY'S RATE CASE EXPENSES MEET THE STANDARDS FOR**
4 **REASONABLENESS UNDER THE *CITY OF EL PASO* CASE AND 16 TAC**
5 **§ 25.245 APPLICABLE TO ELECTRIC UTILITIES?**

6 A. Yes. The City's rate case expenses are reasonable in light of the *City of El Paso*
7 standards and the factors used in electric utility rate cases.

8 **Q. PLEASE SUMMARIZE YOUR OPINIONS CONCERNING THE FACTORS**
9 **DISCUSSED IN THE *CITY OF EL PASO* CASE.**

10 A. *Time and Labor Required/Nature and Complexities of the Case.* The fees, expenses,
11 and hourly rates I reviewed are consistent with the time and labor required, novelty
12 and difficulty of the issues, and the skill necessary to properly perform the legal
13 services in this case. Historically, the City has conducted its own ratemaking process.
14 There is no template for this case, and many of the issues faced by the City and the
15 legal team must be freshly considered. For example, it is my understanding that the
16 Commission has no RFP tailored to this particular type of case, so the City prepared
17 its case at Commission Staff's recommendation utilizing the RFP applicable to Class
18 A investor-owned water utilities. Rate cases in general require a lot of expertise and
19 time, and the unique procedural posture of this case, in addition to the substantial lack
20 of precedent, creates complex challenges for the City and its rate case team.

21 *The Fee Customarily Charged in Locality for Similar Legal Services.* The
22 hourly rates I reviewed in this case are customary in the locality for similar legal
23 services. It is reasonable and customary to charge hourly rates for legal services
24 rendered on behalf of utilities in cases before the Commission. Based upon my

1 experience in other rate cases, the hourly rates charged by the lawyers and support
2 personnel on behalf of the City in this case are more than reasonable and generally
3 lower than the rates charged by other lawyers and supporting resources representing
4 utilities in rate proceedings before the Commission. This is largely due to the size of
5 the City and the fact that the rates charged to municipalities, generally, tend to be on
6 the lower end of the market, due to cities' needs to keep costs down.

7 *Amount of Money or Value of Property or Interest at Stake.* The City's
8 interest in this proceeding is significant. The City rarely litigates rate cases before the
9 Commission, and was unable to recover rate case expenses incurred in Docket No.
10 42857. A utility must be allowed to recover its reasonable and necessary rate case
11 expenses in order to recover its full reasonable cost of doing business. Therefore, the
12 City has a large interest in the outcome of this proceeding.

13 *Extent of Responsibilities and Potential Loss of Other Employment.* Lloyd
14 Gosselink's engagement to represent the City in this rate case is likely to preclude
15 other employment for the firm and its lawyers. Cost of service rate cases require an
16 enormous time commitment that may require the lawyers working on the matter to
17 devote their time exclusively, or almost exclusively, to the utility client for a
18 considerable period of time. Furthermore, because the City is a municipal utility, the
19 process of moving through a rate case is more cumbersome than for an
20 investor-owned utility. Lloyd Gosselink must work closely with city management,
21 utility management, and the Austin City Council. The number of people that must be
22 included in the process requires the legal team to devote substantial time and
23 resources to case management and oversight. This time commitment may make it

1 extremely difficult or impossible for individual attorneys to accept new clients for any
2 kind of material commitment or work on other matters.

3 *Benefits to Client.* The City derives a large benefit from having this team
4 handle the rate case. I do not believe that the City could successfully and timely
5 prepare and prosecute this rate case without substantial additional resources and
6 expertise. These cases do not occur frequently, so it makes more sense to use
7 external resources for this type of project. In my experience, most utilities, whether
8 they are municipal or investor-owned, require substantial external resources when
9 prosecuting a rate case such as this one, and it is the common practice in Texas.

10 **Q. PLEASE SUMMARIZE YOUR OPINIONS CONCERNING HOW THE**
11 **CITY'S RATE CASE EXPENSES SATISFY STANDARDS FOR**
12 **REASONABLENESS UNDER 16 TAC § 25.245(b) APPLICABLE TO**
13 **ELECTRIC UTILITIES.**

14 A. Based on those factors that can be addressed at this point in the proceeding, the City's
15 rate case expenses are reasonable under 16 TAC § 25.245(b). As noted above, this
16 case is unusual and will require a substantial amount of time and effort on the part of
17 the attorneys involved. The rates charged for each of the attorneys working on the
18 case are reasonable given the time commitment and experience level of each of the
19 attorneys. While it is not possible this early in the proceeding to fully evaluate the
20 factors regarding expenses incurred for travel, the nature and scope of the rate case,
21 and the specific issues in the rate case, I believe the City and Lloyd Gosselink have
22 put measures in place to make sure that the rate case expenses incurred throughout
23 this rate proceeding remain reasonable in light of the unique issues presented in this
24 case. For example, establishment of the 13 billing categories directly corresponds to

1 the requirement of 16 TAC § 25.245(b)(6). Also, as discussed above, the City
2 employees and outside consultants are encouraged to avoid luxury or unnecessary
3 travel expenses throughout the rate case proceeding, which helps to manage costs of
4 travel. All of these factors weigh in favor of finding that the City's rate case expenses
5 are reasonable.

6 **Q. IN YOUR OPINION, SHOULD ANY OF THE CITY'S RATE CASE**
7 **EXPENSES BE EXCLUDED FROM RECOVERY?**

8 A. No. Overall, the fees paid to, tasks performed by, and the time spent on this case by
9 the outside legal team and myself as a rate case expense consultant were not extreme
10 or excessive and are reasonable. Although all costs for lodging, travel, and meals
11 have not yet been incurred, the City has encouraged its employees, lawyers, and
12 consultants to steer clear of travel expenses that are luxurious or unnecessary.
13 Moreover, by clearly delineating areas of responsibility for each witness and lawyer,
14 the City has minimized duplication of effort. Also, the City's proposals in this case
15 were based on law, fact, and warranted based on Commission precedent in other rate
16 cases. In general, the City's rate case expenses were proportionate and warranted in
17 relation to the nature and scope of this case, taking into consideration the City's size,
18 its customers, the amount on money at stake, and the complexity of the issues.
19 Furthermore, the City has provided sufficient information, as required under
20 Commission precedent, to claim recovery of rate case expenses. For all of these
21 reasons and the reasons noted above, the City should be permitted to recover its rate
22 case expenses. If the rate case expense issue does not settle, I will provide
23 supplemental direct testimony or an affidavit concerning the expenses incurred after
24 March 31, 2019.

1 Q. IN YOUR OPINION, WERE THE FEES YOU CHARGED AS A
2 CONSULTANT IN THIS CASE REASONABLE?

3 A. Yes. I bill by the hour, as is common and accepted practice. My \$500 per hour rate
4 is well within the reasonable range of rates charged by other lawyers and consultants
5 providing this type of testimony before the Commission. I also utilized the assistance
6 of a junior associate billing at \$266 per hour to more efficiently and cost-effectively
7 assist me in the review of legal invoices and the preparation of my direct testimony.
8 The invoices for my services are included in Schedule II-E-4.4 of the RFP.

9 **VIII. CONCLUSION**

10 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

11 A. Yes.

HUNTON
ANDREWS KURTH



Tab R. Urbantke

Partner

turbantke@HuntonAK.com

Dallas

+1 214 979 3095 direct



For over 15 years, Tab has represented and counseled some of the largest energy companies in Texas and the United States, including electric and gas utilities, transmission-only utilities, retail electric providers, power marketers, generators, mining companies, and other energy sector clients.

Tab regularly advises clients of the regulatory implications and risks of project development, capital market, and commercial energy transactions. His experience includes both rulemaking proceedings and administrative litigation involving a variety of rate case, licensing, complaint, and merger proceedings before numerous state and federal agencies, including the Public Utility Commission of Texas (PUCT), the Railroad Commission of Texas (RRC), the Texas Commission on Environmental Quality (TCEQ), the State Office of Administrative Hearings, the Electric Reliability Council of Texas (ERCOT) the Federal Energy Regulatory Commission (FERC), and several state public utility commissions. He has also led negotiations for clients on a variety of commercial energy transactions. Additionally, Tab has significant experience advising clients on legislative strategy, drafting and advocacy efforts.

Relevant Experience

- Represented Texas' largest electric utility in connection with the PUCT and the FERC's approval of sale, transfer, and merger applications arising from majority owner's bankruptcy and restructuring – one of the largest bankruptcies in US history.
- Represented Texas' largest electric utility in connection with the PUCT's approval of a \$400 million asset swap with another major electric utility.
- Represented Texas' largest electric utility in connection with multiple system-wide cost-of-service rate cases before the PUCT and municipal regulatory authorities with billions of dollars at stake in capital investment, smart meter/grid technologies, and energy efficiency rate mechanisms.
- Assisted in representation of a new-market entrant transmission-only utility in litigated proceedings before the PUCT, including multiple applications for certificates of convenience and necessity for proposed transmission line facilities, and an initial application for transmission service rates.
- Represents electric utilities in connection with matters involving new transmission line construction, including interfacing with ERCOT and obtaining appropriate regulatory approvals and negotiating interconnection and other commercial agreements.
- Lead counsel for major Texas utility in legislative drafting and advocacy efforts, including issues relating to electric ratemaking, transmission line planning and certification, renewable energy, energy storage, and condemnation.

Electric & Gas Utilities

- Assisted in representation of a large nuclear generator before the TCEQ regarding the establishment of a regulated low-level radioactive waste disposal rate.
- Lead counsel for a natural gas midstream company in connection with a shipper's rate-related complaint before the RRC, including representation in mediation proceedings.

- Assisted in representation of Texas' and the United States' largest natural gas local distribution company in connection with the RRC's prudence review of several billion dollars in natural gas purchases.

Energy Regulatory Compliance

- Lead counsel for a major competitive power company in connection with its mine permitting, reclamation, and bonding efforts.
- Represented and counseled clients on compliance with North American Electric Reliability Corporation and regional reliability standards, including preparation for and participation in audits and investigations.
- Represented Texas' largest electric utility on implementation of environmental mitigation requirements under the Endangered Species Act.
- Assisted in the representation of Texas' largest power generation company before the PUCT in terminating its state-mandated obligation to auction off generating capacity.
- Assisted in the representation of a power marketer in alternative dispute resolution efforts before the ERCOT and related PUCT appeals regarding wholesale settlement and market payment issues.
- Counseled a large Independent System Operator in the Eastern Interconnection regarding administration of unbundled wholesale electric markets, including tariff administration and interpretation, regulatory compliance, and corporate governance matters.

Legislative Counseling & Advocacy

- Led drafting and negotiation efforts on behalf of Texas' largest electric utility in connection with rate-related, eminent domain, smart meter , and other legislative issues.
- Assisted in representation of a nuclear generator in development, advocacy, and passage of homeland security legislation.
- Assisted in representation of a national retail food chain in connection with food labeling and licensing requirements

Memberships

- Member, Administrative and Public Law Section, State Bar of Texas
- Member, Public Utility Law Section, State Bar of Texas
- Member, Gulf Coast Power Association
- Member, Dallas Bar Association

Awards & Recognition

- E. Randolph Williams Award for Outstanding Pro Bono Service, 2002–2006
- Pro Bono College of the State Bar of Texas, 2002–2005

SERVICES

Industries

Energy

Practices

Project Finance and Development

Energy and Infrastructure

Oil, Gas and LNG

Power and Utilities Capital Markets

Sustainability and Corporate Clean Power

Energy M&A

Energy

FERC, NERC and State Energy Regulation

Renewable Energy and Clean Power

EDUCATION

JD, Baylor Law School, Order of the Barristers, 2002

MPPA, Baylor University, 2002

BA, Political Science, Baylor University, 1998

BAR ADMISSIONS

Texas

COURT ADMISSIONS

US District Court, Eastern District of Texas

NEWS

Hunton Andrews Kurth Announces Expansion of National Energy Practice with Addition of Myles F. Reynolds and Tab R. Urbantke, August 7, 2018

Media Coverage on Arrival of Myles F. Reynolds and Tab Urbantke, July 25, 2018

Hunton Andrews Kurth Expands Dallas Office and National Energy Practice with Addition of Energy Regulatory Partners, July 19, 2018

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**CHART OF ATTORNEY RESPONSIBILITIES AND
HOURLY BILLING RATES**

Firm	Name	Position	Hourly Billing Rate	Responsibilities
Lloyd Gosselink Rochelle & Townsend, P.C.	Chris L. Brewster	Principal	\$325.00	Oversee and manage witnesses Dan Wilkerson (debt service coverage/revenue requirement), Dennis Waley (credit rating/debt service coverage), and David Anders (policy, accounting, and general background/ rate case issues)
	Thomas L. Brocato	Principal	\$345.00	Lead counsel; generally prepare/oversee rate case preparation; oversee and manage rate case expenses generally; manage witnesses Steve Coonan (reclaimed water issues) and Tab Urbantke (legal rate case expenses)
	Hanna E. Campbell	Paralegal	\$125.00	General support for rate case
	W. Patrick Dinnin	Associate	\$250.00	General support for rate case
	William A. Faulk, III	Associate	\$250.00	General support for rate case
	Tanya R. Leisey	Paralegal	\$125.00	General support for rate case
	Karen W. Mallios	Litigation Support Specialist	\$125.00	General support for rate case
	Jamie L. Mauldin	Associate	\$250.00	Oversee and manage witnesses Joseph Gonzalez (O&M issues, cost allocation/rate design, consumption, capital improvement, debt coverage/financial reserve); general support for the rate case
	Sam J. Weaver	Paralegal	\$125.00	General support for rate case



City of Austin
Law Department

301 W. 2nd Street, P.O. Box 1088
Austin, Texas 78767-1088
(512) 974-2268

(512) 974-2268
Writer's Direct Line

(512) 974-2912
Writer's Fax Line

August 3, 2017

Thomas Brocato
Lloyd Gosselink Rochelle & Townsend, P.C.
816 Congress Ave., Suite 1900
Austin, TX 78701

RE: Provide legal services regarding the Austin Water rate case review, as assigned
by the City Attorney

Dear Mr. Brocato:

This Engagement Letter confirms that you will represent the City of Austin to provide legal services concerning the above-referenced matter. The City requires outside counsel to follow certain policies outlined in the attached Terms of Engagement. Please sign and return this Engagement Letter to Teresa Medina in the enclosed envelope, confirming that you agree to these policies. In addition, the firm must provide Disclosure of Interested Parties, per "Section II C" of attached Terms of Engagement.

Assistant City Attorney D. Clark Cornwell is the in-house attorney responsible for managing this matter (the "Managing Attorney"). The City will pay for the legal services you provide, in a total amount not to exceed \$725,000.00 for all fees and expenses billed under this agreement.

We have agreed that your billing rate for this matter is \$345.00 per hour. The agreed billing rates for any other named attorney(s) and paralegal(s) authorized to work on this matter, if any, are shown on the attached Rate Schedule. **The City will not pay for work by any person not listed on the Rate Schedule unless I preauthorize the change in writing in an amendment to the Rate Schedule.** Unless later agreed to in writing, these hourly rates are set for the duration of this engagement.

If you require consultant or subcontractor services, you must receive prior written approval from me. Pursuant to the City's accounting and auditing policies, you must bill the City on your letterhead for services rendered by other firms, i.e., court reporters, record companies, and consultants. The City cannot pay invoices from other businesses if they were not hired directly by the City.

