



Control Number: 49225



Item Number: 64

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

**CITY OF CELINA'S REPLY BRIEF ON INTERIM RATES**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, the City of Celina, Texas (the "City") and files this Reply Brief on Interim Rates and would respectfully show as follows:

**I. SUMMARY**

When focusing on the pertinent language in the Commission's rules, the issues on interim rates are narrow: a 3% increase is not an unjust or unreasonable rate increase; Petitioners will not suffer economic hardship during the pendency of the administrative proceeding; and the City would suffer real and lasting economic hardship in the form of damage to its cost of debt service if interim rates are imposed, especially considering the fact that the new rates do not yet recover the cost of providing service.<sup>1</sup> Arguments regarding the rate differential between outside-City and inside-City customers that came into effect over twenty years ago are outside the scope of interim rates and must be reserved for a hearing on the merits. Furthermore, Petitioners' brief contains extremely misleading statements regarding the City's cost analysis, omitting numerous City spreadsheets showing the cost of service for outside-City customers is 56.1% higher than the cost

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<sup>1</sup> See City's Initial Brief in Opposition to Interim Rates at 2. ("Such a loss of revenue during the pendency of this case would likely lower the City's debt coverage, which in turn could lower the City's credit rating. A lower credit rating would increase the risk that lenders would assign to the City's debt, which would result in higher debt costs to the City. This would be a serious economic hardship for the City if interim rates were imposed.")

of service for inside-City Customers. The City's rates are cost-based and interim rates must be rejected.

In addition to a required showing that the Petitioners would suffer economic hardship from the 3% rate increase,<sup>2</sup> there are two other key aspects of the rules governing interim rates. First, the amount of interim rates has a ceiling (the proposed rate increase) and a floor (no lower than the immediately prior approved rates).<sup>3</sup> Second, the decision as to whether interim rates should be ordered at all can be judged by whether the new rate *increase* "could result in ... unjust and unreasonable rates."<sup>4</sup> Petitioners have completely ignored the limitations of the first rule (no lower than the immediately prior rates) in an effort to expand the scope of the second rule to include the entire case in chief, challenging a twenty-year-old rate design as a justification for interim rates.

Petitioners have attempted to convert the discussion on interim rates into a discussion of the case in chief, to wit, the justness and reasonableness of the City's rate design in its entirety, hanging their whole argument on a rule that uses the phrase "could result in ... unjust or unreasonable rates." What Petitioners ignore, however, is that the rule limits the phrase "could result in ... unjust or unreasonable rates" to apply only to "the proposed increase."<sup>5</sup>

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<sup>2</sup> 16 TAC § 24.37 (d).

<sup>3</sup> 16 TAC § 24.37 (e)(1) ("In making a determination under subsection (d) of this section, the commission may limit its consideration of the matter to oral arguments of the affected parties and may: (1) set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates").

<sup>4</sup> 16 TAC § 24.37(d) (emphasis added).

<sup>5</sup> Petitioners' Brief on Interim Rates at 2-3 (citing 16 TAC § 24.37(d)). However, the full text of subsection (d) is:

"Interim rates may be established by the commission in those 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." (Emphasis added.)

The City does not question the right of Petitioners to challenge its rate design at the hearing on the merits in this case. The City opposes the abuse of interim rates to preemptively achieve an end goal of undoing a decades-old rate design under the guise of setting interim rates in violation of the Commission's rules, especially without allowing the City to put on its direct case and affirmatively prove the justness and reasonableness of its rates, including its rate design.

## **II. A SUMMARY DECISION HARMING THE CITY IS UNNECESSARY**

The Administrative Law Judge (ALJ) has ruled from the bench that there will be no evidentiary hearing on interim rates. Accordingly, the City is unable to present its evidence of economic harm in the event interim rates are imposed. The Petitioners, on the other hand, must defy common sense in any argument that a 3% rate increase equaling a few dollars each month (for homeowners whose homes are valued an average of \$421,531<sup>6</sup>) could suffer economic hardship from the administrative delay of simply waiting for the Commission to issue its final order in this case. Petitioners have apparently conceded the fact that a 3% increase does not cause an unreasonable economic hardship, so they are trying to change the argument to instead focus on the City's pre-existing rate design to try to make the rate increase seem bigger. It is a transparent attempt that must be rejected.

