Filing Receipt

Filing Date - 2023-09-29 02:42:23 PM

Control Number - 54565

Item Number - 2462

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

APPLICATION OF CSWR-TEXAS UTILITY OPERATING COMPANY, LLC FOR AUTHORITY TO CHANGE RATES	§ § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

OFFICE OF PUBLIC UTILITY COUNSEL'S POST-HEARING REPLY BRIEF

Courtney K. Hjältman
Chief Executive & Public Counsel
State Bar No. 24070294

Renee L. Wiersema
Assistant Public Counsel
State Bar No. 24094361
Sharbel Sfeir
Assistant Public Counsel
State Bar No. 24071204
Chris Ekoh
Deputy Public Counsel
State Bar No. 06507015
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)

ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL

September 29, 2023

TABLE OF CONTENTS

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

APPLICATION OF CSWR-TEXAS UTILITY OPERATING COMPANY, LLC FOR AUTHORITY TO CHANGE RATES	§ § § §	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

OFFICE OF PUBLIC UTILITY COUNSEL'S
<u>POST-HEARING REPLY BRIEF</u>

The Office of Public Utility Counsel ("OPUC"), representing the interests of residential and small commercial consumers in Texas, files this post-hearing reply brief in response to the State Office of Administrative Hearings' ("SOAH") Order No. 7, amending the procedural schedule.[1] Pursuant to that order, filed September 12, 2023, the deadline for the parties to file post-hearing reply briefs is September 29, 2023.[2] Therefore, this brief is timely filed.[3]

I. INTRODUCTION

CSWR-Texas Utility Operating Company, LLC ("CSWR-Texas" or "Company") claims this case presents an opportunity for the Public Utility Commission of Texas ("Commission") to "*implement* the *clear direction of the Legislature*" by consolidating seventy-four small, distressed, rural, community-based water and wastewater systems.[4] The Staff of the Public Utility Commission of Texas ("Staff") and OPUC, however, have raised legitimate concerns about the Company's application, and proposed measures to address the Company's unprecedented requests.

[1] SOAH Order No. 7 Amending Briefing Schedules (Sept. 12, 2023).

[2] *Id.*

[3] The fact that OPUC does not address an issue should not be interpreted as agreement with any particular position on the issue. All page number references are to the native page numbers unless indicated otherwise.

[4] Initial Brief of CSWR-Texas Utility Operating Company, LLC at 5 (Sept. 22, 2023). (CSWR-Texas Initial Brief). [Emphasis added.]

The Company dismisses and mischaracterizes these concerns, claiming that neither Staff's nor OPUC's positions "advances the Legislature's and Commission's *express direction to incentivize investment* in these communities."[5] The Company, however, fails to show that its own actions align with either the Legislature's intent or the Commission's policies.

Despite filing an application that lacks sufficient historical data and relies heavily on annualizations and projections, the Company unreasonably requests that this Commission approve a *massive* revenue requirement increase, with an elevated overall rate of return, and no phase-in opportunity—an outcome that no other water utility in the state has achieved.[6] As CSWR-Texas's witness Chris Ekrut admits in direct testimony:

> Given that the Company's time of ownership of each of these systems varied during the year, *significant annualization adjustments* were needed to properly reflect a full year's worth of expenses for each system included within the filing. Commensurate annualization adjustments have been made to customer levels, revenues, *and anticipated billed volumes* to appropriately match annualized cost and revenues with annualized billing determinants.[7]

It is no wonder that Staff, OPUC, and customers are concerned. As a new market entrant in the state,[8] CSWR-Texas is unproven—it has no established track record with Texas customers and is unknown to the communities from which it acquired the sixty-two water and twelve wastewater systems. The Company's approach disregards the Commission's requirements and standards. It seeks the immediate recovery of incentivized investments[9] which, if approved, would place unreasonable burdens on customers.

---

[5] *Id.* at 7. [Emphasis added.]

[6] *See* Application at 5.

[7] *See* Direct Testimony of Chris Ekrut, CSWR-Texas Ex. 8 at 8:19- 9:3. [Emphasis added.]

[8] *See* Direct Testimony of Brent G. Thies at 8 (Thies Direct).

[9] *See* CSWR Initial Brief at 7.

The Company also misconstrues OPUC's recommendations. Although OPUC recommends consolidation, it does so *only* in conjunction with phased-in rates,[10] which could be implemented in a manner similar to those approved by the Commission in recent water utility consolidation cases of *Monarch*[11] and *Undine*.[12] In both *Monarch* and *Undine*, the Commission approved stipulations in which the parties *agreed* to the consolidation of distressed systems in conjunction with a phase-in rate mechanism, and with *reasonable* rates of return, similar to OPUC's recommendations in this matter. In contrast, the Company here seeks consolidation with immediate recovery, no phase-in, and an *enhanced* rate of return—a position which OPUC does not support.[13] OPUC's recommendations are reasonable and necessary to protect the interests of residential and small commercial consumers. Absent these measures, OPUC cannot support the Company's request for consolidation.

II. CONSOLIDATION — *WITH A PHASE-IN RATE* — IS IN THE PUBLIC INTEREST

When the Company filed its application, Texas Water Code ("TWC") § 13.145 required that any systems a water utility sought to consolidate under a single tariff be substantially similar (in terms of facilities, quality of service, and cost of service) and promote water conservation.[14] On June 2, 2023, TWC § 13.145 was repealed by the 88th Texas Legislature's passage of House

[10] Direct Testimony of Mark E. Garrett at 32:19-33:13. (Garrett Direct).

[11] *See Application of Monarch Utilities I L.P. for Authority to Change Rates*, Docket No. 50944, Order (Feb. 23, 2022). (Monarch).

[12] *See Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Order (Nov. 5, 2020). (Undine).

[13] *See* Company Initial Brief at 29.

[14] TWC §13.145.

Bill No. 2373.[15] The Company argues that the repeal of TWC § 13.145 removed barriers to consolidation, especially in situations such as this, so that utilities can operate distressed systems more efficiently based on the economies of scale.[16] As shown below, OPUC's position regarding the application of TWC § 13.145 is significantly more aligned with Staff's position than that of the Company.

Staff opposes the consolidation of several systems based on its application of TWC § 13.145.[17] Staff points out that the statute is controlling because it was in effect when the Company filed its application and the repeal of the statute is not retroactive.[18] Staff therefore recommends the consolidation of some, but not all, of the Company's distressed water and wastewater systems.[19] Staff also disagrees with consolidating systems for which CSWR-Texas lacks historical test year data. For twenty-seven of the water systems and nine of the sewer systems the Company relied on partial annualizations and projections.[20] Staff's witness James Euton states:

> Permitting CSWR-Texas to implement a consolidated water and sewer revenue requirement *based off test year data combined with annualization adjustments will create bad precedent permitting utilities to file mismatched or speculative test year data and could lead to unreasonable and unjust rates.* Therefore, Staff urges the SOAH ALJs to examine CSWR-Texas's application pursuant to Commission rules and require CSWR-Texas to provide a full 12 months of test year data for all systems it seeks to include in its consolidated water and sewer costs of service and to exclude the systems that lack the required test year data.[21]

---

[15] Tex. H.B. 2373, 88th Leg., R.S. (2023).

[16] Direct Testimony of Josiah Cox at 7:3-8. (Cox Direct); see Tr. at 85:5-10 (Fox Cross) (Sept. 7, 2023); see Tr. at 87:15-88:10 (on Redirect) (Sept. 7, 2023).

[17] *See* Direct (Errata) Testimony of Ethan Blanchard at 5:1-7. (Blanchard Direct).

[18] *See* Commission Staff's Clarification (Jul. 14, 2023); Staff Initial Brief at 5-8.

[19] *See* Direct Testimony of James Euton at 11:2-12:17.

[20] *Id.* at 9.

[21] *Id.* at 11. [Emphasis added.]

