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**DOCKET NO. 45231**  
**SOAH DOCKET NO. 473-16-1836.WS**

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**RATEPAYERS' APPEAL OF THE** §  
**DECISION BY TROPHY CLUB** §  
**MUNICIPAL UTILITY DISTRICT** §  
**NO. 1 TO CHANGE RATES** §

**PUBLIC UTILITY COMMISSION**  
**PUBLIC UTILITY COMMISSION**  
**OF TEXAS** FILING CLERK

**TROPHY CLUB MUNICIPAL UTILITY DISTRICT NO. 1'S**  
**REPLY TO STAFF'S RESPONSE TO ORDER NO. 3**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

Trophy Club Municipal Utility District No. 1 (the "District") files this Reply to Staff's Response to Order No. 3 in support of the District's Motion to Sever PID Petition, which is pending, and would respectfully show the following:

**I.**  
**BACKGROUND**

On October 8, 2015, retail customers of the District filed a petition pursuant to Section 13.043(b) of the Texas Water Code entitled "MUD Petition to Appeal Rates Established by the Board of Directors" (the "Retail Petition"). On November 10, 2015, retail customers of the Town of Trophy Club Public Improvement District (the "PID") filed a petition pursuant to Section 13.043(b) of the Texas Water Code entitled "PID Petition to Appeal Rates Established by the Board of Directors" (the "PID Petition"). On November 16, 2015, the District filed a Motion to Sever PID Petition. On November 18, 2015, the Administrative Law Judge ("ALJ") for the Public Utility Commission of Texas ("Commission") issued Order No. 2 requesting a response to the District's Motion to Sever by December 11, 2015. Commission Staff filed its response to Order No. 2 on December 11, 2015, and stated that "whether the Trophy Club PID Ratepayers have standing in this proceeding requires further factual development," requesting until January 22, 2016, to develop the record and make a recommendation. On December 21, 2015, the ALJ issued Order No. 3 affording Commission Staff time to "further develop the record and provide a recommendation whether the PID appeal should be severed from the instant proceeding." The Commission Staff filed its response on January 22, 2016.

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## II. THE PID PETITION

Commission Staff's argument in its Response to Order No. 2 fails to recognize the Texas statutory law as it applies to the PID Petition and the individuals who signed that petition. As stated in the District's Motion to Sever, the PID Petition is an appeal by individuals who are residents of the Trophy Club Public Improvement District ("PID"), which was created in 2007 by the Town of Trophy Club ("Town"), and the boundaries of the PID do not overlap the boundaries of the District. The District does not provide retail water or wastewater service to the residents of the PID. The District provides wholesale water service to the Town for the area of the PID under a wholesale contract.<sup>1</sup> The Town provides retail water and wastewater service to the PID residents. The Wholesale Contract states that "Town shall have the right at any time to modify its rate order to include separate fees and charges in addition to those billed and charged by [the District]."<sup>2</sup> The District then bills the Town's customers for those services using the rates established by the Town.

While the retail rates that the Town charges to the PID retail customers may be related to the District's retail rates, the fact remains that the Town is responsible for setting its own retail rates, which it does. If the Commission were to follow the Commission Staff's recommendation regarding the broad reading of Rule 22.103(b)<sup>3</sup> to allow retail customers of the District's wholesale customer to appeal a decision regarding the retail rates set by the District because those individuals have a "justiciable interest which may be adversely affected by the outcome of the proceeding"<sup>4</sup>, the Commission would open a veritable Pandora's Box. The result would be a precedent that ANY retail customer of any utility that receives wholesale water or wastewater service could appeal the rates of the wholesale provider to the Commission. There are hundreds of such utilities in the State and thousands of such customers. The Commission Staff's recommendation would effectively eliminate any desire or incentive for a potential wholesale

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<sup>1</sup> Amended and Restated Contract for Wholesale Water Supply and Wastewater Treatment Services and Water and Wastewater Operational Services, dated April 15, 2014 ("Wholesale Contract")

<sup>2</sup> Wholesale Contract, Article 7.1(d).

<sup>3</sup> PUC Proc. Rule 22.103(b)

<sup>4</sup> Id.

provider to enter into wholesale contracts and have its retail rates challenged by an individual with which it has no legal relationship.

The District does not establish retail water or wastewater rates for the residents of the PID. The residents of the PID are ratepayers of the Town, not the District. Consequently, the residents of the PID do not have standing to appeal the District's retail rates under Section 13.043(b) of the Texas Water Code, which applies only to "ratepayers... of a district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users..."<sup>5</sup> An appeal of wholesale rates must be initiated by the wholesale customer, not its ratepayers, under appropriate statutory authority.<sup>6</sup> In this case, the wholesale customer with the right to appeal the District's rates is the Town. The retail customers of the Town should raise their issues with their elected council members. As such, it is not appropriate to include the PID Petition in Docket No. 45231, and the PID Petition should be severed from this action on the Retail Petition.

### **III. PRAYER**

The District respectfully requests that the PID Petition be severed and removed from the filings in Docket No. 45231 and be processed by the Commission as a separate matter, although the District is unaware of any statutory authority for the ratepayers of one retail utility to appeal the wholesale rates of another retail utility, which is what the PID Petition attempts to do.

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<sup>5</sup> Texas Water Code §13.043(b)

<sup>6</sup> See Texas Water Code §12., §13.043(f) or §13.044.

Respectfully submitted,

By:   
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ATTORNEYS FOR TROPHY CLUB  
MUNICIPAL UTILITY DISTRICT NO. 1

**CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 28th day of January, 2016.

  
John Carlton