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P.U.C. DOCKET NO. 43344
SOAH DOCKET NO. 473-15-1594.WS

PUBLIC UTILITY COMMISSION
FILING CLERK

PETITION OF ENCHANTED HARBOR
UTILITY FOR A CEASE AND DESIST
ORDER AGAINST ANITA KOOP IN
CALHOUN COUNTY

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PUBLIC UTILITY COMMISSION
OF TEXAS

PRELIMINARY ORDER

On September 23, 2014, Enchanted Harbor Utility filed with the Commission a request for assistance in its complaint that Anita Koop of Calhoun County violated Tex. Water Code § 13.242 relating to the unauthorized sharing or providing of water to multiple connections within the boundaries of its certificated service area.

On September 26, the Administrative Law Judge (ALJ) filed a notice of petition for cease and desist against Anita Koop and issued order no. 1 requiring Anita Koop to respond to the petition and Commission Staff to respond to the petition and recommend notice requirements and a procedural schedule. Ms. Koop filed a response to the petition on October 8, 2014 asserting an affirmative defense to the alleged violation: she is not an entity subject to the provisions of the TWC § 13.242. Commission Staff found there is a question of material fact whether Ms. Koop is in violation of TWC § 13.242 and P.U.C. Subst. R. 24.101 and recommended that the docket be referred to State Office of Administrative Hearings (SOAH). On December 11, the Commission referred this matter to SOAH. Enchanted Harbor and Commission Staff timely filed proposed lists of issues.

Ms. Koop allowed two neighbors on adjoining property to connect to her water lines that are supplied by her private water well,¹ which is not on Enchanted Harbor's system.² The neighbors are adjoining lot owners who were previous customers of Enchanted Harbor but

¹ Anita Koop's letter response to the Notice of Petition to Cease and Desist (Oct. 8, 2014).

² Petition at 1 (Sep. 23, 2014).

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disconnected from Enchanted Harbor's system to receive water from Koop, which she contends she is providing free of charge.³ Enchanted Harbor submits that because Koop is providing water to more than one service connection not on her property she is subject to and in violation of TWC § 13.242 and 16 Tex. Admin. Code § 24.101⁴

I. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.⁵ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Does Enchanted Harbor's filing of September 23, 2014 comply with the required contents of 16 Tex. Admin. Code § 24.118 for a petition requesting a cease and desist order under TWC § 13.252?
2. If Enchanted Harbor's filing of September 23, 2014 does not comply with the required contents of 16 Tex. Admin. Code § 24.118 should Enchanted Harbor's petition of September 23, 2014 be dismissed?
3. Is Anita Koop a retail public utility under the Texas Water Code? In answering this issue also specifically address the following:
 - a. Is the definition of the term *service* in TWC § 13.002(19) and (20) limited to actions that are performed by a retail public utility?
 - b. Is the definition of the term *retail water service* in TWC § 13.002(19) limited to services provided for compensation?
 - c. Was Anita Koop's action in sharing water from her private well with two of her neighbors performed for compensation?

³ Anita Koop's letter response to the Notice of Petition to Cease and Desist (Oct. 8, 2014).

⁴ Petition at 1 (Sep. 23, 2014).

⁵ TEX. GOV'T CODE ANN. § 2003.049(e) (West 2008 & Supp. 2014).

4. If the answer to issue 3 is no, the following issues should be addressed:
 - a. Can the Commission under TWC § 13.252 or 16 Tex. Admin. Code § 24.118 order Anita Koop to cease and desist the conduct complained?
 - b. Is Anita Koop subject to the jurisdiction of the Commission for purposes of assessing an appropriate remedy, if any, under TWC § 13.4151?
 - c. Is there any form of relief other than a cease and desist order that the Commission has the authority to grant Enchanted Harbor in this proceeding?
 - d. Should Enchanted Harbor's petition be dismissed for failure to state a claim for which relief may be granted?
5. If the answer to issue 3 is yes, the following issues should be addressed:
 - a. Did Anita Koop violate TWC § 13.242 and 16 Tex. Admin. Code § 24.101 by constructing facilities to provide water service to more than one service connection not on property owned by her and within the certificated area of Enchanted Harbor without obtaining written consent from Enchanted Harbor?
 - b. Did Anita Koop violate TWC § 13.252 and 16 Tex. Admin. Code § 24.118 by constructing or extending a line or attempting to interfere with the operation of a line, plant, or system of Enchanted Harbor, or furnishing, making available, rendering, or extending retail water utility service to any portion of the service area of Enchanted Harbor?
6. If the answer to issue 5a or 5b is yes, what is the appropriate penalty, if any, under TWC § 13.4151?
7. If the answer to issue 5b is yes, should the Commission under TWC § 13.252 order Anita Koop to cease and desist?

8. If the answer to issue 5a or 5b is yes, as an alternative to or in addition to an order to cease and desist, is there any other form of relief that should be awarded Enchanted Harbor against Anita Koop?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Effect of Preliminary Order

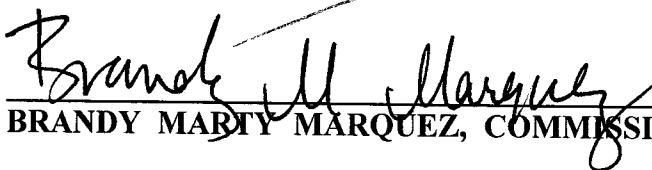
This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the 4th day of ~~January~~ ^{February} 2015.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN


KENNETH W. ANDERSON, JR., COMMISSIONER
BRANDY MARTY MARQUEZ, COMMISSIONER