



Filing Receipt

Filing Date - 2024-03-26 10:49:46 AM

Control Number - 53485

Item Number - 49

DOCKET NO. 53485

**APPLICATION OF GIDEON WATER § PUBLIC UTILITY COMMISSION
LLC FOR A CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN § §
MONTGOMERY COUNTY § §
 § §**

**ORDER NO. 20
DENYING MOTION FOR ORDER *NUNC PRO TUNC* AND
MOTION TO REOPEN THE RECORD**

This Order addresses the joint motion for an order *nunc pro tunc* or, alternatively, to reopen the record filed on March 6, 2024.

I. Background

On April 12, 2022, Gideon Water LLC filed an application to obtain a certificate of convenience and necessity in Montgomery County. Gideon Water’s application included a proposed tariff for approval. On December 13, 2022, Commission Staff sent to Gideon Water, among other items, the tariff that Commission Staff recommended should be approved in this proceeding. A copy of the tariff that Commission Staff sent to Gideon Water on December 13, 2022, is not in the record of this proceeding. On December 14, 2022, Gideon Water filed its consent to the tariff sent by Commission Staff. No tariff was attached to Gideon Water’s consent.

On March 31, 2023, Commission Staff filed its recommendation on final disposition, which included an attached tariff. The memorandum included with Commission Staff’s recommendation states, “Gideon consented to the attached . . . tariff . . . on December 14, 2022.”¹

On April 26, 2023, the parties filed a joint motion to admit evidence and moved to admit, among other things, the tariff filed by Commission Staff on March 31, 2023.

In Order No. 17 filed on July 31, 2023, the administrative law judge (ALJ) admitted, among other things, the proposed tariff as attached to the final recommendation filed on March 31, 2023.

On July 31, 2023, the ALJ filed a Notice of Approval (NOA). The NOA included the following ordering paragraphs:

¹ Commission Staff’s Recommendation on Final Disposition at 7.

1. The Commission issues Gideon [certificate of convenience and necessity (CCN)] number 13304 as described in this Notice of Approval and shown on the attached map.
2. The Commission approves the map and tariff attached to this Notice of Approval.
3. The Commission issues the certificate attached to this Notice of Approval.
4. Gideon must provide service to every customer and applicant for service within the approved area under CCN number 13304 who requests water service and meets the terms of Gideon's water service policies, and such service must be continuous and adequate.
5. Gideon must comply with the recording requirements in [Texas Water Code] § 13.257(r) and (s) for the areas in Montgomery County affected by this application and must file in this docket proof of the recording no later than 45 days after the date of this Notice of Approval.
6. Within ten days of the date this Notice of Approval is filed, Commission Staff must provide the Commission with a clean copy of Gideon's water tariff approved in this Notice of Approval to be stamped *Approved* and retained by Central Records.
7. Gideon must comply with 16 TAC § 24.25(b)(1)(B)(vi) and file notice to the Commission once billing for water service begins.
8. Gideon must file a rate application with actual financial information with the Commission within 18 months from the date water service begins.
9. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.²

The tariff approved by the NOA was the tariff filed as an attachment to Commission Staff's March 31, 2023 recommendation on final disposition.

On October 25, 2023, Gideon Water filed a request for reconsideration. Gideon Water asserted that the incorrect tariff was approved by the NOA and requested approval of the replacement tariff attached to its request for reconsideration.

In Order No. 18 filed on October 30, 2023, the ALJ denied Gideon Water's request for reconsideration because it was untimely.

On October 31, 2023, Gideon Water filed a request for a tariff change under Texas Water Code § 13.244(e)(1).

² Notice of Approval at 8 and 9.

In Order No. 19 filed on November 2, 2023, the ALJ declined to rule on Gideon Water's request because this docket is closed and the ALJ lacked jurisdiction to rule on Gideon Water's request.

II. The Motion for an Order *Nunc Pro Tunc*

On March 6, 2024, Gideon and Commission Staff filed a joint motion for an order *nunc pro tunc*. The parties request a proposed correction to the tariff to remove the language stating that 10,000 gallons of water is included for all meter sizes.

An order *nunc pro tunc* is to correct clerical errors in a judgment after a court's plenary power has expired.³ These types of errors are errors in entering or recording the decision.⁴ An order *nunc pro tunc* cannot correct a judicial error, which are errors in the rendering of the judgment.⁵ "If the court renders incorrectly, it cannot alter a written judgment which precisely reflects the incorrect rendition."⁶ An order *nunc pro tunc* is authorized "where it can be seen by reference to a record what was intended to be entered but which was omitted by inadvertence or mistake, upon satisfactory proof of its rendition provided that no intervening rights will be prejudiced."⁷

The parties assert, "Interpreting the [NOA] to have approved a tariff with the erroneous language included is without merit. . . . [A] thorough review of the record and a reading of the entire [NOA] indicates that the Commission's true decision in this proceeding was to approve Gideon Water's originally requested rates."⁸

The ALJ disagrees. In the application filed on April 12, 2022, the following are the rates requested by Gideon Water:⁹

³ *Escobar v Escobar*, 711 S.W.2d 230, 231 (Tex. 1986).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* (citing *Love v. State Bank & Trust Co. of San Antonio*, 126 Tex. 591, 90 S.W.2d 819 (1935); *Shepherd v. Estate of Long*, 480 S.W.2d 51 (Tex. Civ. App.—Fort Worth 1972, writ ref'd n.r.c.)).

⁷ *Railroad Comm'n v. McClain*, 356 S.W.2d 330, 334 (Tex. App.—Austin 1962, no writ) (citing *Frankfort Ky. Nat. Gas Co. v. City of Frankfort*, 123 S.W.2d 270, 272) (emphasis added).

⁸ Motion for Order *Nunc Pro Tunc* or, Alternative, Motion to Reopen the Record at 3.

⁹ Application at 31 (emphasis added).

Meter Size	Monthly Minimum Charge	Gallage Charge
5/8" or 3/4"	\$50.00 <i>(Includes gallons)</i>	\$3.50 per 1000 gallons, 1st 10,000 gallons
1"	\$125.00	\$5.00 per 1000 gallons, next > 10,000 gallons
1 1/2"	\$200.00	\$____ per 1000 gallons thereafter
2"	\$400.00	
3"	\$750.00	
4"	\$1,500.00	

The tariff filed by Commission Staff on March 31, 2023, and adopted in the NOA reflects the following rates:¹⁰

Meter Size	Monthly Minimum Charge <i>(Includes 10,000 gallons all meters)</i>	Gallage Charge
5/8"	\$50.00	\$3.50 per 1000 gallons, 1st 10,000 gallons
3/4"	\$50.00	\$5.00 per 1000 gallons, next > 10,000 gallons
1"	\$125.00	
1 1/2"	\$200.00	
2"	\$400.00	
3"	\$750.00	
4"	\$1,500.00	

The rates requested by Gideon Water reflect that some unknown gallage was contemplated for inclusion as part of the monthly minimum charge for 5/8" and 3/4" meters. The rates in Commission Staff's March 31, 2023 tariff are consistent with Gideon Water's requested rates, except that Commission Staff's March 31, 2023 tariff specifies the exact gallage for inclusion as part of the monthly minimum charge for all meters. No tariff other than Gideon Water's initial tariff and Commission Staff's March 31, 2023 tariff were filed in this docket. At

¹⁰ Commission Staff's Recommendation on Final Disposition at 14 (emphasis added).

best, a review of the record shows that an ambiguity existed in Gideon Water's rates and was resolved by Commission Staff's March 31, 2023 tariff. Simply put, an order *nunc pro tunc* is inappropriate in this case because it cannot "be seen by reference to a record what was intended to be entered but which was omitted by inadvertence or mistake."¹¹

Additionally, the parties assert, "[E]ven though the erroneous language was included in the tariff attached to Staff's final recommendation, nothing in that tariff nor any language related to Gideon Water's proposed rates or Staff's proposed tariff in the joint proposed [NOA] . . . requires additional judicial reasoning or determination by the ALJ[.]"¹²

The ALJ disagrees. Again, no tariff other than Gideon Water's initial tariff and Commission Staff's March 31, 2023 tariff was filed in this proceeding. Correcting the tariff approved by the NOA would require, at a minimum, the consideration of documents that were filed after the date of the NOA and were never admitted as evidence into the record of this proceeding.

Because the correction to the tariff would require additional judicial reasoning based on documents that were not admitted as evidence into the record of this proceeding, the ALJ denies the motion for an order *nunc pro tunc*.

III. Motion to Reopen the Record

The motion to reopen the record is denied. Corrections to an NOA must be filed within 15 days of the NOA being filed¹³ and motions for rehearing must be filed within 25 days after the date the NOA was signed.¹⁴ Because no corrections or motions for rehearing were filed by the required deadlines, the NOA filed on July 31, 2023, became final,¹⁵ and this docket was closed.

At the request of the parties, the ALJ recently reopened this docket for the limited purpose of allowing the parties to file their joint motion for an order *nunc pro tunc* or, alternatively, to reopen the record. Having now disposed of that motion, this docket is once again closed.

¹¹ *McClain*, 356 S.W.2d at 334 (emphasis added).

¹² Motion for Order *Nunc Pro Tunc* or, Alternative, Motion to Reopen the Record at 3–4.

¹³ 16 Texas Administrative Code § 22.35(c).

¹⁴ Texas Government Code § 2001.146(a).

¹⁵ *Id.* § 2001.144.

Signed at Austin, Texas on the 26th day of March 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'Isaac TA', written over a horizontal line.

**ISAAC TA
ADMINISTRATIVE LAW JUDGE**