The City would urge calm resolve that this case will be expeditiously completed according to the procedural schedule set by the ALJ. A quick resolution of the case without interim rates would reasonably balance the goal of ameliorating harm to the Petitioners with the need to avoid

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<sup>6</sup> See Collin County Appraisal District 2019 Certified Taxable Value Summary, p. 3 at row entitled "COLLIN COUNTY MUD#1," and at column entitled "2019 AVERAGE MARKET VALUE OF HOMES, AS OF 7-15-2019." (The url is <https://www.collincad.org/files/Reports/CertifiedValueSummaries/2019CertifiedValueSummary.pdf>.)

economic harm to the City. The City has consistently recognized its obligation to promptly issue any refunds that are ordered by the Commission.

### **III. “COULD RESULT IN ... UNJUST OR UNREASONABLE RATES” IS NOT AN INVITATION TO LITIGATE THE HEARING ON THE MERITS**

All of the rules on interim rates must be read together and harmonized to give meaning to all provisions. As Justice Learned Hand has said, “Words are not pebbles in alien juxtaposition; they have only a communal existence; and not only does the meaning of each interpenetrate the other, but all in their aggregate take their purport from the setting in which they are used....”<sup>7</sup> Petitioners’ argument that the rule allows interim rates if any part of the utility’s pre-existing approved rates had ever been unjust or unreasonable is so expansive that it obliterates the rule setting the floor for interim rates of no lower than the immediately prior rates.

The rule that says interim rates may be considered if the newly proposed rates “could result in ... unjust or unreasonable rates” is referring solely to the newly set rate *increase*.<sup>8</sup> The phrase is not referring to the prior legally adopted and tariffed rate design from years ago. The scope of the rule can only be reasonably understood to say that interim rates may be considered if the new rate increase, and only the new rate increase, could be unjust or unreasonable.

The floor for interim rates is in place in recognition of the fact that the prior rates are presumed to be just and reasonable, having been duly set by the entity with primary jurisdiction to do so under PURA. The utility is entitled to rely on those approved rates under the Filed Tariff

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<sup>7</sup> *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221, 112 S. Ct. 570, 574, 116 L. Ed. 2d 578 (1991) (quoting *NLRB v. Federbush Co.*, 121 F.2d 954, 957 (CA2 1941) (L. Hand, J.).

<sup>8</sup> 16 TAC § 24.37(d).

Doctrine.<sup>9</sup> It is further consistent with the fact that the utility deserves to have due process in setting new rates.

This follows the assumption that the early procedural stage at which interim rates are determined requires that the scope of review must be limited to only the current rate increase, not an entire indictment of all previous decisions setting just and reasonable rates. Setting interim rates is a summary judgment decision that does not put *all* of the utility's prior rates at play, as they would be in a hearing on the merits. Therefore, the phrase "could result in ... unjust or unreasonable rates" cannot reasonably be construed to allow the presiding officer to summarily decide that the previously approved and effective rates were unjust and unreasonable, with no evidence to support such a claim. Such logic would negate not only the presumption of approved rates being just and reasonable, but also the presumption that interim rates shall not go below the immediately prior rates, as well as the presumption that a utility is given due process to defend its rates in an administrative/ adjudicative process under the Texas Administrative Procedures Act<sup>10</sup> and the Public Utility Regulatory Act (PURA).<sup>11</sup>

Petitioners attack the difference in rate design between the outside-City customers and the inside-City customers as if this was the case in chief, but with no evidence and before the City has filed its direct case. That rate differential has been in existence for many years and had been found by the City to be just and reasonable. It is inappropriate to decide in a summary fashion in the absence of an evidentiary record that the *previously approved* rates were unjust and unreasonable.

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<sup>9</sup> See generally, 73B C.J.S. Public Utilities § 22 ("The filed-rate or filed-tariff doctrine precludes claims that directly attack the validity or reasonableness of rates or terms defined in a tariff." citing *Del Carmen Canas v. Centerpoint Energy Resources Corp.*, 418 S.W.3d 312 (Tex. App. Houston 14th Dist. 2013)).

