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SOAH DOCKET NO. 473-15-0218  
PUC DOCKET NO. 43081

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PUBLIC UTILITY COMMISSION  
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SECOND PETITION OF TRAVIS COUNTY § BEFORE THE STATE OFFICE  
MUNICIPAL UTILITY DISTRICT NO. 12 §  
APPEALING CHANGE OF WHOLESALE §  
WATER RATES IMPLEMENTED BY WEST §  
TRAVIS COUNTY PUBLIC UTILITY § OF  
AGENCY, CITY OF BEE CAVE, TEXAS §  
HAYS COUNTY, TEXAS AND WEST §  
TRAVIS COUNTY MUNICIPAL UTILITY §  
DISTRICT NO. 5 § ADMINISTRATIVE HEARINGS

**TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12'S LIST OF ISSUES**

COMES NOW Travis County Municipal Utility District No. 12 ("TCMUD 12 or District"), and files this List of Issues, and in support thereof would respectfully show the following:

**I. INTRODUCTION**

Travis County Municipal Utility District No. 12 (TCMUD 12) filed this Second Petition Appealing a Change of Wholesale Water Rates Implemented by the West Travis County Public Utility Agency (WTCPUA), as the agent for its Participant Entities (the City of Bee Cave, Texas, Hays County, Texas, and West Travis County MUD No. 5), at TCEQ on July 31, 2014. This Second Petition concerns a Drought Surcharge implemented by WTCPUA effective July 2014, and TCMUD 12 sought referral to SOAH for a hearing on the rate, and in the alternative, referral for a public interest hearing. This Second Petition also sought the issuance of an Interim Rate Order to establish the existing wholesale Monthly Minimum Charge and Volumetric Rate as interim rates and to prohibit the PUA from charging the additional rate in the form of a Drought Surcharge during the pendency of the Appeal. No action was taken on the Second Petition by TCEQ, and the petition was transferred to the PUC on or about September 1, 2014. This Docket was referred to SOAH for processing on September 8, 2014 and has been assigned to ALJ William Newchurch, who has scheduled a Prehearing Conference for September 30, 2014.<sup>1</sup> There is no jurisdictional or statutory deadline for the Commission to act on this Petition.

<sup>1</sup> The Parties have conferred and have agreed to request that the SOAH ALJ postpone the prehearing conference until after the issuance of the Commission's Preliminary Order.

TCMUD 12'S First Petition concerns changes to wholesale water rates by the WTCPUA and its Participant Entities that became effective January 1, 2014, and is pending before the same SOAH Administrative Law Judge as this Second Petition. The First Petition was transferred to the PUC on or about September 1, 2014, and a procedural schedule is in place that will lead to a hearing on the public interest the week of April 20, 2015. The First Petition is now assigned PUC Docket No. 42866, SOAH Docket No. 473-14-5144, *Petition of Travis County Municipal Utility District No. 12 Appealing Change of Wholesale Water Rates Implemented by West Travis County Public Utility Agency; City of Bee Cave, Texas; Hays County, Texas; and West Travis County Municipal Utility District No. 5.*

## **II. PRELIMINARY ISSUES TO BE ADDRESSED BY THE COMMISSION**

This Petition is one of, if not the first, appeal concerning wholesale water rates to be presented to the Commission following transfer of jurisdiction of these matters from TCEQ effective September 1, 2014. TCMUD 12 therefore respectfully requests that the Commission address the following matters of first impression as part of its Preliminary Order:

1. Pursuant to P.U.C. SUBST. R. 24.131(a), does the Second Petition contain all of the information required by P.U.C. SUBST. R. 24.130?
2. TCMUD 12 filed this Second Petition at the TCEQ arguing that jurisdiction arose under TEX. WATER CODE §§ 11.036, 11.041, 12.013 and/or 13.043(f).<sup>2</sup> The matter of the jurisdictional basis for the Petition is complicated by the fact that cases arising under Chapter 11 of the TEX. WATER CODE were not directly transferred to the PUC. The Respondent, WTCPUA, contests jurisdiction under Chapters 11 and 12, as they did with respect to TCMUD 12's First Petition. As to the First Petition, the SOAH ALJ ruled at the Preliminary Hearing that TCEQ's jurisdiction arose under TEX. WATER CODE § 13.043(f), but did not rule on the other jurisdictional claims.<sup>3</sup> TCMUD 12 seeks from the Commission in the Preliminary Order a determination of whether the Commission has jurisdiction to consider the Second Petition under TEX. WATER CODE Chapters 11, Chapter 12, or Chapter 13? WTCPUA contests jurisdiction under Chapters 11 and 12,<sup>4</sup> but not TEX. WATER CODE § 13.043(f). Alternatively, TCMUD 12 would request that the Commission order that the question of the Commission's jurisdiction under TEX. WATER CODE Chapters 11 and 12 be

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<sup>2</sup> TCMUD 12's Second Petition at p. 4.

<sup>3</sup> TCMUD 12 recently amended its jurisdictional claim in the First Petition to remove Chapter 11, in order to permit TCEQ to withdraw from that case.

<sup>4</sup> WTCPUA Response (Aug 11, 2014) at 1.

briefed either to the Commission prior to issuance of a Preliminary Order, or at SOAH with a recommendation to follow in the Proposal for Decision.

3. Is the rate (Drought Surcharge) that is the subject of the Second Petition charged pursuant to a written contract?<sup>5</sup>

The implication of this determination cannot be overstated: If the Commission determines that the Drought Surcharge is charged “pursuant to a written contract,” then TCMUD 12 will carry the burden to prove that the rate is adverse to the Public Interest.<sup>6</sup> On the other hand, if the Commission determines that the Drought Surcharge is not charged pursuant to a written contract, then the WTCPUA will carry the burden to prove its cost of service that supports imposition of the rate.<sup>7</sup> Given the significance of this determination, when a petitioner brings an appeal on a wholesale rate and argues the rate that is being protested is *not* charged pursuant to a contract, the respondent will inevitably respond that it *is* charged pursuant to a contract. As for the disputes between TCMUD 12 and the WTCPUA, in the First Petition TCMUD 12 conceded the protested rates were charged pursuant to the parties’ contract, and that case is being processed under the Public Interest rule. However, for the reasons explained at pages 7 and 8 of TCMUD 12’s Second Petition, Petitioner disputes that the Drought Surcharge is charged pursuant to the parties’ contract(s).<sup>8</sup> Not surprisingly, WTCPUA disagrees with that contention, but does so by simply asserting its conclusion that the Drought Surcharge is charged pursuant the Wholesale Water Services Agreement, without providing any analysis of the contract provisions or responding to the specific arguments presented by TCMUD 12.<sup>9</sup>

P.U.C. Subst. R. 24.131 is titled “Commission’s Review of Petition or Appeal”, and TCMUD 12 requests, pursuant to that rule, that the Commission decide as an initial matter whether TCMUD 12’s Second Petition will be heard on the Rate, or on the Public Interest. The Commission has the expertise to review the parties’ arguments and the contracts and make this determination, and should do so rather than allow the parties to this appeal to be the arbiter of this determination.

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<sup>5</sup> See, P.U.C. SUBST. R. 24.131(b)-(d).

<sup>6</sup> P.U.C. SUBST. R. 24.132 – 24.133 and P.U.C. SUBST. R.24.136 (Burden of Proof).

<sup>7</sup> P.U.C. SUBST. R. 24.131(c), 25.135 and 24.136.

<sup>8</sup> The Wholesale Water Services Agreement was executed by LCRA and TCMUD 12, and transferred to the WTCPUA upon the sale of the LCRA’s West Travis County System to the WTCPUA under a separate agreement.

<sup>9</sup> See, WTCPUA Response at 8.

- a. If the Commission finds that the Drought Surcharge is *not* charged pursuant to the written contract between the Parties, as TCMUD 12 claims, then pursuant to P.U.C. SUBST. R. 24.131(c), the Commission should direct SOAH to conduct an evidentiary hearing on the rate.
  - b. If the Commission finds that the Drought Surcharge *is* charged pursuant to a written contract, as WTCPUA claims, then pursuant to P.U.C. SUBST. R. 24.131(b), the Commission should direct SOAH to conduct an evidentiary hearing on the Public Interest.
  - c. If the Commission does not decide the issue - whether the Drought Surcharge is or is not charged pursuant to the written contract - then the Commission may direct the ALJ to determine if the matter should be abated under P.U.C. SUBST. R. 24.131(d).
4. If the Commission refers the Second Petition to SOAH for a hearing on the Public Interest, TCMUD 12 requests the Commission to clarify in its Preliminary Order if the list of factors set out in P.U.C. Subst. R. 24.133(a)(1) – (4) are exclusive? TCMUD 12's position is that the list is not exclusive.<sup>10</sup>
  5. Finally, TCMUD 12 asks if the Commission will rule on TCMUD 12's request for interim rates, pursuant to Tex. Water Code § 13.043(h) and P.U.C. SUBST. R. 24.29(d) and (e); or refer TCMUD 12's request for interim rates to SOAH pursuant to Tex. Water Code 13.041(c-1) and P.U.C. SUBST. R. 24.29(f)?

### **III. ISSUES TO BE ADDRESSED AT SOAH AND/OR THE HEARING**

1. If the Commission refers TCMUD 12's request for interim rates to SOAH: Could the proposed increase in rates (Drought Surcharge) result in an unreasonable economic hardship on the utility's customers (*i.e.*, TCMUD 12) or unjust or unreasonable rates, thereby justifying the imposition of interim rates? P.U.C. SUBST. R. 24.29(d).
2. If the Second Petition is referred to SOAH for a hearing on the Rate pursuant to P.U.C. SUBST. R. 24.131(c):

<sup>10</sup> See, TCEQ Docket No. 2009-1925-UCR, SOAH Docket No. 582-10-1944, *Order Denying the Petitions of Navarro County Wholesale Ratepayers, et. al to Review the Wholesale Rate Increase Imposed by the City of Corsicana*, (Nov. 9, 2011) at p. 21 ("The Commission modified [the ALJ's proposed] Conclusion of Law No. 17 to remove the statement that the public-interest review is 'limited to' the factors set out in 30 TAC § 291.133(a)(1)-(4).")

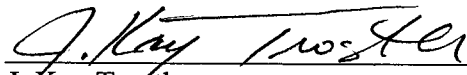
- a. Has WTCPUA filed a cost of service study and other information which supports the protested rate within 90 days of the issuance of the Preliminary Order? P.U.C. SUBST. R. 24.134(c).
  - b. What is the rate that should be set consistent with the ratemaking mandates of TEX. WATER CODE Chapters 12 and 13? P.U.C. SUBST. R. 24.134(e)
3. If the Second Petition is referred to SOAH for a hearing on the Public Interest: Has TCMUD 12 proven that the Drought Surcharge adversely affects the public interest under P.U.C. SUBST. R.24.133?
4. Should the Second Petition be consolidated with the First Petition pursuant to P.U.C. Proc. R. 22.34(a)?

#### **IV. CONCLUSION AND PRAYER**

WHEREFORE, PREMISES CONSIDERED, TCMUD 12 respectfully requests that the Commission address the Preliminary Issues identified above, find that the Drought Surcharge is not charged pursuant to a written contract, and refer the Second Petition to SOAH for a hearing on the rate and for a determination on TCMUD 12's Request for Interim Rates.

Respectfully Submitted,

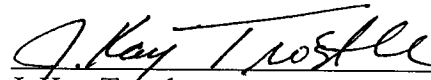
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By:   
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ATTORNEYS FOR TRAVIS COUNTY  
MUNICIPAL UTILITY DISTRICT NO. 12

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document is being served via facsimile, U.S. mail and/or hand delivery to all parties of record on this 25<sup>th</sup> day of September, 2014.

  
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J. Kay Trostle