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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: Johann Rupp
Commission Advising

RE: March 23, 2023 Open Meeting, Item No. XX
McIlrath Properties LLC's Appeal of the Cost of Obtaining Service from Miller Grove Water Supply Corporation, Docket No. 53933, Draft Preliminary Order

DATE: March 14, 2023

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 March 23, 2023 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 March 23, 2023 open meeting.

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DOCKET NO. 53933

MCILRATH PROPERTIES LLC'S	§	PUBLIC UTILITY COMMISSION
APPEAL OF THE COST OF	§	
OBTAINING SERVICE FROM MILLER	§	OF TEXAS
GROVE WATER SUPPLY	§	
CORPORATION	§	

DRAFT PRELIMINARY ORDER

McIlrath Properties LLC filed an appeal of the cost of obtaining service from Miller Grove Water Supply Corporation. This preliminary order identifies the issues that must be addressed in this proceeding.

McIlrath owns an approximately 35-acre tract of land which it intends to be platted into 24 lots to be developed for residential use. Miller Grove is a water supply corporation providing retail water service in areas near Miller Grove, Texas under certificate of convenience and necessity number 11279. McIlrath filed its application for service to Miller Grove on March 15, 2021. On March 15, 2021, McIlrath received a letter from Daniel & Brown Inc., a consultant for Miller Grove, indicating that Miller Grove was able to serve the development, that the cost of obtaining service would likely exceed \$100,000 and that McIlrath would be required to meet the non-standard service requirements of Miller Grove and other conditions of service in the corporation's tariff. On June 8, 2022, Miller Grove provided a \$367,802 itemized estimate to provide service.

McIlrath filed its appeal of the cost of obtaining service on August 4, 2022, less than 90 days after receiving the estimate of charges. On August 26, 2022, Commission Staff filed requests for information to McIlrath and Miller Grove. On September 12, 2022, the administrative law judge (ALJ) filed Order No. 3, finding the petition administratively complete. On September 14, 2022, McIlrath filed responses to Commission Staff's request for information. Between September 30 and October 6, 2022, McIlrath filed proof of notice to Miller Grove. On October 24, 2022, Miller Grove filed its response to Commission Staff's request for information. On January 26, 2023, Commission Staff requested that this case be referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.

On February 9, 2022, McIlrath and Miller Grove 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 February 24, 2023. Commission Staff and McIlrath each timely filed a list of issues. Miller Grove did not file 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 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 Miller Grove a *water and sewer utility, utility, or public utility* as defined in 16 Texas Administrative Code (TAC) § 24.3(38)?
2. Is Miller Grove a *water supply or sewer service corporation* as defined in 16 TAC § 24.3(39)?
3. Has Miller Grove operated in a manner that fails 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)?
4. Did McIlrath provide sufficient notice to Miller Grove of the appeal of the cost of obtaining service?

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

5. Does the Commission have jurisdiction over this dispute under TWC § 13.043(g)?
 - a. Did McIlrath apply for service from Miller Grove?
 - b. Was a decision made by Miller Grove that affects the amount to be paid by McIlrath to obtain service, other than regular membership or tap fees?

¹ Tex. Gov't Code § 2003.049(e).

- c. If so, was McIlrath's appeal initiated within 90 days after the date that written notice of the decision was provided to McIlrath, as required by TWC § 13.043(g) and 16 TAC § 24.101(g)?
6. What is the total amount McIlrath would have to pay to obtain service from Miller Grove, other than regular membership or tap fees? What services, acts, equipment, facilities, pipe, or other materials would that payment cover?
7. What amount, if any, has McIlrath already paid to Miller Grove to obtain service? What services, acts, equipment, facilities, pipe, or other materials do any such payments cover?
8. Is the amount that Miller Grove proposes to charge McIlrath to provide service to its property consistent with Miller Grove's tariff, as required by TWC § 13.043(g) and 16 TAC § 24.101(g)(2)?
 - a. For Miller Grove to provide service to McIlrath's property, does it require standard or non-standard service? What, if any, upgrades to its facilities are required to provide such service?
9. Is the amount that Miller Grove proposes to charge McIlrath to provide service to its property reasonably related to the cost of installing on-site and off-site facilities to provide service to Miller Grove under TWC § 13.043(g) and 16 TAC § 24.101(g)(2)?
10. Is the amount that Miller Grove proposes to charge McIlrath to obtain water service clearly unreasonable under TWC § 13.043(g) and 16 TAC § 24.101(g)(1)?
11. Does the amount to obtain service that Miller Grove proposes to charge McIlrath comply with TWC § 13.043(j)?²
 - a. Is the amount Miller Grove proposes to charge McIlrath to provide service to its property just and reasonable?
 - b. Is the amount Miller Grove proposes to charge McIlrath to provide service to its property unreasonably preferential, prejudicial, or discriminatory?
 - c. Is the amount Miller Grove proposes to charge McIlrath to provide service to its property sufficient, equitable, and consistent in application to each class of customers?

² See TWC § 13.043(g), (j).

- i. Will future customers benefit from the upgrade that Miller Grove indicates is required to provide service to McIlrath's property?
 - ii. If the facilities necessary to provide service to McIlrath are capable of benefitting other or future customers, should McIlrath's cost to obtain service be reduced to reflect benefits that inure to all customers of the utility?
12. Are the amounts Miller Grove proposes to charge McIlrath to obtain water service part of a distribution-system upgrade that should be reflected in rates?
13. If the amount that Miller Grove proposes to charge McIlrath for the cost to obtain service does meet the requirements of TWC § 13.043(j), must this appeal be dismissed?
14. Is state or federal funding available to offset some of the cost of installation of the water line?
15. Has Miller Grove submitted a U. S. Department of Agriculture application to receive federal funding to upgrade its public water system for expansion of its existing water line?
 - a. If not, is Miller Grove able and willing to apply for federal funding to help alleviate these costs?
16. Would a smaller water line work as a cost saving and feasible alternative to the proposed water line suggested by Miller Grove?
17. If 16 TAC § 24.161(c) applies to Miller Grove, has Miller Grove failed to provide McIlrath with construction costs options such as the possibility of sharing construction costs between Miller Grove and McIlrath?
18. Do the requirements of 16 TAC § 24.161(e) apply to this proceeding?
 - a. If so, has Miller Grove complied with the requirements of 16 TAC § 24.161(e)(1)?

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

19. If the amount that Miller Grove proposes to charge McIlrath to obtain water service does not meet the requirements of TWC § 13.043(g) or (j), what amount, that preserves the financial integrity of Miller Grove, should the Commission establish be paid by McIlrath?

20. If Miller Grove owes McIlrath a refund for any portion of the charges paid by McIlrath 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 _____ 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER