



Control Number: 49225



Item Number: 53

Addendum StartPage: 0

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

PETITION BY OUTSIDE CITY	§	BEFORE THE STATE OFFICE
RATEPAYERS APPEALING THE	§	
WATER RATES ESTABLISHED BY	§	OF
THE CITY OF CELINA	§	
	§	ADMINISTRATIVE HEARINGS

**OUTSIDE CITY RATEPAYERS’
LIST OF ISSUES**

TO THE HONORABLE COMMISSION:

COME NOW, the Outside City Ratepayers (“Ratepayers”) and file this List of Issues in response to the Order of Referral and, in support thereof, would respectfully show the following.

I. BACKGROUND

On February 14, 2019, the Ratepayers filed with the Public Utility Commission of Texas (“Commission”) their appeal of the water and wastewater rates charged by the City of Celina (“City”) pursuant to Texas Water Code (“TWC”) Section 13.043(b)(3) and Title 16 Texas Administrative Code (“TAC”) Section 24.101.

On March 15, 2019, Ratepayers filed their First Amended Petition Appealing Water and Wastewater Rates of the City of Celina and Request for Interim Rates.

On April 16, 2019, Commission Staff recommended Ratepayers’ Petition be found administratively complete and, on April 17, 2019, Order No. 4 Deeming Petition Administratively Complete was entered.

On December 10, 2019, Commission Counsel Stephen Journey issued an Order of Referral, referring this Docket to the State Office of Administrative Hearings (“SOAH”) and setting a deadline of January 3, 2020, for Ratepayers and the City to file their list of issues for the SOAH Administrative Law Judge (“ALJ”) to consider in this docket. Ratepayers filed their List of Issues timely.

II. LIST OF ISSUES TO BE ADDRESSED

The Commission is required to provide to the ALJ a list of issues that the ALJ must address in any proceeding referred to SOAH. The Ratepayers have identified the following issues to be addressed in this proceeding. This list is not intended to be exhaustive, and the Ratepayers reserve the right to address additional issues raised by other parties or that may arise in the future and are not set forth below.

1. Should the Commission establish or approve interim rates to be in effect until a final decision is made?¹ If so, what are the appropriate levels of the interim rates?²
2. Do the retail water rates being charged by the City fulfill the requirements of TWC §13.043(j)?³
 - 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?
3. What information was available to the City at the time it made its decision to increase the water utility service rates?⁴
4. Did the City base its retail water and wastewater rates on the actual cost of providing service to each Ratepayer?
5. Considering only the information available to the City's governing body at the time of its decision, what rates are just and reasonable, would be sufficient, equitable, and consistent

¹ TWC § 13.043(h); 16 TAC § 24.101(e)(6), (h).

² 16 TAC § 24.37.

³ See TWC § 13.043(j).

⁴ TWC § 13.043(e).

in application to each customer class, and are not unreasonably preferential, prejudicial, or discriminatory?⁵

- a. What is the appropriate methodology to determine just and reasonable rates for the City?
 - b. What is the revenue requirement that would give the City sufficient funds to provide adequate retail water service?
 - 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?
 - e. What was the reasonable and necessary cost of providing service to each of the Ratepayers?⁶
 - f. What adjustments, if any, should the Commission make to the City's proposed test year data?⁷
6. If the Commission establishes rates different from the rates set by the City, should the Commission order refunds or allow surcharges to recover lost revenues? If so, what is the appropriate amount and over what period should the refund or surcharge be in place?⁸
 7. What is the appropriate effective date of the rates fixed by the Commission in this proceeding?⁹
 8. Did the City develop its revenue requirement in accordance with standard ratemaking principles?
 9. Did the City use a historic test year to determine its revenue requirement in setting Ratepayers' retail water and wastewater rates?

⁵ TWC §§ 13.043(e), (j), 13.182, 13.1871(o); 16 TAC § 24.101(e), (i).

⁶ 16 TAC § 24.41.

⁷ TWC § 13.185(d)(l); 16 TAC § 24.41(b), (c)(5).

⁸ TWC §§ 13.043(e), 13.1871; 16 TAC § 24.101(e)(4).

⁹ TWC § 13.043(e); 16 TAC § 24.101(e)(3).