<sup>10</sup> Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001- .902 (West 2008 & Supp. 2014) (APA).

<sup>11</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

The City must be given some semblance of due process to defend its previously approved rates in a hearing on the merits with evidence meted out by the parties and ruled on by the ALJ. The previously approved rates must not be disposed of in a summary fashion, vis-à-vis, interim rates must not be set based on an implicit finding, with no evidence, that the previously approved rates were not just and reasonable.

#### **IV. PETITIONERS' STATEMENTS ABOUT THE CITY'S COST OF SERVICE MODEL ARE FALSE AND MISLEADING**

It is troubling that, in the absence of an evidentiary hearing with sworn testimony, Petitioners have already made false and misleading statements about the City's rates and rate model. For example, on page 2 of Petitioners' Brief on Interim Rates, they claim that the City uses a multiplier and that it is "arbitrary." As illustrated in the attached Appendix A, far from being arbitrary, the 50% premium is fully justified by the costs. Petitioners go so far as to say that a 50% premium for outside-City customers is just too convenient.<sup>12</sup> In fact, the costs for out-of-City rates actually are 56.1% higher than the cost of service to provide service to inside-City customers.<sup>13</sup> The City asserts that after having had a chance to hear the City's case in a hearing on the merits, the Commission may reasonably *raise* Petitioners' rates in line with their true cost of service.

Petitioners further amplify their false claims regarding the City's cost of service model, asserting "the out-of-City rates were not cost-of-service based."<sup>14</sup> They even go so far as to say,

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<sup>12</sup> Petitioners' Brief on Interim Rates at 2 ("Even if, arguendo, a cost-of-service basis existed for out-of-City rates to be higher than those charged in-City customers, the difference in those rates would not be a convenient, even number such as the 150% multiplier that the City used to set Petitioners' rates. For that reason alone, the Commission should set interim rates to protect the Petitioners from the City's obviously unjust and unreasonable rates.")

<sup>13</sup> See attached Appendix A, p. 2, highlighted portion ("56.1%").

<sup>14</sup> Petitioners' Brief on Interim Rates at 4.

“The Out-of-City rates for water and wastewater are NOT based upon the cost of providing service to out-of-City customers.”<sup>15</sup> *To the contrary*, the analysis summarized in Appendix A demonstrates that the 50% premium is not only justified by a comprehensive multi-year cost of service forecast, the 50% premium is actually *less* than the cost of providing service.

The City’s cost model contains over 60 separate spreadsheets. Starting with the City’s adopted budget, the model applies the American Water Works Association Cash Basis and Utility Basis methodologies to calculate the cost of service for inside-City and outside-City customers. The calculations are summarized in the spreadsheet “*Water Inside Outside Summary*,” which is attached as Appendix A. The spreadsheet shows that for the three-year period of the City’s adopted rate plan, the City’s cost of service for outside-City customers is calculated to be 56.1% greater than the inside-City customers.

There are many pages of spreadsheets that support these calculations, which the City is prepared to present in its direct case. Petitioners admit that they did not prepare any substantive analysis to support their allegations. Remarkably, they admit to having conducted a “quick” review of the City’s discovery responses, as if a cursory review of a complex, internationally-recognized cost of service model that contains more than 60 intertwining spreadsheets is enough to establish a reliable opinion. Petitioners attach to their brief a single spreadsheet extracted from the model, called the *Rate Calculator*, which only shows the City’s use of the 50% premium. Petitioners did not, however, provide either the *Water Inside Outside Summary* (Appendix A) or any of the many other spreadsheets that show the cost of service calculations. These are the very calculations Petitioners claim the City did not prepare. In short, Petitioners provided a single page,

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<sup>15</sup> Petitioners’ Brief on Interim Rates at 5 (emphasis original).



omitted the extensive calculations showing the cost differentials, and then claimed there were no calculations showing the cost differentials. Petitioners' entire argument on this point should summarily disregarded.

