



Control Number: 54683



Item Number: 68

Kathleen Jackson
Interim Chair

Will McAdams
Commissioner

Lori Cobos
Commissioner

Jimmy Glotfelty
Commissioner



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Public Utility Commission of Texas

TO: Interim Chair Kathleen Jackson
Commissioner Will McAdams
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty

All Parties of Record

FROM: Lorena Patrick
Commission Advising

RE: *Application of Enviro-Management for Authority to Change Rates*, Docket
No. 54683, Draft Preliminary Order, September 14, 2023 Open Meeting, Item
No. 6.

DATE: September 7, 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 September 14, 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 September 14, 2023 open meeting.

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DOCKET NO. 54683

**APPLICATION OF § PUBLIC UTILITY COMMISSION
ENVIRO-MANAGEMENT FOR §
AUTHORITY TO CHANGE RATES § OF TEXAS**

DRAFT PRELIMINARY ORDER

Sheila D. Agnew doing business as Enviro-Management filed an application to change its water rates. This preliminary order identifies the issues that must be addressed in this docket.

Sheila D. Agnew doing business as Enviro-Management is a Class D utility applying under Texas Water Code (TWC) §§ 13.1871 and 13.1872(c)(2) to change its water rates based on a test year ending on December 31, 2022.¹ Ms. Agnew provides water service to approximately 110 active connections in Montgomery County under certificate of convenience and necessity (CCN) number 12625.² Ms. Agnew is seeking an increase in annual revenues of \$49,834.³ The proposed rate change increases the monthly bill and increases the volumetric charge per 1,000 gallons as follows.

Meter Size	Current Rate <i>(Includes 1,000 gallons)</i>	Proposed Rate <i>(Includes 0 gallons)</i>	Current Gallonage Charge	Proposed Gallonage Charge
5/8"	\$38.53	\$53.23	\$3.32 per 1,000 gallons	\$6.25 per 1,000 gallons

Ms. Agnew filed an application on February 24, 2023 and confidentially supplemented the application on March 10, 2023.⁴ Ms. Agnew proposed June 19, 2023 as the effective date for new rates.⁵ However, consistent with the recommendation by Commission Staff, the Commission administrative law judge (ALJ) suspended the effective date for the new rates no more than 265 days under TWC § 13.1871(g) and 16 Texas Administrative Code (TAC) § 24.35(c)(2).⁶

¹ Application (Feb. 24, 2023); Supplemental Application at 3 (Mar. 10, 2023).

² Commission Staff's Recommendation on Administrative Completeness, Notice, and Procedural Schedule, Memorandum of James Onyeneke at 1 (May 15, 2023)

³ Supplemental Application at 3.

⁴ Application at 1; Supplemental Application.

⁵ Enviro-Management's Response to Order No. 5, Application Materials at 85 (Jun. 7, 2023).

⁶ Order No. 2 at 1 (Mar. 28, 2023); Order No. 5 at 1 (Jun. 2, 2023).

On March 27, 2023, Commission Staff recommended the application be found administratively incomplete due to errors in the application and notice. In Order No. 2 filed on March 28, 2023, the Commission ALJ found the application administratively incomplete and the notice deficient. The Commission ALJ ordered Ms. Agnew to amend the application on or before May 12, 2023 to cure the deficiencies and re-notice customers with the correct notice information.⁷ Further, the Commission ALJ suspended Ms. Agnew's proposed effective rates until an administratively complete application was submitted. Ms. Agnew confidentially filed a response to Order No. 2 on April 11, 2023 that addressed the issues identified by Commission Staff regarding its application and proposed re-notice.⁸ Commission Staff filed its recommendation on May 15, 2023 that the proposed re-notice was sufficient and that the application was administratively complete.⁹ Commission Staff also recommended that the effective date of the proposed rates be suspended as permitted under TWC § 13.1871(g) or until an interim rate is requested and approved.¹⁰ On June 2, 2023, Ms. Agnew filed an affidavit as proof that re-notice to customers, affected municipalities, and the Office of Public Utility Counsel (OPUC) was provided on May 15, 2023.¹¹

In Order No. 5 filed on June 2, 2023, the Commission ALJ found notice sufficient and the application administratively complete and suspended the effective date of the requested rates. In Order No. 6 filed June 13, 2023, the Commission ALJ also granted Mark Newton's June 5, 2023 motion to intervene.¹²

On July 10, 2023, Commission Staff requested that the case be referred to the State Office of Administrative Hearings (SOAH) consistent with 16 TAC § 24.35(c)(2), which requires the Commission to set an application for hearing if it receives protests from the lessor of 1,000 or 10% of the affected ratepayers during the first 90 days after the effective date of the rate change.¹³ In

⁷ Order No. 2 (Mar. 28, 2023).

⁸ Response to Order No. 2 (May 15, 2023).

⁹ Commission Staff's Recommendation on Administrative Completeness, Notice, and Procedural Schedule (May 15, 2023).

¹⁰ *Id*

¹¹ Errata Notice (June 2, 2023).

¹² Order No. 6 at 1 (June 13, 2023).

¹³ See Commission Staff's Request for Referral at 1 (Jul. 10, 2023).

its request for referral to SOAH, Commission Staff noted Ms. Agnew's rate increase will affect approximately 140 ratepayers and, as of July 10, 2023, over 30 protests had been received.¹⁴ The Commission may set the matter for hearing on its own motion at any time within 120 days after the effective date of the rate change in accordance with 16 TAC § 24.35(c)(1).

Ms. Agnew was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed, identify any issues not to be addressed in the docket, and identify any threshold legal or policy issues that should be addressed by August 10, 2023. Ms. Agnew and Commission Staff each timely filed lists 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.¹⁵ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Applicant

1. What is the legal name and all assumed names, if any, of the utility in this proceeding? If the utility has an assumed name, provide a currently valid certificate of assumed names.
 - a. Which entity or entities own equipment and facilities used to provide water service?
 - b. What entity or entities operate the equipment and facilities? In answering this question, please identify which entity or entities employ the individuals who perform the day-to-day operations at the utility.
 - c. If a combination of entities constitutes the utility seeking the rate change, which entities should be joined in this proceeding?
2. What is the business form of the utility (e.g., corporation, partnership, sole proprietorship)?
 - a. What is the charter or authorization number, the date the business was formed, and the dates any changes were made?
3. Did the utility file its annual report as required by TWC § 13.136 and 16 TAC § 24.129?

¹⁴ *Id*

¹⁵ Tex. Gov't Code § 2003.049(e).

Notice

4. Did the utility provide proper notice of the proposed rate change under TWC § 13.1871(b) and (c) and 16 TAC § 24.27(b)(5) and (d)?

Revenue Requirement

5. What revenue requirement will give the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in providing service to the public more than its reasonable and necessary operating expenses while preserving the utility's financial integrity as required by TWC § 13.183(a)(1) and (2) and 16 TAC § 24.43(a)?

Cost of Service

6. What is the utility's cost of service for providing water service based on its test year?
7. What adjustments, if any, should be made to the utility's proposed test-year data in accordance with TWC § 13.185(d)(1) and 16 TAC § 24.41(b) and (c)(5)?

Allowable Expenses

8. What are the reasonable and necessary allowable expenses for water service under 16 TAC § 24.41(b)?
9. What is the utility's reasonable and necessary operations and maintenance expense?
10. What is the utility's reasonable and necessary depreciation expense?
 - a. For each class of property, what are the proper and adequate depreciation rates and methods of depreciation, including service lives and salvage values under TWC § 13.185(j) and 16 TAC § 24.41(b)(1)(B)?
 - b. Does this expense item contain any amounts related to property provided by explicit customer agreements or funded by customer contributions in aid of construction? If so, what are those amounts?
 - c. Does this expense item contain any amounts related to property contributed by a developer or governmental entity? If so, what are those amounts?
11. What is the utility's reasonable and necessary expense for franchise fees, assessments, and taxes other than federal income taxes under 16 TAC § 24.41(b)(1)(C)?

