



Filing Receipt

Filing Date - 2023-09-18 12:52:50 PM

Control Number - 50721

Item Number - 287

Kathleen Jackson
Interim Chair
Will McAdams
Commissioner
Lori Cobos
Commissioner
Jimmy Glotfelty
Commissioner



Greg Abbott
Governor
Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

TO: Shelah Cisneros
Commission Counsel

All Parties of Record

FROM: Katie Moore Marx *KMM*
Administrative Law Judge

RE: **Docket No. 50721** – *Application of Crystal Clear Water, Inc. for Authority to Change Rates*

DATE: September 18, 2023

On August 22, 2023, I filed a Revised Proposed Order in the above-styled and numbered docket.

On September 5, 2023, Commission Staff and Crystal Clear Water, Inc. each filed corrections to the Revised Proposed Order.

I agree in part with the proposed corrections. Crystal Clear and Commission Staff recommended several corrections that, for various reasons, I decline to adopt as written. However, some proposed corrections highlight the need for clarification in particular areas. Therefore, I have made the following changes for accuracy and clarity:

Findings of Fact

1. Crystal Clear is a Texas ~~non-profit~~ corporation registered with the Texas secretary of state under filing number 1552991400.
14. On April 15 and 26, May 12, and November 21, 2021, March 7, August 1, September 12 and 15, and November 22, 2022, and January 20, March 1 and 8, and June 30, 2023, Crystal Clear filed additional information to supplement the application.
25. In Order No. 2 filed May 18, 2020, the Commission ~~administrative law judge (ALJ)~~ granted the motions to intervene of ratepayers...



28. In Order No. 9 filed on September 17, 2020, the Commission ALJ granted the motions to intervene of ratepayers Gary Fossett, Patrick and Renee Cauley, Glenn Sammons, Leonard and Janice McCain, Joe and Linda Howard, Nicholas P. Kuhn, Jr., Carl Montgomery, Sam Wells, Krist and Jeffrey Hall, and Troy and Janna Spies.
69. Mr. Payne is the owner and director of RP AG, RP Farm Equipment, and RP AG Equipment, ~~RP Custom Farming, Bosque Car Wash, and RP Kan Farm~~. Mr. Payne is the sole owner of Bosque Car Wash and RP Kan Farm. Mr. Payne is a director of RP Custom Farming, ~~RP AG, RP Farm Equipment, and RP AG Equipment~~. Janice Gacke is a manager of RP AG, RP Farm Equipment, RP AG Equipment, and RP Custom Farming.
76. In the Commissioner's Order Remanding to Docket Management, the Commission posed specific questions regarding the loan from Mr. Payne to Crystal Clear. The parties' responses follow. Commission Staff asserts that many of the details contained in the responses to the Commission's questions regarding the loan from Mr. Payne to Crystal Clear were not discussed during negotiations and are not part of the second revised agreement.
77. The loan from Mr. Payne to Crystal Clear is included in the agreed rates through original cost and depreciation.
78. Promissory notes memorializing the loans from Mr. Payne to Crystal Clear were executed in 2005 and 2018 and were replaced by a promissory note executed in 2019, as amended in 2022 ~~and an amendment to the 2019 promissory note, also executed in 2019~~. There are limited records prior to 2005; however, Crystal Clear asserts that Mr. Payne initially lent funds to Crystal Clear in 1997 to finance the design and construction of the Whispering Ridge public water system. Between 1997 and 2005, Mr. Payne ~~has~~ made additional loans to Crystal Clear to finance the acquisition of and repairs to additional public water systems.
79. Crystal Clear asserts that, appropriately, no ~~No~~ portion of the loans is ~~appropriately~~ characterized as a capital contribution to the corporation because Mr. Payne's returns from Crystal Clear are based on the terms of the loan, not the sale of any equity or dividends.

82. Crystal Clear asserts that the ~~The~~ list of capital investments and the amount financed by the loan show that the loan amount is just, reasonable, and necessary for utility operations.
83. Crystal Clear asserts that it ~~It~~ was reasonable and prudent for Crystal Clear to obtain the loan from Mr. Payne because the loan funds have been used to acquire new systems, specifically Airport and Lakeline Acres, and to implement improvements recommended by the Texas Commission on Environmental Quality (TCEQ).
86. Although the loan is viable, Crystal Clear asserts that it is reasonable for Crystal Clear to not have made payments on the loan because Crystal Clear did not have the funds to make payments to Mr. Payne from 2005 through 2018 and since 2020. Due to its persistently low rates, Crystal Clear has been operating at a loss for many years. As the loan is a current debt, the loan is reflected in allowable costs even if payments cannot be made and Crystal Clear will ensure that the loan is recorded under long-term liabilities in its accounts.
87. Crystal Clear asserts that it ~~It~~ was reasonable for Crystal Clear to continue to obtain loans from Mr. Payne, even when no payments are being made and interest on unpaid amounts is accumulating, because Mr. Payne did not believe Crystal Clear could obtain financing from another lender at similar or better terms.
88. Crystal Clear asserts that it ~~It~~ was reasonable to increase the loan amount to acquire new systems. Specifically, Mr. Payne believed the acquisition of Airport, Lakeline Acres, and Glenshores, and the resulting additional revenue would help fund Crystal Clear's operations.
89. Crystal Clear asserts that the ~~The~~ loaned funds are for costs related to ~~have been used to build the Whispering Ridge public water system, acquire the Airport, Lakeline Acres, and Glenshores public water systems, removing~~ the well pump in Lakeline Acres, and ~~making~~ other improvements and repairs in an effort to comply with TCEQ requirements. Crystal Clear provided copies of checks from 1997 and 1998 showing payments for operations and maintenance services for the Whispering Ridge public water system and a bill of sale for the Airport public water system.