Thomas Brocato
August 3, 2017
Page 2

If you have any questions, please do not hesitate to call me or the Managing Attorney.

Sincerely,



Anne L. Morgan
City Attorney

AGREED:



Thomas Brocato
Lloyd Gosselink Rochelle & Townsend, P.C.

Attachments: Terms of Engagement
Rate Schedule.

ALM/tmm

Outside Counsel Hourly Rate Schedule and Authorized Staff

The City will only pay for work done by the staff named and at the hourly rates listed below.

The City expects that this matter will be leanly staffed and economically handled.

Work is to be done by the person with the appropriate qualifications and an appropriate hourly rate for the services performed.

The City expects that work on city matters will be done at hourly rates that are a substantial discount from the firm's general billing rates.

These hourly rates are set for the duration of the engagement.

Only the following people are authorized to work on this matter:

Thomas Brocato	Principal	\$345/hr
Chirs Brewster	Principal	\$325/hr
Hannah Wilchar	Associate	\$250/hr
Jamie Mauldin	Associate	\$250/hr
Tanya R. Leisey	Paralegal	\$125/hr
Kathy Hand	Paralegal	\$125/hr

Name	Classification (e.g., "partner," "associate," "paralegal")	Hourly Rate
------	--	-------------

Agreed:

J. D. R. 8-8-17
Outside Counsel Initials Date

Revised April 28, 2008

CITY OF AUSTIN OUTSIDE COUNSEL – TERMS OF ENGAGEMENT

I. DEFINITIONS

“Agreement” means this Terms of Engagement, including all exhibits and any written amendments, and the Engagement Letter.

II. DUTIES OF FIRM

A. Scope of Services

We expect matters to be leanly staffed and economically handled. The Managing Attorney will be contacting you to discuss the specific work assignments, possible sharing of work between our in-house staff and your firm, and how to work together most efficiently to fulfill the engagement and to constrain costs. All decisions will be made jointly by you and the Managing Attorney.

Examples of such decisions include whether to:

- engage in extensive research on an issue and who will do the research;
- file a motion;
- hire an expert;
- take a particular deposition; and
- engage in settlement negotiations and the scope of those negotiations.

The potential outcome of a case in litigation should be evaluated early and if early settlement is appropriate, it should be pursued at every stage of the case. If necessary and appropriate, use of a neutral third party is encouraged. Some cases, of course, must be fully litigated.

Any decision to appeal a case must be made by the City Attorney.

In litigation matters, all briefs and any affidavits of City of Austin employees done by your firm must be forwarded to the Managing Attorney for review, in draft, at least three business days before filing. No brief or affidavit may be filed until it has been approved by the Managing Attorney.

In non-litigation matters, discuss with the Managing Attorney the precise services requested and whether a formal opinion is desired, or informal oral or written assistance.

Copies of all legal research or memoranda which you create, whether intended for internal or external use, must be timely furnished to the Managing Attorney.

B. Representation

The Firm shall coordinate all aspects of its services with the Managing Attorney assigned to this matter. Contemporaneous copies of all pleadings, legal memoranda, and correspondence shall be submitted to the Managing Attorney. All policy decisions, including but not limited to all settlement actions shall be made by the Managing Attorney. Please note that formal action by the Austin City Council may be required to approve certain actions, including settlement. All contact with City Officials must be coordinated through the Managing Attorney.

C. Interested Parties Disclosure

If this Agreement requires Council approval, the Firm must complete a copy of Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission prior to the execution of a contract with the City. The Certificate of Interested Parties must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the Certificate of Interested Parties to the Texas Ethics Commission within 30 days of receipt from the Firm. A link to Texas Ethics Commission Form 1295 processes and procedures is https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm.

D. Conflict of Interest

Before commencing work on this assignment, you must verify whether your firm has a conflict of interest with respect to the parties involved. If any conflicts are present, please advise the Managing Attorney immediately in writing.

Your Firm may be asked to represent various clients whose interests are adverse to those of the City. By signing the Engagement Letter, you affirm that no such conflict exists. Further, during the course of this representation, your firm shall refrain from representing clients whose interests may conflict with those of the City. Should such a conflict arise, you shall contact the Managing Attorney immediately to discuss the situation.

E. Assignment

The Firm may not assign this Agreement in whole or in part, or subcontract any legal services without the prior written consent of the Managing Attorney.

F. Budget Cap to Complete the Engagement

If required by the Managing Attorney for this engagement, the Firm's budget for this matter is attached. The budget may include an agreement that work on this matter will be billed on an hourly basis with total fees to complete work on the matter capped at the budget limit. The budget shall include a list of specific legal services, including a detailed estimate of all fees, expenses, and costs for each legal service to be performed. If it becomes apparent to the Firm that it may exceed the budget cap because of unforeseeable, exceptional circumstances, the Firm may notify the Managing Attorney in writing describing in detail the reason why the Firm seeks to increase the budget cap. It is solely within the City's discretion to deny or agree to a budget cap increase.

G. Ethics

In providing legal services to the City, the Firm and each attorney providing services to the City shall fully comply with the Texas Disciplinary Rules of Professional Conduct. The law firm shall promptly notify the City if any disciplinary action or malpractice action is instituted against the law firm or an attorney providing services to the City.

H. Media Inquiries

All inquiries from the media must be referred to the Managing Attorney for response. No public comment on litigation matters may be made without prior approval from the City Attorney.

I. Authorized Expenditure Ceiling

The total cost of fees and expenses to the City for representation in this matter shall not exceed the authorized expenditure amount specified in the Engagement Letter. If the City requires additional services, a new or amended Agreement is required before fees or expenses exceeding the expenditure ceiling are incurred. The City will not pay any amount in excess of the authorized expenditure ceiling without a new or amended written agreement. Unlike the Budget Cap which is fixed for the engagement, the authorized expenditure ceiling may be increased if additional work is authorized.

J. Expenses

The Firm shall exercise prudence in incurring expenses. The Firm agrees to timely pay for all reasonable expenses incurred during representation of the City in this matter, including litigation expenses, if applicable. Such payments shall be made as they become due and payable subject to reimbursement as provided in this Agreement. The City agrees to reimburse the Firm for the reasonable, actual cost of expenses incurred in this matter as provided in the Billing Requirements section of this Agreement.

K. No Increase in Billing Rates

The City will not increase billing rates for any matter which is in progress without the written approval of the City Attorney in an amended Rate Schedule.

L. Indemnity

The Firm shall indemnify and hold the City harmless from any claims, liability, damages, suits, causes of action, and judgments arising out of or caused by the negligence, gross negligence, malpractice, or willful misconduct of the Firm, or any attorney associated with the Firm, in the rendering of legal services.

M. Insurance

The Firm shall carry professional liability insurance with minimum limits of one million dollars (\$1,000,000.00) per occurrence and shall not permit such insurance to be canceled or lapse during this engagement. The Firm shall provide an insurance certificate or other proof of insurance to the Managing Attorney with the return of the signed Engagement Letter.

N. Work Products

It is agreed that all files, reports, exhibits, pleadings, data compilations, memoranda, and other work products produced under this Agreement, collectively, the "Documents," are the property of the City of Austin. Upon termination, the Firm may retain a copy of the Documents, but the Firm shall deliver the original Documents to the City Attorney on request, at no expense to the City.

III. BILLING INSTRUCTIONS

Failure to follow these policies may result in no payment for part or all of the fees associated with work that does not comport with these policies.

The City will not pay for work outside the scope of work and assignments approved by the Managing Attorney.

All invoices must be submitted with a remittance page. Your firm's name and remittance address must exactly match your registration on the Vendor Self Service System (VSS).

If your firm has a change of address, you must notify the Managing Attorney immediately and update your registration on VSS. If you move to a different firm, you must indicate in writing your final date with the firm, submit a final invoice from the firm, and indicate your start date with your new firm. The continuation of this engagement and any staffing changes at your new firm must be approved in writing by the City Attorney.

A. Billing Requirements

1. Itemized bills must be submitted on Firm letterhead on a monthly basis.
2. Itemized bills must include a remittance page.
3. The Firm shall bill time in 1/10th of an hour increments.

4. The negotiated hourly rates on the attached Rate Schedule include all overhead and internal charges associated with your firm's practice. The City expects that work for the City will be done at a substantial discount from the firm's general billing rates. The City will not separately pay for overhead or law firm costs associated with services of secretaries, word processors, librarians, investigators, or other support staff.

5. The City will not pay for time spent preparing, discussing, or correcting a billing statement.

6. The City will not pay for opening routine correspondence which does not require a response or impact the merits of the case.

7. The City expects inefficiently spent time to be shown on the bill and written off in the sound exercise of billing judgment.

8. Any attorney work product for which the City is billed shall be provided to the City, either electronically or as a paper copy at the time it is completed.

9. If the Firm requests attorney fees in a contested motion and fees are awarded, the draft should be made payable to the City of Austin, or the amount of the award must be specifically credited on the next billing statement.

10. A copy of all invoices, bills, and receipts for expenses shall be attached to the monthly bill.

11. Expenses over and above the limits set forth herein shall be borne solely by the Firm and shall not be reimbursed under this Agreement.

B. Billing Statement Requirements

All billing statements must contain the following information:

1. IRS taxpayer identification number of the firm or attorney.
2. The vendor's name and address which must exactly match the name and address on the VSS (e.g., if the name includes L.L.P., it must match on the bill and on VSS).
3. Style of case or Matter description.
4. A remittance page with the monthly statement.
5. Dates of service and a detailed description of service. Vague descriptions, such as "review," "update," "attention to file," "research," and "trial preparation" without more specifics are not acceptable.
6. Name, classification (e.g., "partner," "associate," "legal assistant"), billing rate for the person doing the task, and specific time for service to a tenth of an hour.
7. Detailed listing of all expenses with supporting documentation for all third party and travel expenses.

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Sales and Use Tax. The Firm's invoices to the City must not contain assessments of any of these taxes.

* Please note that billing statements are subject to release under the Public Information Act.

C. Consultations

1. The City will not pay for inefficient conferences among outside attorneys or support staff. The City expects the matter to be leanly staffed.
2. The City will not pay for time involved educating an outside attorney on a particular matter when it has previously been handled by another attorney in the Firm.

D. Court Proceedings Attendance

1. Attendance of more than one attorney at depositions or court proceedings, including trials, is not reimbursable without prior approval by the Managing Attorney. Generally, one attorney is expected to handle matters.
2. Time involved for clerks, junior associates, or paralegals to accompany counsel to depositions, hearings, or trials for training purposes is not reimbursable.

E. Inefficient or Duplicate Work

The City will not pay for inefficient work, including the following:

1. More than one attorney performing any one task on a matter.
2. An attorney to re-do the work of a paralegal or another attorney.
3. Multiple entries for reviewing correspondence, documentation, trial, and/or deposition transcripts, indicative of inefficient work.
4. Repeat and inefficient research on an issue.
5. Legal research over 3 hours or any paralegal project over 5 hours, without prior Managing Attorney approval.
6. Research for matters which should be within the knowledge of an experienced practitioner.
7. Time spent training junior or other lawyers.

F. Expenses

The City will not pay for the following expenses:

1. General operating expenses other than long-distance phone bills, postage, and copying (not to exceed 10 cents per page).
2. Unnecessary use of express mail, facsimile transmissions, or couriers.
3. Any computerized legal research over \$200.00 without prior Managing Attorney approval.

The Firm must evaluate the need to engage experts, investigators, visual aid companies, etc. on a case by case basis, and must obtain approval of the Managing Attorney before retaining any such services.

G. Travel

The City will not pay:

1. For time spent traveling unless productive work is done during that time or a specific arrangement is agreed to in writing with the City Attorney in an amendment to this agreement.
2. For air travel expenses in excess of standard coach or economy fares. Counsel is expected to take advantage of special fares or discounts whenever possible and will check with the Managing Attorney for information on City vendor discounts.
3. For lodging and meals that exceed the per diem rates established by the U. S. General Services Administration.
4. For alcoholic beverages.
5. For charges from in room hotel "honor" bars.

The City will pay for automobile mileage not to exceed the amount permitted as a business expense under the Internal Revenue Code.

IV. DUTIES OF CITY

A. Payment Terms

1. The City shall pay the Firm on the basis of monthly invoices submitted by the Firm and approved by the City Attorney or his designee.
2. The City shall make payments to the Firm within 30 days of receipt of an invoice meeting contract and billing requirements.

B. Disputed Payments

1. If the City disputes any item in an invoice the Firm submits for any reason, the Managing Attorney shall advise the Firm of the issue and request that the Firm submit a new invoice of current date that does not include the disputed amount. The City will not pay for time spent discussing or correcting an invoice.

2. If the dispute is later resolved in the Firm's favor, the Firm may include the disputed amount on a separate invoice or on a subsequent monthly invoice.

C. Written Amendment

Unless otherwise specified, this Agreement may be amended only by written instrument executed by the City Attorney.

V. GENERAL PROVISIONS

A. Compliance with Laws

This Agreement and all disputes concerning this Agreement shall be governed by the laws of the State of Texas. Venue of any civil action between the parties regarding this Agreement shall lie exclusively in Travis County, Texas. All obligations of the parties shall be deemed performable in Travis County, Texas.

B. Right to Audit

The City has the right to inspect and audit all books, records, and documents of the Firm pertaining to this engagement at any reasonable time, to the extent necessary to verify the accuracy of any statement, charge, or computation.

C. Audit Expenses

If the Firm is asked to provide information to the City, including, but not limited to City auditors (either City employees or professionals hired by the City to audit the City's records) or the City finance department, the Firm shall provide such information at no additional cost to the City.

D. Entireties

This Agreement, together with the engagement letter, shall constitute the entire Agreement and understanding of the parties concerning the engagement of the law firm. There shall be no amendment or modification to this Agreement, except in writing signed by all parties.

E. Severability

If any provision of this Agreement is declared invalid, illegal, or unenforceable by a court or an agency of competent jurisdiction, such declaration shall not affect the remainder of this Agreement and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

VI. EFFECTIVE DATE; TERMINATION OF AGREEMENT

This Agreement is effective as of the date the City receives a copy of the Agreement signed by the Firm and a completed Certificate of Interested Parties.

The City may terminate this Agreement with or without cause at any time. Upon receipt of a written request by the City, the Firm shall immediately discontinue work under the Agreement and transmit all files or written materials to the City. Thereafter, only those legal services necessary to effectuate termination of representation or transfer to another attorney may be performed. All such services must be expressly authorized in advance and in writing by the Managing Attorney.

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[Reed, Jeremy G.](#)

[Thompson, Sam R.](#)

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BROCATO, THOMAS L.

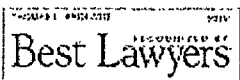
PRINCIPAL

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Thomas Brocato

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Since 2004, Thomas has solved problems for Lloyd Gosselink clients through his more than 27 years of experience in representing clients before regulatory agencies, the courts, and the legislature. In addition to his focus on utility administrative law, his experience at the legislature, rate proceedings, rulemakings, transmission line licensing applications, and appellate litigation make Thomas a valuable resource for clients with electric, gas, and water utility issues.

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Practice Areas

Professional Licenses and Education

- Admitted to the State Bar of Texas (1990)
- Admitted to the U.S. Supreme Court and the Fifth Circuit Court of Appeals
- J.D., Texas Tech University School of Law (1990)
- B.A., The University of Texas at Austin (1987)

Representative Experience

Publications and Presentations

Professional Associations and Memberships

Honors and Awards

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[Lynn, Brian](#)

[Mazzola, James L.](#)

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[Reed, Jeffrey S.](#)

[Thompson, Sara R.](#)

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BROCATO, THOMAS L.

