



Control Number: 49225



Item Number: 65

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

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

FILED  
2020 FEB 23 PM 3:58  
PUC DOCKET NO. 49225

**ORDER NO. 3**  
**DENYING REQUEST FOR INTERIM RATES**

On March 15, 2019, the Outside City Ratepayers of the City of Celina (Ratepayers) filed an amended petition requesting that interim rates be set during the pendency of this rate appeal. This case was referred to the State Office of Administrative Hearings (SOAH) on December 10, 2019, and in SOAH Order No. 2, the Administrative Law Judges (ALJs) requested briefing from the parties on interim rates. Briefs were filed by the Ratepayers, City of Celina (City), and Public Utility Commission staff (Staff).

The rates at issue in this proceeding were adopted by ordinance on November 13, 2018,<sup>1</sup> and continued the City's practice of charging outside-city customers 1.5 times more than the rates for in-city customers. The increase for outside-city customers is approximately 3% per year over three years, with the first increase effective March 19, 2019.<sup>2</sup>

Under the Commission's rules, interim rates may be established "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."<sup>3</sup> Interim rates may not be set "lower than the authorized rates prior to the proposed increase nor higher than the requested rates."<sup>4</sup>

<sup>1</sup> The City subsequently corrected the effective date of the rates. *See* Notice of Corrected Effective Date (Apr. 5, 2019).

<sup>2</sup> *Id.* The Administrative Law Judges assume these facts for purposes of this interim ruling only and without prejudice to being controverted at the hearing on the merits.

<sup>3</sup> 16 Tex. Admin. Code (TAC) § 24.37(d).

<sup>4</sup> 16 TAC § 24.37(e).

In their request for interim rates, the Ratepayers allege that the use of a multiplier to calculate rates for outside-city customers is discriminatory, unjust, unreasonable, and not allowed under Texas law.<sup>5</sup> In support, they cite a 1989 Texas Water Commission decision finding that “[d]ifferent treatment of inside-city and outside-city municipal utility districts is discriminatory” and concluding that the use of a 1.25 multiplier for outside-city customers was unjust, unreasonable and discriminatory.<sup>6</sup> The Ratepayers request that interim rates be set for outside-city customers at the same rates charged to in-city customers, or in the alternative, at the rates charged to outside-city customers prior to the rate change. The Ratepayers contend that the proposed rates could result in unjust or unreasonable rates. Staff recommends, without elaboration, that interim rates be granted at the rate for outside-city customers prior to the rate change.<sup>7</sup>

In opposing the interim rate request, the City argues that the Ratepayers did not show that the existing rate would cause them unreasonable economic hardship and that in fact imposing interim rates would cause unreasonable economic hardship to the City. However, the Ratepayers do not argue that the rates would cause unreasonable economic hardship, only that the rates are unjust and unreasonable as a result of the 1.5 multiplier. The City further states that its rates, including the 1.5 differential for outside-city customers, are cost-based and that it will not fully recover the City’s costs until its third phase of the rate increase.<sup>8</sup> The City also asserts that its rate differential has existed for more than 20 years and that distinctions between classes of customers can be just and reasonable if there is a reasonable basis for the distinction.<sup>9</sup> Further, the City contends that the Ratepayers’ request to set rates for outside-city customers lower than their prior rates violates the Commission’s rule against setting interim rates lower than the rates prior to the proposed increase.

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<sup>5</sup> Petitioners’ Brief on Interim Rates at 5 (Feb. 4, 2020) (citing *In the Matter of the Complaints of Springwoods MUD, et al against the City of Austin*, Docket Nos. 7144-M, 7439-D, 7518-M, and 7466-M at Finding of Fact No. 45(f) (May 23, 1989)).

<sup>6</sup> *Id.*

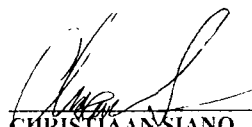
<sup>7</sup> Staff’s Initial Brief on Interim Rates at 2 (Feb. 4, 2020).

<sup>8</sup> City of Celina’s Reply Brief on Interim Rates at Appendix A (Feb. 11, 2020) (spreadsheet from its cost-of-service model indicating that the cost to serve outside-city customers is more than 50% higher than the cost to serve in-city customers).

<sup>9</sup> City of Celina’s Initial Brief in Opposition to Interim Rates at 6, 8 (citing *Black v. City of Killeen*, 78 S.W.3d 686, 699 (Tex. App.—Austin 2002, pet. denied)).

The ALJs are not persuaded that the Ratepayers have shown that interim rates are appropriate. Their sole basis for requesting interim rates is that the City's use of a multiplier in setting outside-city rates is unjust and unreasonable. The ALJs conclude that the Commission's rules do not permit interim rates to be set lower than the rate prior to the proposed increase *for this class*, and rolling the rates back to their pre-increase levels would not remove the disparity. Given that the City's rate differential has existed for more than 20 years and would be unappealable but for the recent passage of its rate-setting ordinance, the ALJs are not persuaded that its mere existence is unjust and unreasonable as a matter of law. The case cited by the Ratepayers found that a multiplier for outside-city rates was unjust and unreasonable because it was not supported by the cost to serve those customers,<sup>10</sup> a finding the ALJs are not prepared to make as a matter of law. Accordingly, the request for interim rates is **DENIED**.<sup>11</sup>

**SIGNED February 28, 2020.**



CHRISTIAAN STANO  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



CASSANDRA QUINN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

<sup>10</sup> *In the Matter of the Complaints of Springwoods MUD* at Finding of Fact No. 45.f.

<sup>11</sup> Because the request for interim rates is denied, the ALJs do not address the City's argument that setting interim rates would cause the City unreasonable economic hardship.