OPUC agrees with Staff that it would be improper for the Company to recover its full cost of service on systems the Company did not even own the entire test year, and for which it relies on annualized and projected data. The key difference between the respective positions of Staff and OPUC on the issue is merely the recommended remedy. Staff recommends removing all systems that lack twelve months of test year data from the consolidation,[22] while OPUC recommends including the systems but implementing a phase-in rate mechanism, so that the Company would not receive full recovery but instead would recover only *a portion* of costs during the phase-in period.[23] OPUC's approach is preferable to the Company's untenable request for full recovery of its unsubstantiated costs.[24]

A. The Company misconstrues OPUC's recommendations.

The Company claims that OPUC would "prohibit" CSWR-Texas from filing another rate proceeding for five to six years, amounting to a further delay of necessary rate increases for these systems.[25] OPUC does not seek to prohibit or direct the timing of future rate cases but to merely effectuate a phase-in rate plan patterned after the plan adopted in *Monarch*. In addition, the Company criticizes OPUC's $10 per year phase-in proposal, stating:

> OPUC seeks to limit rate increases to any system so that rates only increase by $10/per month each year. OPUC acknowledges, given the differences in existing rates for the various systems, its approach could take eight years to fully consolidate all approved systems. However, eight years of phase-in will disincentivize any utility in the state of Texas to acquire and fix the numerous failing systems that still operate in the state. In fact, CSWR-Texas estimates that, under OPUC's phase-in proposal, it would forego recovery of approximately $7.8 million in water and sewer revenues. OPUC does not appear to recognize that these lost revenues are larger than

[22] *See* Direct Testimony of Kathryn Eiland (Eiland Direct).

[23] *See* OPUC's Initial Brief.

[24] *See* Application, *See* CSWR-Texas Initial Brief.

[25] CSWR-Texas Initial Brief at 7.

> the disallowances proposed by Commission Staff, nor the significant carrying costs required to cover eight years of lost revenue.[26]

CSWR-Texas' concerns about OPUC's recommendations are greatly exaggerated, especially as to the length of time it would take to fully consolidate the systems. The Company's own schedules[27] show that the vast majority of the systems achieve full recovery within years three through five of the phase-in period under OPUC's proposal.[28] By the Company's own calculations, the revenue shortfall in year six is only $15,560 and the revenue shortfall in year seven is a *de minimis* $249.[29] Given the Company's premature and unsubstantiated filing, a phase-in approach that limits recovery during the phase-in period but achieves fully consolidated rates within three to five years is a fair and reasonable result.

The Commission should require a phase-in approach to ensure fair, just, and reasonable rates.[30] The Company is asking the Commission to approve an unreasonable rate increase and cost recovery timeline. For water operations, the Company seeks an annual revenue requirement of approximately $7.4 million, an increase of $3.6 million over current revenues of $3.8 million,[31] resulting in a 95% increase in water rates. For wastewater operations, it seeks an annual revenue requirement of approximately $2.3 million, an annual increase of $1.2 million over current revenues of $1.1 million[32]—which is a 109% increase in wastewater rates. If approved, the Company's proposed rate increases would cause unacceptable rate shock and, in many cases,

---

[26] *Id.* at 37.

[27] Rebuttal Testimony of Josiah Cox (Cox Rebuttal), Exhibit JC-R-2.

[28] See OPUC Initial Brief.

[29] *See* Cox Rebuttal, Exhibit JC-R-2.

[30] *See* TWC § 13.182.

[31] *See* Cox Direct at 20:14-15.

[32] *See Id.* at 20:17-19.

extreme hardship for customers. A three-year consolidated phase-in approach, as set forth in OPUC's initial brief, would be a fair and reasonable compromise.[33] As shown in the table below, OPUC's three-year consolidated phase-in example results in lost revenues of only $3.6 million for the Company's water systems.

Table 1: Water System Lost Revenue Comparison

Description	Reference	Year-1	Year-2	Year-3	Total	Lost Revenue
CSWR Revenue Requirement	(Cox Direct p. 20)	$ 7,400,000				
Existing Revenues	(Cox Direct p. 20)	$ 3,800,000				
Inrease Requested	(Cox Direct p. 20)	$ 3,600,000	$ 3,600,000	$ 3,600,000	$ 10,800,000	
1 (Consolidates all facilities)						
				(New GRC)		
OPUC 3-Year Phase-In Increase		$ 1,200,000	$ 2,400,000	$ 3,600,000	$ 7,200,000	$ (3,600,000)
1 (Consolidates all facilities)		33%	67%	100%		
2 (Assumes a 3-Year Phase-In)						
3 (Assumes **No** new GRC is needed)						

Benefits of OPUC 3-Year Consolidated Phase-In Example

1) Consolidates all facilities.
2) Avoids new rate case in 2 years to consolidate remaining facilities.
3) Avoids the need for complete COS data in YR 1.
4) Provides much-needed rate mitigation.
5) Results in lost revenue equal to about 1 year's worth of the proposed increase.

The consolidated phase-in approach outlined in Table 1 above offers several benefits. First, it allows for the consolidation of all facilities at one time, and thus avoids an additional rate case to consolidate remaining facilities. Second, it avoids the need for complete test year cost of service data in Year-1 since the ratepayers would pay only a partial (phased-in) rate rather than the full amount. Third, it provides much-needed rate mitigation. And finally, it results in lost revenue equal to approximately one years' worth of the proposed increase. *This is a fair result because it is the approximate amount of revenue that CSWR would have lost if it had waited to accumulate the complete twelve-month test year data on all systems before filing its application.*[34]

[33] *See* OPUC Initial Brief, Table 5 at 15.

[34] *See* OPUC Reply Brief at 7, Table 1.

B. Staff's recommendation would result in higher consolidated rates.

While Staff's approach of removing from consolidation all systems that are not based upon twelve months of historical test year data may be preferable to the Company's approach of prematurely insisting on the full recovery of the projected costs without a phase-in mechanism, this approach comes with significant drawbacks. The problem with a partial consolidation is twofold: (1) this approach would require the expense of another rate case proceeding before the excluded systems could join; and (2) the removal of the systems from consolidation causes Staff's proposed consolidated rates to be significantly higher than the consolidated rates proposed by the Company. As shown in OPUC's Initial Brief, when one compares the monthly bill amounts for a 5/8" 5,000-gallon customer, Staff's recommended consolidated monthly rate of $95.71 is *17.1% higher* than the Company's consolidated rate of $81.73.[35]

C. The Commission has approved consolidations in prior proceedings without a full twelve months of historical test-year data.

OPUC recognizes that the Commission has approved consolidations without a utility providing a cost-of service study for every system the utility plans to consolidate. The aforementioned *Undine* case is one example..[36] Similarly, in the *Application of CORIX Utilities (Texas) Inc. for Authority to Change Rates*, Docket No. 50557, the Commission relied on the utility's witness' analysis of the operations and maintenance cost on a per equivalent residential

[35] *See* OPUC Initial Brief at 6. *See also*, Company-provided workpaper entitled, "Sched WPs–Rate Filing Supporting Schedules by System ORIGINAL.xlsx, tab "Water Rate Proof Systems, Cells B9 through B21) *with* Blanchard Direct, Attachment ENB-2 Errata, page 2 of 2 Table 4: Staff's Recommended Rates.

[36] *See Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Order (Nov. 5, 2020).

connection to support the substantial similarity for the consolidated water rate regions.[37] However, in both *Undine* and *Corix*, the Commission's approval was based upon the parties' agreement which also provided for phase-in rates and reasonable (not enhanced) rates of return. In this proceeding, OPUC recommends that the Commission approve the Company's request for consolidation *only if* the Commission also orders a phase-in rate approach and adopts Staff's recommended return on equity ("ROE") to mitigate rate shock. OPUC recommends that a phased-in rate plan is the most reasonable and efficient way to balance the interests of the parties in this proceeding. This approach is consistent with prior orders in which the Commission approved settlement agreements in the *Monarch*[38] and *Undine*[39] consolidation cases.[40] It is also consistent with Commission's recent recommendations in its Self-Evaluation report to the Sunset Advisory Commission.[41] In that report, the Commission recommended the repeal of TWC § 13.145, as well as additional measures to expedite the acquisition, consolidation, and improvement of distressed water and sewer utilities.[42]

