

SOAH DOCKET NO. 582-09-0660
TCEQ DOCKET NO. 2008-1481-UCR

**APPLICATION OF NORTH SAN
SABA WATER SUPPLY
CORPORATION TO CHANGE ITS
WATER RATE UNDER
CERTIFICATE OF CONVENIENCE
AND NECESSITY NO. 11227 IN SAN
SABA COUNTY**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**NORTH SAN SABA WATER SUPPLY CORPORATION'S EXCEPTIONS TO THE
PROPOSAL FOR DECISION, AND IN THE ALTERNATIVE, MOTION TO REOPEN
THE RECORD**

NOW COMES North San Saba Water Supply Corporation("WSC"), and files its written exceptions to the proposed decision submitted by the Honorable Rebecca S. Smith in the above styled and numbered cause.

Exceptions to Proposal for Decision

1. The proposed decision would require the WSC to refund the difference between the water rates made effective on August 25, 2008 and those made effective on May 25, 2008. The August 25, 2008 water rates were in effect from August 25, 2008 thru December 24, 2009, a total of 16 months.
2. Furthermore, pursuant to the proposed decision, the WSC would be required to refund the difference between the rates by applying a credit to each customer's bill over a sixteen month period.
3. WSC excepts to the proposed decision because it places an unreasonable and unjust burden on the WSC by requiring a refund, and wholly ignores the uncontroverted evidence adduced at the hearing concerning the WSC's inability to pay any such refund and the consequences to the WSC and its member customers if such a refund is ordered.
4. More specifically, the Vice President for WSC, Wayne Blaylock, testified that he did not believe the WSC would survive if it was required to refund the excess monies collected. See Applicant's Exhibit 3, pg. 4, lines 11-13. Second, Mr. Blaylock testified that the

WSC does not have reasonably sufficient income or cash reserves to issue a refund to each member for the excess money collected since May 25, 2008, and that the WSC suffered a \$3,131 deficit in 2008, despite the rate increase which is the subject of this appeal. See Applicant's Exhibit 3, pg. 5, lines 1-5; and Applicant's Exhibit 3, attachment 11, pg. 1, line 19. Third, Mr. Blaylock testified that the WSC owes in excess of \$480,000 to the United States Department of Agriculture, and in excess of \$9,000 to City National Bank, and his testimony is confirmed by the WSC's 2008 tax return. See Applicant's Exhibit 3, pg. 5, lines 19-22; and Applicant's Exhibit 3, attachment 11, pgs. 11 and 14. Fourth, Mr. Blaylock testified about two new requirements imposed upon WSC by TCEQ, namely the installation of pumps to increase the water pressure in its lines, and the installation of a mixing plant to mix WSC's well water with the water purchased from the City of San Saba. See Applicant's Exhibit 3, pg. 6, lines 1-6. The estimated costs of these two projects alone, exceeds \$1,000,000. See Applicant's Exhibit 3, pg. 6, lines 1-6. Fifth, Mr. Blaylock testified that the WSC would like to increase the efforts at reducing the company's water loss and repair costs, which all parties agree is a major problem, by replacing much of the old deteriorated lines with higher quality and more durable PVC pipe, with the estimated costs of such project to be approximately \$80,000 per year. See Applicant's Exhibit 3, pg. 6, lines 7-11. Lastly, a copy of the most recent rate study performed by WSC was admitted into evidence, and in that rate study it was determined that WSC's current revenue requirement is \$456,126 per year, and that the WSC would need to charge a base water rate of \$105.65 per month¹, in order to meet its revenue requirements.

5. Furthermore, Protestant Charles Terry ("Terry") admitted under cross examination, that given the poor financial condition of WSC, any refund ordered would likely lead to

¹ On December 8, 2009, based upon the rate study performed, WSC voted to increase its base water rate from \$59.75, to \$70 per month. The current water rates went into effect on December 25, 2009, and were not appealed.

receivership because the WSC cannot afford to refund the excess monies collected. See Trial Testimony of Charles Terry, pg. 58, lines 10-21. Terry also admitted that WSC has serious financial problems, owes a substantial amount of money to the USDA, owes approximately \$10,000 to a local bank, has been ordered by TCEQ to install pressure pumps and a water mixing station, which the WSC “probably” cannot afford to do, and has a major water loss problem that needs to be addressed. See Trial Testimony of Charles Terry, pgs. 39-41, 42-43.

6. Additionally, Protestant Susan Rios admitted under cross examination, that WSC’s financial condition was not good, and that if WSC lost this rate appeal, it could be forced into receivership. See Trial Testimony of Susan Rios, pg. 68, lines 8-13, 18-24.
7. In summary, WSC cannot afford the refund ordered in the proposed decision because, both the rates complained of and the current water rates, fall well below those rates required to provide WSC with sufficient funds to meet all of its obligations and make the necessary repairs to its deteriorating infrastructure; WSC is currently burdened with approximately \$500,000 in debt², and has been tasked by TCEQ with projects estimated to cost in excess of \$1,000,000; and WSC does not have any cash reserves from which it could pay any such refund ordered. Simply put, for the Commission to order a refund in this case, equates to financial ruin for the WSC.
8. The ALJ, in her proposed decision, states that “The ALJ agrees that because North San Saba did not show that the rate increases were just and reasonable, it should not keep the amount of the increased revenues.” While Tex. Water Code Ann. §13.043(e) and 30 Tex. Admin. Code §291.41(e) both state that the Commission *may* order a refund, neither require that a refund be ordered in the event rates are rolled back. Simply put, given the appropriate circumstances, the law anticipates scenarios where a refund may not be just or reasonable, even though rates are rolled back. Further, neither Tex. Water Code Ann.

² See Applicant’s Exhibit 3, attachment 11, pg. 11, line 26.

§13.043(e) or 30 Tex. Admin. Code §291.41(e) make the question of whether to order a refund contingent upon a showing that the rates being appealed were ultimately found to be reasonable. If such were the case, the Commission would have no discretion but to order a refund in the event of a successful appeal of water rates by protestants. However, the law clearly imparts discretion upon the Commission to decide whether to order a refund, and the facts of this case illustrate the need for the exercise of that discretion by denying the requested refund.

9. The proposed order, as written, fails to recognize this discretion or distinction, and although it acknowledges Mr. Blaylock's well founded concern about whether WSC can remain financially solvent if a refund is ordered, it summarily dismisses those concerns without any discussion or analysis of the capability of WSC to pay the refund or the consequences of any ordered refund to the WSC or its members. Simply put, the proposed decision fails to consider any factors other than whether the rates were reasonable, although the law allows such factors to be taken into consideration.
10. WSC further excepts to the requirement that the refund take the form of a credit to each member customer's monthly bill. WSC acknowledges that the Commission has the authority to order a refund pursuant to Tex. Water Code Ann. §13.043(e) and 30 Tex. Admin. Code §291.41(e), however, neither of those authorities authorize the Commission to require the WSC to change or restructure its monthly billing to incorporate the proposed refund. In the event a refund is ordered by the Commission, WSC contends that the refund should be ordered by a date certain, and the Commission should allow the WSC and its member customers the right to decide how best to accomplish the refund. To do otherwise, would exceed the scope of the Commission's authority in this rate appeal.
11. In the event the Commission orders a refund, whether by a date certain or as set forth in the proposed decision, WSC requests that it be given reasonably sufficient time to

calculate the amount of the refund due each customer, before the time period in which the refund must be accomplished begins to run. Because WSC has only one part-time employee to perform the refund calculations for approximately 300 members, WSC would request 3 months to perform the refund calculations before the time period in which the refund must be accomplished, begins to run.

Motion to Reopen the Record

12. In the alternative, WSC moves the Commission, pursuant to 30 Tex. Admin. Code §80.265, to order the ALJ to reopen the record for further testimony and proceedings concerning WSC's ability to pay any refund ordered, and the potential consequences to the WSC and its members if the refund in the proposed decision is ordered.

Prayer

WHEREFORE PREMISES CONSIDERED, WSC prays that the Commission disregard that portion of the ALJ's *Proposal for Decision* ordering a refund, and instead deny the request for a refund in its entirety, or in the alternative, order the refund be concluded by a date certain, but permit the WSC and its members the right to decide how best to accomplish the refund; or further in the alternative, order the ALJ to reopen the record for further testimony and proceedings in accordance with the request hereinabove.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on 4/13, 2010 a true and correct copy of the foregoing document was served on each individual listed below, via the method indicated.

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