

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

APPEAL OF MULTI-COUNTY WATER	§	BEFORE THE STATE OFFICE
SUPPLY CORPORATION TO REVIEW	§	
THE WHOLESALE WATER RATE	§	
INCREASE IMPOSED BY THE CITY OF	§	
HAMILTON, CERTIFICATE OF	§	OF
CONVENIENCE AND NECESSITY NO.	§	
11525, AND REQUEST FOR INTERIM	§	
RATES; APPLICATION NO. 36280-M	§	ADMINISTRATIVE HEARINGS

**CITY OF HAMILTON’S REPLY TO MULTI-COUNTY’S
EXCEPTIONS TO PROPOSAL FOR DECISION**

TO THE HONORABLE TRAVIS VICKERY, ADMINISTRATIVE LAW JUDGE:

COMES NOW, THE CITY OF HAMILTON (the “City”), Respondent herein, and files this its Reply to the Exceptions to the Proposal for Decision (“PFD”) filed by Multi-County Water Supply Corporation, Petitioner (“MCWSC”). Pursuant to the letter attached to the PFD, this Reply is due by May 13, 2010, and is therefore timely filed.

I.

PREVIOUS RATE INCREASE

MCWSC continues to assert that a previous rate increase, which set the rate at \$4.46 per thousand gallons effective in May of 2007, should be considered by the ALJ. See Petitioner’s Exceptions at 2. This assertion is contrary to MCWSC’s own pleadings, the Texas Water Code, TCEQ rules, and the ALJ’s rulings at trial.

MCWSC’s petition in this rate appeal specifically asserted that MCWSC sought “to appeal the decision . . . to increase the wholesale rate . . . from \$4.46 per 1000 to \$4.60 per 1000 gallons.” See Exhibit COH-34. Therefore, any claims that any other rate increase should be considered appear to be unfounded. It is worth noting that MCWSC did not amend its petition prior to the conclusion of the trial or the submission of post-hearing briefs. Therefore, even if there was a basis for appealing previous rate increases the right to seek such relief has been waived.

Further, MCWSC specifically stated in its petition that “[t]he statutory authority for appeal is found under Section 13.043(f) of the Texas Water Code.” *Id.* Section 13.043(f) specifically limits TCEQ’s jurisdiction to the fourteen cent rate increase, because the previous

rate increases occurred more than ninety days prior to the petition being filed. Section 13.043(f) states that “[a]n appeal under this subsection must be initiated within 90 days after the date of notice of the decision is received from the provider of water or sewer service . . .” TEX. WATER CODE § 13.043(f). Rule 291.130 incorporates this same deadline. 30 TAC § 291.130(c). It is undisputed that MCWSC did not appeal the previous rate increase of which it now attempts to complain. COH-35 at 125; COH-37 at 15, 19. According to MCWSC’s own witnesses, this appeal only concerns the fourteen cent increase. R. at 76, 125.

The City would be placed at a distinct disadvantage if evidence related to previous rate increases was given any weight. The City prepared its defense of this case based on the fourteen cent increase. The City could have offered evidence with respect to the previous rate increase that was relevant to the factors set forth in the public interest test, but did not do so because the applicable rules do not contemplate such evidence being relevant to any fact in issue.

For these reasons, MCWSC’s exceptions to the PFD which argue that previous rate increases should be considered should be denied.

II.

DISPARATE BARGAINING POWER

The City is not filing a reply to any of MCWSC’s exceptions regarding this factor, but simply stands on its previous arguments.

III.

CHANGED CONDITIONS

MCWSC argues that the City has failed to demonstrate the changed conditions that justify the rate increase. The only arguments proffered by MCWSC deal with the previous rate increase. As noted in the PFD, the City did demonstrate that the fourteen cent increase was a direct result of a pass-through increase that it incurred from Upper Leon River Municipal Water District. Therefore, MCWSC’s exceptions with respect to this factor should be denied.

IV.

METHODOLOGY

The City is not filing a reply to any of MCWSC’s exceptions regarding this factor, but simply stands on its previous arguments.

V.

OTHER VALUABLE CONSIDERATION

The City is not filing a reply to any of MCWSC's exceptions regarding this factor, but simply stands on its previous arguments.

VI.

CONCLUSION

The City respectfully requests that the PFD be adopted, as modified in accordance with the Exceptions filed by the City, and that the Exceptions filed by MCWSC be disregarded and/or denied in their entirety.

Respectfully submitted,

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BY:  _____
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ATTORNEYS FOR RESPONDENT

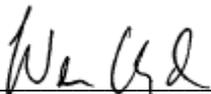
CERTIFICATE OF SERVICE

I certify that on this the 13th day of May, 2010, a true and correct copy of this the City of Hamilton's Reply to Multi-County's Exceptions to the Proposal For Decision has been sent to the persons listed below by certified mail, return receipt requested.

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Further, a courtesy copy of this document is contemporaneously being sent by electronic mail to the Honorable Travis Vickery, with a carbon copy to the above attorneys representing the parties of record.



Wesley D. Lloyd