

SOAH DOCKET NO. 582-09-2557  
TCEQ DOCKET NO. 2009-0048-UCR

PETITION FROM MULTI-COUNTY \* BEFORE THE STATE OFFICE  
WATER SUPPLY CORPORATION \*  
TO APPEAL THE WHOLESAL \*  
E WATER RATE INCREASE OF \* OF  
THE CITY OF HAMILTON \*  
(APPLICATION NO. 36280-M) \* ADMINISTRATIVE HEARINGS

**PETITIONER’S EXCEPTIONS TO THE PROPOSAL FOR DECISION ISSUED  
IN MULTI-COUNTY WATER SUPPLY CORPORATION’S APPEAL OF THE  
WHOLESAL WATER RATE INCREASE OF THE CITY OF HAMILTON**

NOW COMES PETITIONER, Multi-County Water Supply Corporation (Multi-County) and makes and files its Exceptions to the Proposal for Decision issued by the Administrative Law Judge in regard to Multi-County’s appeal of the wholesale water rate increase imposed by the City of Hamilton, Texas, and in support thereof, Petitioner would respectfully show as follows:

I.

Multi-County Water Supply Corporation agrees with the Administrative Law Judge’s analysis of the Procedural History of the case contained in Section III of the Proposal for Decision, and the Legal Background of the proceedings as set forth in Section V of the Proposal for Decision. Multi-County objects to certain factual determinations used by the Administrative Law Judge in reaching his conclusions, and to the certain conclusions of law to be discussed herein.

II.

Multi-County Water Supply Corporation (hereinafter Multi-County) entered into a written contract with the City of Hamilton ( hereinafter City) for delivery of water to

Multi-County in November of 1989. Multi-County EX. 1, p.013/018. Initially, the contract contemplated the delivery of water which was treated by the City of Hamilton at the City's water treatment plant. TR. 193-194. In 2007, the City began receiving treated water from its source, Lake Proctor, provided by Upper Leon River Municipal Water District. TR. 174. The City increased water rates to Multi-County in 2006 based on anticipated costs from Upper Leon and estimated costs of operation and maintenance of the limited distribution system the City held after transfer of its transmission line and closure of its water treatment plant. TR. 174-176. The rate increase that is the subject of this appeal occurred after the city began receiving treated water in May of 2007, and the City did not provide any information as to its operation and maintenance expense for 2008. Multi-County EX. 29; The only information offered, on *anticipated* operation and maintenance was that provided in the notice of rate increase in 2006. Multi-County EX. 23. Multi-County believes that case is not as simple as a mere review of a 14 cent increase from the City's water source. Multi-County asserts that the public interest is affected by the 2008 rate increase..

### III.

Multi-County challenges the protested rate on the ground that it evidences the City's abuse of monopoly power. The Administrative Law Judge properly concluded that Multi-County asserts that it is entitled to a finding in its favor on this contention because of four specific factors:

- (1) Multi-County and the City have disparate bargaining power;
- (2) the City has failed to demonstrate changed conditions that would justify the increased rates;

- (3) the City changed the computation of the revenue requirement or rate from one methodology to another; and
- (4) other valuable consideration received by a party incident to the contract

#### IV.

Multi-County contends that there is evidence of an abuse of the disparate bargaining power between it and the City. Multi-County argues that it has viable alternatives for obtaining the water needed for its citizens, yet the City has repeatedly refused to allow Multi-County to obtain water elsewhere. Multi-County contends that the City's inability to provide water to Multi-County at a flow rate which complied with TCEQ minimum standards hampered its ability to serve numerous potential customers who were awaiting service. TR. 30-31, 80-81, 95-96.

Additionally, during and after drought conditions existed at Lake Proctor, the City's raw and treated water source, Multi-County obtained an alternate source of supply. This was a water allocation through the Brazos River Authority that Multi-County was unable to utilize due to the City's insistence that it remain as Multi-County's sole provider. Multi-County EX. 13; TR. 117-118.

Multi-County offered proof that it has attempted to purchase treated water from other sources, but could not proceed to develop those supplies, to the detriment of persons within its certificate of convenience and necessity. TR 111-112.

The Administrative Law Judge found that Multi-County never sought the services of a recognized independent engineer to confirm that the City was unable to supply water as set forth in the contract between the parties, thereby releasing it from exclusive provider portion of the contract. Multi-County Exhibit 1, page 011/018. Multi-County contends that the City never disputed its inability to serve Multi-County at the rate

mandated by the TCEQ. Shirley Rice, manager of the Multi-County Water Supply Corporation, testified that the City had been requested to provide additional capacity and it assured Multi-County that it would fulfill those requests, but continually failed to do so. TR. 30-31.

Multi-County also contends that the City never permitted it to obtain alternate sources of water, despite the City's contention that Multi-County had been free to pursue other sources of water. TR. 52-55. The Administrative Law Judge found that the City had offered to allow Multi-County to pursue alternate sources. These offers occurred subject to the City's additional conditions. TR. 182-183. Mr. Bill Funderburk, City Administrator, confirmed that as recently as 2006, the City would not delete the exclusive provider provision of its proposed contract. TR. 182. He also testified that the City of Hamilton had not prepared for Multi-County to obtain water from another source, even when drought contingency plans were in place. PreFiled Testimony of Bill Funderburk offered by Multi-County Water Supply Corporation, p. 27, 15-25, p. 28, 1-2.

Multi-County also alleges that the City tried to force Multi-County to enter into a new contract with provisions that Multi-County did not wish to accept, including the agreement that Multi-County become a Special Utility District, and a significantly higher take or pay provision. Hamilton EX. 5, TR. 177, TR 180. Multi-County does not agree with the Administrative Law Judge that the City's position in so doing is reasonable, and further urges that this action is further evidence of the City's abuse of monopoly power. Shortly after this new contract was rejected by Multi-County, a rate increase was instituted changing Multi-County's rate from \$2.50 per thousand to \$4.46 per thousand. Multi-County EX. 23.

V.

Multi-County contends that the City has failed to demonstrate changed conditions that would justify the increased rate that is the subject of this appeal. As noted above, the rate increase that is the subject of this appeal occurred after the city began receiving treated water, and the City did not provide any information as to its operation and maintenance expense for 2008. Multi-County EX. 26. The City's expert, David Yanke, testified that he did not attempt to verify or determine the operation and maintenance expense incurred by the City in 2008. TR. 221-222. The information provided in the 2006 rate increase were based on estimated operation and maintenance costs, as discussed earlier in this brief. But the 2008 rate increase contains no information on the operation and maintenance expense incurred by the City in the fiscal year immediately prior to the rate increase. This fiscal year would have been the first full year in which the City received treated water from Upper Leon; thus, the City's actual expense of maintaining transmission lines and equipment, for chemicals and other necessary supplies was only determinable during the fiscal year from September 1, 2007, to September 1, 2008. The City's expert contends that the rate is comprised of three elements, the cost of water, the debt service, and the operation and maintenance expense. TR 215. The City's notice includes information with only one element of the City's rate formula included. Multi-County EX 26. Multi-County objects to the Administrative Law Judge's finding and conclusion that this does not constitute a failure on the part of the City to demonstrate a change in conditions.

Multi-County contends that the City has never attempted to calculate its operation and maintenance expense after it actually began receiving treated water from

the City of Hamilton. As noted earlier, it was prepared to allow Multi-County to obtain water at a rate of \$2.53 per thousand until July of 2007. TR. 171-172. Apparently the City anticipated sufficient excess revenue at \$2.53 per thousand that it could absorb what would ultimately be an operating loss with Multi-County's rate when the City actually began paying for and receiving treated water. Thus the City was prepared and able to comfortably operate its full water treatment system at the rate of \$2.53 per thousand until July of 2007. This leads to the conclusion that the City had already been receiving revenue from Multi-County that more than offset operating expenses and debt service during 2005-2006, and the increase to \$2.53 per thousand would simply provide an additional surplus of funds from which the City would meet expenses.

Multi-County has seen no evidence from the City that its operating expenses have not dropped dramatically since March of 2007. The City indicates that Upper Leon has absorbed significant expenses by assuming responsibility for the transmission line. Pre-Filed Direct Testimony of Bill Funderburk, p. 15. By its own calculations, the City had debt service of roughly \$1.03 throughout this time period, leaving roughly \$1.50 per thousand to cover the cost of water and remaining expenses when the rate was \$2.50 per thousand. In its 2006 rate increase, the City estimated its operation and maintenance expense would be .68 per thousand. Multi-County EX. 23. This is admittedly an estimate, and when compared with an operation and maintenance expense of \$1.50 per thousand for Multi-County's share of the City's entire water treatment plant and the 36 mile transmission line (TR 104), it seems exceedingly high.

While it is conceded that cost of service is not a factor in a hearing to determine public interest, it is clear from the Commission's rules that the Administrative Law Judge

may consider the seller's failure to reasonably demonstrate the changed conditions that are the basis for a change in rates; thus Multi-County relies on the above information in support of that factor.

V.

In calculating the 2008 rate increase, the City changed the computation of the revenue requirement or rate from one methodology to another. Specifically, the 2008 rate increase speaks only of the 14 cent increase in the cost of water from Upper Leon and fails entirely to mention any of the other factors that the City contends comprise the rate increase. With that information, Multi-County cannot determine the City's method of calculating the underlying rate, and therefore challenges the methodology.

V.

It is clear from the testimony of both parties that the contract was entered into to facilitate a project to build a transmission line from Lake Proctor to the City of Hamilton. TR. 195. Yet the City conveyed away that transmission line without any input from Multi-County and without retiring the debt which both parties incurred in the construction of the line. TR. 97 Multi-County's position with regard to the transmission line is that when Hamilton elected to transfer it to Upper Leon, some reduction in Multi-County's obligation should have resulted from that transaction. TR. 107 Without any corresponding reduction in the debt that was incurred to create the pipeline, part of Multi-County's consideration for entering into the original contract with the City was that very pipeline, and now that consideration has been lost. Yet the indebtedness apparently still makes up a portion of Multi-County's rate. TR. 201.

Multi-County objects to the Administrative Law Judge's determination that this does not constitute evidence of the disparate bargaining power between Multi-County and the City. This transaction emphasizes the need for intervention to protect the interest of the public in the dealings between these two entities, because this contract's public purpose has now been substantially altered.

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully prays that the Proposal for Decision of the Administrative Law Judge not be adopted, and that the Commission enter findings consistent with these Objections, by finding that the protested rate adversely affects the public interest and order the appeal of the wholesale rate to proceed to a review and determination of the propriety of the rate, and for such other and further relief to which it may be justly entitled.

Respectfully submitted,

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BY: \_\_\_\_\_ S \_\_\_\_\_  
Kathleen French Dow  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 3rd day of May, 2010, a true and correct copy of the foregoing instrument was sent facsimile to Mr. Wesley Lloyd, Naman, Howell, Smith & Lee, at (254) 754-6331 and

to Mr. Ron Olson, Staff Attorney, TCEQ, via facsimile at (512) 239-0606.

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KATHLEEN FRENCH DOW