III. THE COMPANY'S PROPOSED RATE INCREASES ARE UNTENABLE

The Company seeks an unreasonable rate increase and cost recovery timeline. For water operations, the Company seeks an annual revenue requirement of approximately $7.4 million, an

---

[37] *Application of CORIX Utilities (Texas) Inc. for Authority to Change Rates*, Docket No. 50557, Finding of Fact Nos. 69, 75-76 (Sep. 29, 2021); *See also Application of CORIX Utilities (Texas) Inc. for Authority to Change Rates*, Docket No. 53815, Cross-Rebuttal Testimony of Chris Ekrut at 9:5-17 (relying on statistical analysis to establish substantial similarity for cost of service) (Sep. 13, 2023).

[38] *See Application of Monarch Utilities I L.P. for Authority to Change Rates*, Docket No. 50944, Order (Feb. 23, 2022) (Monarch).

[39] *See Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Order (Nov. 5, 2020) (Undine).

[40] Garrett Direct at 32:19-33:13.

[41] *See* Rebuttal Testimony of Josiah Cox, Exhibit JC-R-2 (presenting the Pub. Util. Comm'n of Texas Self-Evaluation Report to the Texas Sunset Advisory Commission at Report pp. 235-238 (Sept. 1, 2021).). (Cox Rebuttal).

[42] *Id.* at 238.

increase of $3.6 million over current revenues of $3.8 million[43] — a 95% increase in water rates. For wastewater operations, it seeks an annual revenue requirement of approximately $2.3 million, an annual increase of $1.2 million over current revenues of $1.1 million[44]—which is a 109% increase in wastewater rates.

For customers, this translates into significant monthly billing increases above existing rates for both water and sewer utility service.[45] For example, a customer using 5,000 gallons per month, the current monthly bill can range from as low as $10.00/month to as high as $92.00/month with a median value of *$42.91*, as shown on Table 2 below. For a customer using 10,000 gallons per month, the monthly bill ranges as low as $10.00/month to as high as $122.00/month with a median value of ***$58.00***, as shown on Table 3 below.

Table 2: Water Systems Using 5,000 Gallon Usage per Month[46]			
	Low	High	Median
Existing Stand-Alone Rates	$10.00	$92.00	*$42.91*
Proposed Stand-Alone Rates	$28.09	$674.49	$93.19
Proposed Consolidated Rates			*$81.73*

Table 3: Water Systems Using 10,000 Gallon Usage per Month[47]			
	Low	High	Median
Existing Stand-Alone Rates	$10.00	$122.00	*$58.00*
Proposed Stand-Alone Rates	$39.44	$674.49	$127.53
Consolidated Rates			*$109.43*

If the Commission were to approve the Company's requested rate increases, the median consolidated monthly rate on 5,000-gallon usage customers would increase to *$81.73*, as shown

---

43 *See* Cox Direct at 20:14-15.

44 *See Id.* at 20:17-19.

45 *See* Company provided workpaper titled "Sched WPs – Rate Filing Supporting Schedules by System", tab "Water Rate Proof Systems" Cells B67 through AQ67, B67 through AQ67.

46 *See* Garrett Direct at 21:11 and Exhibit MG-3.3.A WP.

47 *See* Garrett Direct at 22 and Exhibit MG-3.3.A WP.

on Table 2, and the median consolidated monthly rate on 10,000-gallon usage customers would increase to *$109.43*, as shown on Table 3. Based on Company-provided data, the individual systems would experience changes in their monthly bills ranging from an 11% decrease to a 717% increase at the 5,000-gallon monthly usage level.[48] For sewer utility service, the Company is proposing to increase its revenue requirement by 108%.[49] Customers from the individual systems would experience a change in their monthly bills ranging between an 11% and 331% increase.[50] OPUC witness Mr. Mark Garrett testified that he has never seen rate increases of this magnitude imposed on customers,[51] and that regulators *should not* approve rate increases of this magnitude on what are effectively captive customers.[52] Customers should be given the opportunity to adjust their budgets, adjust their usage levels—or even change their addresses as needed—in response to such dramatic increases in the cost of a utility service.[53] As a matter of policy, Mr. Garrett asserts that principles of gradualism support the use of a mechanism to ensure that an increase of this magnitude can be phased-in over a reasonable period.[54]

