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DOCKET NO. 50721

APPLICATION OF CRYSTAL CLEAR	§	PUBLIC UTILITY COMMISSION
WATER, INC. FOR AUTHORITY TO	§	
CHANGE RATES	§	OF TEXAS

CRYSTAL CLEAR WATER, INC.'S RESPONSE TO ORDER NO. 29

COMES NOW, Crystal Clear Water, Inc. (Crystal Clear), by and through its undersigned attorneys of record, and hereby files its Response to Order No. 29 (Response).

I. BACKGROUND

On April 8, 2020, Crystal Clear, a Class D utility, filed an application with the Public Utility Commission (Commission) for authority to change rates (the Application) in accordance with Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) §§ 25.25-33 with a 2019 test year. The State Office of Administrative Hearings (SOAH) issued Order No. 4 Adopting Interim Rates on August 30, 2021. On September 3, 2021, the Parties filed a Joint Motion to Admit Evidence and Remand to the Public Utility Commission, including a Unanimous Stipulation and Settlement Agreement and Joint Proposed Final Order. The Commission rejected the Parties' settlement since the Office of Public Utility Counsel was not a party to the settlement, and on March 7, 2022, the Parties filed another Joint Motion to Admit Additional Evidence with a Revised Unanimous Stipulation and Settlement Agreement and Revised Joint Proposed Final Order. On May 3, 2022, the Commission issued an Order Remanding to Docket Management, identifying concerns about affiliate transactions, including the loan from Mr. Robert Payne, President of Crystal Clear. Crystal Clear filed its Response to the Order Remanding to Docket Management on August 1, 2022 and a Supplemental Response on September 12, 2022. On March 8, 2023, the Parties filed a Second Joint Motion to Admit Additional Evidence, including a Second Revised Unanimous Stipulation and Settlement Agreement and a Second Revised Joint Proposed Order.

On June 5, 2023, the Commission Administrative Law Judge (ALJ) issued Order No. 29 requesting additional detail about (1) Crystal Clear's affiliates and payments thereto, (2) the reasonableness of continuing to take out loans, and (3) notice to customers regarding changing fees. Order No. 29 established a deadline of June 30, 2023, for Crystal Clear to provide responses. Therefore, this Response is timely filed.

II. RESPONSE

A. Evidence of Affiliate Expenses

Order No. 29 states that “[w]hile Crystal Clear provided general costs and expenses paid to affiliates, the ALJ was unable to locate costs or expenses specifically paid to affiliates during the test year.” To address the ALJ’s request, Crystal Clear believes that such information can be found in its Response to Order Remanding to Docket Management and Motion to Admit Additional Evidence, where it states that, amongst other businesses owned by Mr. Robert Payne, it “has only had transactions with RP AG, LLC (office rent and expenses) and RP Farm Equipment, LLC (equipment rental).”¹ Provided however, the cost for office rent and office expenses were included in the rate base calculations while the equipment rental was used to calculate the tap fee.

In particular, Crystal Clear notes that it split office rent and expenses with RP AG, LLC. When Crystal Clear filed its Application, Mr. Payne explained that he previously absorbed office rent and expenses so these expenses were listed under Known & Measurables rather than test year expenses.² The Application estimated \$500/month for rent, \$75/month for water, \$80/month for phone, and \$75/month for office electric.³ Crystal Clear did not have a written lease with RP AG, LLC during the test year, but it has since executed a lease memorializing the \$500/month rent included in the Application.⁴ In its response to Commission Staff’s Request for Information (RFI) 2-12, Crystal Clear estimated that it was responsible for 50% of the office expenses (i.e. electricity, water, sewage, sanitation, gas, internet, and office phone) based on its approximate use of the office space, and 10-20% for cell phone expenses because it accounts for less of the usage.⁵ Crystal Clear produced invoices for electric, water, sewer, sanitation, gas, office phone, internet, and cell phone expenses incurred during the test year in response to Staff RFI 2-12.⁶ According to such invoices, the office expenses during the test year were \$5,785.10, and 50% of that (\$2,892.55)

¹ Crystal Clear Water, Inc.’s Response to Order Remanding to Docket Management and Motion to Admit Additional Evidence at 3–6 (Aug. 1, 2022). The response herein slightly differs from the Response to Order Remanding to Docket Management because Crystal Clear has since clarified that the equipment rentals were not included in the Revenue Requirement and information was provided just to support the proposed tap fee. However, this clarification does not affect the proposed rates because the equipment rentals were originally not included in the Revenue Requirement.

² Crystal Clear Water, Inc. Revised Water Rate Increase with Attachments, Attachment #2 (Aug. 19, 2020).

³ *Id.*

⁴ Crystal Clear Water, Inc.’s Motion to Admit Evidence and Dismiss Intervenor, Exhibit C (March 1, 2023).

⁵ *Id.* at 126.

⁶ Crystal Clear Water, Inc.’s Response to Commission Staff’s Second Request for Information, at 134–189 (Apr. 26, 2021).

should be allocated to Crystal Clear; and the cell phone expenses during the test year were \$3,572.15, and at least 10% of that (\$357.22) should be allocated to Crystal Clear. Therefore, although the invoices show that Crystal Clear should have paid \$9,249.77 in office rent and expenses for the test year, Crystal Clear estimated only \$7,860.00 under Known & Measurables. Again, these expenses were listed under Known & Measurables because Mr. Payne had historically absorbed these expenses, but then realized that they should be included as operating expenses of Crystal Clear and thus included it under Known & Measurables.

Further, Crystal Clear rents heavy equipment from RP Farm Equipment, LLC, but these costs were not included in the Revenue Requirement for the test year. Since no payments were made, there were no equipment rental expenses during the test year that were included under the operating expenses in the Application. The invoice from RP Farm Equipment, LLC for backhoe rental was included with the Application for the purposes of supporting Crystal Clear's proposed tap fee.

B. Order Remanding to Docket Management Question 3(j):

Order No. 29 states that the ALJ was unable to locate a specific answer to Question 3(j) from the Order Remanding to Docket Management. Question 3(j) states: "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?"⁷ It was reasonable for Crystal Clear to continue taking out loans from Mr. Payne, the President of Crystal Clear. Mr. Payne did not believe that Crystal Clear could obtain financing from another lender at the same or with better terms, and therefore, Crystal Clear continued to take out loans from Mr. Payne.

C. Notice of Final Rates and Fees

Order No. 29 states that it is unclear "whether customers received notice reflecting the updated rates and fees due to settlement negotiations or whether customers received notice of all other fees to be implemented as a result of this proceeding." Crystal Clear believes that it has provided its customers, and especially the intervenors, sufficient notice of the updated rates and fees contemplated by this proceeding. First, all customers were given the statutory and Commission regulation required notice of the Application around August 2020, and both PUC Staff and the ALJ found that such notice was found sufficient. All customers had the opportunity

⁷ Order Remanding to Docket Management at 5 (May 3, 2022).

and information to intervene and participate in settlement negotiations. Once the group of intervenors were set, they engaged in settlement discussions. The Parties reached a settlement in principle on the rates and fees in August 2021. Commission Staff filed an Unopposed Motion for Interim Rates on August 27, 2021 based upon the rates and fees agreed to during mediation.⁸ The SOAH ALJ issued an Order adopting the interim rates on August 30, 2021, Commission Staff filed a copy of the Interim Tariff on September 9, 2021,⁹ and Crystal Clear notified all customers (not just the intervenors) of the interim rates. The rates and fees included in the settlement agreements and Proposed Orders filed with the Commission are the same rates and fees in the Interim Tariff.¹⁰ Plus, all customers have been paying these rates and fees for nearly two years as Crystal Clear, the intervenors, and Commission Staff resolve the additional issues raised by the Commissioners. Therefore, Crystal Clear does not believe it is necessary to notify all customers of the rates in the Second Revised Unanimous Stipulation and Settlement Agreement filed on March 8, 2023.

Further, beyond the statutory and PUC-required notice of the rate change application, Crystal Clear is unaware of any additional notice required for non-intervenor customers. To be clear, TWC § 13.1871 and 16 TAC § 24.27 only require utilities to notify customers of the application and proposed rates using the Commission-approved form. The Commission's final orders in rate cases typically do not include any ordering paragraphs that would require a utility to notify customers of the approved rates.¹¹

III. CONCLUSION AND PRAYER

For these reasons, Crystal Clear respectfully requests that the Commission accept this Response, issue a Proposed Order, and grant all other and further relief to which Crystal Clear may be entitled.

⁸ Unopposed Motion for Interim Rates (Aug. 27, 2021).

⁹ SOAH Order No. 4 (Aug. 30, 2021);

¹⁰ Joint Motion to Admit Evidence and Remand to the Public Utility Commission at 49–79 (Sept. 3, 2021); Interim Water Utility Tariff (Sept. 9, 2021); Joint Motion to Admit Additional Evidence at 35–50 (Mar. 7, 2022); Second Joint Motion to Admit Additional Evidence at 44–74 (Mar. 8, 2023).

¹¹ See, e.g., *Application of MSFC Waste Water, Inc. for Authority to Change Rates*, Docket No. 50569, Order at 7–8 (Jan. 31, 2022); *Application of Northtown Acres Water Supply for Authority to Change Rates*, Docket No. 48819, Order at 12–13 (Apr. 4, 2022).

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE &
TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)



DAVID J. KLEIN
State Bar No. 24041257
dklein@lglawfirm.com

DANIELLE LAM
State Bar No. 24121709
dlam@lglawfirm.com

**ATTORNEYS FOR CRYSTAL CLEAR
WATER, INC.**

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via first class mail or electronic mail on June 30, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.



David J. Klein