90. Crystal Clear asserts that ~~A~~ portion of the loaned funds were used to address the TCEQ's recommendations listed in the application addendum filed on August 19, 2020.
91. Crystal Clear asserts that the ~~The~~ 6% interest rate, the clause that allows interest to escalate to 18%, and the 20-year term of the loan are reasonable as shown by a comparison to Docket No. 50944 in which the Commission approved a 6.17% cost of debt for a fixed rate term loan for a utility with a similar debt-to-equity capital structure as Crystal Clear. Commission Staff did not comment on the reasonableness of the interest rate, escalatory clause, or 20-year term of the loan. Mr. Payne has never collected on the loan at the higher 18% interest rate and the ~~July 1, 2019~~ amendment to the promissory note, executed on August 28, 2022, removes the 18% escalation provision in favor of a late fee.
94. Payments subject to TWC § 13.185(e) and included in the agreed rates are shown to be reasonable and necessary through a comparison of price quotes submitted for leasing comparable office and warehouse space and equipment. Renting office and warehouse space and equipment is a typical expense for a utility. Neither RP AG nor RP Farm Equipment lease office and warehouse space or equipment to any other entity, so Crystal Clear is unable to show comparisons to other transactions of RP AG or RP Farm Equipment. Crystal Clear filed quotes for comparable office and warehouse space and equipment rentals showing that Crystal Clear leases from RP AG and RP Farm Equipment for less than the going market rate.
126. c. an amendment to the ~~2019~~ promissory note ~~dated July 1, 2019~~ executed on August 28, 2022, attached as exhibit C to Crystal Clear's supplemental response filed on September 12, 2022;

Conclusions of Law

14. The payments made to Crystal Clear's affiliates for office and warehouse leases, office expenses, cell phone expenses, and equipment rentals are reasonable and necessary under TWC § 13.185(e).

20. There were no unreasonable payments to affiliated interests for costs of any services under TWC § 13.185(e).

All conclusions of law have been correctly renumbered.

I disagree with Crystal Clear and Commission Staff's proposed corrections to the following:

Findings of Fact

I decline to amend Finding of Fact 29 to change "Krist Hall" to "Kristi Hall" because the intervenor forms filled out by Krist and Jeffrey Hall show that the correct spelling is "Krist."

I decline to amend or delete Findings of Fact 65, 67, 78, 81, 82, 84, 86, 87, 89, and 91 because they are direct answers to one of the questions posed in the Commissioners' May 3, 2022 Order Remanding to Docket Management.

I decline to amend Finding of Fact 78, other than to correct the date of the amended promissory note, due to lack of documentation in the record.

I decline to add the Glenshores public water system to Finding of Fact 83 because Crystal Clear did not provide evidence of the acquisition of the Glenshores public water system.

The Corrected Revised Proposed Order is ready for the Commission's consideration.

DOCKET NO. 50721

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

CORRECTED REVISED PROPOSED ORDER

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 filed an unopposed second revised agreement between the parties to this proceeding. The Commission approves Crystal Clear's changes to its water rates and associated tariff, as modified by the second revised agreement, to the extent provided in this Order.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Crystal Clear is a Texas corporation registered with the Texas secretary of state under filing number 152991400.
2. Crystal Clear is solely owned by Robert Payne.
3. Crystal Clear owns and operates for compensation in Texas facilities and equipment for the transmission, storage, distribution, sale, or provision of potable water to the public in Bosque County.
4. As of December 31, 2019, Crystal Clear served a total of 230 active water connections under certificate of convenience and necessity (CCN) number 12997.
5. The following are the public water systems which Crystal Clear operates and the counties in which those systems are located:

PWS #	Subdivision/Facility Name	County
TX0180025	Lakeline Acres	Bosque
TX0180030	Glenshores	Bosque
TX0180032	Airport	Bosque
TX0180081	Whispering Ridge	Bosque

Application

6. On April 8, 2020, Crystal Clear filed an application to change its water rates and associated tariff for its service area in Bosque County under Texas Water Code (TWC) § 13.1872.
7. Crystal Clear's application was based on a historical test year ending December 31, 2019, adjusted for known and measurable changes.
8. In the application, Crystal Clear requested a revenue requirement of \$175,506 and a rate of return of 15% with a proposed effective date of July 1, 2020.
9. On April 23, 2020, Crystal Clear filed additional information to supplement the application.
10. In Order No. 4 filed on June 4, 2020, the Commission administrative law judge (ALJ) found Crystal Clear's rate application administratively incomplete, established an opportunity to cure the deficiency, and suspended the effective date.
11. On August 19, 2020, Crystal Clear filed a revised application.
12. In the revised application, Crystal Clear requested a revenue requirement of \$258,162 and a rate of return of 15%, with a proposed effective date of December 1, 2020.
13. In Order No. 8 filed on September 4, 2020, the Commission ALJ found Crystal Clear's revised application administratively complete and suspended the effective date of the rate change for 265 days from the proposed effective date of December 1, 2020, to August 23, 2021.
14. On April 15 and 26, May 12, and November 21, 2021, March 7, August 1, September 12 and 15, and November 22, 2022, and January 20, March 1 and 8, and June 30, 2023, Crystal Clear filed additional information to supplement the application.

Notice

15. On April 8, 2020, Crystal Clear filed the affidavit of Robert Payne, the owner of Crystal Clear, who attested that on or about May 5, 2020, Crystal Clear provided notice of the application by mail to each customer or other affected party.
16. In Order No. 4 filed on June 4, 2020, the Commission ALJ found Crystal Clear's notice of the application dated on or about May 5, 2020, insufficient.

17. On August 19, 2020, Crystal Clear filed a second affidavit of Mr. Payne, who attested that Crystal Clear provided notice of the application by mail to each customer or other affected party on or about August 19, 2020.
18. In Order No. 8 filed on September 4, 2020, the Commission ALJ found notice of the application sufficient.
19. Crystal Clear did not provide notice of the application to the Office of Public Utility Counsel (OPUC) in 2020.

Notice to OPUC and Request for Good Cause Exception

20. On November 12, 2021, Commission counsel filed a memorandum directing the parties to either identify record evidence showing Crystal Clear provided notice of this proceeding to OPUC or to seek a good cause exception to the applicable Commission rule.
21. On November 23, 2021, Crystal Clear notified OPUC of the application and the original agreement.
22. On March 7, 2022, Crystal Clear filed an unopposed motion for a good cause exception to the notice requirement under 16 Texas Administrative Code (TAC) § 24.27(d)(1)(A) that requires a utility requesting a rate change to provide notice of the proposed change to OPUC at least 35 days before the effective date of the proposed change, which was established by the Commission ALJ as August 23, 2021, in Order No. 8 filed on September 4, 2020.
23. Good cause exists to grant an exception to the notice requirements in 16 TAC § 24.27(d)(1)(A) in relation to OPUC because OPUC participated in revised settlement negotiations and agreed to the first and second revised agreements, as discussed below.

Interventions and Protests

24. More than 10% of the ratepayers affected by the proposed rate increase filed protests in this docket.
25. In Order No. 2 filed May 18, 2020, the Commission ALJ granted the motions to intervene of ratepayers Kim and Arlettia Sharp, Harold Winnett, Justin Witte, Wayne Barnett, Pete Lohmer, Joy Lohmer, Roy Ince, Jr., Glenn Sommons, Thomas Murdoch, Walter Lane, Karla Lowder, Leonard and Janice McCain, Jeff and Krist Hall, Jasper Fuqua, John

Graham, Donald Benda, Billy and Barbara Arnold, Emilie Shipman, Bryan Bronstad, Dale Hulme, Carl Montgomery, Judy Bingaman, James Nawara, Petra Rodriguez, Lance Alsobrook, Tony Hardin, Gerald Longacre, Troy and Jana Spies, Ben Johnson, Stephen Philipp, Dwayne Jackson, Dennis Poe, and James Greenwade.

26. In Order No. 5 filed on June 8, 2020, the Commission ALJ granted the motions to intervene of ratepayers Bill Reitmeyer, Nicholas P. Kuhn, Jr., George Saxon, Kelly Anderson, and Britton Warren.
27. In Order No. 6 filed on July 1, 2020, the Commission ALJ granted the second motion to intervene of Kelly Anderson.
28. In Order No. 9 filed on September 17, 2020, the Commission ALJ granted the motions to intervene of ratepayers Gary Fossett, Patrick and Renee Cauley, Glenn Sammons, Leonard and Janice McCain, Joe and Linda Howard, Nicholas P. Kuhn, Jr., Carl Montgomery, Sam Wells, Krist and Jeffrey Hall, and Troy and Janna Spies.
29. In Order No. 10 filed October 26, 2020, the Commission ALJ granted the motion to intervene of ratepayers Kirk and Mary Sims.
30. In State Office of Administrative Hearings (SOAH) Order No. 1 filed on January 8, 2021, the SOAH ALJ granted the motions to intervene of ratepayers Juanita Cospier, Darrell Winnett, Jimmy and Kristi McElyea, Annelle Wells, and Melissa Boyette.
31. In SOAH Order No. 2 filed on February 23, 2021, the SOAH ALJ granted the motions to intervene of ratepayers Marion Marshall, Tom Marshall, Linda Johnson, Connie Blenden, and Leslie and Todd Marshall.
32. In SOAH Order No. 3 filed on August 3, 2021, the SOAH ALJ dismissed Leonard McCain, Janice McCain, Dale Hulme, Dennis Poe, and Kelly Anderson as parties.
33. In Order No. 12 filed on March 30, 2022, the Commission ALJ granted OPUC's motion to intervene.
34. In Order No. 27 filed on April 24, 2023, the ALJ dismissed Bryan Bronstad as a party because he is no longer a customer of Crystal Clear.

Proceedings Before SOAH

35. On December 30, 2020, the Commission referred this matter to SOAH for a contested case hearing.
36. In SOAH Order No. 1 filed on January 8, 2021, the SOAH ALJ set a prehearing conference for February 9, 2021.
37. On January 29, 2021, the Commission filed a preliminary order.
38. In SOAH Order No. 2 filed on February 23, 2021, the SOAH ALJ memorialized the prehearing conference held on February 9, 2021, abated the proceeding, and referred the proceeding to mediation.
39. On September 3, 2021, Crystal Clear, Commission Staff, and the intervenors filed a joint motion to admit evidence and remand to the Commission, including the original agreement, agreed proposed tariff, a joint proposed final order, and agreed list of assets.
40. In SOAH Order No. 5 filed on September 7, 2021, the SOAH ALJ dismissed the case from SOAH's docket and remanded it to the Commission.

Original Agreement

41. Crystal Clear, Commission Staff, and the intervenors other than OPUC engaged in settlement negotiations and entered into an agreement, filed on September 3, 2021 (the original agreement) resolving the matters at issue in the application.
42. Subsequently, Crystal Clear notified OPUC of the application and original agreement. OPUC then intervened in this proceeding and opposed certain terms in the original agreement.

First Revised Agreement

43. The parties, including OPUC, then engaged in settlement negotiations and entered into a revised agreement, filed on March 7, 2021 (the first revised agreement).
44. The terms of the first revised agreement were incorporated into a Proposed Order for the Commission's consideration.

45. On May 3, 2022, the Commission declined to adopt the Proposed Order and remanded the proceeding to Docket Management to enable the parties to address questions documented in the Commissioners' Order Remanding to Docket Management of the same date.

Second Revised Agreement

46. The parties engaged in renewed settlement negotiations and entered into a second revised agreement, which is attached as exhibit 1 to the parties' second joint motion to admit additional evidence filed on March 8, 2023.
47. The terms of the second revised agreement are incorporated into this Revised Proposed Order.
48. Crystal Clear's total annual revenue requirement is \$178,512.
49. It is reasonable and in the public interest to approve Crystal Clear's total invested capital as of December 31, 2019, in the amount of \$155,855, including \$138,404 of net plant in service and \$17,451 of cash working capital. Attachment C to the second revised agreement identifies all of Crystal Clear's net plant in service as of December 31, 2019.
50. The signatories to the second revised agreement agreed that Crystal Clear's overall rate of return will be 6.34%.
51. It is appropriate not to specify a return on equity in this proceeding.
52. The signatories agree that Crystal Clear should be allowed to implement the retail water rates located in the second revised tariff attached to the second revised agreement as attachment B.
53. Crystal Clear may implement the other tariff provisions included in the second revised tariff in attachment B to the second revised agreement.
54. The second revised tariff attached to the second revised agreement as attachment B governs the water utility rates, terms, treatments, and conditions for the water systems and service area specified in the second revised tariff.
55. The signatories agreed that rates, terms, and conditions of the second revised tariff resulting from the second revised agreement are just and reasonable.

56. The signatories agreed that it is not necessary for Crystal Clear to implement a refund, credit, or surcharge to return or collect amounts recovered under the rates effective August 23, 2021.

57. The agreed retail water rate schedule for Crystal Clear is as follows:

Meter Size	Minimum Monthly Charge (includes 0 gallons)
5/8" or 3/4"	\$38.56
1"	\$96.40
1 1/2"	\$192.80

58. The agreed gallonage charges are as follows:

Usage	Gallonage Charge
1st 5,000 gallons	\$3.74 per 1,000 gallons
Next 5,000 gallons	\$5.61 per 1,000 gallons
Thereafter	\$6.95 per 1,000 gallons

59. The agreed miscellaneous fees are as follows:

Fee	Agreed Charge
Tap fee (standard)	\$1,500.00
Tap fee (unique costs)	Actual Cost
Tap fee (large meter)	Actual Cost
Reconnection fee (nonpayment of bill)	\$25.00
Reconnection fee (customer's request that service be disconnected)	\$25.00
Reconnection fee (seasonal reconnect fee)	No less than \$25.00 and no more than \$13.35 per month disconnected, times the number of months disconnected, not to exceed 6 times.
Transfer fee	\$50.00
Late charge	10%

Returned check charge	\$25.00
Customer deposit residential	\$50.00
Commercial & non-residential deposit	1/6th of estimated annual bill
Meter test fee	Actual cost of testing meter up to \$25.00
Meter relocation fee	Actual cost

The Parties' Responses to Commission Questions

60. In the Commissioner's May 3, 2022 Order Remanding to Docket Management, the Commissioners posed a number of questions and required the parties to file responses.
61. On August 1, 2022, Crystal Clear filed its response to the Commissioners' Order Remanding to Docket Management.
62. On September 12 and 15, and November 22, 2022, and January 20, March 1 and 8, and June 30, 2023, Crystal Clear filed supplemental responses to the Commissioners' Order Remanding to Docket Management, with confidential information.

Affiliates

63. In the Commissioner's Order Remanding to Docket Management, the Commission posed specific questions regarding Crystal Clear's affiliates. Crystal Clear and Commission Staff's responses follow.
64. RP AG, LLC and RP Farm Equipment, LLC, both owned and operated by Mr. Payne, received payments from Crystal Clear during the test year.
65. Other than Crystal Clear, Mr. Payne holds an ownership interest of at least five percent of the voting securities in RP AG; RP Farm Equipment; RP AG Equipment, LLC; RP Custom Farming, LLC; Bosque Car Wash, LLC; and RP Kan Farm, LLC.
66. Each of these entities is a Texas limited liability company.
67. Mr. Payne is the sole owner of RP AG, RP Farm Equipment, and RP AG Equipment.
68. The legal name of Robert Payne Agri-Business is RP AG, LLC.
69. Mr. Payne is the owner and director of RP AG, RP Farm Equipment, and RP AG Equipment. Mr. Payne is the owner of Bosque Car Wash and RP Kan Farm. Mr. Payne is

a director of RP Custom Farming. Janice Gacke is a manager of RP AG, RP Farm Equipment, RP AG Equipment, and RP Custom Farming.

70. RP AG owns the office building and warehouse which Crystal Clear shares with RP AG. Crystal Clear pays RP AG rent for the use of space and its share of office expenses, including cell phone expenses.
71. RP Farm Equipment rented equipment to Crystal Clear for operations and maintenance purposes.
72. Crystal Clear seeks to recover its share of rent, office expenses, and cell phone expenses through rates approved in this proceeding.
73. Crystal Clear filed price quotes for comparable office and warehouse space showing that Crystal Clear leases its office and warehouse space from RP AG for less than the going market rate.
74. Crystal Clear filed price quotes for comparable equipment rental showing that Crystal Clear leases equipment from RP Farm Equipment for less than the going market rate.
75. Neither RP AG nor RP Farm Equipment rent space or equipment to any entity other than Crystal Clear.

