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DOCKET NO. 49367

PETITION BY OUT OF DISTRICT RATEPAYERS APPEALING THE WATER RATES ESTABLISHED BY THE EL PASO WATER CONTROL AND IMPROVEMENT DISTRICT NO.

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PUBLIC UTILITY COMMISSION
OF TEXAS

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COMMISSION STAFF'S PROPOSED LIST OF ISSUES

COMES NOW the Commission Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this this Proposed List of Issues. Staff recommends that the proposed issues included herein be adopted in the Commission's forthcoming preliminary order. In support thereof, Staff would show the following:

I. BACKGROUND

On March 22, 2019, out-of-district ratepayers (Ratepayers) of the District filed a petition contesting a rate action that was effective January 1, 2019. The petition was filed pursuant to 16 Tex. Admin Code (TAC) § 24.103 and Tex. Water Code (TWC) § 13.043.

On June 27, 2019, the Administrative Law Judge issued an Order of Referral, requesting a list of issues to be addressed in the docket by July 17, 2019. This pleading, therefore, is timely filed.

II. PROPOSED ISSUES TO BE ADDRESSED

Staff submits the following issues for consideration in this proceeding:

1. Did the petition appealing the rate change by the District 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? TWC § 13.043(c) and 16 TAC § 24.101(b).
 - b. What number of ratepayers had their rates changed? TWC §§ 13.043(c) and (d) and 16 TAC § 24.101(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 § 24.101(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 §§ 24.101(e)(6) and (h).

3. Do the retail water rates being charged by the District 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 District meet the requirements of TWC § 13.043(j), must this appeal be dismissed?²

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

5. Considering only the information available to the district's governing body 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 §§ 24.101(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 district 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 district's revenue requirement?

¹ 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)).

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.

6. What are the reasonable expenses incurred by the district in this proceeding? TWC § 13.043(e) and 16 TAC § 24.101(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 § 24.101(e)(3).
8. If the Commission establishes rates different than the rates set by the district'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 § 24.101(e)(4).

III. CONCLUSION

In accordance with the recommendations herein, Staff respectfully requests that the Commission issue a preliminary order including Staff's proposed issues to be addressed.

Dated: July 16, 2019

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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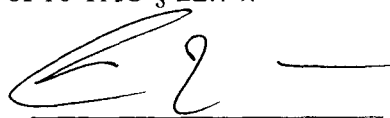


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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on this the 16th of July, 2019 in accordance with the requirements of 16 TAC § 22.74.



Creighton R. McMurray