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REQUEST BY EDE AND RANDY
BULLOCK FOR DETERMINATION
OF RCH WATER SUPPLY
CORPORATION'S COMPLIANCE
WITH TEXAS WATER CODE § 13.004
(37766-1)

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PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

This Order addresses the request by Ede and Randy Bullock (collectively, the Bullocks) for the Public Utility Commission of Texas (Commission) to investigate RCH Water Supply Corporation (RCH) pursuant to Tex. Water Code § 13.004 (TWC). Commission Staff recommended dismissal. For the reasons discussed in this Order, the request is dismissed.

I. Background

On October 14, 2013, the Bullocks filed a request with the Texas Commission on Environmental Quality (TCEQ) to investigate RCH.¹ The Bullocks stated that due to RCH's continued denial of resolving the issue at hand,² they were left with no alternative but to request an investigation of RCH under the Texas Water Code (TWC).³ The Bullocks listed several sections of the TWC; including Chapter 67, §§ 13.002(11) and (24), and § 13.004.⁴ In an October 14, 2013 email with TCEQ that was attached to the investigation request, Randy Bullock stated that they were paying their monthly bill from RCH before the due date, but that the utility had indicated their water was going to be cut off for nonpayment and that RCH was refusing to cash the Bullocks' checks.⁵

On November 12, 2013, TCEQ sent a notice of violation (NOV) to RCH advising that it had come to the agency's attention that the utility might be in violation of what is now 16 Tex.

¹ Bullock Letter to TCEQ at 1 (Oct. 14, 2013) (Oct. 14th Letter).

² Note: The underlying dispute in this proceeding is described in detail in the Bullock's March 15, 2015 filing and described on page 3 of this Order and in Findings of Fact Nos. 18-25.

³ October 14th letter at 1.

⁴ *Id.*

⁵ *Id.* at 2.

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Admin. Code § 24.87 (TAC), which relates to billing by utilities.⁶ TCEQ reminded RCH of its policy regarding the collection of late fees and that a customer's bill could not be subject to discontinuance for nonpayment for that portion of the bill that was disputed.⁷ TCEQ instructed RCH to provide a copy of its tariff and respond to the Bullocks' allegations, or risk referral to TCEQ's enforcement division.⁸ On November 26, 2013, TCEQ accepted the Bullocks' request for filing.⁹

On December 10, 2013, RCH responded to TCEQ's NOV, stating that a copy of RCH's tariff would be forwarded to TCEQ and that it was impossible for RCH to respond to the Bullocks' allegations because there were not sufficient facts to determine what TCEQ regulation had been violated.¹⁰ On January 3, 2014, TCEQ issued a final NOV to RCH, stating that it had not received a copy of RCH's current tariff or a response to the Bullock's allegations.¹¹ TCEQ stated that failure to provide the requested information would result in referral to enforcement and stated that pursuant to TWC § 13.131(e), the agency could examine and audit all accounts of a utility, stating that RCH may be contacted to schedule an audit of its books and records by TCEQ staff.¹² A copy of RCH's tariff, effective in December 1997, was received by the Commission on September 15, 2014.¹³

On July 8, 2014, the Bullock's attorney, Mr. James R. Ray, sent a letter to RCH's attorney.¹⁴ Mr. Ray stated that in August 2013, Mr. Bullock formally initiated the grievance procedures described in RCH's tariff.¹⁵ Mr. Ray stated that RCH did not respond to Mr. Bullock's grievance letter and has done nothing to address the Bullocks' concerns.¹⁶ Mr. Ray stated that

⁶ TCEQ Notice of Violation to RCH at 1 (Nov. 12, 2013).

⁷ *Id.*

⁸ *Id.* at 1-2.

⁹ TCEQ Letter to Bullocks (Nov. 26, 2013).

¹⁰ TCEQ Final Notice of Violation to RCH at 1 (Jan. 3, 2014).

¹¹ *Id.*

¹² *Id.* at 2.

¹³ Water Utility Tariff for RCH Water Supply Corporation (Dec. 1997) (AIS Item No. 3).

¹⁴ Bullock Attorney, James R. Ray, III, Letter to RCH (Jul. 8, 2014) (Ray letter).

¹⁵ *Id.* at 1.

¹⁶ *Id.* at 1-2.

since August 2013, Mr. Bullock has regularly made timely payments to RCH for his current water service, but that RCH has refused to cash Mr. Bullock's checks and further, that RCH continues to charge Mr. Bullock a late fee each month.¹⁷ Mr. Ray stated that if the matter is not resolved, the Bullocks would be filing suit in court.¹⁸ Mr. Ray stated that RCH has disregarded its obligations under the utility's tariff and bylaws.¹⁹ Mr. Ray stated that for several years RCH has failed to give at least 15 days written notice of its annual meeting of its members.²⁰ Further, that the utility is subject to the Texas Open Meetings Act, which he stated, has certainly been violated.²¹

On September 1, 2014, the economic regulation of water and sewer utilities transferred to the Commission. This matter was part of that transfer. On March 20, 2015, the Bullocks renewed their request that RCH be investigated and provided the Commission more detail regarding their grievances against RCH.²² The Bullocks' purchased their meter in July 2000, operated a feed store at the location until 2009, and then leased the building to J&M Tire Store (J&M) from June 2010 through July 2013.²³ The Bullocks stated RCH took a deposit from J&M and transferred the bill into J&M's name.²⁴ The Bullocks stated they received no notice during the tenancy that J&M was not paying the water bill.²⁵ The Bullocks stated that RCH charged a transfer fee to put the bill back in the Bullock's name, but is holding the Bullocks responsible for the full unpaid amount of J&M's water bill, plus late fees, refuses to cash checks for current service and continues to add late charges to the bill.²⁶ Among other things, the Bullocks allege that in holding them responsible for J&M's unpaid water bills, RCH is violating its tariff because they were not required to sign an "Alternate Billing Arrangement" when RCH transferred billing to J&M, and further that RCH violated its tariff because it did not respond to their properly filed grievance.²⁷

¹⁷ *Id.* at 2.

¹⁸ *Id.*

¹⁹ Ray Letter at 2.

²⁰ *Id.*

²¹ *Id.*

²² Bullock Letter to Commission at 1 (Mar. 20, 2015) (Mar. 20th Letter).

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ March 20th Letter at 2-3.

On September 24, 2015, RCH responded to Order No. 1, reciting the limited jurisdiction that the Commission has over a water supply corporation and further stating that the Commission has the burden to establish that RCH is not operating as a water supply corporation before it can invoke jurisdiction.²⁸ RCH provided its most recent Articles of Amendment to its bylaws, which state in several places that the utility is member owned and controlled.²⁹ RCH also provided copies of the two most recent approved minutes of RCH's annual meetings of the membership, for years 2013 and 2014.³⁰ RCH provided an affidavit that the 2015 annual meeting of the members was held as required, but stated that those minutes will not be approved until the 2016 meeting of the membership.³¹

On September 30, 2015, Order No. 2 was issued, requiring RCH to provide (1) a copy of its current tariff and service regulations and (2); (a) documentation showing that it is registered as a non-profit with the Texas Secretary of State (Texas SoS), (b), documentation demonstrating that it has been registered as a non-profit for the past two years, and (c) documentation that its status as a non-profit is up-to-date and in good standing with the Texas SoS. On October 15, 2015, RCH responded to Order No. 2, providing a copy of its current tariff, approved by the RCH board, April 29, 2015.³² On October 21, 2015, RCH supplemented its response to Order No. 2, providing documentation demonstrating that the utility is now up-to-date and in good standing with the Texas SoS as a nonprofit corporation.³³

On October 23, 2015, Order No. 4 was issued, granting Commission Staff' request and requiring RCH to produce:

“(i) a copy of its tariff in place June 2010, with confirmation that that tariff did not include the “Owners and Renters” provision in Section E of the tariff, (ii) confirmation that there was a “Grievance Procedures” on Section B of RCH’s

²⁸ RCH Water Supply Corporation Response to Order No. 1 at 1-2 (Sep. 24, 2015).

²⁹ *Id.* at 2-3.

³⁰ *Id.* at 3-4, referencing Exhibit 2.

³¹ *Id.* at 4.

³² RCH Water Supply Corporation Response to Order No. 2 and Request for Extension of Time, Exhibit A (Oct. 15, 2015).

³³ RCH Water Supply Corporation's Supplemental Response to Order No. 2, Exhibits A, B and C (Oct. 21, 2015).

previous tariff versions, and document that RCH followed this procedure with Petitioners Ede and Randy Bullock regarding the dispute at issue, (iii) confirmation that Petitioners signed paperwork with RCH in the summer of 2010 which stated that Petitioners would be responsible for J&M Tire Store's water bill in the event J&M Tire Store defaulted on its bill; and (iv) confirmation that the April 2015 tariff was voted on in an open meeting after notice was given to members."³⁴

On October 28, 2015, RCH objected to Order No. 4, stating that none of the requested documents relate whatsoever to whether RCH is a water supply corporation.³⁵ RCH requested protection from the requirement to produce the requested documents.³⁶ On November 10, 2015, RCH responded to Order No. 4, re-urging its request for protection from the requirement to produce the documents requested by Commission Staff and not providing any of the requested documents.³⁷ However, the utility did provide an affidavit from Mr. Odis A Lowe, stating that he is the President of the RCH Board of Directors and attesting to confirmations required in Order No. 4.³⁸

On December 31, 2015, the Bullocks responded to RCH's November 10, 2015 filing stating that Jackie Pullen is listed as the President of RCH, not Mr. Lowe, that Mr. Lowe's affidavit did not confirm that proper notice was given of the RCH meeting at which the current tariff was adopted, that they did not sign an "Alternate Billing Agreement" as was and is required by RCH's tariff and that RCH did not follow the grievance procedures provided in its tariff, and finally that RCH operated out of compliance with Texas SoS's requirements numerous times, starting as early as 2006, and appear to have no regard for staying compliant as a non-profit corporation.³⁹

³⁴ Order No. 4 at 1 (Oct. 23, 2015), *citing to* Commission Staff's Response to Order NO. 2 at 3 (Oct. 22, 2015).

³⁵ RCH Water Supply Corporation's Objection to Documents Requested by Commission Staff at 1-2 (Oct. 28, 2015).

³⁶ *Id.* at 1.

³⁷ RCH Water Supply Corporation's Response to Order No. 4 (Nov. 10, 2015).

³⁸ *Id.*, Exhibit A, Affidavit of Odis Lowe.

³⁹ Bullock Response to RCH at 1-2 (Dec. 31, 2015).

On January 15, 2016, Commission Staff filed its final recommendation regarding the Bullocks' request and recommended dismissal.⁴⁰ Commission Staff stated the Bullocks' complaint was brought under TWC § 13.004, which gives the Commission jurisdiction over a water supply corporation only in very limited circumstances; and Commission Staff did not find that those circumstances were met in this case. Commission Staff stated that RCH provided the minutes of the two most recent annual meetings and an affidavit attesting to the dates of the annual meetings in 2014 and 2015.⁴¹ Commission Staff stated that RCH provided information that it was reinstated as a non-profit corporation with the Texas SoS.⁴² Commission Staff concluded that RCH is conducting its annual meetings appropriately and is complying with the requirements for classification as a nonprofit water supply corporation.⁴³ Therefore, Commission Staff concluded that the Commission does not have jurisdiction to investigate the Bullock's billing complaint.⁴⁴ However, Commission Staff recited several troubling issues with regards to RCH's behavior and actions that, if true and if the utility were not entitled to treatment as a nonprofit water supply corporation, would likely violate the Commission's consumer protection rules.⁴⁵

The Commission does not agree with all of RCH's assertions about its jurisdiction or that it has any burden of proof in this type of proceeding. The Commission clearly has jurisdiction to gather the information it deems necessary to make a determination whether a water supply corporation is not only qualified to be treated as a nonprofit water supply corporation, but also that the utility is acting in a manner that is consistent with that classification. The Commission does not find that a water supply corporation should be protected from the production of documentation necessary to make these determinations.

Here however, the Commission agrees with Commission Staff. The Commission's jurisdiction in this proceeding is based on TWC § 13.004. As noted by Commission Staff, RCH is qualified as a nonprofit water supply corporation and its actions are consistent with that

⁴⁰ Commission Staff's Final Recommendation (Jan. 15, 2016).

⁴¹ *Id.* at 2.

⁴² *Id.*

⁴³ *Id.* at 3.

⁴⁴ *Id.*

⁴⁵ *Id.* at 3-4.

classification. For all these reasons, the Commission finds that RCH did not violate TWC § 13.004; therefore, this matter is dismissed for lack of jurisdiction.

The Commission adopts the following findings of fact and conclusions of law:

II. Findings of Fact

Procedural History

1. On October 14, 2013, the Bullocks filed a request with TCEQ to investigate RCH.
2. On November 12, 2013, TCEQ sent a notice of violation letter to RCH, regarding alleged violations of TCEQ's billing rule, requiring a copy of RCH's tariff and a response to the Bullock's allegations.
3. On November 26, 2013, TCEQ accepted the petition for filing.
4. On December 10, 2013, RCH filed a letter with TCEQ in response to Bullock's petition.
5. On January 3, 2014, TCEQ issued a final notice of violation letter to RCH, advising the utility that it had not received a copy of its tariff or a response to the Bullock's allegations.
6. On September 1, 2014, this matter was transferred from TCEQ to the Commission.
7. On March 15, 2015, the Bullocks renewed their request that RCH be investigated.
8. On September 4, 2015, Order No. 1 was issued, requiring RCH to respond to the Bullocks' request and requiring a Commission Staff position statement.
9. On September 24, 2015, RCH responded to Bullock's request, seeking dismissal based upon the Commission's lack of jurisdiction pursuant to TWC § 13.004.
10. On September 29, 2015, Commission Staff recommended that RCH be ordered to provide certain information.
11. On September 30, 2015, Order No. 2 was issued, requiring that RCH provide the information requested by Commission Staff.
12. On October 15, 2015, RCH filed its current tariff and service regulations but requested additional time to locate and produce the items requested from the Texas SoS.
13. On October 21, 2015, RCH filed its Texas SoS documentation.

14. On October 22, 2015, Commission Staff recommended that RCH be ordered to provide additional information.
15. On October 23, 2015, Order No. 4 was issued, requiring the additional information requested by Commission Staff.
16. On October 28, 2015, RCH objected to the additional documents requested by Commission Staff and requested protection from production.
17. On October 30, 2015, Commission Staff responded to RCH's objection, stating that the information was necessary not only to demonstrate that RCH is a water supply corporation, but also to establish whether it is meeting all the requirements of classification under TWC § 13.002(24).
18. On November 10, 2015, RCH re-urged its request for protection from production and filed an affidavit to some of the information responsive to Commission Staff's request.
19. On November 17, 2015, Commission Staff recommended that RCH's responsive information be found adequate for further review of this proceeding.
20. On November 18, 2015, Order No. 5 was issued, finding RCH's information sufficient and establishing a deadline for Commission Staff's final recommendation regarding this docket.
21. On January 15, 2016, Commission Staff recommended dismissal for lack of jurisdiction.

Complaint

22. The Bullocks are a member of RCH.
23. The Bullocks allege that they are being held liable by RCH for a delinquent balance that J&M, a former tenant of one of their properties, incurred.
24. The Bullocks allege that RCH accepted a deposit from J&M and transferred the bill into J&M's name.
25. The Bullocks allege that they never signed an "Alternate Billing Agreement," under RCH's tariff; therefore, they cannot be held liable for the balance J&M incurred.

26. Upon written inquiry by the Bullocks to RCH and RCH's board of directors regarding this dispute, the Bullocks allege that they did not receive a written response of resolution, as required by the Grievance Policy under RCH's tariff.
27. The Bullocks allege that RCH charged the Bullocks a transfer fee to put the bill back in their name.
28. The Bullocks allege, for the property at issue, that they have timely paid each water bill in person since J&M moved out, but that RCH has not cashed any of the checks for those bills. Instead, RCH continues to add late fees to the Bullock's bill.
29. The Bullocks allege that RCH's nonprofit status is not compliant, and that RCH has not posted notice with the County Clerk's Office regarding monthly water board meeting dates and locations.

III. Conclusions of Law

1. The Commission does not have jurisdiction over the Bullock's complaint under TWC § 13.004(a).
2. RCH is a nonprofit water supply corporation as described in TWC § 13.002(24).
3. This docket was processed in accordance with the requirements of the TWC and Commission rules.
4. RCH is entitled to dismissal of this proceeding, having demonstrated that the utility did not violate TWC § 13.004.
5. The 20-day notice requirement in 16 Tex. Admin. Code § 22.35 (TAC) has been met in this proceeding.

IV. Ordering Paragraphs

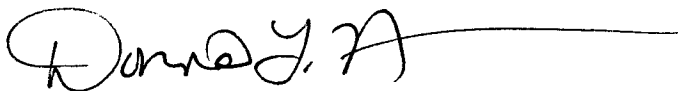
In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. The Bullocks' request is dismissed pursuant to 16 TAC § 22.181(a)(1)(A), for lack of jurisdiction.

2. All other motions, requests for entry of specific finds of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 25th day of April 2016.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER