



Control Number: 49367



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Addendum StartPage: 0

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PUBLIC HEARING CLEAR

OPEN MEETING COVER SHEET

DRAFT PRELIMINARY ORDER

MEETING DATE: August 1, 2019
DATE DELIVERED: August 8, 2019
AGENDA ITEM NO.: 7
CAPTION: Docket No. 49367; SOAH No. 473-19-5531
Petition by Out of District Ratepayers
Appealing the Water Rates Established by
the El Paso Water Control and Improvement
District No. 4
DESCRIPTION: Draft Preliminary Order

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Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

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

All Parties of Record

FROM: Corey Pemberton *CJP*
Commission Advising

RE: *Petition by Out of District Ratepayers Appealing the Water Rates Established by the El Paso Water Control and Improvement District No. 4, Docket No. 49367, SOAH Docket No. 473-19-5831.WS, Draft Preliminary Order, August 8, 2019 Open Meeting, Item No. 7*

DATE: August 1, 2019

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 August 8, 2019 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 August 8, 2019 open meeting.

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**PUC DOCKET NO. 49367
SOAH DOCKET NO. 473-19-5831.WS**

PETITION BY OUT OF DISTRICT	§	PUBLIC UTILITY COMMISSION
RATEPAYERS APPEALING THE	§	
WATER RATES ESTABLISHED BY	§	OF TEXAS
THE EL PASO WATER CONTROL	§	
AND IMPROVEMENT DISTRICT NO. 4	§	

DRAFT PRELIMINARY ORDER

On March 22, 2019, out-of-district ratepayers of El Paso County Water Control and Improvement District No. 4 filed a petition to appeal changes in water and sewer rates charged by the district effective January 1, 2019. The petition was filed under § 13.043(b)(4) of the Texas Water Code (TWC). This preliminary order identifies the issues that must be addressed in this matter.

Eighty-one ratepayers in the Mesa del Norte subdivision, whose residents compose the majority of the district's out-of-district residential customers, signed the petition. The petitioning ratepayers' appeal contends that the January 1, 2019 rate increase for out-of-district ratepayers is excessive. Specifically, the petitioning ratepayers assert that the five percent increase for both water utility and sewer utility service is unreasonable, unfair to residents of the Mesa del Norte subdivision, and unsupported by a factual basis indicating the necessity of such an increase. The appeal also contests the 74.9% differential base rate between in-district and out-of-district customers, as well as the differential rates charged for differing levels of usage, as arbitrary and capricious.

On May 6, 2019, Commission Staff recommended that the petition be found administratively complete. On June 27, 2019, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH). The petitioning ratepayers and the district were directed, and Commission Staff and other interested persons were permitted, to file by July 17, 2019, a list of issues to be addressed in the docket and identify any issues not to be addressed and any threshold legal or policy issues that should be addressed.

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.¹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed 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 Texas Administrative Code (TAC) §§ 24.101(b), (c), and (d); and 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 and sewer rates being charged petitioners by the district fulfill the requirements of TWC § 13.043(j)?²
 - 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?
 - i. What factors did the district consider in distinguishing out-of-district ratepayers from in-district ratepayers for purposes of establishing different customer classes?
 - ii. How does the type of customers within the out-of-district customer class differ from the type of customers within the in-district customer class?

¹ Tex. Gov't Code Ann. § 2003.049(e).

² See TWC § 13.043(j) (West 2008 & Supp. 2016); 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-district customer class differ from the type of water and sewer utility services provided to the in-district customer class?
 - iv. How do the costs of infrastructure, facilities, operations, capital improvements, and administrative services to provide service to the out-of-district customer class differ from those costs to provide service to the in-district customers?
 - v. How do the total revenues received by the district from out-of-district customers relative to the cost of service to that customer class differ from the total revenues received from in-district customers relative to the cost of service to that customer class?
4. If the rates being charged petitioners by the district meet the requirements of TWC § 13.043(j), must this appeal be dismissed?³

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

5. What information was available to the district at the time it made its decision to increase the water and sewer utility service rates? TWC § 13.043(e).
6. 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 and sewer service to the petitioners?
 - c. What is the appropriate allocation of the revenue to customer classes?

³ 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.

- d. What is the appropriate design of rates for each class to recover the district's revenue requirement?
7. 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?
8. 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).
9. If the Commission establishes rates different from 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 period should the refund or surcharge be in place? TWC § 13.043(e) and 16 TAC § 24.101(e)(4).

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 August 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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