



Control Number: 53184



Item Number: 34

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Chairman

Will McAdams
Commissioner

Lori Cobos
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Jimmy Glotfelty
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Commissioner



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TO: Chairman Peter M. Lake
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson

All Parties of Record

FROM: John Kelly
Commission Advising

RE: August 25, 2022 Open Meeting, Item No. X
*Jacob and Jennie Hilbig's Appeal of the Cost of Obtaining Service from Aqua
Water Supply Corporation*, Docket No. 53184, Draft Preliminary Order

DATE: August 16, 2022

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the August 25, 2022 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the August 25, 2022 open meeting.

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DOCKET NO. 53184

JACOB AND JENNIE HILBIG'S	§	PUBLIC UTILITY COMMISSION
APPEAL OF THE COST OF	§	
OBTAINING SERVICE FROM AQUA	§	OF TEXAS
WATER SUPPLY CORPORATION	§	

DRAFT PRELIMINARY ORDER

Jacob and Jennie Hilbig filed an appeal of the cost of obtaining service from Aqua Water Supply Corporation (Aqua WSC). This preliminary order identifies the issues that must be addressed in this proceeding.

Aqua WSC is a non-profit water supply corporation providing retail water service in Bastrop, Caldwell, Lee, and Travis Counties under certificate of convenience and necessity number 10294. The Hilbigs own property on Lee Road in Bastrop County. On December 8, 2021, the Hilbigs requested a preliminary cost summary for the cost to obtain retail water service to a single residential lot located on Lee Road in Bastrop County. On December 20, 2021, Aqua WSC responded with a preliminary cost summary of \$59,164.00 that included a line-item summary of costs that support the estimate. On February 3, 2022, the Hilbigs filed an appeal of the cost to obtain retail water service from Aqua WSC.¹

Previously, Mr. Hilbig and Dustin Wilhelm submitted a joint request to Aqua WSC on May 11, 2021 for a feasibility study for two adjacent residential lots located on Lee Road.² Aqua WSC's engineering consultants prepared a water feasibility study and a preliminary cost summary, which were provided to Mr. Hilbig and Mr. Wilhelm on July 8, 2021.³ On December 8, 2021, the Hilbigs requested a preliminary cost summary for the cost to obtain water service to a single residential lot on Lee Road.⁴ On December 20, 2021, Aqua WSC responded and provided the Hilbigs with a preliminary cost summary of \$59,164.00 for water service at the single residence.

¹ Appeal at 1 (Feb. 3, 2022).

² Aqua WSC's Response and Motion to Dismiss at 1 (Apr. 11, 2022).

³ *Id.*

⁴ Aqua WSC's Response and Motion to Dismiss, Exhibit D.

On February 3, 2022, the Hilbigs filed their appeal of the cost of obtaining service from Aqua WSC. On June 3, 2021, Aqua WSC filed its response to the appeal and a motion to dismiss. Aqua WSC alleged that the Hilbigs appeal should be dismissed because it was not timely filed within 90 days after the date written notice is provided to the applicant or member of the decision of an affected county or water supply or sewer service corporation relating to the applicant's initial request for that service.⁵ Aqua WSC contended that the Hilbigs' initial request for service was the joint request submitted by Mr. Hilbig and Mr. Wilhelm on May 11, 2021, for which Aqua WSC provided written notice of its decision on July 8, 2021. Because the Hilbigs' filed their appeal on February 3, 2022, Aqua WSC alleges that the appeal was not filed within 90 days after the date written notice is provided to the applicant. Commission Staff responded to Aqua WSC's motion to dismiss by asserting that the May 11, 2021 joint request and the December 8, 2021 request were two different requests and that the Hilbigs' appeal was timely filed within 90 days of them receiving Aqua WSC's preliminary cost summary on December 20, 2021.⁶ In Order No. 4, filed on May 13, 2022, the administrative law judge (ALJ) disagreed with Aqua WSC's interpretation of the facts and denied its motion to dismiss.

On March 10, 2022, the ALJ found the petition administratively complete but directed the Hilbigs to mail a copy of the appeal to Aqua WSC and file provide proof of service. On March 16, 2022, the ALJ found notice sufficient. Commission Staff filed requests for information from both parties, and on July 11, 2022, Commission Staff requested that the Commission refer this docket to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.

The Hilbigs and Aqua WSC were directed, and Commission Staff and any 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 July 27, 2022. The Hilbigs, Aqua WSC, and Commission Staff each timely filed a list of issues.

⁵ TWC § 13.043(g) and 16 Texas Administrative Code (TAC) § 24.101(g).

⁶ Commission Staff's Response to Motion to Dismiss at 2–3 (Apr. 19, 2022).

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.⁷ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Is Aqua WSC a *water and sewer utility, utility, or public utility* as defined in 16 TAC § 24.3(38)?
2. Is Aqua WSC a *water supply or sewer service corporation* as defined in 16 TAC § 24.3(39)?
3. Has Aqua WSC operated in a manner that fails to comply with the requirements for classification as a nonprofit water supply or sewer service corporation as prescribed by Texas Water Code (TWC) §§ 13.002(11) and (24), and 13.004(a)?

