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Public Utility Commission of Texas

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

All Parties of Record

FROM: Austin Spraez
Commission Advising

RE: September 15, 2022 Open Meeting, Item No. XX
Crystal Bluff Goat Ranches, LLC's Appeal of the Cost of Obtaining Service from Possum Kingdom Water Supply Corporation, Docket No. 53299, Draft Preliminary Order.

DATE: September 6, 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 September 15, 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 September 15, 2022 open meeting.

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DOCKET NO. 53299

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|--------------------------------------|----------|----------------------------------|
| CRYSTAL BLUFF GOAT RANCHES, | § | PUBLIC UTILITY COMMISSION |
| LLC’S APPEAL OF THE COST OF | § | |
| OBTAINING SERVICE FROM POSSUM | § | OF TEXAS |
| KINGDOM WATER SUPPLY | § | |
| CORPORATION | § | |

DRAFT PRELIMINARY ORDER

Crystal Bluff Goat Ranches, LLC filed an appeal of the cost of obtaining service from Possum Kingdom Water Supply Corporation. This preliminary order identifies the issues that must be addressed in this proceeding.

Possum Kingdom is a non-profit water supply corporation providing retail water service in areas near Possum Kingdom Lake, northwest of Mineral Wells, Texas under certificate of convenience and necessity number 12890. Crystal Bluff purchased an approximately 18-acre tract of land which was plotted into 12 lots to be developed for residential use. On June 6, 2017, Crystal Bluff received a letter from Possum Kingdom indicating it was ready, willing, and able to serve the development. Possum Kingdom provided a \$2,300 to \$2,800 estimate per lot to provide service. By 2021, Crystal Bluff had purchased meters for 3 of the 12 lots, stated that one owner did not require a meter for one of the remaining lots, and therefore only 8 lots in need of service remained. Subsequently, two of the lots have been sold and the new owners are now members of Possum Kingdom. However, Possum Kingdom contends that Crystal Bluff never signed contract for the contribution in aid of construction fee before it increased its fees in 2021.

On May 11, 2021, Possum Kingdom sent a letter to Crystal Bluff stating that the existing water treatment plant was at capacity. Possum Kingdom proposed a new non-standard service contract to Crystal Bluff to provide meters for 10 lots for approximately \$13,385 per meter. On September 29, 2021, Possum Kingdom informed Crystal Bluff of a new cost estimate for 12 meters, instead of ten, at approximately \$13,385 per meter or \$160,620.00 for Crystal Bluff’s development., and that no water service would be provided without the contract in place. On January 11, 2022, Possum Kingdom informed Crystal Bluff that its previous September 29, 2021 offer was withdrawn and that any future service contract must include meters on all 12 lots.

Furthermore, Possum Kingdom's new January 11, 2022 offer was only presented for 30 days with no guarantee that future requests would be at this price.

On March 1, 2022, Crystal Bluff filed its appeal of the cost to obtain retail water service from Possum Kingdom. On April 1, 2022, Commission Staff filed its recommendation on administrative completeness and notice and recommended that the petition be found complete. In Order No. 2 the administrative law judge (ALJ) found Crystal Bluff's petition complete but required additional proof of notice to Possum Kingdom. Crystal Bluff provided proof of notice to Possum Kingdom on April 7, 2022. On April 18, Commission Staff recommended that Crystal Bluff's notice be found sufficient. In Order No. 3 the ALJ found Crystal Bluff's notice sufficient.

On May 16, 2022, Possum Kingdom filed its response to the appeal and motion to dismiss. Possum Kingdom alleged that Crystal Bluff's appeal should be dismissed because it was not timely filed within 90 days after the date written notice was provided relating to a decision on the cost of service relating to Crystal Bluff's request for service. Possum Kingdom contended that its initial cost estimate to provide service was provided to Crystal Bluff on May 11, 2021, and therefore, this petition was not timely filed. In Order No. 7 the ALJ determined that Crystal Bluff's petition was timely filed, noting that the January 11, 2022 and May 11, 2021 letters contain material differences and that the January 11 letter explicitly states that the May 11 offer was withdrawn. Therefore, the ALJ denied Possum Kingdom's motion to dismiss. On July 18, 2022, Commission Staff requested that the Commission refer this proceeding to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.

Crystal Bluff and Possum Kingdom 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 August 17, 2022. Commission Staff, Possum Kingdom, and Crystal Bluff each timely filed a list of issues.

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 the SOAH.¹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Is Possum Kingdom a *water and sewer utility, utility, or public utility* as defined in 16 TAC § 24.3(38)?
2. Is Possum Kingdom a *water supply or sewer service corporation* as defined in 16 TAC § 24.3(39)?
3. Has Possum Kingdom operated in a manner that fail to comply with the requirements for classification as a non-profit 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 Crystal Bluff apply for service from Possum Kingdom?
 - b. Was a decision made by Possum Kingdom that affects the amount to be paid by Crystal Bluffs to obtain service, other than regular membership or tap fees?
 - c. If so, was Crystal Bluff's appeal initiated within 90 days after the date that written notice of the decision was provided to Crystal Bluff, as required by TWC § 13.043(g) and 16 TAC § 24.101(g)?
5. What is the total amount Crystal Bluff would have to pay to obtain service from Possum Kingdom, 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, has Crystal Bluff already paid to Possum Kingdom to obtain service? What services, acts, equipment, facilities, pipe, or other materials do any such payments cover?

¹ Tex. Gov't Code § 2003.049(e).

7. Is the amount that Possum Kingdom proposes to charge Crystal Bluff to provide service to its property consistent with Possum Kingdom's tariff, as required by TWC § 13.043(g) and 16 TAC § 24.101(g)(2)?
 - a. For Possum Kingdom to provide service to Crystal Bluff's property, does it require standard or non-standard service? What, if any, upgrades to its facilities are required to provide such service?
8. Is the amount that Possum Kingdom proposes to charge Crystal Bluff to provide service to its property reasonably related to the cost of installing on-site and off-site facilities to provide service to Crystal Bluff under TWC § 13.043(g) and 16 TAC § 24.101(g)(2)?
9. Is the amount that Possum Kingdom proposes to charge Crystal Bluff 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 Possum Kingdom proposes to charge Crystal Bluff comply with TWC § 13.043(j)?²
 - a. Is the amount Possum Kingdom proposes to charge Crystal Bluff to provide service to its property just and reasonable?
 - b. Is the amount Possum Kingdom proposes to charge Crystal Bluff to provide service to its property unreasonably preferential, prejudicial, or discriminatory?
 - c. Is the amount Possum Kingdom proposes to charge Crystal Bluff to provide service to its property sufficient, equitable, and consistent in application to each class of customers?
 - i. Will future customers benefit from the upgrade that Possum Kingdom indicates is required to provide service to Crystal Bluff's property?
 - ii. If the facilities necessary to provide service to Crystal Bluff are capable of benefitting other or future customers, should Crystal Bluff's cost to obtain service be reduced to reflect benefits that inure to all customers of the utility?
11. Are the amounts Possum Kingdom proposes to charge Crystal Bluff to obtain water service part of a distribution-system upgrade that should be reflected in rates?

² See TWC § 13.043(g), (j).

12. If the amount that Possum Kingdom proposes to charge Crystal Bluff for the cost to obtain service does meet the requirements of TWC § 13.043(j), must this appeal be dismissed?

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

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. 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