- a. Did the City adjust the costs in the historic test year using known and measurable changes to determine its revenue requirement in setting Ratepayers' retail water and wastewater rates?
 - b. If the City did not adjust the costs as described in 9.a., then was it reasonable for the City to set Ratepayers' rates using unadjusted historical data or speculative budgets?
10. Did the City apply a 1.5x multiplier to the City's retail rates for its in-city customers when setting Ratepayers' rates? If so, was that multiplier based upon the actual cost of providing service to the Ratepayers?
11. Did the wastewater billing units for all City customers equate to the actual flow received at the City's wastewater treatment plant?
12. Were the City's revisions to its tariffs and rate schedules appropriate?
13. If the City used the utility basis to set rates:
- a. What was the appropriate debt-to-equity capital structure of the utility?
 - b. What was the appropriate cost of debt for the City and the appropriate return on equity or overall rate of return for a non-profit governmental entity?
 - c. What are the reasonable and necessary components of the City's invested capital?¹⁰
 - d. What was the appropriate weighted average cost of capital?
 - e. What was the amount for an allowance for funds used during construction, if any, that the City transferred to invested capital in this proceeding? If the City transferred such amounts, for what facilities and at what rate did the allowance for funds used during construction accrue?
 - f. Has the utility included any customer contributions or donations in invested capital?¹¹

¹⁰ 16 TAC § 24.41(c)(2).

¹¹ TWC § 13.185(j); 16 TAC § 24.41(c)(2)(B)(v).

- g. What regulatory assets did the City include in its rate base for the provision of service to Ratepayers? If the City included such assets in its rate base, what was the appropriate treatment of such assets?
 - h. What was the original cost of the property used and useful in providing water service to the Ratepayers at the time the City dedicated the property to public use?¹² What was the amount, if any, of accumulated depreciation on such property?
 - i. Has the utility financed any of its plant with developer contributions?¹³ What was the amount, if any, of accumulated depreciation on that property?
 - j. What was the reasonable and necessary depreciation expense for those facilities that provide service to Ratepayers? For each class of property, what are the proper and adequate depreciation rates (including service lives and salvage values) and methods of depreciation?¹⁴
 - k. Did the City include construction work in progress in its revenue requirement for Ratepayers?
 - i. If so, what was the amount sought and for what facilities?
 - ii. Were any of these facilities used and useful in the provision of service to Ratepayers?
 - iii. Has the utility proven that the inclusion was necessary to the financial integrity of the utility and that major projects under construction have been efficiently and prudently planned and managed?¹⁵
14. What is the City's Cost of debt, if any?
- a. What series or issues of bonds of the City are outstanding?
 - b. For each series or issues of outstanding bonds, what is the annual servicing cost?
 - c. What debt service coverage, if any, is required for each series or issues of outstanding bonds?
 - d. For each series or issues, has revenue from water or wastewater service been pledged?

¹² TWC § 13.185(b); 16 TAC § 24.41(c)(2)(A)-(B).

¹³ TWC § 13.185(j); 16 TAC § 24.41(b)(1)(B).

¹⁴ TWC § 13.185(j); 16 TAC § 24.41(b)(1)(B).

¹⁵ TWC § 13.185(b); 16 TAC § 24.41(c)(4).

- e. For each series or issues of outstanding bonds, what contract or contracts have been pledged as security?
 - f. For each such contract, who are the parties to the contract, and what rate, formula, or methodology is specified in each such contract related to the amount paid for water or wastewater service and the amount pledged to the bond?
15. What is the City's reasonable and necessary cost to procure the water it supplies to the Ratepayers?
16. What is the total cost to run the City's water and wastewater systems?
- a. What are the City's reasonable and necessary operations and maintenance expenses for its facilities and systems?
 - b. What are the utility's reasonable and necessary administrative and general expenses?
 - c. What is the reasonable and necessary amount for the City's advertising expense, contributions and donations?
 - d. If the City has a self-insurance plan, what is the reserve amount, and is it appropriate to change that amount? What is the amount of any shortage or surplus for the reserve account for the self-insurance plan?
 - e. What are the City's reasonable and necessary expenses, if any, for pension and other post-employment benefits?
 - f. Are any expenses, including but not limited to, executive salaries, advertising expenses, legal expenses, criminal penalties or fines, and civil penalties or fines, unreasonable, unnecessary, or not in the public interest?
 - g. Were the costs reasonable and necessary for provision of service to each of the Ratepayers?¹⁶
17. What is the reasonable and necessary cost of providing water and sewer service to the Ratepayers?

¹⁶ TWC § 13.185(e); see also *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*, Docket No. 42857, Order at 24 (Jan. 14, 2016).

