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Commissioner

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Commissioner



**Greg Abbott**  
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Executive Director

## ***Public Utility Commission of Texas***

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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:** Austin Spraetz  
Commission Advising

**RE:** *Application of CSWR-Texas Utility Operating Company, LLC for Authority to Change Rates*, Docket No. 54565, Revised Draft Supplemental Preliminary Order, May 25, 2023 Open Meeting, Item No. 3.

**DATE:** May 23, 2023

Please find enclosed the revised draft supplemental preliminary order filed by Commission Advising in the above-referenced docket. An additional sub-issue (sub-issue "c") was added to issues 60A through 60F. The Commission will consider this revised draft supplemental preliminary order at the May 25, 2023 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the revised 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 May 25, 2023 open meeting.

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**PUC DOCKET NO. 54565**  
**SOAH DOCKET NO. 473-23-18885.WS**

<b>APPLICATION OF CSWR-TEXAS</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>UTILITY OPERATING COMPANY,</b>	<b>§</b>	
<b>LLC FOR AUTHORITY TO CHANGE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RATES</b>	<b>§</b>	

**REVISED DRAFT SUPPLEMENTAL PRELIMINARY ORDER**

CSWR-Texas Utility Operating Company, LLC filed an application to change its water and sewer rates. On May 4, 2023, the Commission issued a briefing order on a threshold legal issue. The Commission issued a preliminary order in this docket on May 11, 2023, but did not address the threshold issue in that preliminary order. This supplemental preliminary order addresses the threshold issue and identifies additional issues to be addressed in this proceeding.

**I. Threshold Legal and Policy Determinations**

Parties filed briefs addressing the following threshold legal issue. The following statement of position was reached in consideration of the arguments of the parties. Accordingly, as required by section 2001.058(c) of the Administrative Procedure Act,<sup>1</sup> the Commission states its position on the following threshold issue:

**1. Does 16 TAC § 24.41(f) preclude utilities from seeking a positive acquisition adjustment for plant, property, or equipment acquired through a transaction based on the fair market valuation process under 16 TAC § 24.238?**

A utility may not use an acquisition adjustment under 16 Texas Administrative Code (TAC) § 24.41(e) or (f) for plant, property, or equipment acquired through a transaction based on the fair-market-valuation process under 16 TAC § 24.238.

Certain transactions involving the sale, transfer, merger, consolidation, acquisition, lease, or rental of a water or sewer systems require Commission approval under Texas Water Code (TWC) § 13.301 and 16 TAC § 24.239 (the STM rule). The selling and acquiring utilities may

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<sup>1</sup> Administrative Procedure Act, Tex. Gov't Code §§ 2001.001-.902.

agree to use the fair-market-valuation process in 16 TAC 24.238(f) to establish the rate base for the system or facilities acquired in the transaction.

The Commission's cost-of-service rule allows utilities that acquire a system or facilities that requires Commission approval under the STM rule to make a positive acquisition adjustment to rate base if certain conditions are met.<sup>2</sup> The rule also requires that a negative acquisition adjustments be recognized unless the Commission determines otherwise.<sup>3</sup> However, the cost-of-service rule states that the provisions allowing a positive or negative acquisition adjustment do not apply to plant, property, or equipment acquired through a transaction based on the fair market valuation process under the STM rule.<sup>4</sup>

Therefore, a utility may not make an acquisition adjustment under 16 TAC § 24.41(d) or (e) for plant, property, or equipment acquired through a transaction based on the fair-market-valuation process under 16 TAC § 24.238.

## **II. 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).<sup>5</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

### **Cost of Service**

15A. For each positive acquisition adjustment sought by the utility for any plant, property, or equipment acquired under 16 TAC § 24.239 that did not utilize the fair-market-valuation process under 16 TAC § 24.238, does the utility meet the applicable requirements in 16 TAC § 24.41(d)?

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<sup>2</sup> 16 TAC § 24.41(d).

<sup>3</sup> *Id.* § 24.41(c).

<sup>4</sup> *Id.* § 24.41(f).

<sup>5</sup> Tex. Gov't Code § 2003.049(e).

15B. For any plant, property, or equipment acquired under 16 TAC § 24.239, that did not utilize the fair-market-valuation process under 16 TAC § 24.238, did the original cost of the acquired property less depreciation exceed the actual purchase price? If so, please answer the following for each system.

- a. Did the utility separately record a negative acquisition adjustment from the original cost of the acquired property for all required systems under 16 TAC § 24.41(e)? In answering this question for each system please address the following.
  - i. Did the utility acquire plant, property, or equipment from a non-functioning retail public utility through a sale, transfer, or merger, receivership, or where the utility was acting as a temporary manager? If so, did the utility record and amortize all required negative acquisition adjustments under 16 TAC § 24.41(e)(1)? If not:
  - ii. Should the Commission recognize any negative acquisition adjustments through a bill of credit or by other appropriate means under 16 TAC § 24.41(e)(2)?
  - iii. Has the utility otherwise shown cause as to why the Commission should not account for the negative acquisition adjustment in this proceeding under 16 TAC § 24.41(e)(3)?

**Additional Issues**

**Fair Market Value Acquisition Adjustments**

60A. For facilities held by Aransas Bay Utilities Co., LLC that were sold and transferred to the utility in Docket No. 53326,<sup>6</sup> address the following questions.

- a. Does the ratemaking rate base for Aransas Bay's former water and sewer systems, determined by the order in Docket No. 53326, comport with the ratemaking rate base for Aransas Bay identified by the utility in this proceeding?

