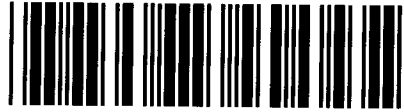




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PUBLIC UTILITY COMMISSION
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REGIONAL SERVICE PROVIDER §
CERTIFICATION BY GULF COAST §
UTILITY COMPANY LLC PURSUANT §
TO § 15.001(12) TEXAS WATER CODE §
AND § 151.355(5) TEXAS TAX CODE §

COMMISSION STAFF'S MOTION TO DISMISS

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Motion to Dismiss. In support of its Motion to Dismiss, Staff states the following:

I. Summary of the Argument

Gulf Coast Utility Company LLC (Gulf Coast Utility Company) requests, for purposes of exemption from certain state taxes, that it be certified as a regional service provider. The Commission does not have jurisdiction over Gulf Coast Utility Company's certification request for two reasons. First, the express language of the amended Chapter 13 of the Texas Water Code does not give the Commission jurisdiction over such certification requests. Second, the express language of the Texas Tax Code gives the Texas Commission of Environmental Quality (TCEQ) jurisdiction over such certification requests. Thus, Staff requests that the Commission dismiss Gulf Coast Utility Company's certification request.¹

II. Background

On February 9, 2015, the Commission received Gulf Coast Utility Company Corporation's request to be certified as a regional service provider. Gulf Coast Utility Company Corporation makes its request pursuant to Chapter 151 of the Texas Tax Code, which addresses sales, excise, and use taxes and exemptions from such taxes.²

The Texas Tax Code provides no definition for regional system. Chapter 15 of Texas Water Code, however, provides a definition for "regionalization." As it relates to the Texas water assistance program administered by the Texas Water Development Board, "regionalization" is defined as the "development of a water supply or wastewater collection and

¹ The Commission's procedural rules permit the presiding officer to dismiss "any proceeding without an evidentiary hearing, for any of the following reasons . . . lack of jurisdiction." P.U.C. PROC. R. 22.181(a)(1)(A).

² See generally TEX. TAX CODE §§ 151.001-151.802.

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treatment system that incorporates multiple service areas into an areawide service facility or any such system that serves an area that includes more than a single county, city, special district, or other political subdivision of the state.”³

Gulf Coast Utility Company Corporation states that it should be certified as a regional service provider because it owns several isolated systems that provide service to one or more communities or subdivisions.

III. Jurisdiction Over Water Issues

A. Jurisdiction of an Agency

An agency “is a creature of the legislature and has no inherent authority.”⁴ “An agency may exercise only those specific powers that the law confers upon it in clear and express language.”⁵ “[T]he legislature impliedly intends that an agency should have whatever power is reasonably necessary to fulfill a function or perform a duty that the legislature has expressly placed in the agency.”⁶ “The agency may not, however, on a theory of necessary implication from a specific power, function, or duty expressly delegated, erect and exercise what really amounts to a new and additional power or one that contradicts the statute, no matter that the new power is viewed as being expedient for administrative purposes.”⁷

“Determining an agency’s jurisdiction requires statutory construction and thus is a question of law that [is] reviewed de novo.”⁸ The “primary objective is to give effect to the intent of the legislature, which, when possible, [is] discern[ed] from the plain meaning of the words chosen.”⁹ The presumption is that “the legislature chooses a statute’s language with care, purposefully choosing each word it includes, while purposely omitting words not chosen.”¹⁰

³ TEX. WATER CODE § 15.001(13).

⁴ *Public Utility Comm’n of Texas v. GTE-Southwest, Inc.*, 901 S.W.2d 401, 406 (Tex. 1995).

⁵ *Id.* at 407 (internal quotations omitted).

⁶ *Id.* (internal quotations omitted).

⁷ *Id.* (internal quotations omitted).

⁸ *Oncor Elec. Deliver Co. LLC v. Public Utility Comm’n of Texas*, 406 S.W.3d 253, 260 (Tex. App.—Austin, 2013, no pet.).

⁹ *Id.*

¹⁰ *Id.* at 260-61. *See also* TEX. GOVT. CODE § 311.023(1)-(7) (list of factors that a court may consider in construing a statute).

“Courts will not imply additional authority to agencies, nor may agencies create for themselves any excess powers.”¹¹ “If a statute affecting an agency’s jurisdiction is ambiguous . . . some deference [is given] to how an agency construes it, but only if the agency’s interpretation is reasonable and does not contradict the statute’s plain language.”¹²

B. The Commission’s Jurisdiction and TCEQ’s Jurisdiction Under the Texas Water Code

The Legislature amended Chapter 13 of the Texas Water Code to give the Commission jurisdiction over the economic regulation of water and sewer utilities.¹³ Under the amended Chapter 13 of the Texas Water Code, the Commission is authorized to “regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation.”¹⁴ Specifically, the Commission is authorized to:

- a. Fix and regulate the rates of water and sewer utilities, including the rules and regulations for the determination of the classification of customers and services;¹⁵
- b. Grant, amend, or revoke a certificate of convenience and necessity, including the granting of a landowner’s request for an expedited release;¹⁶
- c. Approve the sale, transfer, or merger of a water system;¹⁷ and
- d. Approve the sale of a stock transfer.¹⁸

In conjunction with amending Chapter 13 of the Texas Water Code, the Legislature amended Chapter 5 of the Texas Water Code so that the TCEQ no longer has jurisdiction over the specific categories mentioned above.¹⁹ Notwithstanding this amendment to Chapter 5 of the Texas Water Code, the TCEQ still retains jurisdiction over the following water issues:

¹¹ *Subaru of America, Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 220 (Tex. 2002).

¹² *Oncor*, 406 S.W.3d at 261.

¹³ Act of May 25, 2013, 83rd Leg., R.S., ch. 171 (S.B. 567), § 13, eff. Sept. 1, 2013.

¹⁴ TEX. WATER CODE § 13.041(a).

¹⁵ TEX. WATER CODE § 13.181.

¹⁶ TEX. WATER CODE §§ 13.241, 13.254, 13.254(a-1).

¹⁷ TEX. WATER CODE §§ 13.251, 13.301.

¹⁸ TEX. WATER CODE § 13.302.

¹⁹ Act of May 25, 2013, 83rd Leg., R.S., ch. 171 (S.B. 567), § 13, eff. Sept. 1, 2013.

- a. Water and water rights;
- b. Supervision of certain water districts;
- c. Water quality;
- d. Feasibility of certain federal projects;
- e. Construction, maintenance, and removal of dams;
- f. Hazardous spill prevention and control;
- g. Underground water and water wells;
- h. Certain responsibilities pursuant to Chapter 361, 363, 382, and 401 of the Health and Safety Code; and
- i. Any other areas assigned by other Texas laws.²⁰

IV. Argument

The Commission does not have jurisdiction over Gulf Coast Utility Company Corporation's certification request for two reasons. First, the express language of the amended Chapter 13 of the Texas Water Code gives the Commission jurisdiction over only specific economic regulation of water and sewer utilities—i.e. ratemaking, certificates of convenience and necessity, and change of control. The express language of the amended Chapter 13 of the Texas Water Code is silent on the issue of Commission jurisdiction over certification requests such as the one made by Gulf Coast Utility Company. Additionally, the Texas Water Code's apportionment of jurisdiction over water issues between the Commission and the TCEQ militates against an interpretation of the Texas Water Code that gives the Commission broad authority over water and sewer utilities.²¹

Second, the express language of the Texas Water Code gives the TCEQ jurisdiction over certification requests such as the one made by Gulf Coast Utility Company Corporation. Chapter 5 of the Texas Water Code preserves the TCEQ's "general jurisdiction over . . . [a]ny other areas assigned by other Texas laws."²² As it relates to Gulf Coast Utility Company Corporation's certification request, the Texas Tax Code is the applicable law that grants the TCEQ jurisdiction

²⁰ TEX. WATER CODE § 5.013(a)(1)-(12).

²¹ Compare with *TXU Generation Co. v. Public Utility Comm'n of Texas*, 165 S.W.3d 821, 830-31 (Tex. App.—Austin 2005, no pet.) (collectively interpreting various statutory provisions in the Public Utility Regulatory Act as giving the Commission broad authority to create rules over the conduct of market participants).

²² TEX. WATER CODE § 5.013(a)(12).

over such a certification request. Section 151.355 of the Texas Tax Code states:

The following are exempted from [sales, excise, or use] taxes imposed by this chapter [151]:

- ...
- (5) equipment, services, or supplies used solely to construct or operate a water or wastewater system certified by the Texas Commission on Environmental Quality as a regional system.²³

Thus, Gulf Coast Utility Company Corporation's request to be certified as a regional system should be directed to the TCEQ, not the Commission.

V. Conclusion

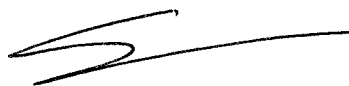
The express language of the Texas Water Code and Texas Tax Code gives jurisdiction to the TCEQ, not the Commission, over requests for certification as a regional system. Thus, Staff requests that the Commission grant its Motion to Dismiss and dismiss Gulf Coast Utility Company Corporation's certification request.

Date: March 9, 2015

Respectfully Submitted,

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²³ TEX. TAX CODE § 151.355(5).

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on March 9, 2015 in accordance with P.U.C. Procedural Rule 22.74.



Sam Chang