18. What are the City's water and sewer utility annual gross revenues?
19. What are the City's water and sewer utility net revenues?
20. Are there established priority of rights to water supplied by the City's water utility? If so, what priority do the Ratepayers have for the water supplied by the City's water utility?
21. Is there any penalty or rate adjustment if the City cannot deliver all the water or treat all the wastewater requested by the Ratepayers?
22. What is the annual revenue obligation of each of the City's customer classes?
23. What entities, if any, other than the Ratepayers, purchase water or wastewater services from the City?
 - a. Under what terms, including the rate, do any such entities take water or wastewater services from the City?
 - b. What is the gross amount of revenues, if any, received from such entities by the City on an annual basis?
 - i. Is any of such revenue pledged to support any bonds issued by the City? If so, how much is pledged and for which series or issues of bonds?
 - ii. How is this revenue accounted for in determining the City's rates for water and wastewater services?
 - iii. Is any such revenue used to offset the Ratepayers' payments?
24. How is the cost responsibility to run, operate, and maintain the City's water and wastewater system allocated, if at all:
 - a. Between the Ratepayers and any other entities that purchase wholesale from the City?
 - b. Between the Ratepayers and retail customers of the City?
25. Does the City allocate between water and wastewater for each component of its cost for providing services to the Ratepayers? If so, is the cost properly allocated?

26. Has the City's water or sewer utility made any payments to other City departments (e.g., general fund transfers)?
27. What facilities and systems, if any, are dedicated exclusively to the provision of water or wastewater services to the Ratepayers?
28. What is the appropriate allocation of the revenue requirement:
 - a. Between the City's retail customers?
 - b. Between the City's wholesale customers and its retail customers?
29. Are the City's proposed water and wastewater rates based upon the actual cost of providing the water and wastewater services to the Ratepayers?
30. Has the City made any payments to affiliates? If so, for all affiliate transactions, what were the costs to the affiliate of each item or class of items in question, and was the price for each transaction no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations?
31. For all transactions affecting the cost of service to Ratepayers, what were the costs to the affiliate of each item or class of items in question, and was the price for each transaction no higher than prices charged by the supplying department to its other departments or divisions for the same item or items, or to unaffiliated persons or corporations?¹⁷
32. What was the appropriate allocation of costs and revenues among the City's rate classes?
33. What was the appropriate rate design for each rate class?¹⁸
34. What revenue requirement will give the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public

¹⁷ TWC § 13.185(e).

¹⁸ 16 TAC § 24.43.

in excess of its reasonable and necessary operating expenses while preserving the City's financial integrity?

III. ISSUES NOT TO BE ADRESSED

1. Jurisdiction. The Commission and SOAH have jurisdiction under TWC § 13.043(b).
2. Burden of Proof. An appeal under Section 13.043(b) is a *de novo* hearing in which the City has the sole burden of proof to establish that the rates charged to Ratepayers were just and reasonable and based on the cost of service to Ratepayers.¹⁹
3. Authority to Set Interim Rates. The Commission or the ALJ may establish interim rates in cases under the Commission's original or appellate jurisdiction. In setting interim rates, the Commission or the ALJ may limit consideration of the matter to oral arguments of the affected parties.²⁰
4. If the rates being charged by the City meet the requirements of TWC § 13.043(j), the appeal need not be dismissed.²¹ A prior finding is not necessary here because appeals brought pursuant to TWC 13.043(b) are reviewed *de novo*.

IV. THRESHOLD ISSUES TO BE BRIEFED

Ratepayers have not identified any threshold or policy issues at this time.

¹⁹ TWC § 13.043(b).

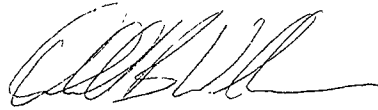
²⁰ 16 TAC § 24.37(d). See also *Petition of North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. JO, and Wells Branch Municipal Utility District from the Ratemaking Actions of the City of Austin and Request for Interim Rates in Williamson and Travis Counties*, Docket No. 42857, Conclusion of Law 11 (Jan. 14, 2016).

²¹ 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. As reviews under § 13.043(b) are conducted *de novo*, such an initial inquiry is not required here.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Ratepayers respectfully pray that the Commission issue an Order consistent with the issues as set forth above.

Respectfully submitted,



Randall B. Wilburn

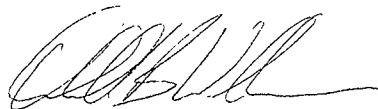
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ATTORNEYS FOR RATEPAYERS

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 3rd day of January, 2020.



Randall B. Wilburn