



Control Number: 43798



Item Number: 2

Addendum StartPage: 0

RECEIVED

REGIONAL SERVICE PROVIDER §  
CERTIFICATION BY PURE WATER §  
SUPPLY CORPORATION, PURSUANT §  
TO SECTION 151.001(12) TEXAS §  
WATER CODE AND SECTION §  
151.255(5) TEXAS TAX CODE §

PUBLIC UTILITY COMMISSION  
2015 MAR 9 11:25 AM  
PUBLIC UTILITY COMMISSION  
OF TEXAS  
FILING CLERK

**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**

Pure Water Supply Corporation 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 Pure Water Supply Corporation'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 Pure Water Supply Corporation's certification request.<sup>1</sup>

**II. Background**

On November 17, 2014, the Commission received Pure Water Supply Corporation's request to be certified as a regional service provider. Pure Water Supply 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.<sup>2</sup>

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

<sup>1</sup> 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).

<sup>2</sup> See generally TEX. TAX CODE §§ 151.001-151.802. In its request, Pure Water Supply Corporation cites to Section 151.255 of the Texas Tax Code, which addresses notice for certain tax permits. It is Staff's position that Pure Water Supply Corporation mis-cited the relevant provision of the Texas Tax Code.

2

water assistance program administered by the Texas Water Development Board, “regionalization” is defined as the “development of a water supply or wastewater collection and 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.”<sup>3</sup>

Pure Water Supply Corporation states that it should be certified as a regional service provider because it serves approximately hundred sixty-five (265) connections in McLennan County, Texas.

### **III. Jurisdiction Over Water Issues**

#### **A. Jurisdiction of an Agency**

An agency “is a creature of the legislature and has no inherent authority.”<sup>4</sup> “An agency may exercise only those specific powers that the law confers upon it in clear and express language.”<sup>5</sup> “[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.”<sup>6</sup> “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.”<sup>7</sup>

“Determining an agency’s jurisdiction requires statutory construction and thus is a question of law that [is] reviewed de novo.”<sup>8</sup> 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.”<sup>9</sup> The presumption is that “the legislature chooses a statute’s language with care,

---

<sup>3</sup> TEX. WATER CODE § 15.001(13).

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

<sup>5</sup> *Id.* at 407 (internal quotations omitted).

<sup>6</sup> *Id.* (internal quotations omitted).

<sup>7</sup> *Id.* (internal quotations omitted).

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

<sup>9</sup> *Id.*

purposefully choosing each word it includes, while purposely omitting words not chosen.”<sup>10</sup> “Courts will not imply additional authority to agencies, nor may agencies create for themselves any excess powers.”<sup>11</sup> “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.”<sup>12</sup>

**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.<sup>13</sup> 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.”<sup>14</sup> 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;<sup>15</sup>
- b. Grant, amend, or revoke a certificate of convenience and necessity, including the granting of a landowner’s request for an expedited release;<sup>16</sup>
- c. Approve the sale, transfer, or merger of a water system;<sup>17</sup> and
- d. Approve the sale of a stock transfer.<sup>18</sup>

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

---

<sup>10</sup> *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).

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

<sup>12</sup> *Oncor*, 406 S.W.3d at 261.

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

<sup>14</sup> TEX. WATER CODE § 13.041(a).

<sup>15</sup> TEX. WATER CODE § 13.181.

<sup>16</sup> TEX. WATER CODE §§ 13.241, 13.254, 13.254(a-1).

<sup>17</sup> TEX. WATER CODE §§ 13.251, 13.301.

<sup>18</sup> TEX. WATER CODE § 13.302.

the specific categories mentioned above.<sup>19</sup> Notwithstanding this amendment to Chapter 5 of the Texas Water Code, the TCEQ still retains jurisdiction over the following water issues:

- 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.<sup>20</sup>

#### **IV. Argument**

The Commission does not have jurisdiction over Pure Water Supply 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 Pure Water Supply Corporation. 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.<sup>21</sup>

Second, the express language of the Texas Water Code gives the TCEQ jurisdiction over certification requests such as the one made by Pure Water Supply Corporation. Chapter 5 of the Texas Water Code preserves the TCEQ's "general jurisdiction over . . . [a]ny other areas

---

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

<sup>20</sup> TEX. WATER CODE § 5.013(a)(1)-(12).

<sup>21</sup> 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).

assigned by other Texas laws.”<sup>22</sup> As it relates to Pure Water Supply Corporation’s certification request, the Texas Tax Code is the applicable law that grants the TCEQ jurisdiction 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.<sup>23</sup>

Thus, Pure Water Supply Corporation’s request to be certified as a regional system should be directed to the TCEQ, not the Commission.

#### **V. Conclusion**

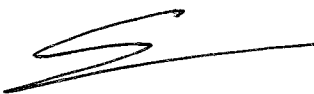
The express language of the Texas Water Code and Texas Tax Code gives jurisdiction to the TCEQ, not the Commission, over requests for certification as a regional system. Thus, Staff requests that the Commission grant its Motion to Dismiss and dismiss Pure Water Supply Corporation’s certification request.

Date: March 9, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Shelah J. Cisneros  
Managing Attorney  
Legal Division



Sam Chang  
State Bar No. 24078333  
Attorney, Legal Division

<sup>22</sup> TEX. WATER CODE § 5.013(a)(12).

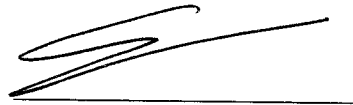
<sup>23</sup> TEX. TAX CODE § 151.355(5).

Public Utility Commission of Texas  
1701 N. Congress Avenue  
Austin, Texas 78711-3326  
(512) 936-7261  
(512) 936-7268 (facsimile)  
sam.chang@puc.texas.gov

**DOCKET NO. 43798**

**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