



Control Number: 49225



Item Number: 52

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PETITION BY OUTSIDE CITY
RATEPAYERS APPEALING THE
WATER RATES ESTABLISHED BY
THE CITY OF CELINA

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S LIST OF ISSUES

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Commission Staff's List of Issues. In support thereof, Staff shows the following:

I. BACKGROUND

On February 14, 2019, certain ratepayers of the City of Celina (City) filed a petition appealing the rates approved by the City's council on November 13, 2019 under city ordinance number 2018-66. This appeal was filed under Texas Water Code § 13.043. On December 10, 2019, the Commission's Administrative Law Judge (ALJ) referred this docket to the State Office of Administrative Hearings and required the parties to file its list of issues by January 3, 2020. Therefore, this pleading is timely filed.

II. COMMISSION STAFF'S LIST OF ISSUES

Staff proposes the following list of issues:

1. Did the petition appealing the rate change by the City follow the requirements of TWC §§ 13.043(b), (c), and (d); 16 Texas Administrative Code (TAC) §§ 24.41(b), (c), and (d); and 16 TAC §§ 24.42(a) and (b)?
 - a. Was the petition filed within 90 days after the effective date of the rate change? TWC § 13.043(c) and 16 TAC § 24.41(b).
 - b. How many ratepayers were affected by the rate change? TWC §§ 13.043(c) and (d) and 16 TAC § 24.41(d).

- c. Did the lesser of 10,000 or 10% of those ratepayers file valid protests to the rate change?
TWC § 13.043(c) and 16 TAC § 24.41(b).
2. Should the Commission establish or approve interim rates to be in effect until a final decision is made? TWC § 13.043(h) and 16 TAC §§ 24.41(e)(6) and (h).
3. Do the retail water rates being charged by the City fulfill the requirements of TWC § 13.043(j)?¹
 - a. Are the rates just and reasonable?
 - b. Are the rates not unreasonably preferential, prejudicial, or discriminatory?
 - c. Are the rates sufficient, equitable, and consistent in application to each class of customers?
4. If the rates being charged by the City meet the requirements of TWC § 13.043(j), must this appeal be dismissed?²

If the rates being charged by the City do not meet the requirements of TWC § 13.043(j), address the following issues:

5. Considering only the information available to the City's council at the time of its decision, what are the just and reasonable rates for the district that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory? TWC § 13.043(e) and (j) and 16 TAC §§ 24.41(e) and (i).
 - a. What is the appropriate methodology to determine just and reasonable rates for the district?
 - b. What is the revenue requirement that would give the City sufficient funds to provide adequate retail water service?

¹ See TWC § 13.043(j) (West 2016); see also *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 335–36 (Tex. App.—Austin 1994) (applying TWC § 13.043(j) in an appeal under § 13.043(f)).


² See *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994). In the *Fort Worth* case, the Austin Court of Appeals found that “the Commission made no finding as to the reasonableness of rates . . . , which is the initial inquiry under § 13.043(j) defining the scope of agency review.” *Id.* at 335. The Court ruled that the scope of appellate review under § 13.043(f) requires an initial determination under § 13.043(j). *Id.* at 336. However, the TWC does not limit the application of subsection (j) to appeals under § 13.043(f). Therefore, the same initial inquiry under subsection (j) must be made in this appeal under § 13.043(b) before the Commission can reset rates.

- c. What is the appropriate allocation of the revenue to customer classes?
 - d. What is the appropriate design of rates for each class to recover the City's revenue requirement?
6. What are the reasonable expenses incurred by the City in this proceeding? TWC § 13.043(e) and 16 TAC § 24.41(e)(2).
- a. Should the Commission allow recovery of these reasonable expenses?
 - b. If so, what is the appropriate recovery mechanism?
7. What is the appropriate effective date of the rates fixed by the Commission in this proceeding? TWC § 13.043(e) and 16 TAC § 24.41(e)(3).
8. If the Commission establishes rates different than the rates set by the City's board, should the Commission order refunds or allow surcharges to recover lost revenues? If so, what is the appropriate amount and over what time period should the refund or surcharge be in place? TWC § 13.043(e) and 16 TAC § 24.41(e)(4).

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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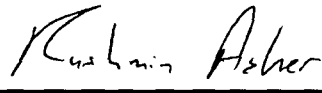
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**SOAH DOCKET NO. 473-20-1554.WS
PUC DOCKET NO. 49225**

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 3,
2020 in accordance with 16 TAC § 22.74.

 (signed with permission)
Rashmin

Rashmin J. Asher