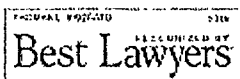
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Since 2004, Thomas has solved problems for Lloyd Gosselink clients through his more than 27 years of experience in representing clients before regulatory agencies, the courts, and the legislature. In addition to his focus on utility administrative law, his experience at the legislature, rate proceedings, rulemakings, transmission line licensing applications, and appellate litigation make Thomas a valuable resource for clients with electric, gas, and water utility issues.

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Practice Areas

Professional Licenses and Education

Representative Experience

- Texas Office of Public Utility Counsel — Assistant Public Counsel representing residential and small commercial consumers on electric utility matters
- Public Utility Commission of Texas — Assistant General Counsel representing the public interest in regulatory matters

Publications and Presentations

Professional Associations and Memberships

Honors and Awards

Personal Profile



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Best Lawyers

Ranked in
CHAMBERS
USA
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Energy &
Infrastructure

Since 2004, Thomas has solved problems for Lloyd Gosselink clients through his more than 27 years of experience in representing clients before regulatory agencies, the courts, and the legislature. In addition to his focus on utility administrative law, his experience at the legislature, rate proceedings, rulemakings, transmission line licensing applications, and appellate litigation make Thomas a valuable resource for clients with electric, gas, and water utility issues.

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Practice Areas

Professional Licenses and Education

Representative Experience

Publications and Presentations

- Speaker "Rate-Setting for Municipal Utilities," TBCPA Energy Conference, May 2017
- "Witness Preparation," EUCI Course presented in Denver May 2018, Charleston February 2017, Baltimore October 2017, Denver January and August 2015, Dallas April 2014, Sacramento July 2014, Denver, Colorado June 2013, Cheyenne, Wyoming, August 2013, Chicago, December 2013
- Speaker "A New Era of MOU Rate Appeals Before the PUC," TBCPA Annual Meeting, June 2015
- Speaker "Onco's Role and the Richardson Litigation," TCCFUI Fall Seminar, October 2015
- Speaker "State Utility Issues Update," TCAA Summer Conference, June 2015
- "Municipal Participation at the Public Utility Commission and Railroad Commission," 2014 TCCFUI Fall Seminar, December 2014
- In-House "Witness Preparation Seminar," FERC Staff Training, May 2014
- "Get to Regulate: Too Much, Too Little, or Just Right," Gulf Coast Power Association Annual Meeting, April 2014
- "Municipally Owned Utility Rate Appeal - City of Austin, Electric Rate Review," presented at the Texas Public Power Association Annual Meeting, 2013
- "MOU Rate Appeal - City of Austin, Electric Rate Review," presented at the Public Utility Law Section Seminar, August 2013
- "Energy Update: Recent Energy Cases and PUC Activities" presented at the TCCFUI Legislative Wrap-Up Seminar October 21, 2011
- "Recent Developments at the PUC, RRC, and TNCB," presented at the Texas City Attorneys' Summer Conference, June 10, 2010
- "Competitive Renewable Energy Zones," presented at the ASWMA / AAEE Spring Symposium, April 15, 2010



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Conner, Sarah W.

Crump, Georgia N.

de la Puente, José

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Lynn, Bettye

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Nelson, Duncan G.

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Practice Areas

Professional Licenses and Education

Representative Experience

Publications and Presentations

Professional Associations and Memberships

Honors and Awards

- The Best Lawyers in America®: 2016, 2017, and 2018
- Selected Texas Super Lawyers List, Thomson Reuters: 2016-2018

Personal Profile



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Chapman, Mark M.

Collins, Blank M.

Crisis, George N.

De la Fuente, Jose

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Faulk, William A. "Cody"

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Gerson, Michael A.

Gibson, Shelia B.

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Linn, Emily R.

Lynn, Bettye

Masella, Sarah L.

Merion, David C.

Peck, James F.

Reese, Jacqueline M.

Reese, Jeffrey S.

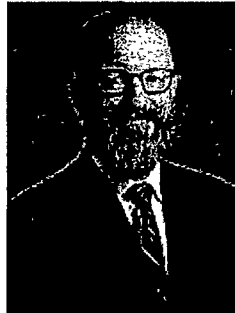
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Chris Brewster

Chris Brewster

cbrewster@gosselink.com

Ranked In
CHAMBERS
USA
2014

Christopher L.
Brewster

Chris brings broad and deep experience in electric utility issues—including deregulated wholesale and retail electricity markets—to our Energy and Utility Practice Group. He's a leading participant in the decision-making process of the Electric Reliability Council of Texas (ERCOT) and the Public Utility Commission of Texas, and he currently serves on ERCOT's Technical Advisory Committee.

Chris represents cities in transmission and distribution rate cases and proceedings and represents consumers in complaints at the PUC.

Prior to joining Lloyd Gosselink, Chris served as the Lead Electric Policy Analyst for the Public Utility Commission of Texas where he advised the commissioners on electric industry matters.

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Practice Areas

Professional Licenses and Education

- Admitted to the State Bar of Texas (2004)
- Licensed in Illinois (2003)
- J.D., University of Notre Dame Law School (2002), cum laude
- S.B.A. Accounting, University of Houston (1993), cum laude

Representative Experience

Publications and Presentations

Professional Associations and Memberships

Honors and Awards

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Brewer, J. Troone

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Brookins, Thomas L.

Chambers, Mark M.

Cole, Daniel W.

Cramer, George H.

De la Fuente, Jose

Dennis, W. Patrick

Emery, Ty H.

Felix, William A. "Doc"

Gay, Geoffrey M.

Graham, Michael A.

Gibson, Shelia B.

Haddock, Lauren J.

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Chris Brewster

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Chris brings broad and deep experience in electric utility issues—including deregulated wholesale and retail electricity markets—to our Energy and Utility Practice Group. He's a leading participant in the decision-making process of the Electric Reliability Council of Texas (ERCOT) and the Public Utility Commission of Texas, and he currently serves on ERCOT's Technical Advisory Committee.

Chris represents cities in transmission and distribution rate cases and proceedings and represents consumers in complaints at the PUC.

Prior to joining Lloyd Gosselink, Chris served as the Lead Electric Policy Analyst for the Public Utility Commission of Texas where he advised the commissioners on electric-industry matters.

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Practice Areas

Professional Licenses and Education

Representative Experience

- Represents cities as consumers in the ERCOT stakeholder process
- Serves as Small Commercial Consumer Representative on ERCOT's Technical Advisory Committee (TAC) (2007 to present); serves as Small Commercial Consumer Representative on ERCOT's Retail Market Subcommittee and Wholesale Market Subcommittee
- Represents cities in transmission and distribution utility rate case proceedings at the Public Utility Commission of Texas
- Represents cities in challenge to PUC decisions in District Court
- Represents commercial businesses, small industrial concerns, churches and non-profits in complaints against their Retail Electric Provider at the Public Utility Commission of Texas

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Adams, Stephen D.

Adams, James T.

Balmer, Samuel L.

Brown, J. Traugott

Brewster, Christopher L.

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Carter, David R.

Chen, Stephen H.

Clark, James W.

Clark, Jr. Patrick

Cobb, Ty M.

Cook, William A. "Doc"

Cox, Caroline M.

Crawford, Michael A.

Crawford, David S.

Cullen, William J.

Davis, David L.

Davis, Emily R.

Lynn, Melissa

Hedden, John L.

Hedden, Daniel C.

Harbo, James F.

Harris, Jacqueline M.

Hend, Jeffrey S.

Thomson, Sara R.

Thompson, Landon

Thomas, Nathan E.

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HURRICANE RESPONSE

SEARCH

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Chris Brewster

Chris Brewster

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Ranked In
CHAMBERS
USA
2015
Christopher L.
Brewster

Chris brings broad and deep experience in electric utility issues—including deregulated wholesale and retail electricity markets—to our Energy and Utility Practice Group. He's a leading participant in the decision-making process of the Electric Reliability Council of Texas (ERCOT) and the Public Utility Commission of Texas, and he currently serves on ERCOT's Technical Advisory Committee.

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Practice Areas

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* Selection for Inclusion by Thomson Reuters in Texas
Super Lawyers – Rising Stars Edition 2010

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Morgan, Stephen P.

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Baker, J. Treadwell

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Conner, Sarah W.

Conner, George H.

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Edwards, D. H.

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Patrick, Lauren A.

Klein, David J.

Linn, Emily R.

Lynn, Brian

Madden, Jamie L.

Martin, Duncan C.

Reiter, James F.

Perkins, Jacqueline M.

Ross, Jeffrey S.

Thompson, Sam H.

SEARCH

DINNIN, W. PATRICK

ASSOCIATE

(512) 322-5848



Patrick Dinnin

Patrick Dinnin

pdinnin@lgawfirm.com

Patrick assists clients with matters involving electric, gas, and water utility services before the Public Utility Commission, Railroad Commission, and the State Office of Administrative Hearings regarding ERCOT matters, license applications, rate proceedings, service area issues, rulemakings, consumer complaints, enforcement, and government relations. Patrick has significant experience investigating, negotiating, and settling violations of ERCOT protocols, PURA, and PUC rules in his previous role in the PUC's Oversight and Enforcement division.

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Practice Areas

- Energy and Utility
- Water
- Compliance and Enforcement

Professional Licenses and Education

Representative Experience

Professional Associations and Memberships

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[Bennett, Christopher L.](#)

[Benson, Thomas L.](#)

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[Coker, Sarah W.](#)

[Crumph, George N.](#)

[De la Piedad, Jose](#)

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[Flew, Gregory M.](#)

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[Lynn, Bettye](#)

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Practice Areas

Professional Licenses and Education

- Admitted to State Bar of Texas (2015)
- J.D., University of Houston Law Center (2015)
- B.A., Government, University of Texas at Austin (2011)

Representative Experience

Professional Associations and Memberships

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Kelley, Lauren J.

Kirk, David A.

Law, Emily R.

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Practice Areas

Professional Licenses and Education

Representative Experience

- Represents clients in rulemaking, service area, and rate case proceedings at the Public Utility Commission of Texas.
- Represents clients in complaints and enforcement matters at the PUC.
- Previously represented the PUC in a myriad of issues as an Attorney in the Oversight and Enforcement division, including matters regarding wholesale and retail electricity services, CCNE, ERCOT Protocols, ancillary services, abandonment of water services, utility submetering and allocation billing, overcharges, violations of Commission orders, license revocations, rulemakings, and the Texas no-call list.

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Representative Experience

Professional Associations and Memberships

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 - Public Utility Law Section
 - Oil, Gas, and Energy Resources Law Section

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Prior to joining the firm, Jamie worked as an attorney in San Francisco, California representing labor interests in front of the California Public Utilities Commission regarding a wide variety of matters including rate cases, policy rulemaking, and permitting proceedings.

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Practice Areas

Professional Licenses and Education

- Admitted to State Bar of Texas (2008)
- Admitted to State Bar of California (2011)
- J.D., University of Houston Law Center (2008)
- B.A., Vanderbilt University (2001)

Representative Experience

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Prior to joining the firm, Jamie worked as an attorney in San Francisco, California representing labor interests in front of the California Public Utilities Commission regarding a wide variety of matters including rate cases, policy rulemakings, and permitting proceedings.

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Practice Areas

Professional Licenses and Education

Representative Experience

- Representing municipalities in gas rate proceedings at the Railroad Commission of Texas
- Representing municipalities in electric rate proceedings and various rulemaking proceedings at the Public Utility Commission of Texas
- Represents cities as consumers in the stakeholder process at the Electric Reliability Council of Texas
- Assisting municipalities in negotiating franchise agreements relating to the provision of electrical service within the municipality
- Representation of investor owned water and sewer utility in Bulk Merger Transaction proceedings at the Public Utility Commission of Texas
- Representation of electrical, gas, and telecommunication labor interests in front of the California Public Utilities Commission regarding a wide variety of rulemaking, permitting, and policy matters for regulated utilities
- Drafting rulings and proposed decisions regarding investor owned utility regulatory matters as a research attorney for the Administrative Law Judge division at the California Public Utilities Commission
- Representing various insurance clients in civil litigation matters in both Texas and California courts

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Practice Areas

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Representative Experience

Publications and Presentations

• Author, "Richardson Prevails Over Electric Utility at Texas Supreme Court," *The Lone Star Current*, April 2012

• Author, "Texas' Electric Grid Operator Predicts Record-Breaking Usage This Summer," *The Lone Star Current*, April 2012

• Co-Author, "Texas Renewable Energy Trends & Legislation," *The Lone Star Current*, April 2017

• Co-Author, "Wave of Electric and Natural Gas Utility Rate Cases Expected in 2017," *The Lone Star Current*, January 2017

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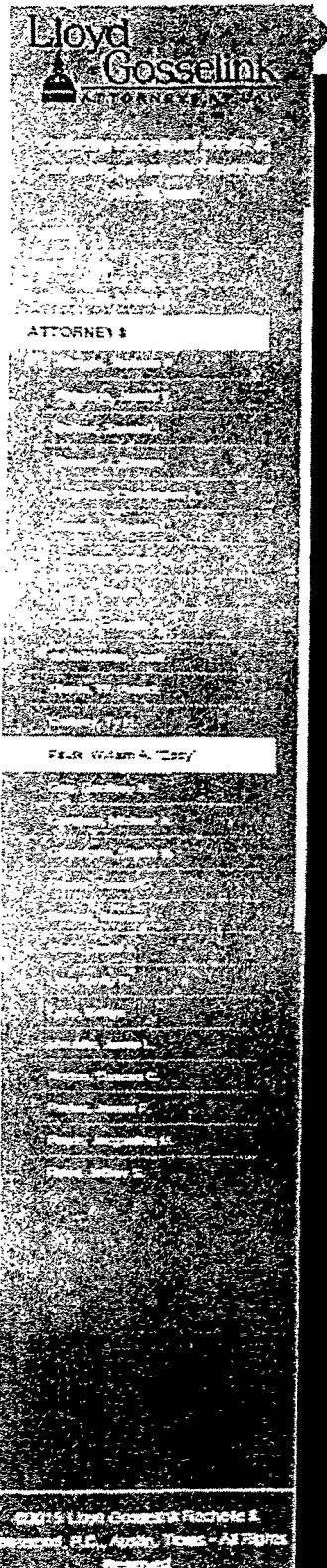
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* State Bar of California

* Austin Bar Association

* Texas Municipal League

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Cody also has extensive experience representing and defending local municipality, utility, and semi-governmental entity clients in a wide range of matters including regulatory enforcement and permitting, Open Meetings Act and Public Information Act compliance, land use regulation, and litigation in Texas state courts.

Figure 1

Friction Areas

Professional Licenses and Education

Representative Experiences

- Represented the first Class A water utility in Texas to file for a rate increase at the Public Utility Commission.
- Represented a large municipally-owned electric utility in its request to integrate 400MW of electric load into the Electric Reliability Council of Texas.
- Represented municipalities, water districts, and individual landowners in transmission line routing proceedings at the Public Utility Commission.
- Represented municipally-owned utilities in disputes regarding Public Utility Commission certificated electric service areas.

