



Control Number: 50721



Item Number: 230

PUC DOCKET NO. 50721
SOAH DOCKET NO. 473-21-0946.WS

2022 MAY -3 PM 12:18

APPLICATION OF CRYSTAL CLEAR
WATER, INC. FOR AUTHORITY TO
CHANGE RATES

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PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER REMANDING TO DOCKET MANAGEMENT

This Order addresses the application of Crystal Clear Water, Inc. for authority to change its water rates and associated tariff for water service. Crystal Clear, Commission Staff, and the Office of Public Utility Counsel (OPUC) filed a revised unanimous agreement between themselves on March 7, 2022. The agreement is based on a black-box revenue requirement. As discussed in this Order, the Commission does not approve the agreed rates because of concerns related to affiliate transactions, the notice provided to customers, and the rate-case-expense surcharge. Instead, the Commission remands this proceeding to Docket Management to enable the parties to address the Commission's concerns.

Affiliate Transactions

Affiliate transactions are unique: The Texas Water Code prohibits the Commission from allowing “[p]ayment to affiliated interests for costs of any services, or any property, right or thing, or for interest expenses . . . either as capital cost or as expense except to the extent that the [Commission] finds that payment to be reasonable and necessary.”¹ To make a finding of reasonableness and necessity, the Commission is required to “include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations.”² Thus, without evidence in the record that would allow the Commission to make these statutorily required findings, the Commission is prohibited from including such items in a utility's rates. Utilities are still required to comply with the requirements of the law even if the parties enter into an agreement.

¹ Texas Water Code (TWC) § 13.185(e).

² *Id.*

The definition of *affiliated interest* or *affiliate* includes “any person who is an officer or director of a utility” and “any corporation 5% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5% or more of the voting securities of any utility”³ Crystal Clear submitted an affidavit stating that it has no affiliates, but the evidence in the record shows otherwise. First, there is no doubt that Robert Payne as the utility’s president and sole owner is an affiliate of Crystal Clear. In addition, the record references other entities such as Robert Payne Agri-Business and RP Farm Equipment, LLC that appear to be affiliates based on filings in this proceeding and public filings on the Texas secretary of state’s website. And there is no doubt that there were transactions between affiliates and the utility.

The record contains a 2019 promissory note from Mr. Payne to the utility for a 20-year loan of more than \$500,000. The spreadsheet attached to the promissory note, though, suggests that the alleged loan has been in place in one form or another since 1997. The spreadsheet shows no payments on the alleged loan from 1997 through 2006 and shows inconsistent payments since then. The spreadsheet shows the loan amount increasing for what may have been capital investments and to purchase new water systems.

The 2019 promissory note itself does not reference any history but stands as a \$513,250.82 loan with a 20-year term, a 6% interest rate, and an escalation to 18% interest if the utility defaults. It is not clear whether the alleged loan has formally existed since 1997 or whether some or all of the alleged loan is more accurately characterized as a capital contribution to the corporation. There is also no explanation for the utility’s failure to make payments and thus its liability for interest on unpaid interest. The origin, validity, payment history, terms, and use of this alleged loan all need to be more closely examined and explained. Because the alleged loan is an affiliate transaction, any portion of it to be included in rates must be found by the Commission to be reasonable and necessary and compliant with the affiliate standards set forth in TWC § 13.185(e).

In addition, the record references other transactions that appear to be with affiliates. For example, the application contains an invoice for Crystal Clear’s rental of a backhoe from RP Farm Equipment, LLC. The record also states that Crystal Clear shares basic operating expenses such

³ TWC § 13.002(2)(D), (E)

as rent and utilities with other business entities related to Mr. Payne. These facts suggest other affiliate transactions, but the record in this proceeding is not adequate for the Commission to determine which transactions are in fact subject to TWC § 13.185(e) and, if so, to make the findings the Commission is required to make.

Because the agreed revenue requirement is a black box, the Commission is not able to determine what, if any, payments from Crystal Clear to affiliates are included in the agreed rates. Before the Commission approves rates for this utility, it needs more transparency regarding what is included in the revenue requirement, in particular any affiliate payments that are included in the revenue requirement and the rates to be approved. The Commission needs substantial additional information to make the findings required by Texas Water Code § 13.185(e) for any affiliate payments included in the revenue requirement. On remand, Crystal Clear must identify all affiliates and identify all affiliate payments during the test year for costs or expenses included in its proposed rates. Further, besides addressing the affiliate issues in the test year, the parties should consider safeguards for this utility and its affiliates—such as agreements between the affiliates—as the Commission has approved in other water rate proceedings.⁴

Notice to Customers

The Commission also directs Commission Staff to closely examine the notice that was issued for the proposed tariff fees in this proceeding and in other water rate cases. A change in fees is a change in rates, and customers must receive notice of any fees that are being changed or added. The standardized notice form expressly provides for supplementation to address fees that are not listed in the form. Because there is no good-cause exception for statutory requirements, to the extent that notice was not provided to customers, either the rates cannot be changed, or notice must be reissued.

Rate-Case-Expense Surcharge

The Commission acknowledges that the parties' agreement on rate-case expenses may change on remand, but any agreement or proposal for decision that comes before the Commission for action in this docket must specify the actual rate and tariff provisions for which the parties seek

⁴ E.g., *Application of W.E. Vlasek for Authority to Change Rates*, Docket No. 48640, Order, Findings of Fact Nos. 65–70 and Ordering Paragraph 5 (May 14, 2020); *Application of Kendall West Utility, LLC for Authority to Change Rates*, Docket No. 49887, Order, Findings of Fact Nos. 62–63 and Ordering Paragraphs 7–8 (July 2, 2021).

approval. Such details should not be deferred to a compliance docket. And if the agreement or proposal for decision includes recovery of rate-case expenses through a date certain, there needs to be clarity whether rate-case expenses after that date are being disallowed or deferred to another proceeding.

List of Specific Questions

Based on the general topics discussed above, the following are specific questions that the parties must address on remand to Docket Management. The list is not exhaustive. Conclusory responses to support a black-box agreement are not sufficient. The parties must explain what is included in the revenue requirement and the rates to be approved and must provide sufficient evidence for the Commission to make the findings it is required to make for any affiliate payments. Further, to the extent that Crystal Clear is required to amend its application or reissue notice to adequately address the Commission's concerns, Crystal Clear must do so.

Questions regarding affiliates

1. What businesses other than Crystal Clear that were owned or operated by Robert Payne received payments from Crystal Clear during the test year?
2. In what other businesses, if any, does Robert Payne have an ownership interest or at least five percent of the voting securities under TWC §13.002(2)(D)?
 - a. What is the business form of each of those entities? What is the charter or authorization number, the date the business was formed, and the dates any changes were made?
 - b. What ownership interest does Mr. Payne have in RP AG, LLC; RP AG Equipment, LLC; and RP Farm Equipment, LLC? Is Mr. Payne an officer or director of any of these entities?
 - c. What is the legal name of Robert Payne Agri-Business? Is it RP AG, LLC?
 - d. Who are the officers and directors of the entities in which Mr. Payne has an ownership interest or over which Mr. Payne has operational control?
 - e. For each entity identified above or identified in a response to one of the questions above, identify all payments or transactions to or from Crystal Clear that are included in the proposed rates or agreed rates. Further, address in detail how those payments meet the requirements of TWC § 13.185(e).
3. Is any part of the alleged loan from Robert Payne to Crystal Clear included in the proposed rates? In the agreed rates? If so, please address the following:

- a. What documentation related to the loan exists prior to the 2019 promissory note?
 - b. What portion, if any, of the alleged loan is more appropriately characterized as a capital contribution to the corporation?
 - c. What documentation, if any, is there of increases to the loan principal such as amended or restated promissory notes?
 - d. What evidence is there of the increase in the amount owed from \$513,250.82 in July 2019 to \$535,294.42 by the end of 2019?
 - e. What evidence is there that any portion of the alleged loan amount is just, reasonable, and necessary for utility operations?
 - f. Was it reasonable and prudent for Crystal Clear to take out the alleged loan?
 - g. For what purposes was the alleged loan originally intended?
 - h. Did Crystal Clear seek a loan from anyone other than Mr. Payne? If so, on what terms?
 - i. If the alleged loan is viable, is it reasonable for the utility not to have made payments on the note? If not, how should that fact be reflected in allowable costs?
 - j. Was it reasonable for the utility to continue taking out loans from Mr. Payne, especially when no payments were made on the alleged loan for 10 years, interest on unpaid interest accumulated for many years, and payments have sometimes been inconsistent when they were made?
 - k. Was it reasonable to increase the loan amount to acquire new systems?
 - l. What evidence is there of what the loaned funds have been used for?
 - m. Were any of the loaned funds used to address the Texas Commission on Environmental Quality's recommendations as listed in the application addendum filed on August 19, 2020?
 - n. What evidence is there that the 6% interest rate, the clause that allows for the escalation of interest to 18%, and the 20-year term are reasonable?
4. What costs for which Crystal Clear is seeking recovery through rates in this proceeding are allocated between Crystal Clear and Robert Payne's other businesses or his personal use? For example, electricity, water, sewer sanitation, gas, phone, internet, cell phone?
 5. With respect to any payments subject to the requirements of TWC § 13.185(e) and included in the agreed rates, what evidence supports the findings and conclusions necessary for the Commission to comply with TWC § 13.185(e)?

6. What prospective safeguards, reporting, or accounting practices should the Commission require to ensure that affiliate costs are accounted for correctly in the future?
 - a. Should the Commission require written agreements between Crystal Clear and its affiliates?

Question regarding notice

7. Did Crystal Clear provide notice to customers of all changes in fees, new fees, and the proposed consolidated rates?

Questions regarding rate-case expenses

8. If an agreement between the parties or a proposal for decision provides for rate-case expenses through a date certain, will any remaining amount incurred after that date be disallowed or deferred to a future proceeding?
9. What is the monthly rate per connection for the rate-case-expense surcharge?
10. What is the associated tariff language for the rate-case-expense surcharge?

Signed at Austin, Texas the 3rd day of May 2022.

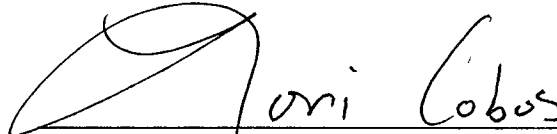
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