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PUC DOCKET NO. 52365
SOAH DOCKET NO. 473-23-07816.WS
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**APPLICATION OF MEDINA
HIGHLANDS, INC. DBA AVALON
POINT WATER SYSTEM, LLC FOR
AUTHORITY TO CHANGE RATES**

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**PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK**

OF TEXAS

PRELIMINARY ORDER

Avalon Point Water System, LLC, operating as Medina Highlands, filed an application for authority to change its water rates. This preliminary order identifies the issues that must be addressed in this proceeding.

Medina Highlands is applying under Texas Water Code (TWC) § 13.1872 to change its water rates based on a test year ending December 31, 2020. Medina Highland provides water service to 44 active connections in Bandera County under certificate of convenience and necessity (CCN) number 12043. Rates for this water system were last approved on November 20, 1996 by the Texas Natural Resource Conservation Commission. Medina Highlands is seeking a \$38,883 increase in annual revenues. Medina Highlands presents a fixed charge and a variable rate calculation comprising a minimum month charge of \$98.60 and a volumetric rate of \$5.84 per 1,000 gallons.

	Current Rates	Proposed Rates
Minimum Monthly Charge	\$30.00	\$98.60
Volumetric Rate per 1,000 gallons	\$3.50	\$5.84

Medina Highlands filed its application on July 29, 2021. In Order No. 2 filed on August 31, 2021, the Commission administrative law judge (ALJ) found the application administratively incomplete and established an opportunity to cure the deficiencies, in part for reconciliation of the name of the company as it appears in the application with the name of the company as it appears on the current tariff. On September 30, 2021, Medina Highlands filed a motion to extend the deadlines in this proceeding so that it could file a sale, transfer, or merger

(STM) application to be approved by the Commission to clarify the ownership of the utility.¹ In Order No. 7 filed on October 1, 2021, the Commission ALJ abated this proceeding. On July 1, 2022, Medina Highlands filed a motion to lift the abatement following the filing of a proposed order in Docket No. 52662 that would approve the sale of Medina Highlands to Avalon Point. On July 12, 2022, Medina Highlands supplemented its application to indicate that the applicant is Avalon Point Water System, LLC, doing business as Medina Highlands and the Commission ALJ found the application administratively complete on August 25, 2022. On September 19, 2022, the Commission ALJ found notice sufficient, and Medina Highlands requested referral of this case to the State Office of Administrative Hearings (SOAH).

The following individuals have been granted intervention in this proceeding to date:² Abel Tijerina, Barbara Zaborski, Ronald Bird, James B. and Terri M. Frizzell, Joseph Fletcher, Leopoldo and Emilia Flores, Kenneth Harte, Bruce Rabalais, Carolyn Newman, Sylvia Farber, Rodney Clyatt, Mary Moore, Anamaria Brannon, and Richard Pruitt.

Medina Highlands was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by October 27, 2022. Medina Highlands and Commission Staff each timely filed a list of issues. On December 13, 2022, this docket was referred to SOAH for a hearing on the merits.

I. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.³ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

¹ *Application of James Kimble dba Medina Highlands Water and Avalon Point Water System, LLC dba Medina Highlands for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bandera County*, Docket No. 52662, Application (Oct. 6, 2022, pending).

² Order No. 3 (Sept. 9, 2021); Order No. 4 (Sept. 17, 2021); Order No. 5 (Sept. 23, 2021); Order No. 6 (Sept. 30, 2021); and Order No. 12 (Sept. 20, 2022).

³ Tex. Gov't Code § 2003.049(e).

Applicant

1. What is the legal name and all assumed names, if any, of the utility seeking a rate change? If the utility uses an assumed name, please provide a currently valid certificate for its assumed names.
 - a. Which entity or entities own the equipment and facilities used to provide water service under CCN number 12043?
 - b. Which entity or entities operate the equipment and facilities? In answering this question, which entity or entities employ the individuals who perform the day-to-day operations of the utility?
 - c. If a combination of entities constitutes the entity seeking the rate change, which entities, if any, should be joined in this proceeding?
2. What is the utility's business form (e.g., corporation, partnership, sole proprietorship)? What is the charter or authorization number, the date the business was formed, and the dates any changes were made?
3. Did the utility seeking the rate change file its 2021 annual report as required by TWC § 13.136 and 16 Texas Administrative Code (TAC) § 24.129?

Notice

4. Did the utility provide proper notice of the proposed rate change under TWC § 13.1872 (c), (c-1), and (d), and 16 TAC § 24.27(d)?

Revenue Requirement

5. What revenue requirement will give the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public in excess of its reasonable and necessary operating expenses while preserving the utility's financial integrity as required by TWC § 13.183(a)(1) and (2), 16 TAC § 24.43(a), and Class C rate-filing-package form section I?

Cost of Service

6. What is the utility's cost of service for providing water service based on its test year?

7. What adjustments, if any, should be made to the utility's proposed test-year data in accordance with TWC § 13.185(d)(1) and 16 TAC § 24.41(b) and (c)(5)?

Allowable Expenses

8. What are the reasonable and necessary allowable expenses for water service under TWC §§ 13.183(a)(1), 13.185, and 16 TAC § 24.41(b)? Class C rate-filing package section II, IV, and V.
9. What is the utility's reasonable and necessary operations and maintenance expenses under 16 TAC § 24.41(b)(1)(A)?
10. What is the reasonable and necessary depreciation expense?
- a. For each class of property, what are the proper and adequate depreciation rates and methods of depreciation, including service lives and salvage values under TWC § 13.185(j) and 16 TAC § 24.41(b)(1)(B)?
 - b. Does this expense item contain any amounts related to property provided by explicit customer agreements or funded by customer contributions in aid of construction? If so, what are those amounts?
 - c. Does this expense item contain any amounts related to property contributed by a developer or governmental entity? If so, what are those amounts?
11. What is the reasonable and necessary expense for franchise fees, assessments, and taxes other than federal income taxes under 16 TAC § 24.41(b)(1)(C)?
12. What is the reasonable and necessary amount for the utility's federal income tax expense under 16 TAC § 24.41(b)(1)(D)?
- a. Is the utility a member of an affiliated group that is eligible to file a consolidated income tax return under TWC § 13.185(f)?
 - b. If so, have income taxes been computed as though a consolidated return had been filed and the utility had realized its fair share of the savings resulting from the consolidated return as required by TWC § 13.185(f)?
 - c. If not, has the utility demonstrated that it was reasonable to not consolidate returns in accordance with TWC § 13.185(f)?

13. Are any tax savings derived from liberalized depreciation and amortization, investment tax credits, or similar methods? If so, are such tax savings apportioned equitably between customers and the utility, and are the interests of present and future customers equitably balanced?
14. What is the reasonable and necessary amount for the utility's professional or trade association expense under 16 TAC § 24.41(b)(1)(E)?
15. What is the reasonable and necessary amount for the utility's advertising expense, contributions, and donations under 16 TAC § 24.41(b)(1)(F)?
16. Are any expenses—including, but not limited to, executive salaries, advertising expenses, rate-case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines—unreasonable, unnecessary, or not in the public interest in violation of TWC § 13.185(h)(3) and 16 TAC § 24.41(b)(2)(I)?
 - a. Are any requested expenses not allowed under 16 TAC § 24.41(b)(2)?
17. What are the utility's reasonable and necessary expenses, if any, for pension and other post-employment benefits?
18. Has the utility made any payments to affiliates for any expense item? If so, for affiliate transactions that affect the cost of service, do the payments, including any interest, for that property meet the requirements of TWC § 13.185(e)?
 - a. Is the payment for each expense item reasonable and necessary?
 - b. What were the costs to the affiliate of each item or class of items in question?
 - c. Is the price to the utility for each item or class of items no higher than the prices charged by the supplying affiliate to its other affiliates or divisions or unaffiliated entities for the same item or items?
 - d. If the payment to the utility is for an allocated expense, is the method used to allocate costs attributable to the utility and the utility's affiliates appropriate to ensure just and reasonable rates?

Capital Structure and Total Return

19. What is the appropriate debt-to-equity capital structure for the utility for the purpose of setting rates?
20. Does the utility have any debt? If so, what is the cost of that debt?
21. What is the appropriate overall rate of return (weighted cost of capital), including return on equity and cost of debt, for the utility in accordance with 16 TAC § 24.41(c)(1)?

Rate Base (Invested Capital)

22. What are the reasonable and necessary components of the utility's rate base under TWC §§ 13.183(a), (b), 13.185(a) through (e), (i), and 16 TAC § 24.41(c) through (g)? Class C rate-filing package section III.
23. Has any rate-base item been acquired from an affiliated interest? If so, please address the following:
 - a. Is each such item used and useful in providing service to the utility's customers?
 - b. Is the payment for each item reasonable and necessary?
 - c. What were the costs to the affiliates of each item or class of items?
 - d. Is the price to the utility for each item or class of items no higher than prices charged by the supplying affiliate to its other affiliates or divisions or unaffiliated entities for the same item or class of items?
 - e. If the payment to the utility is for an allocated share of the cost, is the method used to allocate costs attributable to the utility and the utility's affiliates appropriate to ensure just and reasonable rates?
24. What is the original cost of property used and useful in providing service to the public at the time the property was dedicated to public use under TWC § 13.185(b) and 16 TAC § 24.41(c)(2)(A) and (B)? What is the amount, if any, of accumulated depreciation on such property and the resulting net cost under 16 TAC § 24.41(c)(2)(C)?
25. What is the amount for an allowance for funds used during construction, if any, that is being transferred to invested capital in this proceeding under 16 TAC § 24.41(c)(2)(A)(ii)? If such

amounts are being transferred, for what facilities are the amounts, and when was each facility placed into service? At what rate did the allowance for funds used during construction accrue?