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**PETITION 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 FROM THE
RATEMAKING ACTIONS OF THE
CITY OF AUSTIN AND REQUEST
FOR INTERIM RATES IN
WILLIAMSON AND TRAVIS
COUNTIES**

~~~~~

**PUBLIC UTILITY COMMISSION**  
**OF TEXAS**

**PETITION OF NORTH AUSTIN  
MUNICIPAL UTILITY DISTRICT  
NO. 1, NORTHTOWN MUNICIPAL  
UTILITY DISTRICT, 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**

## ORDER ON REHEARING

This Order addresses the appeal by the petition of the North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10 (Travis WCID 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.<sup>1</sup> This Order also addresses the

<sup>1</sup> As discussed below, the parties dispute the years for which petitioners properly filed appeals of the city's ratemaking actions; however, the parties agreed to use the city's fiscal year 2013 budget, which includes the rate ordinance for the years 2012-2013, as the ordinance being appealed.

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appeal by a separate petition 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. The water and wastewater appeals were consolidated for hearing by agreement of the parties and a single proposal for decision was issued for both appeals. In both appeals the petitioners requested that the Public Utility Commission of Texas set just and reasonable rates pursuant to Texas Water Code (TWC) § 13.044.<sup>2</sup> In addition, petitioners asked the Commission to establish interim rates.

On July 10, 2015 State Office of Administrative Hearings (SOAH) administrative law judges (ALJs) issued a proposal for decision which recommended that the Commission set the water and wastewater rates to be charged to petitioners at the same level as the rates in place immediately before the rates that are appealed. The ALJs made this recommendation because they found that the city did not meet its burden of proof under TWC § 13.044 to show that the water and wastewater rates it charges petitioners are just and reasonable. In the alternative, in case the Commission did not agree with the ruling on the recommended rates, the ALJs made findings on over 40 revenue-requirement adjustments to the 2012-2013 rates that are urged by the parties. The ALJs also recommended that the Commission order the city to refund to petitioners any amounts over-collected for water services under the appealed rates and that the Commission disallow recovery by the city of rate-case expenses.

The Commission adopts the proposal for decision including its findings of fact and conclusions of law except for the ALJs' recommended rates and as otherwise discussed in this Order. The Commission fixes petitioners' water and wastewater and rates as found by Commission Staff but modified by the exclusion of the green-choice electricity rate in the revenue requirement. The Commission requested Commission Staff to recalculate its proposed rates reflecting this exclusion and these modified rates were filed on September 29, 2015. Additionally, as provided by TWC § 13.044(b), the Commission orders the city not to increase wholesale water and wastewater rates applicable to petitioners without prior Commission approval.

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<sup>2</sup> Tex. Water Code Ann. § 13.044 (West & Supp. 2014).

## I. Procedural History

The Commission issued its order on October 14, 2015 granting in part the petitioners' appeal of the city of Austin's wholesale water and sewer rates. On November 3, 2015, petitioners and the city of Austin timely filed motions for rehearing. On November 13, 2015, petitioners timely filed a reply to the city of Austin's motion for rehearing and Commission Staff filed a reply to petitioners' and the city of Austin's motions for rehearing. On November 20, 2015, the Commission extended time to act on petitioners' and the city of Austin's motions for rehearing filed in this docket to the maximum amount of time allowed by law. At the Commission's open meeting on December 17, 2015, the Commission denied the city of Austin's motion for rehearing on all points of error and granted in part and denied in part the petitioners' motions for rehearing. In granting in part petitioners motion for rehearing, the Commission directed Commission Staff to re-compute the rates set forth on attachment 1 to the Commission's order by excluding Water Treatment Plant No. 4 from the revenue requirement. On January 6, 2015, Commission Staff filed its re-computed rates. Additional findings regarding this procedural history are added as findings of fact 32D and 32E.

## II. Discussion

### A. Cost of service determination under TWC § 13.044

The city contends the rates at issue are a matter of contract between the city and each petitioner and that it violates the constitutional prohibition against impairing the obligation of contract<sup>3</sup> for the Commission to examine the reasonableness of the city's rates in a cost-of-service hearing unless the Commission first determines that the contractual rates are so egregious they are against the public interest.

In addition to its constitutional argument, the city asserts that TWC § 13.044 should be interpreted to require a public interest hearing requirement. The ALJs' concluded that the plain language of TWC § 13.044 does not require that a public-interest inquiry be conducted or that a

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<sup>3</sup> Tex. Const. art. I, § 16 provides "No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligations of contracts, shall be made."

finding be made that the contested rates adversely affect the public interest.<sup>4</sup> The city concedes that the Commission has jurisdiction under TWC § 13.044 to consider petitioners' appeal de novo through an evidentiary hearing, wherein the city has the burden of proving that its rates are just and reasonable, and that the Commission may issue an order fixing the rates.<sup>5</sup> However, relying on the *City of Fort Worth* case,<sup>6</sup> the city disputes petitioners' right to move straight to an evidentiary hearing on cost-of-service issues without a prior determination that the protested rates adversely affected the public interest.<sup>7</sup> The *City of Fort Worth* case dealt with an appeal of wholesale water rates under TWC § 13.043 and the court found that language in that section required an adverse public-interest finding before the Commission could modify rates.<sup>8</sup>

The Commission agrees with the ALJs that TWC § 13.044 does not provide for a public-interest finding before the Commission examines and fixes the city's rates. Moreover, the Commission does not have the power to determine the constitutionality of statutes,<sup>9</sup> and it may not find the lack of a public-interest finding impairs that section. The Commission's obligation is to enforce the statute as written by the Texas Legislature.

More importantly, because the rates complained of are set by municipal ordinance, the Commission concludes that the subject of this appeal is not a matter of contract but is the city's rate ordinance that imposes the subject rates on petitioners. Therefore, the issues of whether there is an impairment of contract or, even if an impairment exists whether such impairment is constitutionally prohibited, are not implicated in these appeals. While each petitioner has a wholesale water and wastewater contract<sup>10</sup> with the city, the contracts, though not identical, do not specify a particular rate or establish a rate relationship but provide that rates shall be set each year

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<sup>4</sup> Proposal for Decision at 10-11; *id.* Conclusion of Law No. 6 (July 10, 2015) (PFD).

<sup>5</sup> City's Reply Brief on Jurisdiction at 3 (filed Aug. 23, 2013 with TCEQ) (AIS No. 16).

<sup>6</sup> *Texas Water Commission v. City of Fort Worth*, 875 S.W.2d 332 (Tex. App.—Austin 1994).

<sup>7</sup> 16 TAC § 24.131(b).

<sup>8</sup> *City of Fort Worth*, 875 S.W.2d at 336 ("the provision here [, TWC § 13.043(j),] expressly requires the Commission to make a finding that the provider city's rates are unreasonably preferential, prejudicial, or discriminatory before modifying these rates so that they are just and reasonable.).

<sup>9</sup> *Texas State Bd. of Pharmacy v. Walgreen Texas Co.*, 520 S.W.2d 845, 848 (Tex. App.—Austin 1975, writ ref'd n.r.c.); *City of Dallas v. Stewart*, 361 S.W.3d 562, 568 (Tex. 2012).

<sup>10</sup> Travis County Water Control and Improvement District No. 10 has a water but not a wastewater contract.

by the city. The petitioners complain of the ordinance that imposes the rates that were set. The city's own evidence establishes that the wholesale rates for water and wastewater customers of the city of Austin are not set by contract with any of the petitioners; rates are established annually through the city's budget-setting process based on the current cost-of-service rate study culminating in an annual rate ordinance.<sup>11</sup> Further, this process of annually setting rates by ordinance has been followed by Austin for years and one must presume that the Texas Legislature understood this process when it enacted section 13.044 and did not include a public-interest-finding requirement because it was the city's ordinance that imposed rates.

Accordingly, the Commission finds in this proceeding the contracts between the petitioners and city are relevant solely to establish the applicability of TWC § 13.044 to these appeals. Section 13.044 is limited to appeals of rates charged by a municipality to a district created pursuant to article XVI, section 59 of the Texas Constitution, located in the municipality or the extraterritorial jurisdiction of the municipality, and a resolution, ordinance or agreement of the municipality consents to the creation of the water districts and requires the district to purchase water or wastewater services from the city.

Finally, the Commission's rules that do call for public interest hearings only apply to petitions to review under TWC chapter 11 or 12 or appeals under TWC § 13.043(f).<sup>12</sup> The language of TWC § 13.044 does not include such a requirement for a predetermination that protested rates adversely affect the public interest before an evidentiary hearing on cost-of-service issues is conducted; nor has any court interpreted section 13.044 to include such a requirement. For these reasons, the Commission agrees with conclusion of law 6.

The Commission adds findings of fact 5A and 5B and conclusions of law 6A through 6F to reflect the Commission's decision on this point.

---

<sup>11</sup> City of Austin's Exhibit 2W, Affidavit of Greg Meszaros (May 8, 2014).

<sup>12</sup> 16 TAC § 24.128-138.

**B. The ordinance being appealed**

A district may appeal the rates imposed by a municipality by filing a petition with the Commission,<sup>13</sup> but TWC § 13.044 does not limit the time within which the appeal must be brought. On April 12, 2013, petitioners filed their original petition appealing the portion of the city's rate ordinance that imposes rate for wholesale water service.

As part of its budget process, the city imposes rates on its customers when the Austin City Council adopts an ordinance each year that sets the rates and fees for every function and activity of the city, including rates for water and wastewater service. The city's fiscal year starts on October 1 each year, and the rates are set for the fiscal year (applying to bills and charges rendered on or after November 1). The city set rates on September 12, 2011 for the 2011-2012 fiscal year; it set rates on September 10, 2012 for the 2012-2013 fiscal year; and it set rates on September 9, 2013 for the 2013-2014 fiscal year. While the city usually sets one rate for the entire year, for the 2012-2013 fiscal year it set two rates for water service: one that was effective November 1, 2012—which was set at the same level as the prior year's rate—and the other that was effective February 1, 2013—which was an increase to the prior rate. This February 1, 2013 rate is often referenced in this case as the first phase increase or the Phase I rate.

The ALJs somewhat confuse the issue of what water rates are under appeal in their discussion and in finding of fact 6: "Under the Rate Ordinance [defined as the September 2012 ordinance], rate increases were scheduled to take effect in February 2013, October 2013, and October 2014."<sup>14</sup> The Commission disagrees with this statement. The Rate Ordinance, as defined in the proposal for decision,<sup>15</sup> set water rates that went into effect in October 2012 and February 2013, but only the February 2013 rate involved a rate increase. Two subsequent ordinances, both adopted after the amended water petition was filed, set rates for periods after the water petition, one taking effect in October 2013 and the other in October 2014.

On December 12, 2013, after the city adopted an ordinance that imposed rates for the 2013-2014 fiscal year, the petitioners filed an appeal of the city's wastewater rates imposed by the

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<sup>13</sup> TWC § 13.044b.

<sup>14</sup> PFD at 2-3; Proposed Finding of Fact No. 6.

<sup>15</sup> PFD at 2.



rate ordinance adopted September 10, 2012, i.e., the same ordinance that is the subject of the water appeal (the use of the term *petitioners* in this Order in relation to the appeal of wastewater rates excludes Travis County WCID No. 10). The Texas Commission on Environmental Quality (TCEQ) executive director (ED) found the wastewater appeal, brought solely under TWC § 13.044,<sup>16</sup> to be administratively complete in December 2013, and on April 30, 2014, docketed the case at SOAH for an administrative hearing.

On May 8, 2014, the city moved to consolidate the water and wastewater appeals, but asserted that the 2012-2013 wastewater rates had expired and could no longer be appealed because its 2013-2014 fiscal year began on October 1, 2013, the same date that 2013-2014 rates took effect.<sup>17</sup> Thus, the city argues that only the 2013-2014 wastewater rates are subject to this appeal,<sup>18</sup> because the petition was filed after Austin adopted rates for 2013-2014 and the 2012-2013 rates were no longer in effect<sup>19</sup> (the 2012-2013 wastewater rates became effective November 1, 2012 and expired on October 1, 2013 when the rates set by the new rate ordinance (adopted in September 2013) became effective). As a result, there is an issue over which wastewater rates are under appeal here.

Because TWC § 13.044 has no time limits on when appeals must be filed, the ALJs did not find that the petitioners' appeal of the 2012-2013 wastewater rates was untimely and ruled that the water and wastewater appeals would proceed with reference to the city's 2012-2013 water and sewer rates.<sup>20</sup> Further, the city does not provide any legal authority for the proposition that its rates cannot be appealed under TWC § 13.044 after they have expired. Accordingly, the Commission agrees with the ALJ that the rates under appeal are the 2012-2013 rates for wholesale water service and 2012-2013 rates for wholesale wastewater service.

The Commission modifies findings of fact 6, 7 and 13 consistent with this discussion.

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<sup>16</sup> Docket No. 42867, Original Petition Appealing Wastewater Rates of the City of Austin (filed Dec. 12, 2013 with TCEQ) (AIS No. 1).

<sup>17</sup> City of Austin's Exhibit 2W at 2 (May 8, 2014).

<sup>18</sup> City of Austin's Post-Preliminary Hearing Brief at 4-5 (filed May 27, 2014 with TCEQ) (AIS No. 65).

<sup>19</sup> PFD at 4.

<sup>20</sup> *Id.* at 4-5.

**C. Just and reasonable rates**

For the 2012-2013 fiscal year, the city of Austin's water and wastewater rates are based on an overall revenue requirement (wholesale and retail) of \$264,922,766 for its water utility and \$231,626,292 for its wastewater utility.<sup>21</sup> The portion of the city of Austin's overall revenue requirement allocated to the rates appealed by petitioners is \$8,447,160 for water service and \$4,894,052 for wastewater service.<sup>22</sup>

Austin generates a budget forecasting model and one output of that model is a projection of the pending budget (or fiscal) year (referred to by the city as the test year) for the water and wastewater utility that reflect anticipated test-year costs and adjustments for bond coverage and reserve requirements.<sup>23</sup> The city characterizes this process as establishing a revenue requirement for all of the utilities' activities and services.<sup>24</sup> The budget information is input to the water and wastewater cost-of-service rate models. The model performs calculations that functionalize, allocate, and distribute the utility's revenue requirements to the customer classes.<sup>25</sup> The water and wastewater rate model calculates rates and charges in conformance with rate-design decisions made in the most recent (2008)<sup>26</sup> cost-of-service study.<sup>27</sup> The city derived the revenue-requirement input in its 2012-2013 cost-of-service rate model from its 2012-2013 fiscal-year budget.<sup>28</sup> Neither petitioners nor Commission Staff take issue with the use of budgeted figures per se.<sup>29</sup> Rather, they contend that the city does not provide evidence permitting the parties and the ALJs to test the validity of the underlying budget numbers and the accuracy of the methodology whereby the city used the budgeted figures to compute the rates to charge to petitioners.<sup>30</sup>

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<sup>21</sup> Petitioners' Exhibit 5, Direct Testimony of Jay Joyce at 11:1-3 (Oct. 17, 2014).

<sup>22</sup> *Id.* at 11:4.

<sup>23</sup> City of Austin Exhibit 6, Direct Testimony of Joseph M. Healy at 5:11-14.

<sup>24</sup> *See*, City of Austin's Exhibit 2W.

<sup>25</sup> City of Austin Exhibit 6 at 5:14-16.

<sup>26</sup> Tr. at 156:13-157:1 (Anders direct) (Feb. 18, 2005).

<sup>27</sup> City of Austin Exhibit 6 at 4:20-26.

<sup>28</sup> Tr. at 125:15-22 (Meszaros cross) (Feb. 17, 2015).

<sup>29</sup> PFD at 21.

<sup>30</sup> *Id.*

However, the thrust of the parties' criticism of the city's rates is directed toward over 40 categories of expenses in the city's budget that were included in the revenue requirement. Petitioners and Commission Staff contend for various reasons that the challenged categories of expenses are not reasonably required for the provision of water and or wastewater service provided to the petitioners and therefore should be excluded.<sup>31</sup> The city has agreed that 22 of those challenged expense categories should not have been allocated to wholesale customers.<sup>32</sup> Therefore, for purposes of proposing the just and reasonable rates, petitioners and Commission Staff assume that the city's 2013 cost-of-service rate model is a true and accurate reflection of actual costs of service, but exclude from the city's revenue requirement the agreed-to expense categories and other expense categories that each challenged. Petitioners recommended a reduction of \$3,068,018 (a 23% reduction) in the city's \$13,341,212 revenue requirement applicable to petitioners for both water and wastewater services. Petitioners then calculated water and wastewater rates based upon the reduced revenue requirement. Commission Staff adopted all but seven of the contested revenue-requirement disallowances proposed by petitioners. Commission Staff's recommended reduction equated to \$1,958,550 (a 14.7% reduction) in the city's revenue requirement applicable to petitioners for both water and wastewater services. Commission Staff also calculated its recommended water and wastewater rates.<sup>33</sup>

