



Control Number: 55577



Item Number: 1059

OPEN MEETING COVER SHEET

COMMISSIONER MEMORANDUM

PUBLIC UTILITY
COMMISSION OF TEXAS

MEETING DATE: January 31, 2025

DATE DELIVERED: January 30, 2025

AGENDA ITEM NO.: 5

CAPTION: Docket No. 55577; SOAH Docket No. 473-24-15740.WS – Application of Aqua Texas, Inc. to Amend Its System Improvement Charges under 16 TAC § 24.76

DESCRIPTION: Chairman Thomas Gleeson Memorandum

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Public Utility Commission of Texas

Memorandum

TO: Commissioner Kathleen Jackson
Commissioner Courtney K. Hjaltman

FROM: Chairman Thomas J. Gleeson 76

DATE: January 30, 2025

RE: January 31, 2025 Open Meeting – Item No. 5
Docket No. 55577; SOAH Docket No. 473-24-15740.WS – *Application of Aqua Texas, Inc. to Amend Its System Improvement Charges under 16 TAC § 24.76*

Before the Commission is a proposal for decision (PFD) that recommends denying Aqua Texas, Inc.’s application to amend its system improvement charges (SICs). I agree with the PFD’s ultimate conclusions but would like to clarify some of the reasoning and make limited modifications.

Sufficiency and Standard of Review

There is discussion in the PFD and the parties’ filings regarding the application’s “sufficiency.” I agree with the PFD’s conclusion but would provide the following clarifications.

In Docket No. 46245,¹ the Commission found that a utility was “conflat[ing] the standard for administrative completeness with the utility’s burden of proof. A review of an application’s administrative completeness is performed to determine whether the Commission has received *sufficient* documentation to allow Commission Staff to evaluate the merits of an application An application’s merits are not evaluated in the review for administrative completeness Even though the Commission found its application administratively complete, [the utility in that docket] was put on notice through the testimony and other actions of the parties in this case that its requested rate increase might not be legally *sufficient*.”²

Similarly, in this proceeding, the application was found administratively complete in Order No. 8 filed on January 30, 2024. At that time, the timelines in 16 Texas Administrative Code (TAC) § 24.76(g)—which depend on the determination that the application is sufficient—applied. As the PFD states, “the *sufficiency* determination for purposes of triggering deadlines in Rule 24.76 bears only on the determination to advance the application to a substantive review.”³ In that context, sufficiency is synonymous with administrative completeness.

¹ *Application of Double Diamond Utility Company, Inc. for a Rate/Tariff Change*, PUC Docket No. 46245, SOAH Docket No. 473-17-0119.WS, Order on Rehearing (December 12, 2019).

² *Id.* at 37 (emphasis added).

³ PFD at 14.

However, it would place semantics above substance to suggest that an application is legally sufficient just because it has been found administratively complete. Whether or not one uses the term *sufficiency*, the utility bears the burden of proof by a preponderance of the evidence to show that its application meets the applicable statutory and rule requirements and complies with prior Commission orders.⁴ As the PFD finds, Aqua did not meet its burden of proof in this proceeding.

Practically speaking, if a review is to be expedited, it must be presented in a manner that lends itself to expedited review. That is why the Commission's SIC rule prescriptively requires that an application include "a description of the eligible plant . . . , including the project or projects included in the request and an explanation of how each project has improved or will improve service;" and "information that sufficiently supports the eligible cost, such as invoices, receipts, and direct testimony, and that sufficiently addresses the exclusion of costs for plant provided by explicit customer agreements or funded by customer contributions in aid of construction."⁵ Moreover, the parties clearly had concerns with Aqua's original SIC application but reached an agreement that specified that in all future SIC applications, "any listed assets for which the applicant seeks recovery of investment must be well organized by project and public water or sewer system, and data must be appropriately linked to the model used by the applicant."⁶

Here, as the PFD explains and the preponderance of the evidence shows, Aqua did not comply with the Commission's rule or the Commission's prior order. For example, as the PFD finds, "[Aqua's witness] acknowledged that in preparing the application, he followed the same format of the prior application and did not organize the application by project."⁷ By failing to comply with the Commission's rule and prior order, even though the application was found administratively complete, it was not legally sufficient to carry Aqua's burden of proof in this proceeding. In addition, as the PFD finds, because of the state of the evidence, there is no way to reasonably remedy this situation by simply applying select disallowances.

Further, as the PFD finds, Aqua did not show by the preponderance of the evidence that its costs were eligible for inclusion in the SIC. Because the prudence, reasonableness, and necessity of costs is not addressed unless good cause is found, the main contested issue remaining in a SIC proceeding is whether costs are eligible for inclusion. The extensiveness of attempted review by the parties in this proceeding was not the result of a heightened standard of review but because Aqua's records were poorly organized and its assertion that costs were eligible was not clearly supported.

I hope that the above discussion provides clarity for future proceedings. I believe conclusions of law 8 and 9 capture the nuances of the above discussion well. I would just move the rule reference in each for clarity. I also recommend the following slight rewording of conclusion of law 24 for completeness and clarity:

⁴ 16 TAC § 24.12.

⁵ 16 TAC § 24.76(d)(1), (3).

⁶ *Application of Aqua Texas, Inc. for System Improvement Charges*, PUC Docket No. 53428, SOAH Docket No. 473-23-04521, Order, Ordering Paragraph No. 3 (Sept. 28, 2023)

⁷ PFD at 24.

8. A determination that an application is administratively complete under 16 TAC § 24.8 does not establish that an application was sufficient under all statutory and regulatory requirements. ~~16 TAC § 24.8.~~
9. An administrative completeness determination under 16 TAC § 24.8 establishes only that an application is sufficient for further substantive review. ~~16 TAC § 24.8.~~
24. Aqua Texas failed to meet its burden of proof to establish that its application for a system improvement charge was sufficient. That is, Aqua Texas failed to meet its burden of proof to establish that its application complied with all the requirements of 16 TAC § 24.76(d).

Capitalization Policy

The parties raised significant concerns with Aqua's capitalization policy in this proceeding. Ultimately, the administrative law judges recommend that the policy "be reviewed in Aqua's next comprehensive rate case but do not otherwise make findings regarding its appropriateness."⁸ I agree with the PFD's recommendation: capitalization is a fundamental ratemaking issue because it affects what constitutes a capital investment versus what is an expense.

I also agree that findings regarding the appropriateness of Aqua's capitalization policy should not be made in this proceeding. However, I believe that the Commission's order should memorialize some of the facts and concerns raised in this proceeding to facilitate the Commission's review of this issue in Aqua's upcoming base-rate proceeding. Therefore, based on the evidentiary record and the PFD's discussion sections, I recommend adding the following new findings of fact 68A through 68C and new conclusion of law 31A and modifying ordering paragraph 3, as follows.

Findings of Fact

- 68A. Aqua's capitalization policy was adopted in 2016, which is after Aqua's last comprehensive base-rate proceeding. Aqua's capitalization policy has never undergone Commission review.
- 68B. Intervenors in this proceeding raised concerns that many of Aqua's expenditures were not eligible capital expenditures, but rather regular operations and maintenance costs that should have been expensed.
- 68C. The appropriateness of Aqua's capitalization policy is not addressed in this Order but may be reviewed in Aqua's next comprehensive rate-base proceeding.

⁸ PFD at 80.

Conclusion of Law

- 31A. Under TWC § 13.131(a) and 16 TAC § 24.127, Aqua is required to keep and render to the Commission, in the manner and form prescribed by the Commission, uniform accounts for all business transacted. The Commission may also prescribe forms of books, accounts, records, and memoranda to be kept by Aqua.

Ordering Paragraph 3

3. Based on the concerns raised in this proceeding, ifn its next comprehensive rate case, Aqua Texas must provide testimony and supporting documentation that explains in detail and fully supportsshall thoroughly justify its capitalization policy and demonstrates compliance with the applicable Texas Water Code and Commission rule requirements.

Refunds or Credits

The PFD correctly requires Aqua Texas to refund or credit amounts collected under interim rates. I would modify ordering paragraph 4 for clarity and to further facilitate that process by providing a deadline to file calculations and proposed rates for the refund or credit amounts.

4. Aqua Texas must refund or credit against future affected customer bills all sums collected in excess of the system improvement charges approved in Docket No. 53428-amendments finally ordered plus interest-as-determined by the Commission in a reasonable number of monthly installments. The refunds or credits must be implemented in separate Docket No. _____, Compliance Filing for Docket No. 55577 (Application of Aqua Texas, Inc. to Amend its System Improvement Charges under 16 TAC § 24.76). Within 90 days of the date of this Order, Aqua Texas must file in that compliance docket documentation to identify any sums collected in excess of the system improvement charges approved in Docket No. 53428, identify the amount to be refunded or credited to customers, and identify a reasonable number of monthly installments for refunds or credits to customers.

I look forward to discussing this matter with you at the open meeting.