Loan from Robert Payne to Crystal Clear

76. In the Commissioner's Order Remanding to Docket Management, the Commission posed specific questions regarding the loan from Mr. Payne to Crystal Clear. Crystal Clear and Commission Staff's responses follow. Commission Staff asserts that many of the details contained in the responses to the Commission's questions regarding the loan from Mr. Payne to Crystal Clear were not discussed during negotiations and are not part of the second revised agreement.
77. The loan from Mr. Payne to Crystal Clear is included in the agreed rates through original cost and depreciation.
78. Promissory notes memorializing the loans from Mr. Payne to Crystal Clear were executed in 2005 and 2018 and were replaced by a promissory note executed in 2019, as amended in 2022. There are limited records prior to 2005; however, Crystal Clear asserts that Mr. Payne initially lent funds to Crystal Clear in 1997 to finance the design and construction

of the Whispering Ridge public water system. Between 1997 and 2005, Mr. Payne made additional loans to Crystal Clear to finance the acquisition of and repairs to additional public water systems.

79. Crystal Clear asserts that, appropriately, no portion of the loans is characterized as a capital contribution to the corporation because Mr. Payne's returns from Crystal Clear are based on the terms of the loan, not the sale of any equity or dividends.
80. The only documentation of increases to the loan principal are the promissory notes from 2005, 2018, and 2019.
81. Between July 2019 and January 2020, the amount owed by Crystal Clear on the loan increased by \$22,043.60 from \$513,250.82 to 535,294.42 due to the accrual of six months interest, \$12,043.60, and a \$10,000 increase in the loan principal for a storage tank for Whispering Ridge.
82. Crystal Clear asserts that the list of capital investments and the amount financed by the loan show that the loan amount is just, reasonable, and necessary for utility operations.
83. Crystal Clear asserts that it was reasonable and prudent for Crystal Clear to obtain the loan from Mr. Payne because the loan funds have been used to acquire new systems, specifically Airport and Lakeline Acres, and to implement improvements recommended by the Texas Commission on Environmental Quality (TCEQ).
84. In 2005, Robert Payne extended the loan to Crystal Clear to finance public water system facilities, materials for operations and maintenance, costs of engineering, and the acquisition of another public water system.
85. Crystal Clear has not sought a loan from anyone other than Mr. Payne because Mr. Payne did not believe that Crystal Clear could obtain similar or better terms from another lender.
86. Although the loan is viable, Crystal Clear asserts that it is reasonable for Crystal Clear to not have made payments on the loan because Crystal Clear did not have the funds to make payments to Mr. Payne from 2005 through 2018 and since 2020. Due to its persistently low rates, Crystal Clear has been operating at a loss for many years. As the loan is a current debt, the loan is reflected in allowable costs even if payments cannot be made and Crystal Clear will ensure that the loan is recorded under long-term liabilities in its accounts.

87. Crystal Clear asserts that it was reasonable for Crystal Clear to continue to obtain loans from Mr. Payne, even when no payments are being made and interest on unpaid amounts is accumulating, because Mr. Payne did not believe Crystal Clear could obtain financing from another lender at similar or better terms.
88. Crystal Clear asserts that it was reasonable to increase the loan amount to acquire new systems. Specifically, Mr. Payne believed the acquisition of Airport, Lakeline Acres, and Glenshores, and the resulting additional revenue would help fund Crystal Clear's operations.
89. Crystal Clear asserts that the loaned funds have been used to build the Whispering Ridge public water system, acquire the Airport, Lakeline Acres, and Glenshores public water systems, remove the well pump in Lakeline Acres, and make other improvements and repairs in an effort to comply with TCEQ requirements. Crystal Clear provided copies of checks from 1997 and 1998 showing payments for operations and maintenance services for the Whispering Ridge public water system and a bill of sale for the Airport public water system.
90. Crystal Clear asserts that a portion of the loaned funds were used to address the TCEQ's recommendations listed in the application addendum filed on August 19, 2020.
91. Crystal Clear asserts that the 6% interest rate, the clause that allows interest to escalate to 18%, and the 20-year term of the loan are reasonable as shown by a comparison to Docket No. 50944 in which the Commission approved a 6.17% cost of debt for a fixed rate term loan for a utility with a similar debt-to-equity capital structure as Crystal Clear. Commission Staff did not comment on the reasonableness of the interest rate, escalatory clause, or 20-year term of the loan. Mr. Payne has never collected on the loan at the higher 18% interest rate and the amendment to the promissory note, executed on August 28, 2022, removes the 18% escalation provision in favor of a late fee.

Expenses for which Crystal Clear Seeks Recovery

92. In the Commissioner's Order Remanding to Docket Management, the Commission posed specific questions regarding expenses for which Crystal Clear is seeking recovery. Crystal Clear and Commission Staff's responses follow.

93. Crystal Clear is seeking to recover its portion of rental expenses for office and warehouse space and the cell phone bill, both of which are shared with RP AG.
94. Payments subject to TWC § 13.185(e) and included in the agreed rates are shown to be reasonable and necessary through a comparison of price quotes submitted for leasing comparable office and warehouse space and equipment. Renting office and warehouse space and equipment is a typical expense for a utility. Neither RP AG nor RP Farm Equipment lease office and warehouse space or equipment to any other entity, so Crystal Clear is unable to show comparisons to other transactions of RP AG or RP Farm Equipment. Crystal Clear filed quotes for comparable office and warehouse space and equipment rentals showing that Crystal Clear leases from RP AG and RP Farm Equipment for less than the going market rate.

Affiliate Costs

95. In the Commissioner's Order Remanding to Docket Management, the Commission posed specific questions regarding affiliate costs. Crystal Clear and Commission Staff's responses follow.
96. Under 16 TAC § 24.129, utilities must file annual reports which provide safeguards to ensure that affiliate costs are appropriately recorded.
97. Whether the Commission should require written agreements between Crystal Clear and its affiliates depends on the duration and nature of the transaction and industry standards. For example, it is unreasonable to require a written agreement for equipment rentals because it is unusual for utilities to enter long-term contracts for this type of rental. Crystal Clear filed an executed lease, dated August 25, 2022, between itself and RP AG for the lease of office and warehouse space. Crystal Clear also filed amendments to the lease, dated November 21, 2022, and February 24, 2023.