Disallowing the city's evidence of its 2008 cost-of-service study and finding no other evidence tying actual cost of service to budget data used for the revenue requirement adopted by the city,<sup>34</sup> the ALJs recommend that the Commission deny the rate increases imposed on the petitioners in the 2012-2013 rates.<sup>35</sup> The ALJs recommend that the rates to be charged by the city to petitioners are the rates that existed immediately before the appealed rates went to effect.<sup>36</sup> The petitioners excepted to the finding that the rates should be set at pre-appeal rate levels. In the

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<sup>31</sup> Petitioners Exhibit 5 at 8:13-30; 13-44.

<sup>32</sup> 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.

<sup>33</sup> Commission Staff's Exhibit 2, Supplemental Direct Testimony of Heidi Graham, Exhibit HG-3 (Feb. 11, 2015).

<sup>34</sup> PFD at 20-21.

<sup>35</sup> *Id.* at 27.

<sup>36</sup> *Id.* at 29.

alternative, in the event the Commission determined that the city's evidence did sufficiently support the city's revenue requirement used for its 2012-2013 water and wastewater rates, the ALJs made recommendations on the disallowances to the revenue requirement that should be incorporated in any new rates that are calculated.<sup>37</sup> The proposal for decision adopts all disallowances to the revenue requirement conceded by the city, all of Commission Staff's recommended disallowances, and a disallowance of the expenses attributable to the utilities' switch to green-choice electricity, which amounts to a further reduction in the revenue requirement used to calculate petitioners' rates.<sup>38</sup> Nevertheless, relying on the same rationale used for denying the city's 2012-2013 rates, the ALJs did not re-compute rates based upon their recommended disallowances to the revenue requirement.

The Commission agrees that the city did not establish that its 2012-2013 rates are just and reasonable but disagrees with the recommendation to set petitioners' water and wastewater rates at the rates that existed immediately before the appealed rates went to effect. Petitioners' expert stated that "the use of budgeted data for establishing rates is widely accepted for government utilities" as long as the utility proves "that its budget approximates actual costs adjusted for known and measurable changes."<sup>39</sup> Commission Staff's expert testified that investor-owned utilities have to use a "historical 12-month period" but that municipalities "can use a budget year" provided that they can "support that budget."<sup>40</sup> The Commission notes the city introduced unrefuted evidence that for fiscal year 2012, the utilities' water cost-of-service budget was 0.4% less than year-end actuals and the wastewater cost-of-service budget exceeded the year-end actuals by only 2.0%.<sup>41</sup> Similarly, for fiscal year 2013, the utilities' water cost-of-service budget only exceeded year-end actuals by 4.2% and the wastewater cost-of-service budget exceeded the year-end actuals by

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 31-45.

<sup>39</sup> Petitioners Exhibit 5 at 31:13-16.

<sup>40</sup> Tr. at 853:25-854:2, 854:25-855:1, 855:8-12, 856:14-18, 856:25-857:2, 858:4-12 (Sears cross) (Feb. 24, 2015).

<sup>41</sup> City of Austin Exhibit DA-R-9; Tr. at 238:21-239:8 (Anders direct), 1088:9-1089:8, 1091:1-3 (rebuttal-Anders direct), 1104:3-1105:3 (rebuttal-ALJ questions), 1156:10-1160:23 (rebuttal-Anders cross) (Feb. 25, 2015).

only 1.2%.<sup>42</sup> Moreover, there is no evidence demonstrating that there is a wide variance between the city's budget data and actual costs.

The Commission finds that, for purposes of these appeals, the city's budget data is a reasonable approximation of actual costs for purposes of determining the revenue requirement upon which the city's 2012-2013 water and wastewater rates are based. However, the Commission also finds that the ALJs' recommendations on all challenged reductions to the revenue requirement should be affirmed because either the city agreed or the city's evidence did not establish that these costs were reasonable and necessary to provide water or wastewater service to the petitioners.<sup>43</sup> Consequently, as required by TWC § 13.044, the Commission finds the just and reasonable water and wastewater rates applicable to these petitioners for the 2012-2013 fiscal year are Commission Staff's proposed rates recalculated by Commission Staff (to exclude the green-choice electricity rate in the revenue requirement) as requested by the Commission and set forth in the spreadsheet attached to Commission Staff's letter of September 29, 2015. The rates adopted by this Order are shown in Attachment 1.

TWC § 13.044(b) provides that once the Commission fixes the rates to be charged by the city, the city may not increase such rates without the prior approval of the Commission. Accordingly, the Commission orders the city not to increase rates applicable to petitioners without prior Commission approval.

The Commission adds new findings of fact 51A through 51H and new conclusion of law 21A, and deletes findings of fact 54, 56 and 57 and conclusion of law 19 to reflect the Commission decision on the just and reasonable water and wastewater rates applicable to these petitioners for the 2012-2013 fiscal year.

The Commission's final order sets forth the reductions to the revenue requirement in finding of fact 52(a)-(n) and the resultant rates adopted in ordering paragraphs 1 and 2 are set forth in Attachment 1. Upon rehearing, it appears that the revenue requirement used by Commission Staff to compute water-service rates did not remove Water Treatment Plant No. 4 that was ordered to be disallowed by finding of fact 52(m). Because Water Treatment Plant No. 4 was not placed

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<sup>42</sup> *Id.*

<sup>43</sup> PFD at 33-50.

into service until November 2014, and because the city's witness agreed the plant was not necessary to provide service to petitioners in fiscal year 2013, the costs should be excluded from revenue requirements when setting rates for petitioners. The Commission required Commission Staff to re-compute rates after excluding Water Treatment Plant No.4 from the revenue requirement. The Revised Attachment 1 reflects the corrected rates.

In response to petitioner's motion for rehearing, the Commission adds a qualifying phrase to clarify finding of fact 38 and conclusion of law 16.

Also, upon rehearing the Commission notes that findings of fact 52 and 53 as phrased do not accurately reflect the Commission's determination on this point. Accordingly, findings of fact 52 and 53 are modified to eliminate the conditional language.

Finally, the Commission's order discusses the rates that it found to be just and reasonable and the basis of that determination. However, as raised in the motion for rehearing, the Commission's order omitted any findings of fact or conclusions of law specifically supporting that decision. The Commission agrees that appropriate findings should be included in the order on rehearing and does so by adding findings of fact 57A and 57B and conclusion of law 21B.

#### **D. The City's due process claim**

The ALJs noted that the city claimed that it lacks the internal expertise or access to external sources of guidance on how to file a case showing that its rates are just and reasonable. The ALJs responded that the city, as a home rule municipality that operates a \$550 million water and wastewater utility with 1,100 employees, is a sophisticated party, and has outside legal counsel and experts for advice.<sup>44</sup> The ALJs also cited to the city's evidence that it follows and recognizes the American Water Works Association's (AWWA) *M1 Manual*<sup>45</sup> as authoritative and uses it in its rate-setting process. Petitioners' expert witness agreed that it would be reasonable for the city to follow the practices suggested in the *M1 Manual* in the city's ratemaking process.<sup>46</sup> However, the proposal for decision does not contain findings of fact specific to this issue. In its exceptions

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<sup>44</sup> *Id.* at 26.

<sup>45</sup> *Manual of Water Supply Practices M1, Principles of Water Rates, Fees and Charges*, Sixth Edition, American Water Works Association (2012) (*M1 Manual*).

<sup>46</sup> Tr. at 513:9-16 (Joyce cross) (Feb. 20, 2015).

to the proposal for decision, the city of Austin contends that the hearing on the merits denied the city due process. The city complains that neither TCEQ nor the Commission has rules of practice to define, describe or explain to a municipally owned water or sewer utility how to satisfy its burden of proof that its wholesale rates are just and reasonable in a *de novo* rate appeal under TWC § 13.044.<sup>47</sup>

The Commission notes that the controlling standard for establishing rates—just and reasonable—is stated in TWC § 13.044. While there is no rule that defines the term just and reasonable—it is a well-known standard in the industry. The Commission also notes that subchapter B of chapter 24 of the Commission’s rules, while not controlling in an appeal of the city’s rates, provides significant guidance on the Commission’s criteria in evaluating the justness and reasonableness of rates in general. Further, the city’s expert testified the AWWA’s *MI Manual* is the authoritative reference regarding the development of cost-based rates for water service, and it discusses the three step process for the establishment of cost-based rates for water service to include: a revenue requirements analysis, functionalization and allocation of the revenue requirement, and rate design.<sup>48</sup> Moreover, the director of Austin’s water utility testified “[t]hat manual [AWWA’s *MI Manual*] provides guidance for utility operators in determining the costs of providing water utility service and setting just and reasonable rates.”<sup>49</sup> The Commission also notes that the city also has experience in applying the just and reasonable standard in appeals of its electric utility’s rates and in previous appeals of water and sewer rates.

The Commission determines that the lack of TCEQ or Commission rules guiding the city in the proof it needed to establish a known industry standard—just and reasonable rates—does not constitute a violation of the city’s due process. Ratemaking principles applicable to Texas utilities were established long before the city developed the protested wholesale water and sewer rates. The controlling standard is specified by statute: just and reasonable—a well-known standard. TWC § 13.044 places the burden on city to decide what evidence to bring forth to prove its rates are just and reasonable.

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<sup>47</sup> City of Austin’s Exceptions to the PFD at 24 (Jul. 24, 2015).

<sup>48</sup> City of Austin Exhibit 5, Direct Testimony of Richard D. Giardina at 7:14–8:6 (Jul. 29, 2014).

<sup>49</sup> City of Austin Exhibit 2, Direct Testimony of Greg Meszaros at 14:24–26 (Jul. 29, 2014).

The Commission adds conclusion of law 9A to reflect the Commission decision.

**E. Rate-case expenses**

The Commission concurs with the ALJs' discussion and findings denying the city the recovery of its rate-case expenses. The Commission also concludes that apart from the absence of competent testimony establishing the reasonableness of the legal expense component of the city's rate-case expenses, there is no documentation of the requested rate-case expenses in evidence upon which to make a finding on the reasonableness of the city's rate-case expenses in any amount.

The Commission modifies finding of fact 16 to add a relevant procedural event.

**F. Other issues**

New findings of fact 25A, 32A, 32B, and 32C are added to reflect procedural aspects of the case after issuance of the proposal for decision. In addition, the Commission made changes to findings of fact and conclusions of law to correct citations, spelling, and punctuation and for stylistic purposes. The Commission also deletes conclusion of law 2 because it is irrelevant to this proceeding.

The Commission adopts the following findings of fact and conclusions of law:

**III. Findings of Fact**

**Procedural History and General Background**

1. The city of Austin is a municipal corporation and home-rule city operating under the Texas Constitution and Texas Local Government Code §§ 9.001-.008.
2. Austin Water Utility (AWU) is a municipal water and wastewater utility wholly owned by the city.
3. Each of North Austin Municipal Utility District No. 1 (North Austin MUD), Northtown Municipal Utility District (Northtown MUD), Travis County Water Control and Improvement District No. 10 (Travis WCID No. 10), and Wells Branch Municipal Utility District (Wells Branch MUD) is a district created pursuant to Article XVI, Section 59 of the Texas Constitution; each is located within the corporate limits or extraterritorial jurisdiction of the city; and, the agreements of the city consenting to the creation of each



district requires that district to purchase water or wastewater services from the city, as follows:

- a. North Austin MUD is required to purchase water and wastewater service from the city under the terms of the *Agreement Concerning Creation and Operation of North Austin Municipal Utility District No. 1*, dated November 15, 1983.
  - b. Northtown MUD is required to purchase water and wastewater service from the city under the terms of the *Agreement Concerning Creation and Operation of North Town Municipal Utility District No. 1*, dated August 14, 1985.
  - c. Travis WCID No. 10 is required to purchase water service from the city under the terms of the *Water Supply Contract* dated August 9, 1957, as amended by the *Water Service Contract between the city of Austin and Travis County Water Control and Improvement District No. 10*, dated August 29, 1990.
  - d. Wells Branch MUD is required to purchase water and wastewater service from the city under the terms of the *Agreement Concerning Creation and Operation of North Austin Growth Corridor Municipal Utility District No. 1*, dated August 13, 1981, as amended.
4. North Austin MUD, Northtown MUD, Travis WCID No. 10, and Wells Branch MUD (each a petitioner, and collectively petitioners, but excluding Travis WCID No. 10 in relation to the wastewater appeal) each purchases treated water from the city and distributes and sells the treated water to retail customers within each district's respective boundaries. Each petitioner owns and operates its own facilities for the distribution of treated water within its boundaries.
  5. Petitioners North Austin MUD, Northtown MUD, and Wells Branch MUD also purchase wastewater service from the city. Each of these three petitioners owns its own facilities for the collection of untreated wastewater within its respective boundaries.
- 5A. The wholesale rates for water and wastewater customers of the city of Austin rates are established annually through the city's budget-setting process based on the current cost of service rate study.<sup>50</sup>
  - 5B. The wholesale rates for water and wastewater services are imposed on customers by ordinance adopted by the Austin City Council.

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<sup>50</sup> See, City of Austin Exhibit 2W (May 8, 2014).

6. At its regular meeting of September 10, 2012, the Austin City Council adopted an ordinance (rate ordinance) that raised water and wastewater rates charged to customers, including petitioners.
- 6A. The city's fiscal year starts on October 1 each year, and water and wastewater rates are set for the fiscal year (applying to bills and charges rendered on or after November 1).
- 6B. While the city usually sets one rate for the entire year, for the 2012-2013 fiscal year it set two rates for water service: one that was effective October 1, 2012 and the other that was effective February 1, 2013.
7. On April 16, 2013, all four petitioners filed a petition (original petition) with the Texas Commission on Environmental Quality (TCEQ) appealing the city's rate ordinance that imposed rates for wholesale water service for the 2012-2013 fiscal year (the water appeal), which was adopted on September 12, 2012. The original petition asserted three alternative bases on which petitioners believed the TCEQ could take jurisdiction of the case: Section 13.044, Sections 11.036-.041, or Section 12.013 of the Texas Water Code.
8. On May 30, 2013, the Executive Director of the TCEQ (TCEQ ED) docketed the original petition at the State Office of Administrative Hearing (SOAH) for an administrative hearing, but did not specify which of petitioners' three alternative bases would govern the SOAH hearing. The original petition was initially designated as SOAH Docket No. 582-13-4617.
9. SOAH Administrative Law Judge (ALJ) Pratibha J. Shenoy convened the first preliminary hearing on July 31, 2013, at which petitioners, the city, the TCEQ ED, and the Office of Public Interest Counsel (OPIC) of the TCEQ made appearances and were all admitted as parties.
10. On August 16, 2013, petitioners filed their first amended petition (petition) clarifying that their primary plea for relief was under TWC § 13.044.
11. On September 13, 2013, the ALJ issued an order taking jurisdiction of the water appeal under TWC § 13.044.

12. At a prehearing conference on October 8, 2013, the parties agreed to a hearing on the merits to convene in the water appeal on October 7-17, 2014.
13. On December 12, 2013, the three petitioners who purchase wastewater services from the city filed an appeal under TWC § 13.044 of the city's rate ordinance that imposed rates for wholesale wastewater service for the 2012-2013 fiscal year (the wastewater appeal), which was adopted on September 10, 2012.
14. The TCEQ ED found the wastewater appeal to be administratively complete in December 2013, and on April 30, 2014, docketed the case at SOAH for an administrative hearing. The wastewater appeal was initially designated SOAH Docket No. 582-14-3145.
15. At a joint preliminary hearing for the water and wastewater appeals on May 15, 2014, the ALJ admitted all of the parties in the water appeal (except for Travis WCID No. 10) as parties in the wastewater appeal.
16. By order dated May 29, 2014, the ALJ took jurisdiction of the wastewater appeal under TWC § 13.044, consolidated the water and wastewater appeals for hearing, required the city's rate-filing package to be filed by July 15, 2014, and set a hearing on the merits to convene on February 12-25, 2015.
17. The parties agreed to consolidate the appeals for hearing and to use the city's fiscal year 2013 (October 1, 2012–September 30, 2013) as the reference year. The city preserved its objection that, in the wastewater-rate appeal, petitioners timely appealed only those rate increases that took effect in fiscal year 2014.