Issues Pertaining to an Appeal of the Cost to Obtain Service Other than Regular Membership or Tap Fees

4. Does the Commission have jurisdiction over this dispute under TWC § 13.043(g)?
 - a. Did the Hilbigs apply for service from Aqua WSC?
 - b. Was a decision made by Aqua WSC that affects the amount to be paid by the Hilbigs to obtain service, other than the regular membership or tap fees?
 - c. If so, was the Hilbigs' appeal initiated within 90 days after the date that written notice of the decision was provided to the Hilbigs, as required by TWC § 13.043(g) and 16 TAC § 24.101(g)?
5. What is the total amount the Hilbigs would have to pay to obtain service from Aqua WSC, other than regular membership or tap fees? What services, acts, equipment, facilities, pipe, or other materials would that payment cover?
6. What amount, if any, have the Hilbigs already paid to Aqua WSC to obtain service? What services, acts, equipment, facilities, pipe, or other materials do any such payments cover?

⁷ Tex. Gov't Code § 2003.049(e).

7. Is the amount that Aqua WSC proposes to charge the Hilbigs to provide service to their property consistent with Aqua WSC's tariff, as required by TWC § 13.043(g) and 16 TAC § 24.101(g)(2)?
 - a. For Aqua WSC to provide service to the Hilbigs' property, does it require standard or non-standard service? Does it require an upgrade to the existing service lines?
8. Is the amount that Aqua WSC proposes to charge the Hilbigs to provide service to their property reasonably related to the cost of installing on-site and off-site facilities to provide service to the Hilbigs under TWC § 13.043(g) and 16 TAC § 24.101(g)(2)?
9. Is the amount that Aqua WSC proposes to charge the Hilbigs to obtain water service clearly unreasonable under TWC § 13.043(g) and 16 TAC § 24.101(g)(1)?
10. Does the amount to obtain service that Aqua WSC proposes to charge the Hilbigs comply with TWC § 13.043(j)?⁸
 - a. Is the amount Aqua WSC proposes to charge the Hilbigs to provide service to their property just and reasonable?
 - b. Is the amount Aqua WSC proposes to charge the Hilbigs to provide service to their property unreasonably preferential, prejudicial, or discriminatory?
 - c. Is the amount Aqua WSC proposes to charge the Hilbigs to provide service to their property sufficient, equitable, and consistent in application to each class of customers?
 - i. Will future customers benefit from the upgrade that Aqua WSC indicates is required to provide service to the Hilbigs' property?
 - ii. If the facilities necessary to provide service to the Hilbigs are capable of benefitting other or future customers, should the Hilbigs' cost to obtain service be reduced to reflect benefits that inure to all customers of the utility?
11. Are the amounts Aqua WSC proposes to charge the Hilbigs to obtain water service part of a distribution-system upgrade that should be reflected in rates?
12. If the amount that Aqua proposes to charge the Hilbigs for the cost to obtain service does meet the requirements of TWC § 13.043(j), must this appeal be dismissed?

⁸ See TWC § 13.043(g), (j).

If the amount that Aqua proposes to charge the Hilbigs for the cost to obtain service does not meet the requirements of TWC § 13.043(j), address the following issues.

13. If the amount that Aqua WSC proposes to charge the Hilbigs to obtain water service does not meet the requirements of TWC § 13.043(g) or (j), what amount, that preserves the financial integrity of Aqua WSC, should the Commission establish be paid by the Hilbigs?
14. If Aqua WSC owes the Hilbigs a refund for any portion of the charges paid by the Hilbigs that exceeds the fee to be paid in the Commission's order, what interest rate should be applied to the refund?

Issues Pertaining to the Response to Request for Service

15. Are the Hilbigs a *qualified service applicant* of Aqua WSC under 16 TAC § 24.161(a)? If not, what specific tariff provisions, service policies, or regulations have not been met and what rates or fees (if any) have not been paid for the Hilbigs to become a qualified service applicant?
16. If the Hilbigs are a qualified service applicant of Aqua WSC under 16 TAC § 24.161(a), has Aqua WSC complied with all requirements of 16 TAC § 24.161 in addressing the Hilbigs' request for water service?
 - a. Has Aqua WSC made a service application available to the Hilbigs upon their request?
 - b. Has Aqua WSC accepted a completed application for water service from the Hilbigs?
17. Did Aqua WSC fail to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from the Hilbigs?
18. Did Aqua WSC fail to provide the Hilbigs with construction cost options such as the possibility of sharing construction costs between other Aqua WSC customers and the Hilbigs as required under 16 TAC § 24.161(c)?
19. Did Aqua WSC require easements as allowed under 16 TAC § 24.161(d)(3)?
20. If applicable, has Aqua WSC complied with the requirements of 16 TAC § 24.161(e)(1)?
21. If Aqua WSC charged an amount paid or to be paid inconsistent with its tariff under TWC § 13.043(g) or is in violation of any Commission rule or TWC statute related to the Hilbigs' request for service, what remedy is appropriate?

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 _____ day of _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER

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