12. What is the reasonable and necessary amount for the utility's federal income tax expense under 16 TAC § 24.41(b)(1)(D)?
- a. Did the utility include an allowed expense in the utility's rates or an investment in its rate base for which there is a related income tax benefit as contemplated under TWC § 13.185(f)? If so, has the related income tax benefit of the allowed expense or investment been included in the computation of income tax expense to reduce rates as required by TWC § 13.185(f)?
 - b. Is the utility a member of a consolidated group that files a consolidated income tax return under TWC § 13.185(f)? If so, please address the following:
 - i. Did the consolidated return eliminate the intercompany profit on purchases by the utility from an affiliate and result in an amount of income tax that the consolidated group saved?
 - ii. If so, has the amount of income tax saved been applied to reduce the cost of the property or service purchased by the affiliate as required by TWC § 13.185(f)?
13. Are any tax savings derived from liberalized depreciation and amortization, investment tax credits, or similar methods? If so, are such tax savings apportioned equitably between customers and the utility, and are the interests of present and future customers equitably balanced?
14. What is the reasonable and necessary amount for the utility's professional or trade association expense under 16 TAC § 24.41(b)(1)(E)?
15. What is the reasonable and necessary amount for the utility's advertising expense, contributions, and donations under 16 TAC § 24.41(b)(1)(F)?
16. Are any expenses, including but not limited to, executive salaries, advertising expenses, rate case expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, civil penalties or fines, unreasonable, unnecessary, or not in the public interest in violation of TWC § 13.185(h)(3) and 16 TAC § 24.41(b)(2)(I)?
- a. Are any requested expenses not allowed under 16 TAC § 24.41(b)(2)?
17. If the utility has a self-insurance plan approved by the Commission or other regulatory authority, what is the approved target amount for the reserve account, and is it appropriate to

change that amount? What is the amount of any shortage or surplus for the reserve account, and what actions, if any, should be taken to return the reserve account to the approved target amount?

18. What is the utility's reasonable and necessary expenses, if any, for pension and other post-employment benefits?
19. Has the utility made any payments to affiliates for any expense item? If so, for affiliate transactions that affect the cost of service, do the payments, including any interest, for that property meet the requirements of TWC § 13.185(e)?
 - a. Is the payment for each expense item reasonable and necessary?
 - b. What were the costs to the affiliate of each item or class of items in question?
 - c. Is the price to the utility for each item or class of items no higher than prices charged by the supplying affiliate to its other affiliates or divisions or unaffiliated entities for the same item or items?
 - d. If the payment to the utility is for an allocated expense, is the method used to allocate costs attributable to the utility and the utility's affiliates appropriate to ensure just and reasonable rates?
20. Are any requested expenses not allowed under 16 TAC § 24.41(b)(2)?

Capital Structure and Total Return

21. What is the appropriate debt-to-equity capital structure for the utility for the purpose of setting rates?
22. Does the utility have any debt? If so, what is the cost of that debt?
23. What is the appropriate overall rate of return (weighted cost of capital), including return on equity and cost of debt for the utility, consistent with 16 TAC § 24.41(c)(1)?

Rate Base (Invested Capital)

24. What are the reasonable and necessary components of the utility's rate base under TWC §§ 13.183(a) and (b), 13.185(a) through (e) and (i), and 16 TAC § 24.41(c) through (g)?
25. Has any rate-base item been acquired from an affiliated interest? If so, then address the following:

- a. Is each such item used and useful in providing service to the utility's customers?
 - b. Is the payment for each item reasonable and necessary?
 - c. What were the costs to the affiliates of each item or class of items in question?
 - d. Is the price to the utility for each item or class of items no higher than prices charged by the supplying affiliate to its other affiliates or divisions or unaffiliated entities for the same item or items?
 - e. If the payment to the utility is for an allocated share of the cost, is the method used to allocate costs attributable to the utility and the utility's affiliates appropriate to ensure just and reasonable rates?
26. What is the original cost of the property used and useful in providing service to the public at the time the property was dedicated to public use under TWC § 13.185(b) and 16 TAC § 24.41(c)(2)(A) and (B)? What is the amount, if any, of accumulated depreciation on such property and the resulting net cost under 16 TAC § 24.41(c)(2)(C)?
27. What is the amount, if any, of accumulated depreciation on such property and the resulting net cost?
28. What is the amount for an allowance for funds used during construction, if any, that is being transferred to invested capital in this proceeding? If such amounts are being transferred, for what facilities and when was each facility placed into service? At what rate did the allowance for funds used during construction accrue?
29. Is the utility seeking inclusion of construction work in progress? If so, what is the amount sought, and for what facilities? Additionally, has the utility proven that the inclusion is necessary to the financial integrity of the utility and that major projects under construction have been efficiently and prudently planned and managed as required by 16 TAC § 24.41(c)(4)?
30. What is the reasonable and necessary working capital allowance for the utility under 16 TAC § 24.41(c)(2)(C)?
31. Does the utility have any utility property that was acquired from an affiliate or a developer before September 1, 1976? If so, has such property been included by the utility in its rate base,

and has it been included in all ratemaking formulas at the installed cost of the property rather than the price set between the entities as required by TWC § 13.185(j)?

32. Has the utility financed any of its plant with developer contributions under TWC § 13.185(j) and 16 TAC § 24.41(b)(1)(B)? What is the amount, if any, of accumulated depreciation on that property?
33. Has the utility included any customer contributions or donations in invested capital consistent with TWC § 13.185(j) and 16 TAC § 24.41(c)(2)(C)(viii)? If so, what is the amount of those customer contributions or donations?
34. What is the reasonable and necessary amount of the utility's accumulated reserve for deferred federal income taxes, excess deferred federal income taxes, unamortized investment tax credits, contingency reserves, property insurance reserves, contributions in aid of construction, customer deposits, and other sources of cost-free capital that should be deducted from the utility's rate base under 16 TAC § 24.41(c)(3)? What other items should be deducted from the utility's rate base under 16 TAC § 24.41(c)(2)?
35. What regulatory assets, if any, are appropriately included in the utility's rate base? If such assets are included in rate base, what is the appropriate treatment of such assets?

Allocation and Rate Design

36. What is the appropriate allocation of costs and revenues among the utility's rate classes?
37. What is the appropriate rate design for each rate class consistent with 16 TAC § 24.43?
38. What is the utility's number of connections at the end of the test year?
39. What is the utility's number of connections at the time its application for a rate change was filed?
40. In designing rates for water, should the utility use the current number of connections as of the date of the application or the number of test-year-end connections?

Rates

41. What are the just and reasonable rates for water service that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential,

prejudicial, or discriminatory under TWC §§ 13.182 and 13.187(h) and 16 TAC § 24.35(d)?

Do these rates recover the utility's revenue requirement for each type of service?

42. What is the appropriate effective date of the rates to be approved or fixed by the Commission in this proceeding under TWC § 13.1871?

43. Has the utility provided sufficient evidence to justify any requested changes in fees?

Tariffs

44. Are the utility's proposed revisions to its tariff and rate schedules appropriate?

45. For the proposed tariff, does the tariff include and identify all applicable systems?

Interim Rates

46. Did the utility request interim rates? If so, has the utility met the requirements for interim rates? If so, what are the appropriate levels of the interim rates under 16 TAC § 24.37?

47. If a refund or surcharge under TWC § 13.1871(u) and 16 TAC § 24.35(e) results from this proceeding, how and over what period of time should the refund or surcharge be made?

Rate Case Expenses

48. What is the utility's expenses incurred in this rate proceeding that are just, reasonable, necessary, and in the public interest under 16 TAC § 24.44? Does that amount include any prospective rate-case expenses to be incurred after the Commission's final order? Should the utility be able to recover its reasonable and necessary rate-case expenses from ratepayers? If so, how should such expenses, if any, be recovered by the utility?

49. How should rate-case expenses be allocated between customers?

Pass-Through Rates

50. Has the utility requested approval of any pass-through rates? If so, please identify each pass-through rate requested. For each requested pass-through rate, please address the following items.

- a. Specify the entity whose costs will be passed through under the pass-through rate.
- b. Specify the amount of costs to be passed through under the pass-through rate.
- c. Specify what products or services the costs to be passed through under the pass-through rate would cover.

d. Specify how the pass-through rate is calculated.

51. Has the utility requested to include costs in its pass-through rates for an entity for which it has also requested to recover costs through its base rates? If so, please identify the entity, the amount of costs, and what products or services the costs cover.
52. Do the utility's proposed pass-through rates include only the actual costs charged to the utility?
53. Do the proposed pass-through rates exclude any charges that are included in the utility's requested cost of service in this docket?
54. Do the utility's pass-through provisions in its tariff conform to Commission rules, and are they appropriately worded?

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 Texas Government 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

KATHLEEN JACKSON, INTERIM CHAIR

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

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