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Will McAdams
Commissioner
Lori Cobos
Commissioner
Jimmy Glotfelty
Commissioner



Greg Abbott
Governor
Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

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

All Parties of Record

FROM: Ariadna Garcia
Commission Advising

RE: *Petition of McAllen Public Utility Appealing Wholesale Water Rates Charged by Hidalgo County Water Improvement District No. 3*, Docket No. 52758, SOAH
Docket No. 473-22-1659.WS, Draft Supplemental Preliminary Order,
November 30, 2023 Open Meeting, Item No. 2.

DATE: November 17, 2023

Please find enclosed the draft supplemental preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft supplemental preliminary order at the November 30, 2023 open meeting. Parties shall not file responses or comments addressing this draft supplemental preliminary order.

Any modifications to the draft supplemental preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the November 30, 2023 open meeting.

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PUC DOCKET NO. 52758
SOAH DOCKET NO. 473-22-1659.WS

PETITION OF MCALLEN PUBLIC	§	PUBLIC UTILITY COMMISSION
UTILITY APPEALING WHOLESALE	§	
WATER RATES CHARGED BY	§	OF TEXAS
HIDALGO COUNTY WATER	§	
IMPROVEMENT DISTRICT NO. 3	§	

DRAFT SUPPLEMENTAL PRELIMINARY ORDER

McAllen Public Utility filed a petition appealing the July 2021 decision of Hidalgo County Water Improvement District No. 3 to increase its rates for wholesale water service. The Commission filed an initial preliminary order in this docket on February 11, 2022. The initial preliminary order does not address jurisdictional issues raised in a letter filed in this docket on August 23, 2022 by Texas senator Hinojosa and Texas representative Canales. This supplemental preliminary order supplements the initial preliminary order filed in this proceeding and identifies issues relevant solely to the Commission’s jurisdiction over this proceeding.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).¹ In the initial preliminary order filed in this proceeding, the Commission determined this appeal should proceed in two phases—phase one to allow the Commission to determine whether the rates appealed harm the public interest under TWC 12.013(g); and phase two, if necessary, to allow the Commission to set just and reasonable rates. As a result of developments after the initial preliminary order was issued, the Commission determines an interim proposal for decision on jurisdictional matters is needed. Accordingly, the Commission requests that the SOAH ALJs conduct an evidentiary hearing, if necessary, and prepare an interim proposal for decision for consideration by the Commission regarding the jurisdictional issues. If necessary, the Commission will then consider the pending interim appeal of SOAH Order No. 4.

¹ Tex. Gov’t Code § 2003.049(e).

After reviewing the pleadings submitted by the parties and the letter filed by Texas senator Hinojosa and Texas representative Canales, the Commission identifies the following issues that must be addressed in this docket:

C. Jurisdictional Issues

25. Do the facts demonstrate that the Commission has authority under TWC § 12.013 to decide this appeal? If so, was the petition filed in accordance with TWC § 12.013 and 16 TAC § 24.107?
26. Do the facts demonstrate that all or certain portions of the appealed rates fall outside the Commission's appellate authority under TWC § 12.013? In answering this question, please address the following subissues for all time periods relevant to the rates on appeal.
 - a. Is McAllen an owner of irrigable land within the district?
 - b. Is McAllen a user of water delivered by the district for any purpose other than irrigation?
 - c. Does McAllen dispute all or part of a district board order concerning the determination of the amount of an assessment, charge, fee, rental, or deposit allocated to pay for operation and maintenance expenses of the district's water delivery system as estimated under TWC § 51.304?
 - d. At the time the appealed rates were fixed, what were the district's costs to operate and maintain its water delivery system as estimated by the district's board under TWC § 51.304?
 - e. Do the appealed rates collect any assessments, charges, fees, rentals, or deposits allocated to pay for operation and maintenance expenses of the district's water delivery system as estimated under by the district's board TWC § 51.304? If so, what portion or amount of the appealed rates collect any assessments, charges, fees, rentals, or deposits allocated to pay for operation and maintenance expenses of the district's water delivery system?
 - f. Does the revenue requirement for the appealed rates include any maintenance and operating expenses of the district's water delivery system as estimated by the district's board under TWC § 51.304? If so, what portion or amount of the revenue requirement is allocated to pay for operation and maintenance expenses of the district's water delivery system?

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 Tex. Gov't Code § 2003.049(e).

II. Issues Not to be Addressed

The Commission identifies the following issues that need not be addressed in this supplemental preliminary order for the reasons stated.

3. *Whether McAllen's interim appeal of SOAH Order No. 4 should be granted.*

Included in the above issue not to be addressed are all issues arising out of McAllen's interim appeal of SOAH Order No. 4. The Commission will consider the interim appeal if it determines it has jurisdiction over all or part of this appeal.

III. Effect of Preliminary Order

The Commission's discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, 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 the non-dispositive rulings of 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 _____ day of _____ 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

KATHLEEN JACKSON, INTERIM CHAIR

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER