



Control Number: 49759



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DOCKET NO. 50085

RECEIVED

APPLICATION OF CASTLE WATER, §
INC. DBA HORSESHOE BEND WATER §
SYSTEM AND HORSESHOE BEND §
WATER COMPANY, FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN PARKER COUNTY §

BEFORE THE
2021 MAR -3 PM 12:02

PUBLIC UTILITY COMMISSION
FILING CLERK

OF TEXAS

DOCKET NO. 49759

APPLICATION OF MARK §
PATTERSON FOR TEMPORARY §
RATES FOR SERVICES PROVIDED §
FOR A NONFUNCTIONING UTILITY §
§

BEFORE THE
PUBLIC UTILITY COMMISSION

OF TEXAS

EXPLANATION OF DISAGREEMENT WITH PROPOSED TARIFF

COMES NOW, Horseshoe Bend Water Company LLC ("HBWC"), and files this Explanation of Disagreement with Proposed Tariff seeking continuation of existing Temporary Rates (hereinafter defined) without reduction by the amount of the temporary manager's fee of \$8.00 per connection per month.

I. EXPLANATORY NOTE

HBWC has not been admitted as a party to the proceeding in Docket No. 49759 but is a party in Docket No. 50085 before the Public Utility Commission ("Commission") under Texas Water Code §13.301 (Report of Sale, Merger, Etc.), pursuant to which HBWC has acquired the public water system which is the subject of this proceeding (the "*System*"). Pursuant to Texas Water Code §13.046(d), the temporary rates determined in Docket No. 49759 will be applied for

a “reasonable period” after the acquisition of a nonfunctioning retail water utility under HBWC’s ownership and thus HBWC has an interest in this proceeding. After consultation with staff of the Commission, HBWC is filing this Explanation of Disagreement with Proposed Tariff under both dockets.

II. BACKGROUND

On July 3, 2019, the Executive Director of the Texas Commission on Environmental Quality (the “**TCEQ**”) issued an Emergency Order, TCEQ Docket No. 2018-0923-UCR-E (the “**Emergency Order**”) pursuant to Tex. Water Code Chapters 5, 13 and 26 and 30 Tex. Admin. Code Chapters 35, 291 and 307 with respect to Castle Water Inc., and the Emergency Order appointed Mark Patterson (“**Patterson**”) as temporary manager of the System.

On July 17, 2019, Patterson provided notice in Commission Case No. 49759-1 that he would immediately begin charging temporary rates under Texas Water Code §13.046 and 16 Texas Administrative Code §24.147 because such rates were necessary to provide continuous and adequate service and requested that such emergency rates “remain in effect until this utility is in compliance with PUC and TCEQ rules.”¹ The temporary rates requested by Patterson were as follows:

Meter Size	Minimum Monthly Charge
¾”	\$42.00
1”	\$57.00
2”	\$175.00
Volumetric Charge (for all usage)	\$4.00 per 1,000 gallons

¹ Application of Mark Patterson for Temporary Rates for Services Provided for a Nonfunctioning Utility, Docket No. 49759, Application at 1 (July 17, 2019)

The above rates requested by Patterson pursuant to Case No. 49759-1 are referenced herein as the “*Temporary Rates*.”²

On June 22, 2020 the Commission filed an order in Docket No. 50847³ appointing Patterson as temporary manager of Castle Water.⁴ The Commission set Mr. Patterson’s compensation for his role as temporary manager at \$8.00 per connection per month by attributing a portion of the Temporary Rates Patterson was already charging to the hypothetical temporary management fee.

On January 13, 2021, Chairman DeAnn T. Walker filed two Commissioner Memoranda in Docket No. 49759 as follows: (1) a detailed legal analysis applicable to Items 3, 4 and 5 of the Open Meeting agenda (the “*General Memorandum*”) and (2) a companion memorandum which addressed Docket No. 49759 as Item 5 of the Open Meeting agenda (the “*Item 5 Memorandum*” and, together with the General Memorandum, the “*Memoranda*”).

On February 16, 2021, the Staff of the PUC transmitted via email a proposed map, tariff and consent forms to the parties to Docket No. 50085 (the “*Proposed Documents*”). In accordance with the Memoranda, the Proposed Documents included a proposed tariff with the following rates.

Meter Size	Minimum Monthly Charge
3/4" x 1/4"	\$34.00
1"	\$69.00
2"	\$167.00
Volumetric Charge (for all usage)	\$4.00 per 1,000 gallons

² Mr. Patterson filed supplements to this application on August 5 2019, August 28, 2019, October 1 2019, November 1, 2019, December 11 2019 march 31, 2020, April 2 2020 and June 17, 2020

³ Petition for an Order Appointing a Temporary Manager for Castle Water, Inc., dba Horseshoe Bend Water System, Docket No 50847, Order Appointing a Temporary Manager (Jun 22, 2020).

⁴ Mr. Patterson’s term of appointment as temporary manager under TCEQ Docket No. 2019-0923-UCR-E was scheduled to expire on June 27, 2020.

The above rates are referenced herein as the “*Proposed Rates.*” HBWC’s sole objection to the Proposed Rates is the reduction of the minimum monthly charge for the smallest meter size from \$42.00 per connection per month (as fixed by the Temporary Rates) to \$34.00 per connection per month (as fixed in the Proposed Rates) to account for the hypothetical \$8.00 per connection per month temporary manager’s fee.

On March 1, HBWC timely filed a consent form indicating it did not agree with the Proposed Documents.

While HBWC takes no position with respect to the conclusion in the Memoranda that the temporary manager should be compensated by reference to a separate temporary manager fee, HBWC believes the retroactive accounting for such fee in this instance is not consistent with the intent of the Memoranda and would be inequitable because it would reduce projected System revenue by approximately \$48,288 per annum and would create a projected shortfall over 12 months of approximately \$48,029 below the estimated cost of restoring the System to compliance.⁵

III. ANALYSIS

Section 13.046(a) is intended to establish procedures by rule to allow temporary rates to provide the revenue necessary to bring a nonfunctioning utility into compliance with TCEQ rules

As stated in the General Memorandum, “Section 13.046(a) is intended to establish procedures by rule to allow temporary rates to provide the revenue necessary to bring a nonfunctioning utility into compliance with TCEQ rules.” HBWC has previously provided the Commission with a copy of its Compliance Plan with the TCEQ which identifies \$103,281 in

⁵ HBWC has requested a 12 month continuation of the Temporary Rates from the effective date of the Compliance Plan (which was effective October 2, 2020).

estimated repair costs ("*Repair Costs*"). A copy of the Compliance Plan is attached hereto as Exhibit A (the "*Compliance Plan*").

The unmodified Temporary Rates come closest to approximating the estimated cost of bringing the System back into compliance with TCEQ rules

The projected annual revenue of the System under its existing tariff is approximately \$245,990. When added to the \$245,990 projected revenue under the System's existing tariff, the \$103,281 in Repair Costs required by the Compliance Plan suggest the target revenue for the System under temporary rates should be approximately \$349,271.⁶

The Temporary Rates put in place by Patterson with a minimum monthly charge of \$42.00 are estimated to generate approximately \$349,530 in annual revenue. However, after reduction for the hypothetical \$8.00 per connection per month temporary manager fee, the Proposed Rates are estimated to generate approximately \$301,242 in annual revenue. The reduction of the minimum monthly charge from \$42.00 to \$34.00 thus reduces projected revenue from \$349,530 (which is only \$259 higher than the amount suggested by adding estimated Repair Costs required by the Compliance Plan to the System's projected revenue under its existing tariff) to \$301,242 (which is \$48,029 below the amount suggested by adding Repair Costs to the System's projected revenue under its existing tariff).

The Item 5 Memorandum's proposed structure is sensible prospectively but the retroactive subtraction of a the \$8,00 per connection per month temporary manager's is inequitable in this instance

The Item 5 Memorandum recommends that the temporary manager compensation should be recovered through a separate rate. While that may be advisable prospectively, in this instance subtracting the \$8.00 per month per connection fee would be inequitable. As the party

⁶ \$245,990 (System's projected revenue under existing tariff) + \$103,281 (Repair Costs in Compliance Plan) = \$349,271

responsible for implementing the Compliance Plan. HBWC should not be subject to temporary rates which would generate less revenue than a temporary manager would receive and which would fail to account for the full estimated Repair Costs required by the Compliance Plan

The General Memorandum suggests “flexible requirements” which account for the fact “there may be little to no historical financial or operational records for the nonfunctioning utility.” Most temporary rate proceedings may not involve a detailed Compliance Plan in place. However, where a Compliance Plan is in place as in this instance, HBWC believes the flexible requirements posited by the Memoranda should allow for consideration of the Compliance Plan when considering what adjustments (if any) should be made to existing temporary rates when adopting those rates for continuation by a purchaser in an STM docket pursuant to Texas Water Code §13.046(d)

Eliminating this \$8.00 per connection per month reduction would allow the System’s customers to continue paying the rates to which they have become accustomed and which accurately reflect the estimated costs to bring the System into compliance with TCEQ rules in accordance with Section 13.046(a).

IV **REQUEST FOR MODIFICATION OF PROPOSED RATES**

It is clear that both Section 13.046(a) and the condition of the System require a temporary rate which generates adequate revenues to assist in returning the System to compliance. Moreover, the System’s customers have not objected to the Temporary Rates implemented by Patterson. HBWC hereby respectfully requests that the Proposed Rates be modified to provide for a minimum monthly charge of \$42.00 per connection per month prior to their continuation pursuant to Texas Water Code §13.046(d) in Docket No. 50085 and that such rates be continued

and expire on the first billing date after scheduled completion of the Compliance Plan on October 2, 2021.

HBWC has no other objection to the Proposed Documents.

Respectfully submitted,

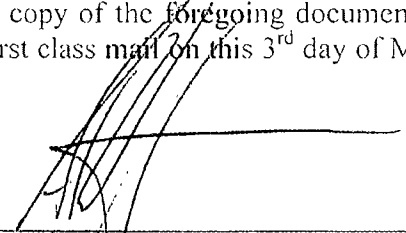
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**ATTORNEY FOR HORSESHOE BEND
WATER COMPANY LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by e-mail, fax, hand-delivery and/or regular, first class mail on this 3rd day of March 2021, to the parties of record.



ALAN E. WRIGHT

EXHIBIT A

Compliance Plan

[see attached]

Horseshoe Bend Water System

Compliance Plan For TCEQ Enforcement Order

PWS 1840002

CCN 10263

<u>Violation</u>	<u>Citation</u>	Proposed By <u>HBWC</u>	Approved By <u>TCEQ</u>	Estimated <u>Cost</u>	
Failure to equip air compressor injection lines with filtration	290.43(d)(3)	Resolved	NA	-	
Sanitary Control Easements	290.41(c)(1)(F)	6 Months	180 Days	380	
Plant Operations Manual	290.42(l)	6 Months	180 Days	380	
Monitoring Plan	290.121(a) and (b)	6 Months	180 Days	380	
Drought Contingency Plan	288.20(a)	6 Months	90 Days	760	
Customer Service Inspections	290.46(j)	6 Months	180 Days	190	
Backflow Prevention Assembly Test & Maintenance Forms	290.44(h)	6 Months	180 Days	190	
Ground storage tank and pressure tank inspection forms	290.46(m)(1)	6 Months	90 Days	5,380	*
Well calibration	290.46(s)(1)	6 Months	90 Days	380	
Well completion data	290.46(n)(2)	6 Months	180 Days	190	
Failure to maintain the door of the gas chlorine room at both plants	290.42(e)(5)	6 Months	30 Days	2,501	
Failure to provide working well meters (Well No. 1 and Well No. 5)	290.41(c)(3)(N)	6 Months	180 Days	4,000	
Failure to provide a well casing vent on Well #5	290.41(c)(3)(K)	6 Months	90 Days	250	
Failure to provide an all weather access road to each wellsite	290.41(c)(3)(P)	12 Months	365 Days	8,000	
Failure to maintain the GST at the Lower Pump Station free of holes	290.43(m)(4)	15 Months	210 Days	37,900	**
Failure to provide a production capacity of 0.6 gpm per connection	290.45(b)(1)(D)(i)	18 Months	365 Days	30,000	***
Failure to provide a service pump capacity of 0.6 gpm per connection	290.45(b)(1)(D)(iii)	18 Months	365 Days	12,400	****

* Assuming will need to replace both pressure tanks

** Includes the cost to repair, coat interior, and paint exterior

*** Received an ACR on November 24, 2020 for 0.44 gpm / connection

**** ACR received on November 24, 2020 requires 1.30 gpm / connection

103,281