18. Effective September 1, 2014, water and wastewater appeals were transferred from the subject matter jurisdiction of the TCEQ to the Public Utility Commission of Texas (Commission). The water and wastewater appeals were consolidated under SOAH Docket No. 473-14-5138 (PUC Docket No. 42857). ALJ Beth Bierman was assigned to co-preside.
19. Prior to the transfer of jurisdiction over water and wastewater appeals from the TCEQ to the Commission, no party certified any questions to the TCEQ as permitted by TCEQ rules.

20. On January 9, 2015, the city filed a motion requesting the ALJs to certify five questions to the Commission, as follows:
- a. "Under what Chapter(s) of the Texas Water Code [(TWC)] is SOAH's jurisdiction to hold a contested case on behalf of the PUC appropriate, where the petitioners are municipal utility districts that have appealed water and wastewater rates set pursuant to long term contracts between Austin and petitioners and where the PUC has not previously prescribed such rates?
  - b. It is [sic] necessary for the PUC to make a determination whether Austin's challenged wholesale water and wastewater rates adversely affect the public interest in an evidentiary proceeding prior to the holding of a cost of service evidentiary hearing?
  - c. Is interim rate relief appropriate for petitioners in these appeals, and if so, under what rules of the PUC and following what conditions precedent to an award of such interim rates?
  - d. If the city of Austin has been directed to pay [sic] petitioners interim rates during the handling of these dockets, thus far without a sound legal basis for doing so, is Austin entitled to an immediate refund from petitioners of said unauthorized interim rates?
  - e. What is the appropriate role of the PUC Staff in these appeals under TWC § 13.011(b), EMPLOYEES (of the Public Utility Commission); and, what cost of service documentation are municipalities required to present for evaluation by PUC Staff and development of a PUC Staff position?"
21. The city also filed a motion on January 20, 2015, seeking to abate the scheduled hearing on the merits until the Commission could consider the questions sought to be certified. The ALJs denied both motions in Order No. 16, issued January 22, 2015.
22. The city filed an interlocutory appeal of Order No. 16 with the Commission on January 23, 2015. The city's appeal of Order No. 16 requested the Commission to "grant this appeal of SOAH Order No. 16 and abate these proceedings to allow the Commission to consider and render a ruling overruling SOAH Order No. 16 which does the following:
- a. Specifies the relief available to wholesale customers under TWC § 13.044(b).
  - b. Specifies that all interim rate relief awarded petitioners purportedly under TWC § 13.044(b) during the pendency of this contested case hearing is invalid and should be recovered by Austin from petitioners.
  - c. Specifies that rate refunds sought by petitioners dating from the date the petitions were filed are not authorized by TWC § 13.044(b) and PUC Subst. R. § 24.29."

23. By letter dated February 2, 2015, all parties were advised that no Commissioner voted to add the interlocutory appeal of Order No. 16 to an open meeting agenda.
24. On February 9, 2015, the city filed a petition for temporary injunction and declaratory judgment under Texas Government Code § 2001.038 in *City of Austin v. Public Utility Commission et al.*, No. D-1-GN-15-000513 (200th Civ. Dist. Ct., Travis County, Tex.).
25. The Travis County district court held a hearing on the temporary injunction petition on February 12, 2015, and on February 13, 2015, issued an order denying the request. The district court case was set for a trial on the merits in September 2015. SOAH and the Commission are represented in the district court action by the Office of the Attorney General of Texas. The ALJs take no position on and have no involvement in the matter.
- 25A. On September 9, 2015, the Court conducted the trial of *City of Austin v. Public Utility Commission et al.*, No. D-1-GN-15-000513 (200th Civ. Dist. Ct., Travis County, Tex.). On this date the Court issued its Order Abating Plaintiff's Claim, stating that the Court would defer to the primary jurisdiction of the PUC and that the city's claims against the PUC are abated pending further order of the court.
26. The hearing on the merits was set to convene February 12-25, 2015, but due to the death of an immediate family member of petitioners' counsel, the hearing began on February 17, 2015, and concluded on February 26, 2015. Attorneys John J. Carlton and Randall B. Wilburn represented petitioners. Attorneys Gwendolyn Hill Webb and Stephen P. Webb represented the city, along with members of the city's law department. Commission Staff was represented by attorneys Sam Chang and Thomas L. Tynes.
27. On February 16, 2015, the city filed a motion for leave to designate attorney Matthew Henry as an expert on rate case expenses, and a motion to sever the issue of rate-case expenses into a separate proceeding.
28. Mr. Henry was retained by the city on December 29, 2014, and his retention was disclosed to the parties the next day, which was the last day of the discovery period. The city did not designate Mr. Henry as an expert by 60 days before the close of the discovery period.

29. During the hearing on February 20, 2015, the ALJs verbally denied the city's motion to designate Mr. Henry as an expert witness on the basis that the city failed to establish good cause for the late designation.
30. Also on February 20, 2015, the ALJs verbally denied the motion to sever and memorialized the denial in Order No. 22, issued February 23, 2015.
31. The city appealed Order No. 22 to the Commission on March 5, 2015. By letter dated March 16, 2015, all parties were advised that no Commissioner voted to add the appeal of Order No. 22 to an open meeting agenda.
32. After the parties filed written closing briefs, the record closed on May 15, 2015.
- 32A. The proposal for decision was filed on July 10, 2015.
- 32B. Exceptions were filed by petitioners and the city on July 24 and the city, petitioners, and Commission Staff filed replies on August 3, 2015.
- 32C. The city requested oral argument before the Commission. The city's request was granted and all parties made oral argument at the Commissioner's open meeting on August 14, 2015.
- 32D. The Commission issued its order on October 14, 2015 granting in part the petitioners' appeal of the city of Austin's wholesale water and sewer rates. On November 3, 2015, petitioners and the city of Austin timely filed motions for rehearing. On November 13, 2015, petitioners timely filed a reply to the city of Austin's motion for rehearing and Commission Staff filed a reply to petitioners' and the city of Austin's motions for rehearing. On November 20, 2015, the Commission extended time to act on petitioners' and the city of Austin's motions for rehearing filed in this docket to the maximum amount of time allowed by law.
- 32E. At the Commission's open meeting on December 17, 2015, the Commission denied the city of Austin's motion for rehearing on all points of error and granted in part and denied in part the petitioners' motion for rehearing. In granting in part petitioner's motion for rehearing, the Commission directed Commission Staff to re-compute the rates set forth on attachment 1 to the Commission's order by excluding Water Treatment Plant No. 4 from

the revenue requirement. On January 6, 2015, Commission Staff filed its re-computed rates.

### Interim Rates

33. When the water appeal was first docketed at SOAH in 2013, the ALJ denied petitioners' request that interim rates be set for water during the pendency of the appeal.
34. By order dated May 29, 2014, the ALJ set interim rates for water at the rate in effect prior to the first rate increase under the rate ordinance.
35. Interim rates for water were set as follows:

| PETITIONER                | MONTHLY FIXED RATE | VOLUME RATE |
|---------------------------|--------------------|-------------|
| Wells Branch MUD          | \$744.00           | \$3.46      |
| Travis County WCID No. 10 | \$690.00           | \$3.97      |
| Northtown MUD             | \$1,250.00         | \$3.57      |
| North Austin MUD No. 1    | \$1,320.00         | \$3.71      |

36. The ALJ initially set interim rates for Northtown MUD with a monthly fixed rate of \$1,050.00 per month. On June 4, 2014, the city filed a notice that the 2012 monthly fixed rate for Northtown MUD was \$1,250.00. Petitioners made no response to the city's filing.
37. Prior to setting interim rates, the ALJ considered the oral arguments of the parties as well as two rounds of written briefing.

### Cost of Service and Rate Design Evidence

38. The revenue requirement for a cash-basis utility includes operating and maintenance (O&M) expenses, debt service, payment in lieu of taxes, and plant extension, replacement and improvements, but only to the extent that all such costs relate to the actual cost of providing service.

39. In 2008, AWU and an outside consultant prepared a cost-of-service study (2008 COS study) that developed formulas used for each subsequent year's rate model for water and wastewater.
40. Petitioners' request for production no. 1, propounded on the city during discovery in November 2013, asked for all working Excel spreadsheets used to develop the fiscal year 2013 wholesale water rates with all the formulas and rates intact.
41. The city refused to produce the working Excel spreadsheets on the grounds that those documents used proprietary and active links that had to remain under the city's control. Subject to that and other objections, the city produced a disk (Disk 1) that contained Excel spreadsheets for the water and wastewater cost-of-service rate models for fiscal years 2012, 2013, and 2014.
42. The city asserted that the rate models on Disk 1 were the outputs generated when each year's updated data and budget figures were entered into the formulas developed in its 2008 COS Study.
43. The Excel program files on Disk 1 were inactive, and a user would be unable to view and analyze the original calculations or source documents used to calculate a cost number included in a field in the Excel spreadsheet.
44. The city filed its direct case on July 15, 2014. In its direct case, the city filed paper copies of the spreadsheets contained on Disk 1.
45. Based on Disk 1 and the city's direct case, petitioners' expert witness attempted to evaluate the city's rates by starting from the assumption that the data entries in the city's inactive Excel spreadsheets were valid. After spending 500 hours and at a cost of nearly \$100,000, petitioners' expert and his team reverse-engineered the inactive Excel spreadsheets to create active spreadsheets that they used to guess the formulas and bases for the underlying data. The reverse-engineered Excel spreadsheets still contained the city's data entries and assumed their validity.
46. Petitioners filed their direct case on October 17, 2014.



47. On December 18, 2014, the city supplemented its response to petitioners' request for production no. 1 with a second disk (Disk 2). Disk 2 contained the same Excel worksheets as Disk 1, but the spreadsheets on Disk 2 were active and could be manipulated by the user. The worksheets on Disk 2 still contained inactive links.
48. The city filed its rebuttal case on January 30, 2015, and at that time filed a third disk (Disk 3). Disk 3 contained the information from Disk 2 along with documents asserted to be annotations of materials already provided in discovery.
49. Commission Staff filed its direct case on December 12, 2014, and supplemental testimony on February 11, 2015.
50. The city's direct and rebuttal cases provided an overview of the city's process in setting rates, but did not disclose underlying data and formulas to support its rates.
51. The city's provision of non-working Excel files prevented petitioners, Commission Staff, and the ALJs from ascertaining whether the rates set through the rate ordinance recover actual, verifiable costs that are reasonable and necessary to provide water and/or wastewater service to petitioners.
- 51A. While there is no rule that defines the term just and reasonable—it is a well-known standard in the industry.
- 51B. Although not adopted in Texas, the city followed the American Water Works Association's *M1 Manual* in its cost-of-service and rate design process.
- 51C. The city is a home-rule municipality that operates a \$550 million water and wastewater utility with 1,100 employees, and retained outside legal counsel in this case.
- 51D. The city has participated in numerous appeals of its electric utility's rates and numerous appeals of its water and sewer rates, all of which required the city to prove just and reasonable rates.
- 51E. The city has more than sufficient resources and access to expertise that would permit it to show just and reasonable rates for the AWU.

- 51F. For fiscal year 2012, AWU's water cost-of-service budget was .4% less than year-end actuals and the wastewater budget exceeded the year-end actuals by only 2.0%.<sup>51</sup> Similarly, for fiscal year 2013, AWU's water cost-of-service budget only exceeded year-end actuals by 4.2% and the wastewater budget exceeded the year-end actuals by only 1.2%.<sup>52</sup>
- 51G. There is no evidence demonstrating that the city's budget data does not closely approximate actual costs adjusted for known and measurable changes.
- 51H. The city's budget data is a reasonable approximation of actual costs for purposes of determining the revenue requirement to use in calculating just and reasonable rates for 2012-2013 water and wastewater rates.

**Specific Revenue Requirement Items**

52. The following revenue requirements must be adjusted because the city failed to prove that these revenue requirements are reasonable and necessary costs of providing water and wastewater services to petitioners:
- a. General fund transfer;
  - b. Rate case expenses;
  - c. Reclaimed water system (capital and O&M costs);
  - d. City's reclassification of SWAP and commercial paper administration costs from capital to expense;
  - e. Drainage fee;
  - f. Allocation of O&M expenses to the reclaimed water utility;
  - g. Depreciation;
  - h. Green Water Treatment Plant capital costs;
  - i. Revenue Stability Reserve Fund;
  - j. Barton Springs/Edwards Aquifer Conservations District;
  - k. Govalle Wastewater Treatment Plant (capital costs/O&M costs);
  - l. Utility-Wide contingency;
  - m. Water Treatment Plant No. 4; and
  - n. Green Choice electricity.
53. The following revenue requirements should not be adjusted as recommended by Petitioners:

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<sup>51</sup> City of Austin Exhibit DA-R-9.

<sup>52</sup> *Id.*

- a. City proposed reclassification of contract management from capital to expense;
- b. Over-Budgeting expense;
- c. Excess staffing;
- d. Excess salaries;
- e. Transfer to Austin Energy in the electric rate charged to AWU; and
- f. Green Water Treatment Plant sale adjustment.

54. DELETED.

**Allocation Factor to Separate Water Transmission and Distribution Costs**

55. The cost allocation for water transmission and distribution lines should be reduced from 45.8% to 34.5%, as agreed by the city.

**Rate Design**

56. DELETED.

57. DELETED.

57A. In order for the rates to be just and reasonable, the revenue requirement for each petitioner is the amount shown on Revised Attachment 1.

57B. The just and reasonable water and wastewater rates for each petitioner are those shown on Revised Attachment 1.

**IV. Conclusions of Law**

**Jurisdiction**

1. Subject matter jurisdiction over water and wastewater rate cases and appeals was vested in the TCEQ until September 1, 2014, when such jurisdiction was transferred to the Commission. Act of May 25, 2013, 83rd Leg., R.S., ch 170 (H.B. 1600), § 2.96, eff. Sept. 1, 2013; Act of May 25, 2013, 83rd Leg., R.S., ch 171 (S.B. 567), § 96, eff. Sept. 1, 2013.
2. DELETED.
3. Petitioners' original petition set forth claims in the alternative under Section 13.044, Sections 11.036-.041, or Section 12.013 of the Texas Water Code. Petitioners' first amended petition filed in August 2013 clarified that petitioners' primary plea for relief was brought under TWC § 13.044.

4. Petitioners met the requirement to appeal under TWC § 13.044 because they are districts created pursuant to Article XVI, Section 59, of the Texas Constitution; they are districts located within the corporate limits or the extraterritorial jurisdiction of the city; and the resolution, ordinance, or agreement of the city consenting to the creation of the districts requires the districts to purchase water or wastewater service from the city. TWC § 13.044(a).
5. Jurisdiction by the TCEQ, the Commission, and SOAH was and is proper in this case under TWC § 13.044(a).
6. The plain language of TWC § 13.044 does not require that a public interest inquiry be conducted or that a finding be made that the contested rates adversely affect the public interest. Compare TWC § 13.043(j) and *Texas Water Commission v. City of Fort Worth*, 875 S.W.2d 332 (Tex. App.—Austin 1994, writ denied) (construing TWC § 13.043 and finding public interest inquiry was required).
- 6A. Agencies have no power to determine the constitutionality of statutes.<sup>53</sup> The Commission must apply the statutes as written.
- 6B. Because the action complained is the ratemaking action of the city that set rates by city ordinance, the subject of this appeal is not a matter of contract.
- 6C. The Commission's wholesale-rate-appeal rules, promulgated in response to the *City of Fort Worth* holding, do not apply to appeals under TWC § 13.044, which was in existence at the time the *City of Fort Worth* case was decided.
- 6D. The *City of Fort Worth* case was concerned with TWC § 13.043, which contains an explicit directive to consider the public interest as set forth in Section 13.043(j)—rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. TWC § 13.044 does not contain this language.

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<sup>53</sup> *Texas State Bd. of Pharmacy v. Walgreen Texas Co.*, 520 S.W.2d 845, 848 (Tex. App.—Austin 1975, writ ref'd n.r.e.); *City of Dallas v. Stewart*, 361 S.W.3d 562, 568 (Tex. 2012).

- 6E. The structure and purpose of TWC § 13.043 differ from the structure and purpose of TWC § 13.044. The former confers appellate rights to a broad category of ratepayers of various entities. The latter confers appellate rights to a narrow category of ratepayers—i.e. municipal utility districts or water control improvement districts created under Article XVI, Section 59 of the Texas Constitution that purchase service from a municipality.
- 6F. No court has interpreted TWC § 13.044 to require a public interest determination for rate appeals.
7. The plain language of TWC § 13.044 allows an appeal by a district notwithstanding the provisions of any resolution, ordinance, or agreement. TWC § 13.044(b).
8. An appeal under Section 13.044 is a *de novo* hearing in which the municipality has the burden of proof to establish that the contested rates are just and reasonable. TWC § 13.044(b).
9. The hearing on the merits in this case was properly a *de novo* cost-of-service hearing in which the city had the burden of proof to establish that the rates charged to petitioners under the rate ordinance were just and reasonable.