Rate Case Expense Surcharge

98. In the Commissioner's Order Remanding to Docket Management, the Commission posed specific questions regarding the rate case expense surcharge. Crystal Clear and Commission Staff's responses follow.

99. In the second revised agreement, the parties agreed that Crystal Clear is entitled to recover \$44,965 in rate-case expenses. These rate-case expenses must be recovered through a \$8.50 per connection monthly surcharge to ratepayers over a period of 23 months.
100. Crystal Clear is disallowed from recovering any additional rate-case expenses incurred in connection with this application in a future proceeding.
101. Crystal Clear will submit a surcharge collection report every six months until the \$44,965 is fully recovered. The reports will include supporting documents showing the amounts of the surcharge collected by meter size and the remaining amounts due.
102. The rate case expense surcharge language in the second revised tariff states, “\$8.50 to be collected per month calculated as follows: $\$44,965 \div 230 \text{ connections} \div 23 \text{ months} = \8.50 . Crystal Clear Water, Inc. may collect the surcharge for 23 consecutive months.”

Notice of Changes in Fees, New Fees, and Consolidated Rates

103. In the Commissioner’s Order Remanding to Docket Management, the Commission asked whether Crystal Clear provided notice to customers of all changes in fees, new fees, and the proposed consolidated rates. Crystal Clear’s answers follow.
104. On August 19, 2020, Crystal Clear notified customers of proposed rates and the following fees: \$2,500 tap fee, \$25 reconnect fee for non-payment fee, \$25 reconnect fee by customer request, 10% late charge, \$25 return check charge, \$50 deposit, and \$25 meter test fee. All other fees were carried over from the existing tariffs.
105. Negotiations between the parties lowered the proposed rates and the standard tap fee was reduced to \$1,500.
106. Crystal Clear notified all customers of the interim rates adopted by SOAH Order No. 4 on August 30, 2021. The rates and fees included in the original agreement, first revised agreement, and second revised agreement and proposed orders filed by the parties are the same interim rates and fees adopted by SOAH Order No. 4.
107. All customers, especially the intervenors, received sufficient notice of updated rates and fees.
108. All customers have been paying the rates and fees in the interim tariff for almost two years.

Consolidation of Systems

109. In its application, as supplemented, Crystal Clear proposed consolidated rates for Lakeline Acres, Glenshores, Airport, and Whispering Ridge.
110. Lakeline Acres, Glenshores, Airport, and Whispering Ridge are substantially similar water systems.
111. Crystal Clear's proposed consolidated rates for Lakeline Acres, Glenshores, Airport, and Whispering Ridge promote water conservation.

Effective Date

112. In the revised application, Crystal Clear requested approval of the proposed rate and tariff revisions, effective no sooner than December 1, 2020.
113. In Order No. 8 filed on September 4, 2020, the Commission ALJ suspended the effective date of the rate change for 265 days from the proposed effective date of December 1, 2020 until August 23, 2021.
114. On August 27, 2021, the parties filed a motion for interim rates that would allow Crystal Clear to begin charging the agreed upon settlement rates beginning August 23, 2021.
115. In SOAH Order No. 4 filed on August 30, 2021, the SOAH ALJ adopted interim rates as set out in the interim tariff filed on August 27, 2021.
116. In the second revised agreement, the parties agreed that the effective date of the proposed rates and second revised tariff will be the date provided by the Commission when it issues the final order.

Interim Rates

117. On August 30, 2021, the SOAH ALJ adopted interim rates as set out in the interim tariff filed on August 27, 2021.
118. The authorized interim rates are identical to those being approved in this Order.

Rate-Case Expenses

119. Crystal Clear is entitled to recover \$44,965 in rate-case expenses. These rate-case expenses must be recovered through a \$8.50 per connection monthly surcharge to ratepayers over a period of 23 months.

120. Crystal Clear may not seek to recover any additional rate-case expenses incurred in connection with this application in a future proceeding.
121. The second revised agreement's treatment of rate-case expenses is appropriate, and the agreed rate-case expense surcharges are reasonable and necessary.

Evidentiary Record

122. In SOAH Order No. 5 filed on September 7, 2021, the SOAH ALJ admitted the following evidence into the record:
- a. the application of Crystal Clear filed on April 8, 2020;
 - b. additional information filed by Crystal Clear on April 23, 2020;
 - c. Crystal Clear's revised application and attachments filed on August 19, 2020;
 - d. Crystal Clear's response to Commission Staff's first request for information (RFI) filed on April 15, 2021;
 - e. Crystal Clear's response to Commission Staff's second RFI filed on April 26, 2021;
 - f. Crystal Clear's first supplement to response to Commission Staff's second RFI filed on May 12, 2021;
 - g. Crystal Clear's response to Commission Staff's third RFI filed on May 12, 2021;
 - h. agreements appointing intervenors' representatives, attached to the joint motion as exhibit 1, filed on September 3, 2021;
 - i. the original agreement, attached to the joint motion as exhibit 2, filed on September 3, 2021;
 - j. the agreed joint proposed final order (attachment A to the original agreement), the agreed proposed tariff (attachment B to the original agreement), and the agreed list of assets (attachment C to the original agreement); and
 - k. Commission Staff's affidavit of Anna Givens in support of the agreement, filed on September 3, 2021.
123. In Order No. 11 filed November 15, 2021, the Commission ALJ admitted the affidavit of David Klein, attorney for Crystal Clear, filed on November 12, 2021, into the record.

