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Filing Date - 2024-10-08 12:09:44 PM

Control Number - 56610

Item Number - 30

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Public Utility Commission of Texas

TO: Chairman Thomas J. Gleeson
Commissioner Lori Cobos
Commissioner Jimmy Glotfelty
Commissioner Kathleen Jackson
Commissioner Courtney K. Hjaltman

All Parties of Record

FROM: Ariadna V Garcia
Commission Advising

RE: *Ratepayers' Appeal of the Decision by Leroy-Tours-Gerald Water Supply Corporation to Change Rates*, Docket No. 56610, Draft Preliminary Order, October 24, 2024 Open Meeting, Item No. XX.

DATE: October 8, 2024

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 October 24, 2024 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 October 24, 2024 open meeting.

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DOCKET NO. 56610

RATEPAYERS' APPEAL OF THE DECISION BY LEROY-TOURS-GERALD WATER SUPPLY CORPORATION TO CHANGE RATES §
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 § **PUBLIC UTILITY COMMISSION OF TEXAS**

DRAFT PRELIMINARY ORDER

Ratepayers of Leroy-Tours-Gerald Water Supply Corporation (LTG) filed a petition under Texas Water Code (TWC) § 13.043(b)(1) appealing LTG’s decision to change its water rates. This preliminary order identifies the issues that must be addressed in this proceeding.

The ratepayers filed the petition on May 14, 2024, and LTG filed a response on June 4, 2024. On August 6, 2024, the administrative law judge (ALJ) found the petition administratively complete and notice sufficient. Commission Staff requested on August 20, 2024, that this proceeding be referred to the State Office of Administrative Hearings (SOAH) for a hearing.

The ratepayers and LTG were directed, and Commission Staff and 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 September 16, 2024. All parties timely filed 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. Does the Commission have jurisdiction over the petition for review?²
 - a. Is LTG a water supply or sewer service corporation?³

¹ Tex. Gov’t Code § 2003.049(c).

² Tex. Water Code § 13.043(b) (TWC).

³ TWC §§ 13.002(24), 13.043(b)(1); 16 TAC §§ 24.3(39), 24.101(c)(1).

- b. What decision of LTG's governing body have the petitioners appealed?⁴
 - i. What resolution, motion, or other action of LTG's governing body made the appealed decision?
 - ii. When did LTG's governing body approve the resolution, motion, or other action?
 - c. Do the petitioners meet the qualifications to appeal the decision under TWC § 13.043(b)?
 - i. Are the petitioners retail ratepayers of LTG?⁵
 - ii. What rate changes were authorized by the appealed decision? Which of these changes have the petitioners appealed?
 - iii. Did any of the appealed rate changes affect the water, drainage, or sewer rates of the petitioners?⁶
 - d. Does the petition for review meet all applicable statutory and rule requirements?
 - i. What is the effective date of each appealed rate change?
 - ii. Was the petition for review filed within 90 days after the effective date of the appealed rate changes?⁷
 - iii. Was the petition for review properly signed by the lesser of 10,000 or 10 percent of the ratepayers whose rates were changed by the appealed decision?⁸
2. Did each signature page of the petition contain all the required information in legible form for each signatory ratepayer?⁹
 3. Did LTG provide written notice of the hearing to all affected customers?¹⁰

⁴ TWC § 13.043(b); 16 TAC § 24.101(c).

⁵ TWC § 13.043(b); 16 TAC § 24.101(c).

⁶ TWC § 13.043(b); 16 TAC § 24.101(c).

⁷ TWC § 13.043(c); 16 TAC § 24.101(b).

⁸ TWC § 13.043(c), (d); 16 TAC § 24.101(b), (d); *id.* § 24.103(b).

⁹ 16 TAC § 24.103(a).

¹⁰ 16 TAC § 24.101(c)(6).

4. Have the petitioners or Commission Staff requested interim rates?¹¹ If so, should the request for interim rates be granted?
5. Do the appealed rates conform to the statutory standards identified in TWC § 13.043(j)?¹²
 - a. Are the appealed rates just and reasonable?
 - b. Are the appealed rates not unreasonably preferential, prejudicial, or discriminatory?
 - c. Are the appealed rates sufficient, equitable, and consistent in application to each class of customers?
6. If the appealed rates conform to the statutory standards identified in TWC § 13.043(j), must this appeal be denied?

If the appealed rates do not conform to the statutory standards identified in TWC § 13.043(j), please address the following issues.

7. What information was available to LTG's governing body at the time it made its decision?¹³

¹¹ TWC § 13.043(h); 16 TAC § 24.101(e)(6), (h).

¹² TWC § 13.043(j); see *Ratepayers Appeal of the Decision of Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No. 50788, Order at 7–8 (Mar. 21, 2024). In an appeal under TWC § 13.043, the Commission must find the appealed rates are against the public interest before fixing new rates. *Id.* at 7. The Commission elaborated on the requirements of the public-interest test in Docket No. 50788, stating that

[i]n an appeal under TWC § 13.043, the Commission must find the appealed rates are against the public interest before setting just and reasonable rates. In the initial public-interest inquiry, the Commission must ensure the appealed rates conform to all statutory rate standards identified in TWC § 13.043(j). No standard takes precedence over another. The retail public utility bears the burden of proof to show the appealed rates are in the public interest. Specifically, the Commission is statutorily obligated to ensure that every appealed rate is just and reasonable; is sufficient, equitable, and consistent in application to each class of customers; and is not unreasonably preferential, prejudicial, or discriminatory. If the Commission determines either that the appealed rates do not conform to all statutory rate standards identified in TWC § 13.043(j) or that the retail public utility failed to carry its burden of proof to establish such conformance, the Commission must find the appealed rates are not in the public interest and must fix new rates.

Id. at 7–8 (citations omitted) (citing *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 335–37 (Tex. App.—Austin 1994, writ denied)).

¹³ TWC § 13.043(e); 16 TAC § 24.101(e)(5).

8. Considering only the information that was available to LTG's governing body at the time of its decision, what are the rates the governing body should have fixed in the action from which this appeal was taken?¹⁴
 - a. What is the annual revenue requirement that will conform to the statutory standards identified in TWC § 13.043(j) and preserve LTG's financial integrity?¹⁵
 - b. What is the appropriate allocation of revenues to LTG's customer classes?
 - c. What is the appropriate rate design for LTG's customer classes?
9. What expenses were incurred by LTG in this appeal proceeding?¹⁶
 - a. Were these expenses supported by evidence?
 - b. Were these expenses reasonable?
 - i. If so, should the Commission allow recovery of the reasonable expenses?
 - ii. If so, what is the appropriate recovery mechanism?
 - c. If attorney's fees are included in the expenses, are they supported by the testimony or affidavit of a licensed attorney qualified to render admissible opinions on the reasonableness of the attorney's fees?
10. What is the appropriate effective date of the rates fixed by the Commission in this proceeding?¹⁷
11. If the Commission fixes rates that are different from the appealed rates, should the Commission order refunds or allow surcharges to recover lost revenues?¹⁸
 - a. If so, what is the appropriate amount to be refunded or surcharged per month?
 - b. If so, over what period should the refunds or surcharges be assessed?

¹⁴ TWC § 13.043(c); 16 TAC § 24.101(c)(5).

¹⁵ TWC § 13.043(j); *see also* Docket No. 50788, Order, Conclusion of Law No. 12A ("The financial-integrity requirement of TWC § 13.043(j) requires the Commission to fix rates that preserve the financial integrity of the retail public utility at the time the appealed rates were set by the retail public utility's governing body.").

¹⁶ TWC § 13.043(c); 16 TAC § 24.101(c)(2).

¹⁷ TWC § 13.043(c); 16 TAC § 24.101(c)(3).

¹⁸ TWC § 13.043(e); 16 TAC § 24.101(e)(4).

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 _____ 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

THOMAS J. GLEESON, CHAIRMAN

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER

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