- 9A. The lack of TCEQ or Commission rules guiding the city in the proof it needed to establish a known industry standard—just and reasonable rates—does not constitute a violation of the city's due process.

**Interim Rates**

10. Effective September 1, 2014, with the transfer of jurisdiction over water and wastewater rate cases from the TCEQ to the Commission, TCEQ rules found in 30 Texas Administrative Code (TAC) chapter 291 were migrated to Commission rules and codified in 16 TAC chapter 24. *See* Project No. 42190, *Order Adopting New Chapter 24 Related to Substantive Rules Applicable to Water and Sewer Service Providers (Migration of Substantive Rules from the TCEQ (30 TAC CH 291) to the PUC (16 TAC CH 24))*, as approved at the Commission's July 10, 2014 Open Meeting.
11. The Commission or ALJ may establish interim rates in cases under the Commission's original or appellate jurisdiction where the proposed increase in rates could result in an

unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility. 16 TAC § 24.29(d).

12. In making a determination under 16 TAC § 24.29(d), the Commission or ALJ may limit consideration of the matter to oral arguments of the affected parties. 16 TAC § 24.29(e).
13. Interim rates to be charged to the petitioners by the city for water services were properly set in this case at the rate in effect prior to the first rate increase under the rate ordinance.
14. Upon the Commission's setting of final rates for water and wastewater services that the city may charge to petitioners, petitioners are entitled to a refund of any amounts over-collected by the city pursuant to the rate ordinance. 16 TAC § 24.29(g)-(h).

**Cost of Service and Rate Determination Principles**

15. It is a fundamental principle of ratemaking that regulated public utilities are entitled to rates which will allow them to collect total revenues equal to their cost of service. *Suburban Util. Corp. v. Public Util. Comm'n*, 652 S.W.2d 358, 362 (Tex. 1983).
16. The revenue requirement for a utility that uses the cash basis of accounting may include O&M expenses, debt service, payment in lieu of taxes, and plant extension, replacement and improvements, if all such costs are related to its actual cost of providing service. *Black v. City of Killeen*, 78 S.W.3d 686, 694 (Tex. App.—Austin 2002, pet. denied).
17. A cash-basis utility typically classifies its costs according to its expenses associated with customer service, use, meter reading, billing, accounting and collection expenses. *Black*, 78 S.W.3d at 694.
18. The expenses a utility may claim are limited to amounts actually realized or which can be anticipated with reasonable certainty. *Suburban Util.*, 652 S.W.2d at 362.

**City's Evidence Fails to Meet Burden of Proof**

19. DELETED.
20. Neither petitioners nor Commission Staff had the burden of proof to ask for complete and relevant information from the city. TWC § 13.044; 1 TAC § 155.427.

21. The city failed to meet its burden of proof to show by a preponderance of the evidence that its rates are just and reasonable.
- 21A. Under TWC § 13.044(b), once the Commission fixes the rates to be charged by the city, the city may not increase such rates without the prior approval of the Commission.
- 21B. The rates shown on Revised Attachment 1 are just and reasonable in accordance with TWC §13.044(b) and 16 TAC § 24.45(c)

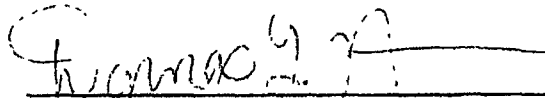
#### V. Ordering Paragraphs

In accordance with the above findings of fact and conclusions of law, the Commission issues the following Orders:

1. The water and wastewater appeals of the petitioners are granted to the extent provided by this Order, and the rate ordinance of the city of Austin is modified to impose on the petitioners the rates established by this Order for wholesale water and wastewater service as shown in Revised Attachment 1.
2. Beginning with the next billing cycle after this Order is signed, the city shall charge petitioners the water and wastewater rates set forth in this Order in Revised Attachment 1.
3. Within 30 days after this Order is signed, the city shall refund any amounts collected in excess of the rates set forth above, plus Commission-approved interest rates, over the same number of months as the city collected the appealed rates.
4. Within 30 days of effectuating the ordered refund, the city shall file proof of the same along with calculations supporting the amount paid with the Commission in Docket No. 45240, *The City of Austin's Proof of Refunds in Compliance with Docket No. 42857*.
5. The city may not increase water or wastewater rates applicable to petitioners without prior Commission approval.
6. All other motions, requests for entry of specific findings of fact and/or conclusions of law, and other requests for general or specific relief, if not expressly granted, are denied.

SIGNED AT AUSTIN, TEXAS the 14<sup>th</sup> day of January 2016.

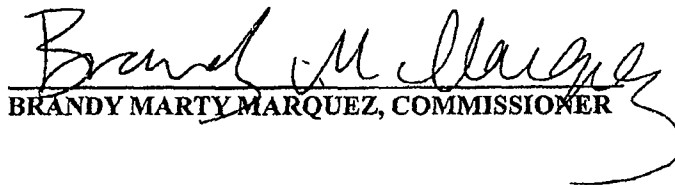
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER



**Revised Attachment 1  
Docket No. 42857  
Commission-Approved Rates**

**Water Rates**

| <b>Customer</b>   | <b>Adjusted<br/>Total<br/>Revenue<br/>Requirement</b> | <b>Minimum<br/>Monthly<br/>Charge</b> | <b>Variable<br/>Charge<br/>(per<br/>1,000<br/>gallons)</b> |
|-------------------|-------------------------------------------------------|---------------------------------------|------------------------------------------------------------|
| North Austin MUD  | \$1,283,336                                           | \$16,652                              | \$2.75                                                     |
| Northtown MUD     | \$946,723                                             | \$12,304                              | \$2.59                                                     |
| Water District 10 | \$2,882,245                                           | \$38,611                              | \$2.75                                                     |
| Wells Branch MUD  | \$1,598,910                                           | \$21,133                              | \$2.60                                                     |

**Sewer Rates**

| <b>Customer</b>  | <b>Adjusted<br/>Total<br/>Revenue<br/>Requirement</b> | <b>Minimum<br/>Monthly<br/>Charge</b> | <b>Variable<br/>Charge<br/>(per<br/>1,000<br/>gallons)</b> |
|------------------|-------------------------------------------------------|---------------------------------------|------------------------------------------------------------|
| North Austin MUD | \$1,329,582                                           | \$51                                  | \$4.23                                                     |
| Northtown MUD    | \$1,071,604                                           | \$60                                  | \$4.15                                                     |
| Wells Branch MUD | \$1,805,851                                           | \$51                                  | \$4.14                                                     |

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## Texas Administrative Code

[TITLE 16](#)

ECONOMIC REGULATION

[PART 2](#)

PUBLIC UTILITY COMMISSION OF TEXAS

[CHAPTER 24](#)SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER  
SERVICE PROVIDERS[SUBCHAPTER B](#)

RATES AND TARIFFS

[RULE §24.44](#)

Rate-case Expenses Pursuant to Texas Water Code §13.187and §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, necessary, and in the public interest.

(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.

(c) 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.

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

**Source Note:** The provisions of this §24.44 adopted to be effective October 17, 2018, 43 TexReg 6826

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

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

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**

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00001

**§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.~~

~~(c) — 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.~~

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

[<<Prev Rule](#)**Texas Administrative Code**

|                     |                                                            |
|---------------------|------------------------------------------------------------|
| <u>TITLE 16</u>     | ECONOMIC REGULATION                                        |
| <u>PART 2</u>       | PUBLIC UTILITY COMMISSION OF TEXAS                         |
| <u>CHAPTER 25</u>   | SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS |
| <u>SUBCHAPTER J</u> | COSTS, RATES AND TARIFFS                                   |
| <u>DIVISION 1</u>   | RETAIL RATES                                               |
| <u>RULE §25.245</u> | Rate-Case Expenses                                         |

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(a) Application. This section applies to utilities requesting recovery of expenses for ratemaking proceedings (rate-case expenses) pursuant to Public Utility Regulatory Act (PURA) §36.061(b)(2) and to municipalities requesting reimbursement for rate-case expenses pursuant to PURA §33.023 (b).

(b) Requirements for claiming recovery of or reimbursement for rate-case expenses. A utility or municipality requesting recovery of or reimbursement for its rate-case expenses shall have the burden to prove the reasonableness of such rate-case expenses by a preponderance of the evidence. A utility or municipality seeking recovery of or reimbursement for rate-case expenses shall file sufficient information that details and itemizes all rate-case expenses, including, but not limited to, evidence verified by testimony or affidavit, showing:

(1) the nature, extent, and difficulty of the work done by the attorney or other professional in the rate case;

(2) the time and labor required and expended by the attorney or other professional;

(3) the fees or other consideration paid to the attorney or other professional 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 consumers served;

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

(C) the novelty or complexity of the issues addressed;

(D) the amount and complexity of discovery;

(E) the occurrence and length of a hearing; and

(6) the specific issue or issues in the rate case and the amount of rate-case expenses reasonably associated with each issue.

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

(1) the fees paid to, tasks performed by, or time spent on a task by an attorney or other professional were extreme or excessive;

(2) the expenses incurred for lodging, meals and beverages, transportation, or other services or materials were extreme or excessive;

(3) there was duplication of services or testimony;

(4) the utility's or municipality's proposal on an issue in the rate case had no reasonable basis in law, policy, or fact and was not warranted by any reasonable argument for the extension, modification, or reversal of commission precedent;

(5) rate-case expenses as a whole were disproportionate, excessive, or unwarranted in relation to the nature and scope of the rate case addressed by the evidence pursuant to subsection (b)(5) of this section; or

(6) the utility or municipality failed to comply with the requirements for providing sufficient information pursuant to subsection (b) of this section.

(d) Calculation of allowed or disallowed rate-case expenses.

(1) Based on the factors and criteria in subsections (b) and (c) of this section, the presiding officer shall 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 or municipality. The presiding officer shall 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.

(2) A disallowance pursuant to subsection (c)(5) of this section may be calculated as a proportion of a utility's or municipality's requested rate-case expenses using the following methodology or any other appropriate methodology:

(A) For utilities, the ratio of:

- (i) the amount of the increase in revenue requirement requested by the utility that was denied, to
- (ii) the total amount of the increase in revenue requirement requested in a proceeding by the utility.

(B) For municipalities, the ratio of:

- (i) the amount of the increase in revenue requirement requested by the utility unsuccessfully challenged by the municipality, to
- (ii) the total amount of the increase in revenue requirement challenged by the municipality.

(3) If the evidence presented pursuant to subsection (b)(6) of this section does not enable the presiding officer to determine the appropriate disallowance of rate-case expenses reasonably associated with an issue with certainty and specificity, then the presiding officer may disallow or deny recovery of a proportion of a utility's or municipality's requested rate-case expenses using the following methodology or any other appropriate methodology:

(A) For utilities, the ratio of:

(i) the amount of the increase in revenue requirement requested by the utility in the rate case related to the issue(s) not reasonably supported by evidence of certainty and specificity, to

(ii) the total amount of the increase in revenue requirement requested in a proceeding by the utility.

(B) For municipalities, the ratio of:

(i) the amount of the increase in revenue requirement requested by the utility in the rate case challenged by the municipality relating to the issue(s) not reasonably supported by evidence of certainty and specificity, to

(ii) the total amount of the increase in revenue requirement challenged by the municipality.

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**Source Note:** The provisions of this §25.245 adopted to be effective August 26, 2014, 39 TexReg 6434

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Sec. 33.023. RATEMAKING PROCEEDINGS. (a) The governing body of a municipality participating in or conducting a ratemaking proceeding may engage rate consultants, accountants, auditors, attorneys, and engineers to:

(1) conduct investigations, present evidence, and advise and represent the governing body; and

(2) assist the governing body with litigation in an electric utility ratemaking proceeding before the governing body, a regulatory authority, or a court.

(b) The electric utility in the ratemaking proceeding shall reimburse the governing body of the municipality for the reasonable cost of the services of a person engaged under Subsection (a) to the extent the applicable regulatory authority determines is reasonable.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 36.061. ALLOWANCE OF CERTAIN EXPENSES. (a) The regulatory authority may not allow as a cost or expense for ratemaking purposes:

- (1) an expenditure for legislative advocacy; or
- (2) an expenditure described by Section 32.104 that the regulatory authority determines to be not in the public interest.

(b) The regulatory authority may allow as a cost or expense:

- (1) reasonable charitable or civic contributions not to exceed the amount approved by the regulatory authority; and
- (2) reasonable costs of participating in a proceeding under this title not to exceed the amount approved by the regulatory authority.

(c) An electric utility located in a portion of this state not subject to retail competition may establish a bill payment assistance program for a customer who is a military veteran who a medical doctor certifies has a significantly decreased ability to regulate the individual's body temperature because of severe burns received in combat. A regulatory authority shall allow as a cost or expense a cost or expense of the bill payment assistance program. The electric utility is entitled to:

- (1) fully recover all costs and expenses related to the bill payment assistance program;
- (2) defer each cost or expense related to the bill payment assistance program not explicitly included in base rates; and
- (3) apply carrying charges at the utility's weighted average cost of capital to the extent related to the bill payment assistance program.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 597 (S.B. 981), Sec. 1, eff. June 14, 2013.

Sec. 13.043. APPELLATE JURISDICTION. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the utility commission. This subsection does not apply to a municipally owned utility. An appeal under this subsection must be initiated within 90 days after the date of notice of the final decision by the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the utility commission and by serving copies on all parties to the original rate proceeding. The utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken and may include reasonable expenses incurred in the appeal proceedings. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the utility provider and may order refunds or allow a surcharge to recover lost revenues. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings.

(b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality;

(4) a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users; and

(5) a utility owned by an affected county, if the ratepayer's rates are actually or may be adversely affected. For the purposes of this section ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

(b-1) A municipally owned utility shall:

(1) disclose to any person, on request, the number of ratepayers who reside outside the corporate limits of the municipality; and

(2) provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.

(b-2) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Section 182.052, Utilities Code, the municipally owned utility may not disclose the address of the ratepayer under Subsection (b-1)(2).

(b-3) The municipally owned utility may not charge a fee for disclosing the information under Subsection (b-1)(1). The municipally owned utility may charge a reasonable fee for providing information under Subsection (b-1)(2). The municipally owned utility shall provide information requested under Subsection (b-1)(1) by telephone or in writing as preferred by the person making the request.

(c) An appeal under Subsection (b) must be initiated by filing a petition for review with the utility commission and the entity providing service within 90 days after the effective day of the rate change or, if appealing under Subdivision (b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. The petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b).

(d) In an appeal under Subsection (b) of this section, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The petition for review is considered properly signed if signed by a person, or the spouse of a person, in whose name utility service is carried.

(e) In an appeal under Subsection (b), the utility commission shall hear the appeal de novo and shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the service provider, may order refunds or allow a surcharge to recover lost revenues, and may allow recovery

of reasonable expenses incurred by the retail public utility in the appeal proceedings. The utility commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings. The rates established by the utility commission in an appeal under Subsection (b) remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the utility commission determines that a financial hardship exists.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the utility commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after the date of notice of the decision is received from the provider of water or sewer service by the filing of a petition by the retail public utility.

(g) An applicant for service from an affected county or a water supply or sewer service corporation may appeal to the utility commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. In addition to the factors specified under Subsection (j), in an appeal brought under this subsection the utility commission shall determine whether the amount paid by the applicant is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant. If the utility commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid for that applicant. An appeal under this subsection must be initiated within 90 days after the date written notice is provided to the applicant or member of the decision of an affected county or water supply or sewer service corporation relating to the applicant's initial request for that service. A determination made by the utility commission on an appeal under this subsection is binding on

all similarly situated applicants for service, and the utility commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The utility commission may, on a motion by the utility commission or by the appellant under Subsection (a), (b), or (f), establish interim rates to be in effect until a final decision is made.

(i) The governing body of a municipally owned utility or a political subdivision, within 60 days after the date of a final decision on a rate change, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. The governing body of a municipally owned utility or a political subdivision may provide the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.

(j) In an appeal under this section, the utility commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The utility commission shall use a methodology that preserves the financial integrity of the retail public utility. For agreements between municipalities the utility commission shall consider the terms of any wholesale water or sewer service agreement in an appellate rate proceeding.

(k) Not later than the 30th day after the date of a final decision on a rate change, the commissioners court of an affected county shall provide written notice to each ratepayer eligible to appeal. The notice must include the effective date of the new rates, the new rates, and the location where additional information on rates may be obtained.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 7, eff. Sept.

1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 6, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 852, Sec. 2, eff. June 16, 1991; Acts 1993, 73rd Leg., ch. 549, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 400, Sec. 2, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 979, Sec. 7, eff. June 16, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 18.53, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 9.01, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.15, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 15, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 4, eff. September 1, 2015.

Sec. 13.044. RATES CHARGED BY MUNICIPALITY TO CERTAIN SPECIAL DISTRICTS. (a) This section applies to rates charged by a municipality for water or sewer service to a district created pursuant to Article XVI, Section 59, of the Texas Constitution, or to the residents of such district, which district is located within the corporate limits or the extraterritorial jurisdiction of the municipality and the resolution, ordinance, or agreement of the municipality consenting to the creation of the district requires the district to purchase water or sewer service from the municipality.

(b) Notwithstanding the provisions of any resolution, ordinance, or agreement, a district may appeal the rates imposed by the municipality by filing a petition with the utility commission. The utility commission shall hear the appeal de novo and the municipality shall have the burden of proof to establish that the rates are just and reasonable. The utility commission shall fix the rates to be charged by the municipality and the municipality may not increase such rates without the approval of the utility commission.

Added by Acts 1989, 71st Leg., ch. 567, Sec. 7, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.16, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 16, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 849 (H.B. 2369), Sec. 2, eff. June 15, 2017.



## Sec. 13.084. AUTHORITY OF GOVERNING BODY; COST REIMBURSEMENT.

The governing body of any municipality or the commissioners court of an affected county shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination of these experts to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on water and sewer utility ratemaking proceedings. The water and sewer utility engaged in those proceedings shall be required to reimburse the governing body or the commissioners court for the reasonable costs of those services and shall be allowed to recover those expenses through its rates with interest during the period of recovery.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 567, Sec. 10, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 979, Sec. 9, eff. June 16, 1995.

Sec. 13.187. CLASS A UTILITIES: STATEMENT OF INTENT TO CHANGE RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) This section applies only to a Class A utility.

(a-1) A utility may not make changes in its rates except by sending by mail or e-mail a statement of intent to each ratepayer and to the regulatory authority having original jurisdiction at least 35 days before the effective date of the proposed change. The utility may send the statement of intent to a ratepayer by e-mail only if the ratepayer has agreed to receive communications electronically. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include:

- (1) the information required by the regulatory authority's rules;
- (2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:
  - (A) 10,000 gallons of water; and
  - (B) 30,000 gallons of water;
- (3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 10,000 gallons, unless the utility proposes a flat rate for sewer services; and
- (4) a description of the process by which a ratepayer may intervene in the ratemaking proceeding.

(b) The utility shall mail, send by e-mail, or deliver a copy of the statement of intent to the Office of Public Utility Counsel, appropriate offices of each affected municipality, and any other affected persons as required by the regulatory authority's rules.

(c) When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule and any appropriate cost and rate schedules and written testimony supporting the requested rate increase. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported costs or expenses.

(d) Except as provided by Subsections (d-1) and (e), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The utility commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the utility commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n).

(d-1) After written notice to the utility, a local regulatory authority may suspend the effective date of a rate change for not more than 90 days from the proposed effective date. If the local regulatory authority does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the local regulatory authority thereafter to continue a hearing in progress.

(e) After written notice to the utility, the utility commission may suspend the effective date of a rate change for not more than 150 days from the proposed effective date. If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the utility commission thereafter to continue a hearing in progress.

(e-1) The 150-day period described by Subsection (e) shall be extended two days for each day a hearing exceeds 15 days.

(f) The regulatory authority shall, not later than the 30th day after the effective date of the change, begin a hearing to determine the propriety of the change. If the regulatory authority is the utility commission, the utility commission may refer the matter to the State Office of Administrative Hearings as provided by utility commission rules.

(g) A local regulatory authority hearing described by this section may be informal.

(g-1) If the regulatory authority is the utility commission, the utility commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The utility commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The utility is not required to provide a formal answer or file any other formal pleading in response to the notice, and the absence of an answer does not affect an order for a hearing.

(h) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.

(i) A utility may put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which the utility commission is exercising appellate or original jurisdiction, by filing a bond with the utility commission if the suspension period has been extended under Subsection (e-1) and the utility commission fails to make a final determination before the 151st day after the date the rate change would otherwise be effective.

(j) The bonded rate may not exceed the proposed rate. The bond must be payable to the utility commission in an amount, in a form, and with a surety approved by the utility commission and conditioned on refund.

(k) Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills:

(1) all sums collected under the bonded rates in excess of the rate finally ordered; and

(2) interest on those sums at the current interest rate as determined by the regulatory authority.

(l) At any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect during the applicable suspension period under Subsection (d-1) or Subsections (e) and (e-1) or until a final determination is made on

the proposed rate. If the regulatory authority does not establish interim rates, the rates in effect when the application described by Subsection (c) was filed continue in effect during the suspension period.

(m) If the regulatory authority sets a final rate that is higher than the interim rate, the utility shall be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(n) For good cause shown, the regulatory authority may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(o) If a regulatory authority other than the utility commission establishes interim rates or bonded rates, the regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or bonded rates or the rates are automatically approved as requested by the utility.

(p) Except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility system, a utility or two or more utilities under common control and ownership may not file a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 539, Sec. 11, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 567, Sec. 20, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 678, Sec. 5, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 4.03, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 402, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 400, Sec. 4, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 3.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 966, Sec. 10.06, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1106 (H.B. 2301), Sec. 1, eff.  
September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 9.02,  
eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 180, eff.  
September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.39, eff.  
September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 39, eff.  
September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 5, eff.  
September 1, 2015.

Sec. 13.1871. CLASS B UTILITIES: STATEMENT OF INTENT TO CHANGE  
RATES; HEARING; DETERMINATION OF RATE LEVEL. (a) Except as provided  
by Section 13.1872, this section applies only to a Class B utility.

(b) A utility may not make changes in its rates except by  
sending by mail or e-mail a statement of intent to each ratepayer and  
to the regulatory authority having original jurisdiction at least 35  
days before the effective date of the proposed change. The utility  
may send the statement of intent to a ratepayer by e-mail only if the  
ratepayer has agreed to receive communications electronically. The  
effective date of the new rates must be the first day of a billing  
period, and the new rates may not apply to service received before  
the effective date of the new rates. The statement of intent must  
include:

(1) the information required by the regulatory authority's  
rules;

(2) a billing comparison regarding the existing water rate  
and the new water rate computed for the use of:

(A) 10,000 gallons of water; and

(B) 30,000 gallons of water;

(3) a billing comparison regarding the existing sewer rate  
and the new sewer rate computed for the use of 10,000 gallons, unless  
the utility proposes a flat rate for sewer services; and

(4) a description of the process by which a ratepayer may  
file a complaint under Subsection (i).

(c) The utility shall mail, send by e-mail, or deliver a copy of the statement of intent to the appropriate offices of each affected municipality and to any other affected persons as required by the regulatory authority's rules.

(d) When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule and any appropriate cost and rate schedules supporting the requested rate increase. In adopting rules relating to the information required in the application, the utility commission shall ensure that a utility can file a less burdensome and complex application than is required of a Class A utility. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported costs or expenses.

(e) Except as provided by Subsection (f) or (g), if the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The utility commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the utility commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n).

(f) After written notice to the utility, a local regulatory authority may suspend the effective date of a rate change for not more than 90 days from the proposed effective date. If the local regulatory authority does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the local regulatory authority thereafter to continue a hearing in progress.

(g) After written notice to the utility, the utility commission may suspend the effective date of a rate change for not more than 265 days from the proposed effective date. If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved. This approval is subject to the authority of the utility commission thereafter to continue a hearing in progress.

(h) The 265-day period described by Subsection (g) shall be extended by two days for each day a hearing exceeds 15 days.

(i) If, before the 91st day after the effective date of the rate change, the regulatory authority receives a complaint from any affected municipality, or from the lesser of 1,000 or 10 percent of the ratepayers of the utility over whose rates the regulatory authority has original jurisdiction, the regulatory authority shall set the matter for hearing.

(j) If the regulatory authority receives at least the number of complaints from ratepayers required for the regulatory authority to set a hearing under Subsection (i), the regulatory authority may, pending the hearing and a decision, suspend the date the rate change would otherwise be effective. Except as provided by Subsection (h), the proposed rate may not be suspended for longer than:

- (1) 90 days by a local regulatory authority; or
- (2) 265 days by the utility commission.

(k) The regulatory authority may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change.

(l) The hearing may be informal.

(m) The regulatory authority shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The utility commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice for the hearing, including notice to the governing body of each affected municipality and county. The utility is not required to provide a formal answer or file any other formal pleading in response to the notice, and the absence of an answer does not affect an order for a hearing.



(n) The utility shall mail notice of the hearing to each ratepayer before the hearing. The notice must include a description of the process by which a ratepayer may intervene in the ratemaking proceeding.

(o) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.

(p) A utility may put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which the utility commission is exercising appellate or original jurisdiction, by filing a bond with the utility commission if the suspension period has been extended under Subsection (h) and the utility commission fails to make a final determination before the 266th day after the date the rate change would otherwise be effective.

(q) The bonded rate may not exceed the proposed rate. The bond must be payable to the utility commission in an amount, in a form, and with a surety approved by the utility commission and conditioned on refund.

(r) Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills:

(1) all sums collected under the bonded rates in excess of the rate finally ordered; and

(2) interest on those sums at the current interest rate as determined by the regulatory authority.

(s) At any time during the pendency of the rate proceeding the regulatory authority may fix interim rates to remain in effect during the applicable suspension period under Subsection (f) or Subsections (g) and (h) or until a final determination is made on the proposed rate. If the regulatory authority does not establish interim rates, the rates in effect when the application described by Subsection (d) was filed continue in effect during the suspension period.

(s) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1236 , Sec. 18.001, eff. September 1, 2015.

(t) If the regulatory authority sets a final rate that is higher than the interim rate, the utility shall be allowed to collect

the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(u) For good cause shown, the regulatory authority may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate.

(v) If a regulatory authority other than the utility commission establishes interim rates or bonded rates, the regulatory authority must make a final determination on the rates not later than the first anniversary of the effective date of the interim rates or bonded rates or the rates are automatically approved as requested by the utility.

(w) Except to implement a rate adjustment provision approved by the regulatory authority by rule or ordinance, as applicable, or to adjust the rates of a newly acquired utility system, a utility or two or more utilities under common control and ownership may not file a statement of intent to increase its rates more than once in a 12-month period, unless the regulatory authority determines that a financial hardship exists. If the regulatory authority requires the utility to deliver a corrected statement of intent, the utility is not considered to be in violation of the 12-month filing requirement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.40, eff. September 1, 2013.

Added by Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 40, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 18.001, eff. September 1, 2015.

## **TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT**

**(Including Amendments Effective May 1, 2018, June 1, 2018 and February 26, 2019)**

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