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PUC DOCKET NO. 44484

**REQUEST BY MARYANNE THERIOT §
PURSUANT TO TEXAS WATER CODE §
§ 13.004 REGARDING ETOILE WATER §
SUPPLY CORPORATION §**

PUBLIC UTILITY COMMISSION

OF TEXAS

2015 NOV 20 PM 2:09
PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S STATEMENT OF POSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Statement of Position, and would show the following:

I. BACKGROUND

On February 24, 2015, Maryanne Theriot filed a request to investigate the election procedures of Etoile Water Supply Corporation (Etoile) pursuant to Tex. Water Code § 13.004 (TWC). Specifically, Ms. Theriot alleged that Etoile inappropriately changed the signature requirement in the application for a director. On September 25, 2015, Order No. 1 was issued, requiring that Etoile file a response to Theriot's request by October 23, 2015, and that Staff file a statement of position by November 20, 2015.

II. STATEMENT OF POSITION

The Commission's jurisdiction in this proceeding is based on TEX. WATER CODE § 13.004 (TWC). Under TWC § 13.004(a), the Commission has jurisdiction only if the water supply corporation "(1) is failing to conduct annual or special meetings in compliance with Section 67.007; or (2) is operating in a manner that does not comply with the requirements for classifications as a nonprofit water supply or sewer service corporation prescribed by Sections 13.002(11) and (24)." TWC § 13.002(24) defines a water supply or sewer service corporation as "a nonprofit corporation organized and operating under Chapter 67 that provides potable water service or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member-controlled."

If it appears that a complainant had identified violations of TWC §§ 13.002(11) and (24), then a petition could be filed that would request that the water supply and sewer service corporation be found to be out of compliance with TWC § 13.004.

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In this proceeding, Ms. Theriot complained that Etoile's Board of Directors voted to remove the signature requirement for applications for directors. Etoile responded that "the complaint wholly fails to provide a basis for the Commission's jurisdiction over Etoile under Tex. Water Code § 13.004(a)(1)."¹ However, TWC § 13.004(a)(1) grants the Commission jurisdiction if the water supply corporation "is failing to conduct annual or special meetings in compliance with Section 67.007." TWC § 67.007(b) states: "The board shall adopt written procedures for conducting an annual or special meeting of the members or shareholders in accordance with this section and Sections 67.0052, 67.0053, and 67.0054." TWC § 67.0052 concerns ballot applications, and subsection (a)(2) requires that "if the corporation has 1,500 or more members or shareholders, a petition signed by 20 members or shareholders requesting that the person's name be placed on the ballot as a candidate for that position." In this situation, Etoile has less than 1,500 members. Therefore, Etoile is not in violation of 67.0052(a)(2), as applications for directors for Etoile are not required to have any signatures.

Based on TWC §§ 67.0052 and 67.007, Staff recommends that Etoile is not in violation of any statutory requirements by changing the application for a director to remove the requirement that the application have 20 signatures of members of the district. Consequently, Staff recommends that the Commission does not have jurisdiction over Etoile under TWC § 13.004 and further recommends that the complaint be dismissed.

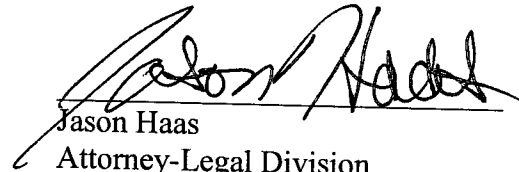
¹ Etoile Water Supply Corporation's Response to Maryanne Theriot's Request at 3 (Oct. 23, 2015).

Dated: November 20, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director - Legal Division

Karen S. Hubbard
Managing Attorney – Legal Division

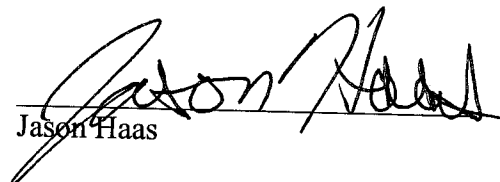


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on November 20, 2015, in accordance with 16 Tex. Admin. Code § 22.74.



Jason Haas