The Company claims that it "shares OPUC's concerns about bill impacts," acknowledging that some customers will experience increases, but "they are far less than the impacts of not consolidating."[55] These assurances are not helpful. The fact that the Company's proposed standalone rates are even higher than its proposed consolidated rates *does not prove that the*

---

[48] See Garrett Direct at 23:7 and Exhibit MG-3.3.A. WP.

[49] *See* Company-provided workpaper titled "Sched WPs – Rate Filing Supporting Schedules by System," tab "Sewer," Cell E90.

[50] Garrett Direct at 27:13-16; and Exhibit MG-3.3.B. WP.

[51] *Id.* at 30:10-16.

[52] *Id.* at 29:16-17.

[53] *Id.* at 29:16-21.

[54] *Id.* at 29:19-3:2.

[55] CSWR-Texas Initial Brief at 37.

consolidated rates are reasonable, or that the Commission should approve the Company's request without modification.

IV. A PHASED-IN APPROACH IS NECESSARY FOR SETTING JUST AND REASONABLE RATES IN THIS CASE

A phase in rate approach, based on principles of gradualism and fairness, is the best way to address rate shock issues. With the adoption of a phase-in rate plan, the rates during the phase-in period are not directly based on cost-of-service. This approach, therefore, alleviates concerns about setting rates with incomplete test year data, while at the same time provides a plan to bring rates up to cost-of service levels within a reasonable period of time. Mr. Garrett's recommendation for a phase-in plan is consistent with those recently adopted in settlement agreements,[56] and approved by the Commission.[57] The Company's dismissive response to Mr. Garrett's phase-in recommendation[58] is an unfortunate missed opportunity for the parties to devise a phase-in plan variation as part of a workable approach for the setting of just and reasonable rates. The Company requests full recovery of its massive rehabilitation costs, along with an escalated rate of return, before it even presents full cost of service data on many of its systems—*that is unrealistic.* Although consolidation of the system may be reasonable and appropriate—the pace at which the Company seeks to recover costs is not. *The Commission should set just and reasonable rates to avoid rate shock.* The Company's approach fails to present a viable alternative for the Commission to approve.

---

[56] *See* Garrett Direct at 31:16-19, fn. 70, *Application of Monarch Utilities I L.P. for Authority to Change Rates*, Docket No. 50944, Order (Feb. 23, 2022).

[57] *See* Garrett Direct at 31:21—32:5, *fn.* 71, *See Application of Undine Texas, LLC and Undine Texas Environmental, LLC for Authority to Change Rates*, Docket No. 50200, Order (Nov. 5, 2020).

[58] *See* Cox Rebuttal at 28:1.

A. A phased-in rate plan is consistent with the Commission's objectives.

A phased-in rate plan is not only consistent with prior orders of the Commission approving similar plans for distressed water system consolidations, it also is consistent with the Commission's recommendations in its September 2021 Self-Evaluation Report to the Sunset Advisory Commission to facilitate the acquisition, consolidation and improvement of non-functioning water and sewer utilities in a reasonable manner.[59] Phased-in rate plans are a mechanism designed to provide adequate temporary rates in the initial phase of new ownership, as well as a plan for providing incremental future increases to facilitate utility investment without causing undue rate shock.

B. The Commission has authority to require phase-in rates, or other mechanisms, to establish just and reasonable rates.

The Commission has authority under TWC § 13.182(a) to ensure "that every rate made, demanded, or received by any utility or by any two or more utilities jointly shall be just and reasonable." Rates must "be sufficient, equitable, and consistent in application to each class of consumers."[60] Implementing a phased-in rate approach in this case provides the balance that the utility and the customers desperately need to accomplish the statutory objective delegated to the Commission to establish reasonable rates. Although in *Monarch*[61] and *Undine*,[62] the Commission approved phase-in plans that were developed by the parties pursuant to settlement agreements, the approval of the agreements signifies the Commission's authority to establish just and reasonable

---

[59] *See* Cox Rebuttal, Exhibit JC-R-2 (presenting the Pub. Util. Comm'n of Texas Self-Evaluation Report to the Texas Sunset Advisory Commission at 235-238 (Sept. 1, 2021)).

