



Control Number: 49225



Item Number: 54

Addendum StartPage: 0

OPEN MEETING COVER SHEET

DRAFT PRELIMINARY ORDER

MEETING DATE: JANUARY 16, 2020

DATE DELIVERED: JANUARY 9, 2020

AGENDA ITEM NO.: 4

CAPTION: Docket No. 49225; SOAH No. 473-20-1554.WS
Petition by Outside City Ratepayers
Appealing the Water Rates Established by
the City of Celina

DESCRIPTION: DRAFT PRELIMINARY ORDER

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Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: Alexander Scheifler **AS**
Commission Advising

RE: *Petition by Outside City Ratepayers Appealing the Water Rates Established by the City of Celina*, Docket No. 49225, SOAH Docket No. 473-20-1554.WS,
Draft Preliminary Order, January 16, 2020 Open Meeting, Item No. 4.

DATE: January 9, 2020

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the January 16, 2020 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the January 16, 2020 open meeting.

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

PETITION BY OUTSIDE CITY	§	PUBLIC UTILITY COMMISSION
RATEPAYERS APPEALING THE	§	
WATER RATES ESTABLISHED BY	§	OF TEXAS
THE CITY OF CELINA	§	

DRAFT PRELIMINARY ORDER

Ratepayers outside the City of Celina filed a petition under Texas Water Code (TWC) § 13.043(b)(3) appealing the City of Celina’s decision to change its water and sewer rates. This preliminary order identifies the issues that must be addressed and that shall not be addressed.

The petitioning ratepayers filed their petition on February 14, 2019 and an amended petition on March 15, 2019. Petitioners challenge the City of Celina’s three-phase and sewer rate increases as well as the 1.5 multiplier applied to ratepayers outside of the city.¹ Petitioners request a cost of service study to show that the rates are just and reasonable and based on the actual cost of service in compliance with the TWC and Commission rules, interim rates until a final decision on this appeal is rendered, and an order vacating the City of Celina’s rates that apply to the petitioners.²

The City of Celina responds that interim rates would be contrary to the public interest and that its current rates are cost-based and impose no economic hardship.³

On April 5, 2019, the City of Celina filed a notice of corrected effective date. The City of Celina stated that the notice and published rate schedules reflected the intended correct rates; however, in the ordinance the columns indicating the years for the phased rates were off by one year. The City of Celina adopted corrections in a subsequent ordinance with a revised effective date of March 19, 2019.

¹ Petition by Outside City Ratepayers Appealing the Water Rates Established by the City of Celina at 1–3 (Feb. 14, 2019).

² First Amended Petition Appealing Water and Wastewater Rates of the City of Celina and Request for Interim Rates at 6 (Mar. 15, 2019).

³ City of Celina’s Response to Motion for Referral to SOAH and Opposition to Request for Interim Rates at 3–4 (Dec. 13, 2019).

On April 16, 2019, Commission Staff filed its response to Order No. 3 in which Commission Staff recommended that the application be deemed administratively complete in accordance with 16 Texas Administrative Code (TAC) § 24.103. Commission Staff reviewed the petition and amended petition filed by petitioners and found that it contained signatures from 10% of the eligible ratepayers. Commission Staff further noted that the City of Celina acknowledged that the petitioners met the 10% threshold of 145 connections. In response to requests for information from Commission Staff, the City of Celina stated that the total number of out-of-city water and sewer connections is 1,452 and that the number of signatories to the petition is 325.⁷

Regarding the corrected rates and effective date, Commission Staff stated that because there were no errors in the notices or published rate schedules provided to ratepayers following the initial ordinance approving the rate increase, the ratepayers timely initiated an appeal in accordance with TWC § 13.043(c) by filing their appeal on February 14, 2019, 44 days following the January 1, 2019 effective date of the rate change in Ordinance 2018-66.

On December 6, 2019, the petitioners filed a motion for referral of this docket to the State Office of Administrative Hearings (SOAH) and a request for interim rates. On December 10, 2019, this matter was referred to SOAH.

The Commission directed the petitioners and the City of Celina and allowed Commission Staff and other interested persons to file by January 3, 2020 a list of issues to be addressed, issues not to be addressed, and any threshold legal or policy issues that should be addressed in the docket. The petitioners, the City of Celina, and Commission Staff timely filed lists of issues.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.⁸ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

⁷ City of Celina's Responses to Commission Staff's First Request for Information at responses to Staff RFI 1-1.

⁸ Tex. Gov't Code § 2003.049(e).

1. Did the petition appealing the rate change by the City of Celina follow the requirements of TWC §§ 13.043(b), (c), and (d); 16 TAC §§ 24.101(b), (c), and (d); and 16 TAC §§ 24.103(a) and (b)?
 - a. Was the petition filed within 90 days after the effective date of the rate change as required by TWC § 13.043(c) and 16 TAC § 24.101(b)?
 - b. What number of ratepayers had their rates changed and were eligible to appeal the rate change in accordance with TWC § 13.043(b)(3) and (d) and 16 TAC § 24.101(c) and (d)?
 - c. Did the lesser of 10,000 or 10% of those ratepayers file valid protests to the rate change in accordance with TWC § 13.043(c); and 16 TAC §§ 24.101(b) and 24.103(a), (b)?
2. Did the City of Celina provide written notice of hearing to all affected customers as required by 16 TAC § 24.101(c)(6)?
3. Should the Commission establish or approve interim rates under TWC § 13.043(h) and 16 TAC § 24.101(e)(6) and (h) to be in effect until a final decision is made?
4. Do the retail water and sewer rates being charged petitioners by the City of Celina fulfill the requirements of TWC § 13.043(j)⁹ and 16 TAC § 24.101(i)? In addressing this question, evaluate the following:
 - a. Are the rates just and reasonable?
 - b. Are the rates unreasonably preferential, prejudicial, or discriminatory?
 - c. Are the rates sufficient, equitable, and consistent in application to each class of customers?
 - i. What factors did the City of Celina consider in distinguishing out-of-city ratepayers from in-city ratepayers for purposes of establishing different customer classes?
 - ii. How does the type of customers within the out-of-city customer class differ from the type of customers within the in-city customer class?

⁹ See TWC § 13.043(j); 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)).

- iii. How does the type of water and sewer utility services provided to the out-of-city customer class differ from the type of water and sewer utility services provided to the in-city customer class?
 - iv. How do the costs of infrastructure, facilities, operations, capital improvements, and administrative services to provide service to the out-of-city customer class differ from those costs to provide service to the in-city customers?
 - v. How do the total revenues received by the City of Celina from out-of-city customers relative to the cost of service to that customer class differ from the total revenues received from in-city customers relative to the cost of service to that customer class?
5. If the rates being charged petitioners by the City of Celina meet the requirements of TWC § 13.043(j), must this appeal be dismissed?¹⁰

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

- 6. What information was available to the City of Celina at the time it made its decision to increase the water and sewer utility service rates under TWC § 13.043(e)?
- 7. Considering only the information available to the City of Celina at the time of its decision, what are the just and reasonable rates for the City of Celina that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory under TWC § 13.043(e), (j) and 16 TAC § 24.101(e), (i)?
 - a. What is the appropriate methodology to determine just and reasonable rates for the City of Celina?
 - b. What is the revenue requirement that would give the City of Celina sufficient funds to provide adequate retail water and sewer service to petitioners?

¹⁰ 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 of Celina's revenue requirement?
8. What are the reasonable expenses incurred by the City of Celina in this proceeding under TWC § 13.043(e) and 16 TAC § 24.101(e)(2) and (5)?
- a. Should the Commission allow recovery of these reasonable expenses?
 - b. If so, what is the appropriate recovery mechanism?
9. What is the appropriate effective date of the rates fixed by the Commission in this proceeding under TWC § 13.043(e) and 16 TAC § 24.101(e)(3)?
10. If the Commission establishes rates different from the rates set by the City of Celina, should the Commission order refunds or allow surcharges to recover lost revenues under TWC § 13.043(e) and 16 TAC § 24.101(e)(4)? If so, what is the appropriate amount and over what period should the refund or surcharge be in place?

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

II. Effect of Preliminary Order

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the _____ day of January 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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