124. In Order No. 12 filed March 30, 2022, the Commission ALJ admitted the following evidence into the record:
- a. the water systems' facilities information, attachment A to Crystal Clear and Commission Staff's response to Commission counsel's memorandum filed on March 7, 2022;
 - b. the affidavit of Mr. Payne, attachment D to Crystal Clear and Commission Staff's response to Commission counsel's memorandum filed on March 7, 2022;
 - c. the first revised agreement, exhibit 1 to the joint motion to admit evidence, including the revised joint proposed final order, first revised tariff, and agreed list of assets, attachments A, B, and C to the first revised agreement, filed on March 7, 2022.
125. In Order No. 16 filed on August 4, 2022, the Commission ALJ admitted the following evidence into the record:
- a. the Texas secretary of state records for entities of which Mr. Payne is the owner or director besides Crystal Clear attached as exhibit A to Crystal Clear's response to Order Remanding to Docket Management filed on August 1, 2022;
 - b. an estimate for office and warehouse lease rates by Bosque County Properties, LP attached as exhibit B to Crystal Clear's response to Order Remanding to Docket Management filed on August 1, 2022;
 - c. a quote for equipment rentals from United Rentals attached as exhibit C to Crystal Clear's response to Order Remanding to Docket Management filed on August 1, 2022;
 - d. the prior promissory notes executed in 2005 and 2018 attached as exhibit D to Crystal Clear's response to Order Remanding to Docket Management filed on August 1, 2022;
 - e. a list of capital investments and the amount financed by the loan attached as exhibit E to Crystal Clear's response to Order Remanding to Docket Management filed on August 1, 2022; and
 - f. a proposed tariff adding the rate case surcharge language to the agreed proposed tariff attached as exhibit F to Crystal Clear's response to Order Remanding to Docket Management filed on August 1, 2022.

126. In Order No. 17 filed on September 15, 2022, the Commission ALJ admitted the following evidence into the record:
- a. checks for projects and services for the Whispering Ridge public water system attached as exhibit A to Crystal Clear's supplemental response filed on September 12, 2022;
 - b. the bill of sale for the purchase of the Airport public water system attached as exhibit B to Crystal Clear's supplemental response filed on September 12, 2022;
 - c. an amendment to the 2019 promissory note executed on August 28, 2022, attached as exhibit C to Crystal Clear's supplemental response filed on September 12, 2022;
 - d. property listings to compare cost of leasing comparable office and warehouse space attached as exhibit D to Crystal Clear's supplemental response filed on September 12, 2022; and
 - e. an unsigned copy of the lease between Crystal Clear and RP AG, LLC for the rental of office and warehouse space attached as exhibit E to Crystal Clear's supplemental response filed on September 12, 2022.
127. In Order No. 18 filed on September 16, 2022, the Commission ALJ admitted the following evidence into the record:
- a. the executed lease attached as exhibit A to Crystal Clear's motion to admit additional evidence filed on September 15, 2022;
 - b. a copy of Crystal Clear's rate case expenses since October 1, 2021, not including legal expenses incurred in August 2022 of thereafter, attached as exhibit F to Crystal Clear's supplemental response filed on September 12, 2022; and
 - c. a proposed tariff with rate case surcharge language attached as exhibit G to Crystal Clear's supplemental response filed on September 12, 2022.
128. In Order No. 20 filed on November 28, 2022, the Commission ALJ admitted the following evidence into the record:
- a. the executed lease attached as exhibit A to Crystal Clear's motion to admit evidence filed on November 22, 2022; and

- b. the updated rate consultant invoice filed confidentially as exhibit B to Crystal Clear's motion to admit evidence filed on November 22, 2022.
129. In Order No. 22 filed on January 24, 2023, the Commission ALJ the following evidence into the record:
- a. the spreadsheet of all rate case expenses incurred in this docket through December 31, 2022, attached as exhibit A to Crystal Clear's motion to admit additional evidence filed on January 20, 2023; and
 - b. a copy of the rate case expenses incurred in this docket for September 2022 through December 2022, attached as exhibit B to Crystal Clear's motion to admit additional evidence filed on January 20, 2023.
130. In Order No. 26 filed on March 14, 2023, the Commission ALJ admitted the following evidence into the record:
- a. the second revised agreement, exhibit 1 to Crystal Clear and Commission Staff's second joint motion to admit additional evidence, filed on March 8, 2023; and
 - b. the second revised joint proposed final order, the second revised tariff, and the agreed list of assets, attachments A, B, and C to Crystal Clear and Commission Staff's second joint motion to admit additional evidence, filed on March 8, 2023.
131. In Order No. 27 filed April 24, 2023, the Commission ALJ admitted the following evidence into the record:
- a. the affidavit of Mr. Payne attached as exhibit A to Crystal Clear's motion to admit evidence filed on March 1, 2023;
 - b. the affidavit of Mr. Klein, submitted in part confidentially, attached as exhibit B to Crystal Clear's motion to admit evidence filed on March 1, 2023; and
 - c. the amended and restated lease executed on February 24, 2023, attached as exhibit C to Crystal Clear's motion to admit evidence filed on March 1, 2023.
132. In Order No. 30 filed July 31, 2023, the Commission ALJ admitted the following evidence into the record:
- a. the joint response to Order No. 27 filed on May 8, 2023;

- b. Crystal Clear's response to Order No. 29 filed on June 30, 2023; and
- c. Commission Staff's supplemental recommendation on Crystal Clear's response to Order No. 29 filed on July 21, 2023.

Informal Disposition

- 133. More than 15 days have passed since the completion of notice provided in this proceeding.
- 134. The only parties to this proceeding are Crystal Clear; Commission Staff; OPUC; Sam Wells, representative for the intervenors of the Airport water system; Pat Cauley, representative for the intervenors of the Glenshores and Lakeline Acres water systems; and Nicholas P. Kuhn and Stephen Phillip, the intervenors in the Whispering Ridge water system.
- 135. All parties to this proceeding are signatories to the second revised agreement.
- 136. No party requested a hearing and no hearing is needed.
- 137. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

- 1. The Commission has authority over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.181, 13.1871, and 13.1872.
- 2. Crystal Clear is a utility, public utility, and water utility, as those terms are defined in TWC § 13.002(23) and 16 TAC § 24.3(38).
- 3. Crystal Clear is a class D utility as defined in TWC § 13.002(4-d) and 16 TAC § 24.3(8).
- 4. The Commission processed the application in accordance with the requirements of the TWC, Administrative Procedure Act,¹ and Commission rules.
- 5. Crystal Clear complied with the requirement to provide notice of the rate application as required by TWC § 13.1872 and 16 TAC § 24.27(d), except that Crystal Clear did not provide timely notice to OPUC.

¹ Tex. Gov't Code §§ 2001.001-.903.

6. A good cause exception to the requirement under 16 TAC § 24.27(d)(1)(A) for Crystal Clear to timely provide notice to OPUC is appropriate.
7. Under TWC § 13.184(c) and 16 TAC § 24.12, Crystal Clear has the burden of proof to establish that the proposed rates are just and reasonable.
8. The rates approved in this Order are just and reasonable under TWC § 13.182(a).
9. The Lakeline Acres, Glenshores, Airport, and Whispering Ridge public water systems are substantially similar in terms of facilities, quality of service, and cost of service and the second revised tariff provides for rates that promote water conservation for single-family residences and landscape irrigation, as required by 16 TAC § 24.25(k), and therefore qualify to be consolidated into one tariff and rate design.
10. The consolidated-system rates and tariff approved by this Order are just and reasonable and comply with TWC §§ 13.145(a) and 13.182(d) and 16 TAC § 24.25(k) and (l).
11. As required by TWC § 13.182(b), the rates approved in this proceeding are not unreasonably preferential, prejudicial, or discriminatory and are sufficient, equitable, and consistent in application to each class of customers.
12. In accordance with TWC § 13.183(a), the rates approved in this Order will permit Crystal Clear a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public over and above its reasonable and necessary operating expenses and will preserve Crystal Clear's financial integrity.
13. An overall rate of return of 6.34% will not yield Crystal Clear more than a fair return on the invested capital used and useful in rendering service in accordance with TWC § 13.184(a) and 16 TAC § 24.41(c)(1).
14. The payments made to Crystal Clear's affiliates for office and warehouse leases, office expenses, cell phone expenses, and equipment rentals are reasonable and necessary under TWC § 13.185(e).
15. The only portions of the loan included in the agreed-upon rates are those used to fund the assets in the rate base plus a reasonable cost of debt in accordance with 16 TAC § 24.41.

16. Under TWC § 13.183(a), the Commission is required to establish a revenue requirement in setting rates.
17. As required by TWC § 13.185(h), the rates approved in this Order do not include legislative advocacy expenses, the cost of processing a refund or credit, or any expenditure that is unreasonable, unnecessary, or not in the public interest.
18. In accordance with TWC § 13.185 and 16 TAC § 24.41(c)(2)(B), the rates approved in this proceeding are based on original cost, less depreciation, of property used and useful in Crystal Clear's provision of service.
19. The rates approved in this Order comply with 16 TAC § 24.43(b)(1) regarding conservation.
20. There were no unreasonable payments to affiliated interests for costs of any services under TWC § 13.185(e).
21. It is not necessary for Crystal Clear to implement a refund, credit, or surcharge to return or collect amounts recovered under the rates effective August 23, 2021, under 16 TAC § 24.37.
22. The rate-case expenses approved by this Order are just, reasonable, necessary, and in the public interest as required under 16 TAC § 24.44(a).
23. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves Crystal Clear's changes to its water rates, as modified by the second revised agreement, to the extent provided in this Order.
2. The Commission approves the second revised tariff attached to the second revised agreement as attachment B, and other the provisions of such tariff, effective on the date this Order is signed.

3. The Commission approves the consolidation of rates for the public water systems of Lakeline Acres, Glenshores, Airport, and Whispering Ridge under the second revised tariff approved by this order.
4. The Commission establishes that the rate base for Crystal Clear as of December 31, 2019, is \$155,855 and includes \$138,404 of net plant in service, as shown in attachment C to the agreement. Crystal Clear must include this specific rate base as of December 31, 2019, in determining its rate base in its next filing for a rate increase under TWC § 13.1872(c)(2).
5. The Commission authorizes Crystal Clear to collect rate-case expenses of \$44,965.00 via a monthly surcharge of \$8.50 per connection over a 23-month period.
6. Under 16 TAC § 24.2(b), the Commission grants Crystal Clear an exception to the notice requirements of 16 TAC § 24.27(d)(1)(A).
7. Crystal Clear must not seek to recover any additional rate-case expenses incurred in connection with this docket in a future proceeding.
8. Crystal Clear must file a report documenting the calculation and collection of the rate-case expense surcharge from customers every six months until the \$44,965.00 in rate case expenses authorized is fully collected. These reports must include supporting documentation showing the amounts of the surcharge collected by meter size along with remaining amounts due. The reports must be filed in Compliance Filing for Docket No. 50721 (Application of Crystal Clear Water, Inc. for Authority to Change its Water Rates), Docket No. 53433.
9. Crystal Clear must comply with its commitments set forth in the second revised agreement, except as modified by this Order.
10. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the second revised agreement and must not be regarded as precedential as to the appropriateness of any principle or methodology underlying the agreement.
11. Within ten days of the date this Order is filed, Commission Staff must provide the Commission with a clean copy of Crystal Clear's tariff to be stamped *Approved* and retained by Central Records.

12. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of _____ 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

KATHLEEN JACKSON, INTERIM CHAIR

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER