



Control Number: 46355



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APPLICATION OF CARROLL
WATER COMPANY, INC. TO
IMPLEMENT A PASS-THROUGH
RATE CHARGE §
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PUBLIC UTILITY COMMISSION
OF TEXAS
PUBLIC UTILITY COMMISSION
FILING CLERK
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COMMISSION STAFF'S MOTION TO DISMISS

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its Motion to Dismiss. In support of its Motion to Dismiss, Staff states the following:

I. Background

Carroll Water Company, Inc. (Carroll Water) requests approval of an increase in its current pass through charge that is assessed to ratepayers in the Red Oak Community subdivision. The current pass through charge is \$3.50 per 1,000 gallons of water. The requested pass through charge is \$3.70 per 1,000 gallons of water. Carroll Water proposes that October 1, 2016 be the effective date of the new pass through charge. The pass through charge that Carroll Water assess to ratepayers in the Red Oak Community subdivision is related to fees that Carroll Water pays to the Prairielands Groundwater Conservation District.

Based on Staff's review of Carroll Water's currently certificated service area, the Red Oak Community subdivision is located wholly within the City of Red Oak's corporate limits. The City of Red Oak has not ceded its original jurisdiction to the Commission.¹

II. Argument

A. Commission jurisdiction over water rates

The Texas Water Code splits original jurisdiction over water rates between municipalities and the Commission. With regard to rates for water service within a municipality's corporate limits, the Texas Water Code states:

[T]he governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and

¹ Staff's request to dismiss is based on the attached memorandum from the Water Utilities Division.

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sewer utility within its corporate limits.²

A municipality, however, may cede its original jurisdiction to the Commission.³ The Commission has “exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services”⁴ Additionally, the Commission has appellate jurisdiction over a municipality that exercises original jurisdiction over water and sewer utility rates.⁵

B. Request for Dismissal

The Commission should dismiss this proceeding because the City of Red Oak, not the Commission, has original jurisdiction over the rates, including pass-through rates, that Carroll Water charges to its ratepayers in the Red Oak Community subdivision.⁶ The Red Oak Community subdivision is located within the corporate limits of the City of Red Oak, and the City of Red Oak has not ceded to the Commission its original jurisdiction over water rates. Thus, the Commission should dismiss this proceeding.

III. Conclusion

The Commission does not have original jurisdiction over this proceeding, and thus this proceeding should be dismissed. Carroll Water should seek approval of the pass-through charge from the City of Red Oak, which has original jurisdiction over rates charged to ratepayers in the Red Oak Community subdivision.

² Tex. Water Code § 13.042(a). *See also City of Carrollton v. Texas Comm’n on Environmental Quality*, 170 S.W.3d 204, 210-11 (Tex. App.—Austin 2005, no pet.).

³ *See* Tex. Water Code § 13.042(b).

⁴ Tex. Water Code § 13.042(e).

⁵ *See* Tex. Water Code § 13.042(d).

⁶ *See* 16 Tex. Admin. Code § 22.181(a)(1)(A) (permitting dismissal based on a lack of jurisdiction).

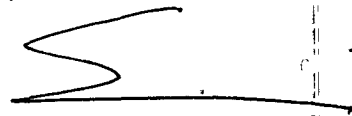
Date: October 4, 2016

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
Legal Division

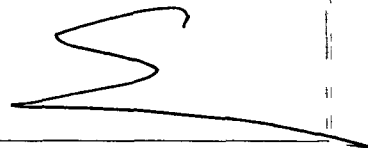


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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on October 4, 2016, in accordance with 16 TAC § 22.74.



Sam Chang

PUC Interoffice Memorandum

To: Sam Chang, Attorney
Legal Division

Thru: Tammy Benter, Director
Heidi Graham, Technical Manager
Water Utilities Division

From: Debi Loockerman, Financial Manager
Water Utilities Division

Date: October 3, 2016

Subject: Docket No. 46355, *Application of Carroll Water Company, Inc. to Implement a Pass-Through Rate*

Carroll Water Company, Inc. has filed a pass-through application for Certificate of Convenience and Necessity (CCN) No. 12932, in Ellis County, pursuant to the criteria in 16 Tex. Admin. Code § 24.21 (b)(2)(A)(iii) (TAC).

Based on the review of the information in the application, I recommend that the application be dismissed, unless the applicant can show that jurisdiction has been surrendered, or that the subdivision is not inside the city limits of Red Oak. According to the Public Utility Commission of Texas' CCN viewer, the subdivision served by Carroll Water Company, (Red Oak Community Water Service subdivision (PWS #07000056)) is located inside the City of Red Oak who has original jurisdiction over all rates within its city limits. Red Oak has not surrendered jurisdiction to the Public Utility Commission of Texas under 16 TAC § 24.150.