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PUC DOCKET NO. 57765
SOAH DOCKET NO. 473-25-20789.WS

PETITION OF PREMIER AT KATY,	§	PUBLIC UTILITY COMMISSION
LLC APPEALING THE DECISION OF	§	
THE NORTHWEST HARRIS-FORT	§	OF TEXAS
BEND COUNTIES MUNICIPAL	§	
UTILITY DISTRICT NO. 3 TO	§	
CHANGE RATES	§	

PRELIMINARY ORDER

Premier at Katy, LLC filed a petition appealing Northwest Harris-Fort Bend Counties Municipal Utility District No. 3’s decision to change rates under Texas Water Code (TWC) § 13.043(b)(4). This preliminary order identifies the issues that must be addressed in this proceeding.

I. Overview

The petitioner asserts that it is the leaseholder and operator of Premier at Katy (the housing complex), a residential multi-family housing complex located within the District’s service area.¹ The District provides water and sewer service to the petitioner, which pays for the services on behalf of the residents of the housing complex.² The petitioner states that the housing complex and underlying real property are owned by Lakeside Place PFC, a public facility corporation that is an instrumentality of the Houston Housing Authority.³ The Houston Housing Authority is exempt from ad valorem taxes.⁴ Therefore, because Lakeside Place PFC owns and leases the real property to the petitioner, the District does not derive ad valorem tax revenue from the real property upon which the housing complex sits.⁵

¹ Petition at 4 (Feb. 26, 2025).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

On January 1, 2025, the District adopted an amended rate order that imposed a monthly fee on non-taxable entities such as the petitioner (the nontaxable entity fee).⁶ The amended rate order describes the nontaxable entity fee as:

a monthly fee equal to one-twelfth (1/12) of the annual ad valorem taxes that such Customer would have paid to the District had such property remained taxable, as calculated by the District based upon the most recent rate of ad valorem taxes adopted by the District as applied to the *greater* of:

1. the most recent certified market value of the Apartments as established by the Harris Central Appraisal District,
2. the certified taxable value of the Apartments as established by the Harris Central Appraisal District prior to the ownership of the Apartments by a Nontaxable entity,
3. the market value of the apartments as determined by an independent appraisal commissioned by the District, or
4. such other value, as determined by the District in its sole and absolute discretion, which generates sufficient annual revenues necessary for the District to pay the cost of facilities, operations and administrative services necessary for the District to provide services to such customer.⁷

The petitioner asserts that the District added the new nontaxable entity fee to make up for lost tax revenue due to the Houston Housing Authority's exemption from ad valorem taxes.⁸

II. Procedural History

The application was filed on February 26, 2025. On March 26, 2025, Commission Staff and the petitioner filed a joint request to refer this proceeding to the State Office of Administrative Hearings (SOAH) for a hearing. On March 28, 2025, the application was found administratively complete.

The petitioner and the District were directed, and Commission Staff and other interested persons were allowed, by May 14, 2025, 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. Each party timely filed a list of issues.

⁶ *Id.*

⁷ *Id.* at 5; *id.*, Ex. A (Amended Rate Order) at § 3.13 (emphasis added).

⁸ Petition at 5.

III. 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 SOAH.⁹ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

Appeal under Texas Water Code § 13.043

1. May the Commission hear this appeal under TWC § 13.043(b)?
 - a. Are the petitioners ratepayers of the District?¹⁰
 - b. Did the appealed decision of the governing body of the District affect the petitioners' water, drainage, or sewer rates?¹¹
 - c. Is the District a district or authority created under article III, § 52, or article XVI, § 59, of the Texas Constitution that provides water or sewer service to household users?¹²
2. Does the petition meet the requirements of TWC § 13.043(c) and (d)?
 - a. What was the effective date of the appealed rate change? In answering this issue, please specify the action that enacted the rate change.
 - b. Was the petition filed within 90 days after the effective date of the appealed rate change?¹³
 - c. What number of ratepayers had their rates changed?¹⁴
 - d. Did the lesser of 10,000 or 10% of those ratepayers file valid protests to the rate change?¹⁵
3. Did each signature page of the petition contain all the required information in legible form for each signatory ratepayer?¹⁶

⁹ Tex. Gov't Code § 2003.049(e).

¹⁰ TWC § 13.043(b); 16 Tex. Admin. Code (TAC) § 24.101(c).

¹¹ TWC § 13.043(b).

¹² *Id.* § 13.043(b)(4).

¹³ *Id.* § 13.043(c); 16 TAC § 24.101(b).

¹⁴ TWC § 13.043(c), (d); 16 TAC § 24.101(b), (d).

¹⁵ TWC § 13.043(c); 16 TAC § 24.103(b).

¹⁶ 16 TAC § 24.103(a).

4. Did the District provide written notice of the hearing to all affected customers?¹⁷
5. Should the Commission establish or approve interim rates to be in effect until a final decision is made in this proceeding?¹⁸ If so, what are the appropriate interim rates?
6. Does the nontaxable entity fee charged by the District conform to the statutory standards identified in TWC § 13.043(j)?¹⁹
 - a. Is the fee just and reasonable?
 - b. Is the fee not unreasonably preferential, prejudicial, or discriminatory?
 - c. Is the fee sufficient, equitable, and consistent in application to each class of customers?
7. If the nontaxable entity fee being charged by the District conforms to the statutory standards identified in TWC § 13.043(j), must this appeal be dismissed?²⁰

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

¹⁷ *Id.* § 24.101(c)(6).

¹⁸ TWC § 13.043(h); 16 TAC § 24.101(e)(6), (h).

¹⁹ See *Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No. 50788, Order Remanding Proceeding at 3 (June 30, 2022). In an appeal under TWC § 13.043, the initial inquiry of the Commission is whether the appealed rates conform to the *public interest standard* identified in TWC § 13.043(j). *Id.* at 3. The Commission elaborated on the requirements of this initial inquiry in Docket No. 50788, stating that

[i]n the initial inquiry in an appeal under TWC § 13.043, the Commission must ensure that all of the standards set out in subsection (j) of that section are met, including whether the appealed rates are just and reasonable. No standard takes precedence over another. As the [*City of Fort Worth*] court stated, the “reasonableness of rates demanded by Fort Worth[, the appealed rates,] is the initial inquiry under section 13.043(j) defining the scope of agency review.” That court further stated that the Commission must “first find [the appealed] rate was unreasonable in some manner,” and that the “reasonableness requirement is a jurisdictional requirement” for the Commission itself to set rates.

Id. at 5 (citations omitted) (quoting *Tex. Water Comm’n v. City of Fort Worth*, 875 S.W.2d 332, 335–37 (Tex. App.—Austin 1994, writ denied)). See also 16 TAC § 24.101(i).

²⁰ *City of Fort Worth*, 875 S.W.2d at 335 (noting that for appeals brought under TWC § 13.043, “the initial inquiry under section 13.043(j) defin[es] the scope of agency review.”).

8. What information was available to the District's governing body, including any information that shows, or tends to show, the information that was available to the District's governing body at the time the District set the appealed fee?²¹
9. Considering only the information available, and any information that shows or tends to show the information that was available, to the District's governing body at the time of its decision, what is the just and reasonable nontaxable entity fee for the District that is sufficient, equitable, and consistent in application to each customer class and that is not unreasonably preferential, prejudicial, or discriminatory?²²
 - a. What revenue requirement will provide the District with sufficient funds to provide continuous and adequate retail water utility service and preserve the District's financial integrity?
 - b. What is the appropriate allocation of revenues to the District's customer classes?
 - c. What is the appropriate rate design for each class of customers that will recover the District's revenue requirement?
10. What are the reasonable expenses incurred by the District in this proceeding?²³
 - a. Should the Commission allow recovery of these reasonable expenses?
 - b. If so, what is the appropriate recovery mechanism?
11. What is the appropriate effective date of the rates fixed by the Commission in this proceeding?²⁴
12. If the Commission establishes rates different from the appealed rates, should the Commission order refunds or allow surcharges to recover lost revenues? If so, what is the appropriate amount and over what period should the refund or surcharge be in place?²⁵

This list of issues is not intended to be exhaustive. The parties and the SOAH ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any

²¹ TWC § 13.043(e).

²² *Id.* § 13.043(e), (j); 16 TAC § 24.101(e), (i).

²³ TWC § 13.043(e); 16 TAC § 24.101(e)(2), (e)(5).

²⁴ TWC § 13.043(e); 16 TAC § 24.101(c)(3).

²⁵ TWC § 13.043(e); 16 TAC § 24.101(e)(4).

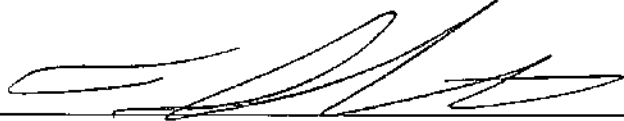
limitations imposed by the SOAH ALJ or by the Commission in future orders issued in this docket. The Commission may identify and provide to the SOAH ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

IV. 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 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 5th day of June 2025.

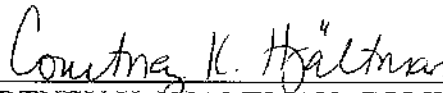
PUBLIC UTILITY COMMISSION OF TEXAS



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