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Chairman
Arthur C. D'Andrea
Commissioner
Shelly Botkin
Commissioner
John Paul Urban
Executive Director



Greg Abbott
Governor

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PUBLIC UTILITY COMMISSION
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Public Utility Commission of Texas

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

All Parties of Record

FROM: Hunter Burkhalter *HB*
Administrative Law Judge

RE: **Open Meeting of February 14, 2020**
Docket No. 49605 – *Application of Carroll Water Co., Inc. for a Price Index Rate Adjustment*

DATE: January 15, 2020

Enclosed is a copy of the Proposal for Decision in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Friday, February 14, 2020, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file corrections or exceptions to the Proposal for Decision on or before Thursday, February 6, 2020.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 49605

**APPLICATION OF CARROLL WATER § PUBLIC UTILITY COMMISSION
CO., INC. FOR A PRICE INDEX RATE §
ADJUSTMENT § OF TEXAS**

**PROPOSAL FOR DECISION
ON MOTION FOR SUMMARY DECISION**

In this matter, Carroll Water Co., Inc. seeks a price index rate adjustment for several subdivisions to which Carroll Water provides water service. On December 4, 2019, Commission Staff filed a motion for summary decision. In this proposal for decision (PFD), the administrative law judge (ALJ) finds that there is no genuine issue as to any material fact, that Commission Staff is entitled to a decision in its favor as a matter of law, and that Carroll Water's application for a price index rate adjustment should be denied.

I. Procedural History

On June 5, 2019, Carroll Water filed the petition in this matter. It seeks a price index rate adjustment for the Grande Casa, Spanish Grant, Emerald Forest, and Lakeview Ranchettes subdivisions.

On December 4, 2019, Commission Staff filed its motion for summary decision, arguing that Carroll Water serves more than 500 connections and, therefore, is prohibited by law from obtaining a price index adjustment.

Carroll Water did not file a response to Commission Staff's motion for summary decision.

In Order No. 5 filed on January 14, 2020, the ALJ admitted evidence proffered by Commission Staff in support of its motion for summary decision.

No hearing was held on the motion for summary decision.

II. Applicable Law

Under Texas Water Code (TWC) § 13.1872¹ and 16 Texas Administrative Code (TAC) § 24.49, a Class C utility may, through an expedited procedure, obtain an annual rate adjustment based on changes to the price index. Under TWC § 13.1872, a Class C utility is defined as a public utility that provides retail water or sewer service to fewer than 500 taps or connections.

Under 16 TAC § 22.182(a), the ALJ may grant a motion for summary decision on any or all issues if the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion. Under 16 TAC § 22.182(d), a hearing on the motion is not required. Under 16 TAC § 22.182(f), if all issues will be resolved by granting a motion for summary decision, the ALJ must issue a PFD.

III. Discussion and Analysis

Commission Staff contends that Carroll Water is not a Class C utility because it provides water service to more than 500 connections and, therefore, is not authorized to obtain an annual rate adjustment based on changes to the price index. As detailed below, the undisputed evidence in the administrative record demonstrates that Commission Staff is correct. Carroll Water included only four subdivisions in the application that is at issue in this docket, and the utility provides water service to less than 500 connections within those four subdivisions. There is, however, a fifth subdivision, Red Oak Community, to which Carroll Water also provides water service. When the connections served in the Red Oak Community are also counted, Carroll Water serves more than 500 connections.

In support of its motion for summary decision, Commission Staff provided an affidavit from Spencer English, a financial analyst in the Commission's Rate Regulation Division. Mr. English concluded that Carroll Water has more than 500 connections by reviewing various reports, copies of which are attached to his affidavit. The first report (Attachment SE-1 to Mr. English's affidavit) is a Drinking Water Watch report from the Texas Commission on

¹ Except where indicated otherwise, all cites to the Texas Water Code in this Proposal for Decision are to the version of the statutes in effect prior to September 1, 2019, which are applicable to this petition because this proceeding was commenced prior to that date. *See*, Act of May 25, 2019, 86th Leg., R.S., S.B. 700, §§ 13, 15.

Environmental Quality regarding Carroll Water. The report includes extensive data about each public water system (PWS) operated by Carroll Water. Among other things, the report identifies the number of connections served by each PWS as follows:

PWS No. (Subdivision)	No. of Service Connections
TX070056 (Red Oak Community Water Service)	112
TX070057 (Lakeview Ranchettes)	106
TX070058 (Emerald Forest)	63
TX070064 (Spanish Grant)	111
TX070063 (Grande Casa)	167
Total Connections:	559

The second report (Attachment SE-2 to Mr. English's affidavit) is Carroll Water's Water and Wastewater Utilities Annual Report for the year 2018 filed by the utility in Docket No. 48918.² In the report, Carroll Water states that it had a total of 590 water connections at the beginning of 2018, and 588 connections at the end of that year.

Finally, in a letter filed in this docket on August 27, 2019, Carroll Water's representative, Patty Hilton, stated that Carroll Water has a total of 471 connections in the four subdivisions included in the application in this docket (136 in Spanish Grant, 104 in Lakeview Ranchettes, 170 in Grande Casa, and 61 in Emerald Forest). Ms. Hilton admitted, however, that Carroll Water also provides water service to Red Oak Community subdivision. She explained that the utility did not include Red Oak Community in this request for price index rate adjustment because the subdivision lies within the boundaries of the City of Red Oak and, therefore, its rates are subject to approval by the city and outside the Commission's jurisdiction.

The evidence summarized above establishes that there is no genuine issue as to the material facts and that Commission Staff is entitled to a decision in its favor, as a matter of law.

² See also, *2018 Annual Reports of Water and Wastewater Utilities*, Docket No. 48918, Water and Wastewater Utilities Annual Report of Carroll Water Co., Inc. (June 19, 2019).

IV. Findings of Fact

The ALJ makes the following findings of fact.

1. Carroll Water operates, maintains, and controls facilities that provide water service under certificate of convenience and necessity number 11543, primarily in Ellis County.
2. On June 5, 2019, Carroll Water filed the petition at issue in this matter, seeking a price index rate adjustment for four of the five subdivisions to which the utility provides water service.
3. Carroll Water provides retail water service to more than 500 taps or connections.
4. On December 4, 2019, Commission Staff filed a motion for summary decision.
5. Carroll Water did not file a response to Commission Staff's motion for summary decision.
6. No hearing was held on the motion for summary decision.
7. In Order No. 5 filed on January 14, 2020, the ALJ admitted as evidence in the record of this proceeding the affidavit of Spencer English of the Commission's Rate Regulation Division, and all attachments, filed on December 4, 2019 as an attachment to Commission Staff's Motion for Summary Decision.

V. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has jurisdiction in this matter under TWC §§ 13.041 and 13.1872.
2. Carroll Water is a public utility as defined by TWC § 13.002(23).
3. Because it serves 500 or more water taps or connections, Carroll Water is not a Class C utility as defined by TWC § 13.002(4-c).
4. Because it is not a Class C utility, Carroll Water is not entitled to receive an annual rate adjustment based on changes in the price index under TWC § 13.1872.
5. Summary decision on all issues in a proceeding may be granted if the pleadings and evidence show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law. 16 TAC § 22.182(a).

6. A hearing on a motion for summary decision is not required. 16 TAC § 22.182(d).
7. If all issues will be resolved by granting a motion for summary decision, the ALJ must issue a PFD. 16 TAC § 22.182(f).
8. Commission Staff proved, by summary decision, that Carroll Water's petition should be denied.

VI. Ordering Provisions

In accordance with these findings of fact and conclusions of law, the ALJ proposes the following ordering paragraphs.

1. The Commission grants Commission Staff's motion for summary decision and denies the petition of Carroll Water.
2. The Commission denies all other motions, and any other requests for general or special relief if not expressly granted.

Signed at Austin, Texas the 15th day of January 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE