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PUBLIC UTILITY COMMISSION
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MARK GROBA'S APPEAL OF THE
COST OF OBTAINING SERVICE
FROM NOACK WATER SUPPLY
CORPORATION IN WILLIAMSON
COUNTY

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PUBLIC UTILITY COMMISSION

OF TEXAS

COMMISSION STAFF'S MOTION TO DISMISS

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

I. BACKGROUND

On June 9, 2016, Mark Groba filed a petition with the Public Utility Commission of Texas (Commission) appealing the decision of Noack Water Supply Corporation (Noack WSC) for the cost of obtaining service. On December 1, 2016, Mr. Groba filed a request for a hearing on "taking out [his] water tap." On January 4, 2017, Order No. 4 was issued, requiring that Noack WSC and Staff file a response to the hearing request by January 25, 2017.

II. MOTION TO DISMISS

Staff moves for dismissal pursuant to 16 TAC § 22.181(d)(8) for failure to state a claim upon which relief can be granted, lack of jurisdiction, and mootness. In his complaint, Mr. Groba raises several issues. First, the form that Mr. Groba used to make his complaint is to appeal the cost of obtaining water service from a water supply corporation under Texas Water Code (TWC) § 13.043(g). Second, Mr. Groba complains that he is unable to participate in various livestock watering services that were previously offered by Noack WSC. Third, he complains that a meter that previously existed on his property was removed by Noack WSC, that he already "paid for" the meter, and he wants the meter reinstalled.¹

Noack has made it clear that Mr. Groba's meter was removed and that in order to receive service, Mr. Groba would have to pay either the accumulated Reserved Service Fees of \$3,955.00 or the Capital Recovery Fee of \$3,500.00 to reinstate service.² Noack WSC did offer to waive the

¹ Petition at 1-2 (June 8, 2016).

² Noack WSC Response at 2-4 (July 8, 2016).

\$500 new meter fee if a request for service was received within 12 months.³ Noack WSC also indicated that the livestock programs were only due to the drought conditions and were discontinued due to normal rainfall rates.⁴

The Commission's review of the connection fees for a water supply corporation is made pursuant to TWC § 13.043(g), which states, in part:

An applicant for service from an affected county or a water supply or sewer service corporation may appeal to the utility commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. In addition to the factors specified under Subsection (j), in an appeal brought under this subsection the utility commission shall determine whether the amount paid by the applicant is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant. If the utility commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid for that applicant.

Specifically, Noack WSC's tariff provides that the WSC "shall charge accumulated Reserved Service Fees... until the total balance of Reserved Service Fees equals the amount of the Front-end Capital Contribution previously paid for service to the property."⁵ Noack WSC calculated the Reserved Service Fee to be \$3,955, and the Capital Recovery Fee of \$3,500, which Mr. Groba did not dispute.⁶ Noack WSC indicated that the "cost to obtain service quoted to Mr. Groba follows the provisions for service provided for in Noack WSC's tariff."⁷ Mr. Groba has not disputed the calculation of the charges. As stated in Staff's earlier recommendation, Staff recommends that Noack WSC is applying the Reserved Service Fee and Capital Recovery Fee to Mr. Groba's request consistently with the terms of its tariff, and Staff recommends that this claim be dismissed for failure to state a claim upon which relief can be granted.

Staff's initial analysis of Mr. Groba's complaint only evaluated "the amount to be paid to obtain service," and does not evaluate Mr. Groba's portion of the complaint about participating in other programs offered by Noack WSC.⁸ TWC § 13.043(g) does not provide the Commission

³ *Id.* at 4.

⁴ *Id.* at 2.

⁵ Noack WSC Tariff, Section 2, Paragraph 3.b. The latest copy of Noack WSC's Tariff was filed in Project No. 45428 on December 10, 2016.

⁶ Petition at 6.

⁷ Noack WSC Response at 1 (July 8, 2016).

⁸ Petition at 2.

authority to direct the types of services that a WSC must provide to its members. In addition, based on Noack WSC's position, these programs are no longer offered, so Mr. Groba would not be able to participate in any event. Therefore, this issue is moot. Additionally, the Commission's authority does not extend to replacing the meter outside of the established procedures in the tariff to restore service to Mr. Groba. Noack WSC's tariff states: "The Corporation's ownership and maintenance responsibility of water supply and metering equipment shall end at the point where the Member connects to the equipment provided by the Corporation during the installation of the metering equipment."⁹ Under the tariff, Noack WSC owns the water supply system up to and including the meter. While the meter may have existed when Mr. Groba's bought the property, it was always owned by Noack WSC pursuant to its tariff.¹⁰

Pursuant to 16 TAC § 22.181(c), the facts of this case appear to be uncontested and no hearing is necessary. Noack WSC is correctly applying its tariff to Mr. Groba's request for service with respect to the Reserved Service Fee and the Capital Recovery Fee, and the charges are not unreasonable.

III. CONCLUSION

Based on the foregoing, Staff requests that Mr. Groba's complaint be dismissed without prejudice pursuant to 16 TAC § 22.181(d) for failure to state a claim upon which relief can be granted, lack of jurisdiction, and mootness, and without hearing pursuant to 16 TAC § 22.181(c).

⁹ Noack WSC Tariff, Section 2, Paragraph 20.d.

¹⁰ Petition at 2.

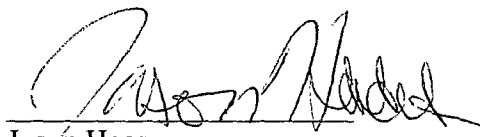
Dated: January 25, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

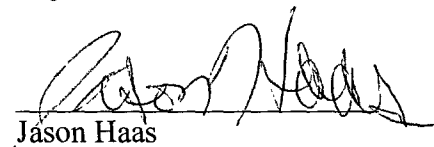
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 25, 2017 in accordance with 16 Tex. Admin. Code § 22.74.


Jason Haas