[60] TWC § 13.182(b).

[61] *See* Garrett Direct at 33:1-4, *Application of Monarch Utilities I L.P. for Authority to Change Rates*, Docket No. 50944, Order (Feb. 23, 2022).

[62] *See* Undine.

rate here, and should under the circumstances, require that phase-in rates be implemented. Table 4 below shows OPUC's example of a three-year plan based on CSWR-Texas's proposed consolidated rate:

Table 4: Sample 3-Year Phase-In Plan Consolidating All Systems Using CSWR-TX Proposed Consolidated Rate (5,000 Gallon Customer Example)			
Description	Median Current Rate	Proposed CSWR Consolidated Rate	Difference
Source:	Garrett Direct, p. 21 Table 1	Garrett Direct, p. 21 Table 1	
Current/Future Rates	$42.91	$81.73	$38.82
Phase-In Over 3 Years			/3
Annual Increase			$12.94
	Yr -1	**Yr -2**	**Yr -3**
Current Rate Level	$42.91	$55.85	$68.79
Increase	$12.94	$12.94	$12.94
New Rate	**$55.85**	**$68.79**	**$81.73**

In the alternative, an example of a three-year plan based on OPUC's proposed consolidated rate is shown in Table 5 below:

Table 5: Sample 3-Year Phase-In Plan Consolidating All Systems Using OPUC Proposed Consolidated Rate (5,000 Gallon Customer Example)			
Description	Median Current Rate	Proposed OPUC Consolidated Rate	Difference
Source:	Garrett Direct, p. 21 Table 1	Garrett Direct, p. 34	
Current/Future Rates	$42.91	$76.32	$33.41
Phase-In Over 3 Years			/3
Annual Increase			$11.14
	Yr -1	**Yr -2**	**Yr -3**
Current Rate Level	$42.91	$54.05	$65.18
Increase	$11.14	$11.14	$11.14
New Rate	**$54.05**	**$65.18**	**$76.32**

OPUC finds the phased-in rates shown in Table 5 to be preferable because they are based on a more reasonable ROE recommended by both Staff[63] and OPUC.[64]

V. NON-FMV ACQUISTION PREMIUM RECOVERY SHOULD BE DEFERRED

Regarding Non-fair-market-value ("Non-FMV") positive acquisition adjustments, the Commission should require a showing of customer benefits, quantified savings and improvements as a result of the acquisitions. So far, the Company's assertions are based on promises and projections rather than data. As Mr. Garrett explains:

> [T]he Company indicates that it has identified three factors that allow CSWR-Texas to operate more cost effectively. First, as the number of acquired systems increase, CSWR-Texas can build economies of scale with its affiliates in several states in areas such

[63] *See* Staff Initial Brief at 25.

[64] *See* OPUC Initial Brief at 15.

> as executive management, legal, accounting, human resources, customer experience, information technology, procurement, and other business services. Second, CSWR has developed innovative construction techniques to lower installation costs or extend the life of existing facilities to defer pending construction projects. Third, CSWR has initiated new water and sewer treatment techniques to treat water more cost effectively. Although these are promising indicators of cost saving measures that may lead to customer benefits, the actual benefits have not yet been proven in a manner sufficient to satisfy the requirements.[65]

Although the Company assures the Commission that its policies are sound, and that it will be able to operate the acquired systems in a more efficient manner,[66] these assurances alone are not proof. The Company has not met the requisite standard to recover these costs. As Mr. Garrett notes:

> [I]nformation the Company presents falls short of proving that the actual purchase price paid is reasonable, and that the rates charged to pre-acquisition customers will not increase unreasonably. One reason the Company failed to prove the required criteria is that, as the Company itself acknowledges, the books and records of the acquired systems have had insufficient detail regarding the value of assets and rate base. In addition to the records being incomplete, they were often of poor quality, and the Company does not believe that the historical rate base figures it was able to obtain are truly representative of the value of plant assets and consequently of rate base.[67]

The Company has failed to present sufficient evidence that these costs are recoverable. As articulated by Mr. Garrett, "[i]t is unclear why a distressed, poorly-run system should be priced at an above-book premium value rather than at a discount."[68] Thus, while it may be understandable that the Company elected not to incur the additional appraisal, engineering, and regulatory costs associated with the statutory FMV process for every system it acquired, this decision eliminated

---

[65] Garrett Direct at 17:1 – 17:5.

[66] *See* Application, *See* Thies Direct.

[67] *Id.* at 14:5-12.

[68] *Id.* at 14:16-17.

the safeguards of the FMV process which serve to assure that the price paid over book value is reasonable and allowable in rates.[69]

Moreover, the Company thus far has not provided sufficient evidence that its goals of improving customer service have been achieved. The Company acknowledges that customers who intervened in this case have expressed concerns about CSWR-Texas's quality of service.[70] In response the Company states:

> As with any construction project, there can be delays associated with permit approval, labor shortages, material shortage, etc., all of which are frustrating both for customers and CSWR-Texas. Then, after the problems are repaired, it takes time for CSWR-Texas to help customers forget the past poor water and wastewater service they have received from the prior owners or subsequent temporary mangers or receivers. Thus, *in CSWR-Texas's experience*, once the Company has an opportunity to professionally operate and restore the system, service quality concerns are less frequent.[71]

This statement admits that it takes time for the Company to show that improvements have been achieved. The statement also demonstrates the Company's tendency to gloss over concerns with promises, mission statements, and grandiose plans. Reliance on the Company's assurances regarding its experience, presumably in other jurisdictions, is not sufficient for this Commission to determine: (1) that the Company is entitled to immediate and full recovery of its partially-documented costs; (2) that a phase-in rate would be fundamentally unfair to the Company; (3) that non-FMV acquisition premiums should be recovered in rates before associated benefits are documented; and (4) that the Company is entitled to an additional, enhanced ROE based on the evidence presented in this proceeding.

---

[69] *Id.* at 14:17—15:1.

[70] CSWR-Texas Initial Brief at 39.

[71] *Id.* at 40. [Emphasis added.]

VI. CONCLUSION

OPUC has proposed reasonable measures to mitigate the Company's premature and unprecedented request for cost recovery in this proceeding. The Company has glossed over the valid concerns raised by Staff and has misconstrued OPUC's position. OPUC does not agree that the Company's request for a full recovery of its costs should be approved. OPUC recommends the consolidation of all of the Company's systems should be approved *only* in conjunction with a phase-in rate plan and a reasonable (not enhanced) ROE. The Commission should defer recovery of non-FMV acquisition premiums until the Company can demonstrate and quantify benefits to customers in a future rate proceeding. Customers of these distressed systems should be given a reasonable chance to adjust to the new rates over time with gradual increases phased-in to lessen the blow of the extraordinary rate shock they would otherwise experience. Therefore, OPUC respectfully requests that the Commission require a phased-in rate plan to ensure that the rates set in this proceeding are fair, just, and reasonable.

Date: September 29, 2023

Respectfully submitted,

Courtney K. Hjältman
Chief Executive & Public Counsel
State Bar No. 24070294

Renee Wiersema

Renee L. Wiersema
Assistant Public Counsel
State Bar No. 24094361
Sharbel Sfeir
Assistant Public Counsel
State Bar No. 24071204
Chris Ekoh
Deputy Public Counsel
State Bar No. 06507015

1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)
renee.wiersema@opuc.texas.gov (Service)
sharbel.sfeir@opuc.texas.gov (Service)
chris.ekoh@opuc.texas.gov (Service)
opuc_eservice@opuc.texas.gov (Service)

ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL

CERTIFICATE OF SERVICE

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

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 29th day of September 2023 by facsimile, electronic mail, and/or first class, U.S. Mail.

Renee Wiersema

Renee L. Wiersema