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Received - 2023-04-11 02:40:21 PM
Control Number - 50788
ItemNumber - 350

**SOAH DOCKET NO. 473-20-4071.WS
PUC DOCKET NO. 50788**

RATEPAYERS APPEAL OF THE	§	BEFORE THE STATE OFFICE
DECISION BY WINDERMERE OAKS	§	
WATER SUPPLY CORPORATION TO	§	OF
CHANGE WATER AND SEWER	§	
RATES	§	ADMINISTRATIVE HEARINGS

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Order addresses the appeal of the decision by Windermere Oaks Water Supply Corporation (WOWSC) to change water and sewer rates.

I. FINDINGS OF FACT

General and Procedural Findings

1. WOWSC is a non-profit water supply corporation operating under Chapter 67 of the Texas Water Code (TWC).
2. WOWSC's Public Water System Identification Number is 0270035.
3. WOWSC's water utility and sewer service Certificates of Convenience and Necessity numbers are 12011 and 20662.
4. WOWSC is managed by a member-elected Board of Directors, where each director must be a resident of the State of Texas, a member, and a customer of WOWSC.
5. WOWSC has five board members, and the Board of Directors elects its officers.
6. The approved rates from the February 1, 2020, Board meeting were effective as of March 23, 2020.
7. On April 27, 2020, the Ratepayers of WOWSC (Ratepayers) filed a petition under TWC § 13.043(b) to appeal the decision by allowing WOWSC to change rates.
8. Greater than 10% of WOWSC's total active connections at the time of filing signed a petition to contest the rate increase.
9. The appealed rates became effective on March 23, 2020.
10. On June 23, 2020, the Administrative Law Judge (ALJ) issued Order No. 3 finding the petition administratively complete.
11. On June 23, 2020, the Public Utility Commission (Commission) referred the case to the State Office of Administrative Hearings (SOAH), requesting the assignment of a SOAH ALJ to conduct a hearing and issue a proposal for a decision, if necessary.

12. In its referral order, the ALJ required the Ratepayers and WOWSC to file a list of issues by July 1, 2020, and allowed Commission Staff to file its list of issues by that date if desired.
13. On July 16, 2020, the ALJ entered a Preliminary Order, including eleven issues to be addressed in the SOAH proceeding.
14. On August 8, 2020, a prehearing conference was held, during which the Parties expressed interest in mediation.
15. On October 8, 2020, SOAH Order No. 5 was issued, referring parties to mediation.
16. On October 19, 2020, a mediation letter was filed, and mediation was held on November 20, 2021.
17. On January 19, 2021, a mediator's report was filed indicating that parties did not reach an agreement during mediation.
18. On January 26, 2021, Staff filed an agreed proposed procedural schedule.
19. On February 2, 2021, the ALJ issued SOAH Order No. 7 adopting the procedural schedule.
20. On March 10, 2021, WOWSC filed the direct testimonies of George Burris, Joe Gimenez, III, Mike Nelson, and Jamie L. Mauldin.
21. On April 7, 2021, Ratepayers prefiled the direct testimonies of Danny Flunker, Patti Flunker, Kathryn Allen, and Bill Stein.
22. On May 5, 2021, Commission Staff prefiled the direct testimonies of Maxine Gilford, Spencer English, Heidi Graham, and Stephen Mendoza.
23. On June 7, 2021, WOWSC prefiled its rebuttal testimony of Mike Nelson, Joe Gimenez, III, and Grant Rabon.
24. On June 7, 2021, WOWSC prefiled its first supplemental direct testimony of Jamie L. Mauldin.
25. On June 10, 2021, Staff filed an agreed request to amend the procedural schedule.
26. On June 14, 2021, the ALJ issued Order No. 11, granting the agreed request to amend the procedural schedule.
27. On June 17, 2021, Ratepayers filed their errata testimony of Danny Flunker, Patricia Flunker, and Bill Stein.
28. On November 18, 2021, Ratepayers filed a notice of authorized representative.