The bottom line is that the City's extensive cost of service calculations, conducted by an internationally-recognized utility financial consulting firm, conclusively demonstrate that not only is the City's 50% premium appropriate, it is actually *less* than the cost of providing service. Petitioners' misrepresentations of selected data from those spreadsheets reflect either a fundamental misunderstanding of those spreadsheets, or an effort to promote a false narrative with no data at all. Either scenario underscores the need to avoid interim rates and to move expeditiously to an evidence-based hearing on the merits.

#### **V. INTERIM RATES WOULD CAUSE UNREASONABLE ECONOMIC HARDSHIP ON THE CITY**

As explained earlier, a loss of revenue associated with interim rates during the pendency of this case would likely lower the City's debt coverage, which in turn could lower the City's credit rating. A lower credit rating would increase the risk that lenders would assign to the City's debt, which would result in higher debt costs to the City. Had there been an evidentiary hearing on interim rates, the City was prepared to put on sworn testimony on this fact.

This loss of revenue is equally harmful to the City regardless of whether interim rates take the form of setting rates at the City's immediately prior rates or at the new rate level but requiring the City to set aside the increased revenue into escrow during the pendency of this case, because both options immediately remove a critical revenue stream.

In addition to the substantial harm that interim rates would cause to the City's access to debt, interim rates would also cause significant harm to the City's ability to fund critical infrastructure improvements associated with the area's rapid growth and development. This is a critical time in the City's growth in which a sudden reduction in ongoing revenues brought on by interim rates and the more costly debt that would follow could wreak havoc on the City's ability to prepare for infrastructure needs in the near and distant future.

## **VI. CONCLUSION**

The fact that Petitioners have already launched into making misleading and false claims regarding the City's cost study underscores the risks involved in summarily setting interim rates with no evidence or cross-examination of that evidence when there is only a 3% increase at stake and when the municipal utility is stating it will be economically harmed by such interim rates. The ALJ should reject Petitioners' request for interim rates because there is no showing that the 3% increase would cause unreasonable economic hardship on the Petitioners, and because the City has alleged that interim rates would inflict an unreasonable economic hardship on it.

The City respectfully prays that the ALJ deny the motion for interim rates and allow the parties to proceed expeditiously toward a full resolution of this case and such other relief to which the City may be justly entitled.

Respectfully submitted,

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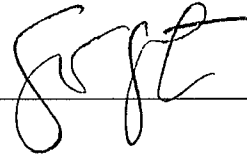
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**ATTORNEYS FOR CITY OF CELINA**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on all parties of record on this 11th day of February, 2020, in accordance with 16 Tex. Admin. Code § 22.74.

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Scott Smyth

A handwritten signature in black ink, appearing to read 'Smyth', is written over a horizontal line.

## Appendix A - Celina Reply Brief on Interim Rates

10 Year Forecast 2018-2027		CITY OF CELINA WATER/WASTEWATER COST OF SERVICE MODEL				
Rate Plan Period Total		Prior 2018	Year 1 2019	Year 2 2020	Year 3 2021	
Forecast Summary -- Inside City and Outside City Cost of Service Scenario: 2019 11 06 Scenario 2 -- WW Inverted Block						
1 ADOPTED RATE PLAN						
INSIDE CITY						
WI1 Residential Inside						
Monthly Minimum Charge -- 1st 2,000 Gallons						
3/4"		\$ 23.15	\$ 23.84	\$ 24.56	\$ 25.30	
Volume Rate/1,000 Gal						
2,001	10,000	5.08	5.21	5.37	5.53	
10,001	20,000	7.68	7.89	8.13	8.37	
20,001	30,000	9.02	9.29	9.57	9.86	
30,001	Above	13.02	13.41	13.81	14.23	
WI2 Commercial Inside						
Monthly Minimum Charge -- 1st 2,000 Gallons						
3/4"		\$ 27.81	\$ 28.64	\$ 29.50	\$ 30.39	
1"		46.67	50.13	51.63	53.18	
1 1/2"		97.34	100.26	103.27	106.37	
2"		155.74	160.41	165.22	170.18	
Volume Rate/1,000 Gal						
2,001	10,000	5.06	5.21	5.37	5.53	
10,001	20,000	7.66	7.89	8.13	8.37	
20,001	30,000	9.02	9.29	9.57	9.86	
30,001	Above	13.02	13.41	13.81	14.23	
OUTSIDE CITY						
WO1 Residential Outside						
Monthly Minimum Charge -- 1st 2,000 Gallons						
3/4"		\$ 34.72	\$ 35.77	\$ 36.84	\$ 37.95	
Volume Rate/1,000 Gal						
2,001	10,000	7.59	7.82	8.05	8.29	
10,001	20,000	11.49	11.84	12.19	12.56	
20,001	30,000	13.53	13.94	14.35	14.78	
30,001	Above	19.53	20.12	20.72	21.34	
Percent Greater than Inside		50.0%	50.0%	50.0%	50.0%	
WO2 Commercial Outside						
Monthly Minimum Charge -- 1st 2,000 Gallons						
3/4"		\$ 41.72	\$ 42.97	\$ 44.26	\$ 45.58	
1"		73.01	75.20	77.45	79.77	
1 1/2"		146.01	150.39	154.90	159.55	
2"		233.61	240.62	247.84	255.27	
Volume Rate/1,000 Gal						
2,001	10,000	\$ 7.59	\$ 7.82	\$ 8.05	\$ 8.29	
10,001	20,000	11.49	11.84	12.19	12.56	
20,001	30,000	13.53	13.94	14.35	14.78	
30,001	Above	19.53	20.12	20.72	21.34	
Percent Greater than Inside		50.0%	50.0%	50.0%	50.0%	

## Appendix A - Celina Reply Brief on Interim Rates

10 Year Forecast

2018-2027

CITY OF CELINA

WATER/WASTEWATER COST OF SERVICE MODEL

Rate Plan Period

Total

Prior

2018

Year 1

2019

Year 2

2020

Year 3

2021

Forecast Summary -- Inside City and Outside City Cost of Service

Scenario: 2019 11 06 Scenario 2 -- WW Inverted Block

2

TOTAL COST OF SERVICE AND REVENUE REQUIREMENT

CASH Basis -- Inside City

Operating Expenses	\$ 20,556,058	\$ 4,139,331	\$ 4,943,924	\$ 5,513,776	\$ 5,959,027
Capital Outlays	727,292	181,823	181,823	181,823	181,823
Transfers	1,503,659	359,415	370,198	381,304	392,743
Current Debt Service	5,016,320	1,278,533	1,285,388	1,248,679	1,203,620
Future Debt Service	5,542,668	-	1,187,714	1,187,714	3,187,239
Depreciation	-	-	-	-	-
Return	-	-	-	-	-
Total Cost of Service	33,345,997	5,959,203	7,969,047	8,513,296	10,904,451
Less Non-Rate Revenues	6,509,298	1,675,083	1,675,083	1,793,131	1,366,001
Net Revenue Requirement	26,836,699	4,284,120	6,293,965	6,720,165	9,538,450

UTILITY Basis -- Outside City

Operating Expenses	\$ 20,556,058	\$ 4,139,331	\$ 4,943,924	\$ 5,513,776	\$ 5,959,027
Capital Outlays	-	-	-	-	-
Transfers	1,503,659	359,415	370,198	381,304	392,743
Current Debt Service	-	-	-	-	-
Future Debt Service	-	-	-	-	-
Depreciation	7,323,385	1,360,462	1,541,769	2,109,132	2,312,022
Return	22,853,771	4,205,021	4,774,721	6,541,550	7,132,479
Total Cost of Service	52,036,874	10,064,230	11,630,612	14,545,761	15,796,270
Percent Greater than Cash Basis	56.1%	66.9%	45.9%	70.9%	44.9%
Less Non-Rate Revenues	6,509,298	1,675,083	1,675,083	1,793,131	1,366,001
Net Revenue Requirement	45,527,576	8,389,148	9,955,529	12,752,630	14,430,269
Percent Greater than Cash Basis	89.6%	95.8%	58.2%	89.0%	51.3%