26. Is the utility seeking inclusion of construction work in progress? If so, what is the amount sought and for what facilities? Additionally, has the utility proven that the inclusion is necessary to the financial integrity of the utility and that major projects under construction have been efficiently and prudently planned and managed as required under 16 TAC § 24.41(c)(4)?
27. What is the reasonable and necessary working capital allowance for the utility under 16 TAC § 24.41(c)(2)(D)?
28. Does the utility have any utility property that was acquired from an affiliate or a developer before September 1, 1976? If so, has such property been included by the utility in its rate base, and has it been included in all ratemaking formulas at the installed cost of the property rather than the price set between the entities as required by TWC § 13.185(i)?
29. Has the utility financed any of its plant with developer contributions under TWC § 13.185(j) and 16 TAC § 24.41(b)(1)(B)? What is the amount, if any, of accumulated depreciation on that property?
30. Has the utility included any customer contributions or donations in invested capital in accordance with TWC § 13.185(j) and 16 TAC § 24.41(c)(2)(C)(viii)? If so, what is the amount of those customer contributions or donations?
31. What is the reasonable and necessary amount of the utility's accumulated reserve for deferred federal income taxes, excess deferred federal income taxes, unamortized investment tax credits, contingency reserves, property insurance reserves, contributions in aid of construction, customer deposits, and other sources of cost-free capital? What other items should be deducted from the utility's rate base?
32. What regulatory assets, if any, are appropriately included in the utility's rate base? If such assets are included in rate base, what is the appropriate treatment of those assets?

Allocation and Rate Design

33. What is the appropriate allocation of costs and revenues among the utility's rate classes?

34. What is the appropriate rate design for each rate class in accordance with 16 TAC § 24.43? Should the utility's water rates consist of a fixed charge and a variable rate, or should the utility's water rates consist of just a flat rate?
35. What is the utility's number of connections used for its test-year end?
36. What is the utility's number of connections at the time its application for a rate change was filed?
37. In designing rates, should the utility use the current number of connections as of the date of the application as opposed to using the number of test-year-end connections?

Rates

38. What are the just and reasonable rates for service that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory under TWC §§ 13.182 and 13.1871(o) and 16 TAC § 24.35(d)? Do these rates recover the utility's revenue requirement for service? Class C rate-filing package section VI.
39. What is the appropriate effective date of the rates fixed by the Commission in this proceeding under TWC § 13.1871?

Tariff

40. Are the utility's proposed revisions to its tariff and rate schedules appropriate?
41. For the proposed tariff, does the tariff include and identify all applicable systems?

Interim Rates

42. Did the utility request interim rates? If so, has the utility met the requirements for interim rates? If so, what are the appropriate levels of the interim rates under 16 TAC § 24.37?

Refund or Surcharge

43. If a refund or surcharge under 16 TAC § 24.35(e) results from this proceeding, how and over what period of time should the refund or surcharge be made?

Rate-case Expenses

44. What are the utility's expenses incurred in this rate proceeding that are just, reasonable, necessary, and in the public interest under 16 TAC § 24.44? Does that amount include any prospective rate-case expenses to be incurred after the Commission's final order? Should the

utility be able to recover its reasonable and necessary rate-case expenses from ratepayers? If so, how should such expenses, if any, be recovered by the utility?

45. How should rate-case expenses be allocated between customers?

Pass-through Rates

46. Has the utility requested to include costs in its pass-through rates for an entity for which it has also requested to recover costs through its base rates? If so, please identify the entity, the amount of costs, and what products or services the costs cover.

47. Do the utility's proposed pass-through rates include only the actual costs charged to the utility?

48. Do the proposed pass-through rates exclude any charges that are included in the utility's requested cost of service in this docket?

49. Does the utility's pass-through provision in its tariffs conform to Commission rules and is it appropriately worded?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

II. Effect of Preliminary Order

This order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this order may be appealed to the Commission. The Commission will not address whether this order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the 15th day of December 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER



KATHLEEN JACKSON, COMMISSIONER