29. On November 19, 2021, WOWSC filed its second supplemental direct testimony of Jamie L. Mauldin.
30. On November 23, 2021, Staff filed its first errata to the direct testimony of Spencer English and its supplemental direct testimony of Maxine Gilford.
31. On November 29, 2021, WOWSC filed its errata to the direct testimony of Mike Nelson.
32. On December 1, 2021, a 3-day hearing on the merits was held via Zoom before ALJs Siano and Wiseman and was attended by WOWSC, Ratepayers' counsel and Commission Staff.
33. Under SOAH Order No. 15, the Parties filed initial post-hearing briefs on December 30, 2021, and response briefs on January 25, 2022.
34. In SOAH Order No. 15, the ALJs directed WOWSC to file an exhibit supporting rate case expenses in its brief and a motion to reopen the record and admit the exhibit into evidence.
35. On December 11, 2021, Ratepayers filed its Request for Interim Relief.
36. On December 14, 2021, WOWSC filed its response to Ratepayers' Request for Interim Relief.
37. On December 20, 2021, the ALJs issued Order No. 16, denying Ratepayers' Request for Interim Relief.
38. On December 30, 2021, WOWSC filed a motion to reopen the record and admit evidence supporting rate cases expenses.
39. On February 15, 2022, the ALJs issued Order No. 17 re-opening the evidentiary record and admitting WOWSC Exhibit 22 related to WOWSC rate case expenses.
40. On March 31, 2022, the ALJs issued their Proposal for Decision recommending that the Commission dismiss Ratepayers' appeal and allow WOWSC to recover \$345,227.03 in rate case expenses, plus any trailing expenses incurred after December 31, 2021, through a surcharge over 42 months.
41. On May 25, 2022, WOWSC filed its Fourth Supplemental Direct Testimony of Jamie L. Mauldin.
42. On June 30, 2022, the Commission issued its Order Remanding Proceeding rejecting the ALJs' Proposal for Decision and remanding the proceeding back to SOAH to address all the standards prescribed under TWC § 13.043(j).
43. On September 26, 2022, the ALJs issued SOAH Order No. 23 adopting the procedural schedule.

44. On October 28, 2022, WOWSC filed its Supplemental Testimony of Grant Rabon.
45. On December 1, 2022, Ratepayers filed their Supplemental Direct Testimonies of Robert Gaines and Kathryn Allen.
46. On December 19, 2022, WOWSC filed its First Errata to the Rebuttal Testimony of Mike Nelson.
47. On January 6, 2023, the ALJs issued SOAH Order No. 27 granting WOWSC's Motion to Strike Ratepayers' Supplemental Direct Testimonies of Robert Gaines and Kathryn Allen.
48. On January 10, 2023, Commission Staff filed its Supplemental Direct Testimonies of Anna Givens and Stephen J. Mendoza.
49. On January 10, 2023, Commission Staff filed its Motion to Adopt the Testimony of Maxine Gilford.
50. On February 10, 2023, WOWSC filed its Supplemental Rebuttal Testimonies of Joe Gimenez, III and Mike Nelson.
51. On February 10, 2023, WOWSC filed its Fifth Supplemental Direct Testimony of Jamie L. Mauldin.
52. On March 16, 2023, WOWSC filed its Errata to the Fifth Supplemental Direct Testimony of Jamie L. Mauldin.
53. On March 22, 2023, a one-day hearing on the merits was held via Zoom before ALJs Siano and Wiseman and was attended by WOWSC, Ratepayers' counsel, and Commission Staff.
54. Under SOAH Order No. 31, the Parties filed initial post-hearing briefs on April 11, 2023, and response briefs on April 25, 2023.

Evidentiary Record

55. At the first hearing on the merits, the SOAH ALJs admitted the following items into the evidentiary record:
 - Ratepayers Exhibits: 2-33,35-38,40-44,46-48,50-53;
 - Staff Exhibits: 1-5; and
 - WOWSC Exhibits: 1-19.
56. At the second hearing on the merits, the SOAH ALJs admitted the following items into the evidentiary record:
 - Ratepayers HOM-2 Exhibits: 74, 81, 119, 121, 128, 129-136, 139-143, 144A, 144B, 145-155;

- Staff HOM-2 Exhibits: 1-58; and
- WOWSC HOM-2 Exhibits: 24-28, 30, 32-33.

Background

57. WOWSC' initial Articles of Incorporation were signed on November 9, 1995.
58. WOWSC has one class of "members," as defined by TWC § 13.002(11), and the purpose of WOWSC is to furnish water and sewer service to these members.
59. All board members are volunteers and receive no dividends, no stock or bonuses, nor other compensation.
60. The bylaws allow the nonprofit water corporation to pay up to \$5,000 annually to a board director for the provision of business services to the corporation.
61. WOWSC has contracted services for water management with Water Management, Inc., owned by George Burris.
62. WOWSC does not employ in-house legal counsel, but does utilize outside counsel for legal matters affecting the Corporation.
63. At the WOWSC Board meeting on February 1, 2020, the Board of Directors approved the rate increase, consistent with the Texas Rural Water Association (TRWA) recommendations and financial consultant recommendations.
64. As of the date of the Board of Directors' decision to increase rates in 2020, WOWSC had 271 water connections and 245 wastewater connections.
65. WOWSC considered the mounting legal invoices, required maintenance and operation costs, and necessary repairs to the system in its decision to raise rates.
66. Prior to the rate increase, WOWSC had a minimum water service availability charge of \$50.95 and a minimum sewer service availability charge of \$40.12.
67. The rate increase was made only to the base rates with a water base charge of \$90.39 per month, the sewer service base charge of \$66.41 per month, and provided a debt service coverage ratio of 1.25.

Revenue Requirement

68. The use of the cash needs method was appropriate in this case.
69. The TRWA rate sheet used the cash needs method in its analysis.
70. WOWSC's net revenue requirement should be \$576,192.

- 71. A debt service coverage ratio of 1.25 is reasonable and required pursuant to WOWSC's credit agreement with its lender.
- 72. The Capital Expenditure Reserve totaling \$53,273 is reasonable.
- 73. The amount paid to Water Management, Inc. for operations is reasonable.
- 74. The amount paid to Water Management, Inc. paid to Corix for subcontracting operations is reasonable.
- 75. The total WOWSC budgeted amount of \$14,160 for insurance is reasonable.
- 76. The inclusion of outside legal expenses in WOWSC's revenue requirement is reasonable.
- 77. Excluding outside legal expenses from WOWSC's revenue requirement will result in severe financial harm to WOWSC.

Rate Design

- 78. WOWSC has one class of customers.
- 79. Because WOWSC's customers reside in the same location, receive the same service, and impose similar costs on WOWSC, the customers have similar characteristics.
- 80. It is appropriate to charge all WOWSC customers a single rate.
- 81. WOWSC has approximately 75 active connections for service at airport hangars, where there is limited use of water.
- 82. The rate increase is applied to the base rate in order to provide equitable rates for all Customers.
- 83. The revenue requirement of \$576,192 is allocated 60% to water and 40% to wastewater, totaling a base rate for water of \$90.39 for water and base rate of \$66.41 for wastewater.
- 84. The appealed rates are just and reasonable.
- 85. The appealed rates are not unreasonably preferential, prejudicial, or discriminatory.
- 86. The appealed rates are sufficient, equitable, and consistent in application to each class of customers.

Rate Case Expenses

- 87. WOWSC incurred rate case expenses since the initiation of this proceeding, beginning on April 27, 2020, through the date of this filing.
- 88. The rate case expenses of \$478,184.08 incurred from April 27, 2020, through February 10, 2023, are supported as reasonable and necessary.
- 89. Staff supports the recovery of rate case expenses in this proceeding.

90. A 42-month recovery period for rate case expenses is reasonable.
91. The rate case expense surcharge should be calculated based on a 42-month recovery, and the surcharge should continue until all reasonable and necessary rate case expenses are fully recovered.

II. CONCLUSIONS OF LAW

1. The Commission has authority over this proceeding under TWC § 13.043 and 16 Texas Administrative Code (TAC) § 24.101.
2. WOWSC is a nonprofit water supply corporation, as defined by TWC § 13.002(24).
3. WOWSC is a retail public utility, as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
4. SOAH, upon referral, has jurisdiction over this proceeding under Texas Government Code § 2003.049.
5. This docket was processed in accordance with the requirements of PURA, the Administrative Procedure Act,¹ Texas Government Code Chapter 2001, and Commission rules.
6. In a rate appeal brought under TWC § 13.043, the Commission must find that the utility established rates that were just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.²
7. The utility bears the burden of proof to establish that the contested rates are not unreasonably preferential, prejudicial, nor discriminatory.³
8. The utility bears the burden of proof to establish that the contested rates are just and reasonable.⁴
9. The Ratepayers' petition was timely filed under TWC § 13.043 and 16 TAC § 24.101(b) and meets the 10% ratepayer-signature threshold established under TWC § 13.043(c) and 16 TAC §§ 24.101(d) and 24.103(b).

¹ Tex. Gov't Code §§2001.001-.903.

² Tex. Water Code § 13.043(j) (TWC); *Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No. 50788, Order Remanding Proceeding at 7-8 (Jun. 30, 2022) (Remand Order).

³ 16 TAC § 24.12.

⁴ *Id.*

10. Under TWC § 13.043(e), the Commission may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the utility in the appeal proceedings.
11. The petition is an appeal governed by TWC § 13.043. Such section provides for a de novo proceeding in which the Commission fixes rates at the level that those rates should have been.
12. In an appeal under TWC § 13.043, the Commission must use a methodology that preserves the financial integrity of the retail public utility.
13. The rates appealed are not unreasonably preferential, prejudicial, and discriminatory.
14. The rates appealed are just and reasonable.
15. The rates approved in this Order are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory in compliance with TWC § 13.043(j).
16. The rates approved in this Order will preserve the financial integrity of WOWSC in compliance with TWC § 13.043.
17. The revenue requirement for a utility that uses the cash needs method can include O&M expenses, debt service, and a reasonable cash reserve account.⁵
18. Under TWC § 13.043(e), the Commission may allow WOWSC to impose surcharges to recover lost revenues and rate-case expenses.
19. WOWSC may recover the expenses it has incurred in this proceeding under TWC § 13.043(e).

⁵ *Black v. City of Killeen*, 78 S.W.3d 686, 694 (Tex. App.—Austin 2002, pet. Denied).