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<sup>6</sup> Application of CSWR-Texas Utility Operating Company, LLC and Aransas Bay Utilities, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Aransas County, Docket No. 53326, Notice of Approval (Dec. 16, 2022).

- b. If not, explain why and identify the statute or Commission rule that authorizes an adjustment to the ratemaking rate base determined by the order in Docket No. 53326.
  - c. To the extent that the utility seeks to adjust the rate base for the systems acquired in Docket No. 53326 to reconcile the asserted net book value for the systems with the ratemaking rate base approved by the Commission, what rule or statute authorizes the requested adjustment to the rate base?
- 60B. For facilities held by Walter J. Carroll Water Company, Inc. that were sold and transferred to the utility in Docket No. 52879,<sup>7</sup> address the following questions.
- a. Does the ratemaking rate base for Carroll Water's former water system, determined by the order in Docket No. 52879, comport with the ratemaking rate base for Carroll Water identified by the utility in this proceeding?
  - b. If not, explain why and identify the statute or Commission rule that authorizes an adjustment to the ratemaking rate base determined by the order in Docket No. 52879.
  - c. To the extent that the utility seeks to adjust the rate base for the system acquired in Docket No. 52879 to reconcile the asserted net book value for the system with the ratemaking rate base approved by the Commission, what rule or statute authorizes the requested adjustment to the rate base?
- 60C. For facilities held by Copano Cove Water Company, Inc. that were sold and transferred to the utility in Docket No. 52803,<sup>8</sup> address the following questions.

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<sup>7</sup> *Application of Walter J. Carroll Water Company, Inc. and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Ellis County*, Docket No. 52879, Notice of Approval (Sep. 21, 2022).

<sup>8</sup> *Application of Copano Cove Water Company, Inc. and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Aransas County*, Docket No. 52803, Notice of Approval (Dec. 19, 2022).

- a. Does the ratemaking rate base for Copano Cove's former water system, determined by the order in Docket No. 52803, comport with the ratemaking rate base for Copano Cove identified by the utility in this proceeding?
  - b. If not, explain why and identify the statute or Commission rule that authorizes an adjustment to the ratemaking rate base determined by the order in Docket No. 52803.
  - c. To the extent that the utility seeks to adjust the rate base for the system acquired in Docket No. 52803 to reconcile the asserted net book value for the system with the ratemaking rate base approved by the Commission, what rule or statute authorizes the requested adjustment to the rate base?
- 60D. For facilities held by Leon Springs Utility Company that were sold and transferred to the utility in Docket No. 52410,<sup>9</sup> address the following questions.
- a. Does the ratemaking rate base for Leon Springs's former sewer system, determined by the order in Docket No. 52410, comport with the ratemaking rate base for Leon Springs identified by the utility in this proceeding?
  - b. If not, explain why and identify the statute or Commission rule that authorizes an adjustment to the ratemaking rate base determined by the order in Docket No. 52410.
  - c. To the extent that the utility seeks to adjust the rate base for the system acquired in Docket No. 52410 to reconcile the asserted net book value for the system with the ratemaking rate base approved by the Commission, what rule or statute authorizes the requested adjustment to the rate base?

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<sup>9</sup> *Application of CSWR-Texas Utility Operating Company, LLC and Leon Springs Utility Company for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bexar County*, Docket No. 52410, Notice of Approval (Jun. 3, 2022).

60E. For facilities held by North Orange Water & Sewer, LLC that were sold and transferred to the utility in Docket No. 53483,<sup>10</sup> address the following questions.

- a. Does the ratemaking rate base for North Orange's former water and sewer systems, determined by the order in Docket No. 53483, comport with the ratemaking rate base for North Orange identified by the utility in this proceeding?
- b. If not, explain why and identify the statute or Commission rule that authorizes an adjustment to the ratemaking rate base determined by the order in Docket No. 53483.
- c. To the extent that the utility seeks to adjust the rate base for the systems acquired in Docket No. 53483 to reconcile the asserted net book value for the systems with the ratemaking rate base approved by the Commission, what rule or statute authorizes the requested adjustment to the rate base?

60F. For facilities held by Texas Landing Utilities that were sold and transferred to the utility in Docket No. 52880,<sup>11</sup> address the following questions.

- a. Does the ratemaking rate base for Texas Landing's former water and sewer systems, determined by the order in Docket No. 52880, comport with the ratemaking rate base for Texas Landing's identified by the utility in this proceeding?
- b. If not, explain why and identify the statute or Commission rule that authorizes an adjustment to the ratemaking rate base determined by the order in Docket No. 52880.
- c. To the extent that the utility seeks to adjust the rate base for the systems acquired in Docket No. 52880 to reconcile the asserted net book value for the systems with

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<sup>10</sup> *Application of CSWR-Texas Utility Operating Company LLC and North Orange Water & Sewer, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Orange County*, Docket No. 53483, Notice of Approval (Mar. 8, 2023).

<sup>11</sup> *Application of Texas Landing Utilities and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Polk and Montgomery Counties*, Docket No. 52880, Notice of Approval (Nov. 3, 2022).



the ratemaking rate base approved by the Commission, what rule or statute authorizes the requested adjustment to the rate base?

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).

### **III. Effect of Preliminary Order**

The Commission's discussion and conclusions in this Order regarding threshold legal and policy issues should be considered dispositive of those matters. Questions, if any, regarding threshold legal and policy issues 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 May 2023.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PETER M. LAKE, CHAIRMAN**

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**WILL MCADAMS, COMMISSIONER**

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**LORI COBOS, COMMISSIONER**

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**JIMMY GLOTFELTY, COMMISSIONER**

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**KATHLEEN JACKSON, COMMISSIONER**