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Chairman

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Commissioner

Brandy Marty Marquez
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Executive Director



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Public Utility Commission of Texas
PUBLIC UTILITY COMMISSION
FILING CLERK

TO: Donna L. Nelson, Chairman
Kenneth W. Anderson, Jr., Commissioner
Brandy Marty Marquez, Commissioner

All Parties of Record

FROM: Susan E. Goodson *AG*
Administrative Law Judge

RE: **Open Meeting of April 14, 2016**
Docket No. 44484 – *Request by Maryanne Theriot Pursuant to Texas Water Code § 13.004 Regarding Etoile Water Supply Corporation*

DATE: March 17, 2016

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, April 14, 2016, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Wednesday, April 6, 2016.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 44484

REQUEST BY MARYANNE THERIOT	§	PUBLIC UTILITY COMMISSION
PURSUANT TO TEXAS WATER CODE	§	
§ 13.004 REGARDING ETOILE WATER	§	OF TEXAS
SUPPLY CORPORATION	§	

PROPOSED ORDER

This Order addresses the request by Ms. Maryanne Theriot (Ms. Theriot) for the Public Utility Commission of Texas (Commission) to investigate Etoile Water Supply Corporation (Etoile) for alleged violations of Tex. Water Code §§ 13.004(a)(1) and (2) (TWC). Commission Staff recommended dismissal. For the reasons discussed in this Order, the complaint is dismissed.

I. Background

On February 24, 2015, Ms. Theriot filed a request for the Commission to investigate the election procedures of Etoile.¹ Ms. Theriot stated that at Etoile's November 18, 2013 board meeting, the board voted to remove the requirement for member signatures in the "Application for Director" section of the utility's "Election Procedures for Members' Meetings" (Election Procedures).² Ms. Theriot provided copies of the agendas for Etoile's November 18, 2013 and December 16, 2013 board meetings. She stated that neither agenda included an item concerning the change in Etoile's Election Procedures.³ She noted that during the November 18, 2013 regular meeting of Etoile's board of directors, the vote to change the utility's Election Procedures was not conducted during the portion of the meeting that was used to discuss and vote on a change to Etoile's bylaws, but was instead raised and voted on during Etoile's Office Managers Report.

On October 23, 2015, Etoile responded to Ms. Theriot's complainant, arguing that Ms. Theriot's complaint is not a proper subject of a proceeding before the Commission because the Commission lacks jurisdiction of any reasonable interpretation of the complaint and the alleged actions are false and/or do not constitute a violation of law.⁴ Etoile claims that the Commission's

¹ Request by Maryanne Theriot Pursuant to Texas Water Code § 13.004 Regarding Etoile Water Supply Corporation (Dec. 4, 2015).

² *Id.* at 1.

³ *Id.*

⁴ Etoile Water Supply Corporation's Response to Maryanne Theriot's Request at 1 (Oct. 23, 2015) (Etoile Response) (Etoile Response).

jurisdiction over entities such as Etoile is quite limited,⁵ and if invoked, such jurisdiction is limited to economic regulation.⁶ Further, Etoile stated that the Commission can only make the findings necessary to invoke its jurisdiction after notice and an opportunity for a hearing.⁷

Specific to Ms. Theriot's request, Etoile first argues that pursuant to TWC § 13.004(a)(1), TWC § 67.007 expressly applies to the annual meeting of a corporation's members or shareholders, not meetings of a board of directors as Ms. Theriot has alleged.⁸ Second, Etoile argues that under TWC § 13.004(a)(2), it clearly meets the requirements prescribed by Section 13.002(11) and (24) and that Ms. Theriot's request does not bring forth any allegations or evidence to the contrary.⁹ Etoile points to the attachments to Ms. Theriot's request as proof that the corporation operated properly.¹⁰

Etoile stated that without waiving its position that the Commission is without jurisdiction to hear Ms. Theriot's request, it would address what it understands to be the gravamen of the complaint, changes to Etoile's Election Procedures.¹¹ Etoile explained that TWC § 67.005-67.0055 govern the qualification and election of the members of its board of directors.¹² Further that TWC § 67.0052 was amended in 2011 such that for all corporations with fewer than 1,500 members, the requirement to have a director candidate's petition signed by the fewer of 20 members or 5% of the members was removed.¹³ Etoile stated that it has less than 1,500 members; therefore, removing the requirement for signatures from its director application is not in violation of TWC § 13.004(a)(2) because applications for directors for Etoile are not required to have any signatures.¹⁴ Finally, Etoile stated that should Ms. Theriot's complaint be construed as being directed at the procedure by which the changes were made, and if that procedure is claimed to be

⁵ *Id.* at 2.

⁶ *Id.* at 2.

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ *Id.* at 3.

¹⁰ Etoile Response at 3.

¹¹ *Id.* at 4.

¹² *Id.* at 4.

¹³ *Id.* at 5.

¹⁴ *Id.* at 5.

contrary to the requirements of the Texas Open Meetings Act, which has not been alleged by Ms. Theriot, under no circumstances does the Commission have jurisdiction.¹⁵

On November 20, 2015, Commission Staff filed a position statement, recommending dismissal. Commission Staff recommended that, based on TWC §§ 67.0052 and 67.007, 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.¹⁶ As a result, Commission Staff stated that the Commission does not have jurisdiction over Etoile under TWC § 13.004 and the complaint should be dismissed.¹⁷

The Commission finds that Etoile's notice of its November 18, 2013 board meeting, which included an item for the discussion and/or approval of an amendment to the utility's bylaws, was sufficient notice for the board's vote to change the utility's Election Procedures during that meeting. Further, as noted by Commission Staff, the change to Etoile's Election Procedures was a legal change. For all these reasons, the Commission finds that Etoile did not violate TWC § 13.004(a)(1) or (2) when it changed its Election Procedures by removing the member signatures requirement in the Application for Director section; 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 February 24, 2015, Ms. Theriot filed a request to investigate a change to Etoile's Election Procedures; alleging that Etoile did not use the proper process when it eliminated the 20 member signature requirement in the Application for a Director section of the utility's Election Procedures, and that the change itself may have been inappropriate.
2. On September 25, 2015, Order No. 1 was issued, requiring Etoile to respond to Ms. Theriot's request and requiring a Commission Staff position statement.

¹⁵ *Id.* at 6.

¹⁶ Commission Staff's Statement of Position at 2 (Nov. 20, 2015).

¹⁷ *Id.*

3. On October 23, 2015, Etoile responded to Ms. Theriot's request, claiming that the corporation has not violated TWC § 13.004(a) and therefore that the Commission lacks jurisdiction.
4. On November 20, 2015, Commission Staff recommended dismissal of Ms. Theriot's complaint for lack of jurisdiction.

Complaint

6. Ms. Theriot is a member of Etoile.
7. During the November 18, 2013 regular monthly meeting of Etoile's board of directors, a motion to remove the requirement for 20 Etoile member signatures from the Application for Director Section of the utility's Election Procedures was considered and approved.
8. The November 18, 2013 agenda for the regular meeting of Etoile's board of directors did not contain an agenda item specifying that the board would be discussing and possibly changing its Election Procedures.
9. Item VI of the November 18, 2013 agenda for the regular monthly meeting of Etoile's board of directors was "Discuss and/or Approve Amending Bylaws."
10. Item IX of the November 18, 2013 agenda for the regular monthly meeting of Etoile's board of directors was "Discuss and/or Approve Office Managers Report."
11. During the Operations Managers Report portion of the November 18, 2013 regular meeting of Etoile's board of directors, a vote was taken approving a change to the utility's Election Procedures.
12. Ms. Theriot stated that she does not believe this process was proper and that 20 member signatures have not been required in an Application for Director since 2013.

III. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TWC §§ 13.004(a).
2. Etoile is a non-profit water supply corporation as prescribed by TWC §§ 13.002(11) and (24).

3. This docket was processed in accordance with the requirements of the Texas Water Code and Commission rules.
4. Etoile is entitled to dismissal of this proceeding, having demonstrated that the utility did not violate TWC § 13.004(a).
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. Ms. Theriot's 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 _____ day of April 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER