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PUC DOCKET NO. 42862
SOAH DOCKET NO. 473-14-5139.WS

APPEAL OF WATER AND
SEWER RATES CHARGED
BY THE TOWN OF WOODLOCH
CCN NOS. 12312 AND 20141

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OFFICE OF PUBLIC UTILITY COUNSEL'S AMICUS BRIEF
IN RESPONSE TO TOWN OF WOODLOCH'S
REPLY TO COMMISSION STAFF'S REQUESTED RECALCULATIONS
AND OBJECTION TO AGENDA SETTING

The Office of Public Utility Counsel (OPUC) files this amicus brief in response to the Town of Woodloch's Reply to Commission Staff's Requested Calculations and Objection to March 3, 2016 Agenda Setting.¹

I. Introduction

Woodloch has "declined" to provide basic billing information to PUC Staff that is necessary to perform the Commission-requested number run to calculate the amounts that Woodloch must refund and surcharge to out-of-city (OC) customers and in-city (IC) customers based on the Commission's decision at the February 11, 2016 open meeting.² While OPUC is not a party to this proceeding, OPUC is filing this response to ensure that Woodloch's actions do not hinder the timely issuance of a final order that will provide much-needed rate relief for the town's customers. Further, Woodloch's refusal to provide basic information to PUC Staff about the utility's current number of connections and amounts collected and billed is cause for concern and may indicate that an audit of Woodloch's utility records is warranted.

Woodloch also contends that any further deliberation on this case must be postponed beyond the March 3, 2016 open meeting because the meeting notice was defective and the town's attorney will not be available to attend. Woodloch's contention that the notice was defective appears to be without merit, and any delay in granting a final order in this case would

¹ OPUC recognizes that this response is being filed less than seven days before the Commission's scheduled open meeting, but believes there is good cause for its consideration because Woodloch's response was filed on February 26, 2016, which is six days before the scheduled open meeting.

² Staff's Requested Recalculations at 2 (Feb. 24, 2016).

exacerbate the hardships that Woodloch's customers are already experiencing. As a result, the consideration of this proceeding should not be postponed.

For the reasons discussed below, OPUC requests that the Commission maintain its March 3, 2016 open meeting date and issue a final order in this proceeding consistent with its discussion at the February 11, 2016 open meeting. Further, given that Woodloch does not appear able to easily produce the information requested by Staff, OPUC requests that the Commission consider ordering an audit of Woodloch's utility records to ensure that they are being adequately and accurately maintained, and further that the Commission require quarterly, rather than semiannual, reporting of Woodloch's compliance with the final order ultimately issued by the Commission.

II. Discussion

As an initial matter, Woodloch contends that the posting of this docket on the March 3, 2016 agenda did not comply with the Texas Open Meetings Act (TOMA).³ However, this claim appears to be without merit. Section 551.41(a) of the Texas Government Code requires that the Texas Secretary of State (SOS) post notice on the Internet of a meeting of a state commission for at least seven days before the day of the meeting. According to the SOS's website, notice of the Commission's March 3, 2016 meeting was posted on February 24, 2016, which is eight days before the scheduled meeting, and the posted notice included this docket for consideration. Woodloch has not pointed to any evidence that shows otherwise. Thus, it appears that the Commission has complied with the posting requirements.

Woodloch also notes that its attorney is not available to attend the March 3, 2016 open meeting because it conflicts with a contested case hearing in Kingsville, Texas in which Woodloch's attorney is representing another client. While OPUC is sympathetic to this scheduling conflict, it does not justify the delay of relief for Woodloch's customers. As discussed below, any further delay would be harmful to Woodloch's customers and should not be allowed.

Of particular concern in this case is Woodloch's refusal to provide basic customer information to the PUC Staff so that it can perform a Commission-requested number run. In

³ Appellant Town of Woodloch's Reply to Commission Staff's Requested Recalculations and Objection to March 3, 2016 Agenda Setting (Feb. 26, 2016).

response to Staff's requested recalculation, Woodloch states that "until a final order is issued, Woodloch cannot be required by PUC Staff to assimilate information for the purpose of assisting the PUC in the financial ruin of its utility."⁴ Woodloch's refusal to provide the basic information necessary to calculate the refunds and surcharges that would result from the Commission's decision at the February 11, 2016 open meeting is disturbing. Further, to the extent it delays the Commission's issuance of a final order in this proceeding, it would result in harm to Woodloch's customers.

Woodloch's customers have been subject to the full impact of the town's proposed rate increase for approximately three years during the processing of this rate appeal.¹ The proposed rate increase went into effect in February 2013 based on a requested revenue requirement of \$344,174. However, the proposal for decision (PFD) and Commission draft order would approve a revenue requirement of only \$248,979. The PFD and Commission draft order also indicate that the distinctions in how Woodloch charges its customers based on whether they are OC or IC customers is unreasonably preferential, prejudicial and discriminatory. As a result, the OC customers have been paying more than their fair share of the rate increase and would be due refunds.

Moreover, as both the PFD and the Commission's draft order found, Woodloch began charging a \$35 rate case expense surcharge to the OC customers in approximately August 2014 without legal authorization and the charge should be discontinued. In addition, all of Woodloch's customers are currently overpaying for Woodloch's permit fee for the Lone Star Groundwater Conservation District (LSGCD), and paying a "San Jacinto River Authority" surcharge even though Woodloch is not a member of the SJRA. A delay in issuing a final order would add to the hardship of Woodloch's customers by requiring them to continue paying amounts that the ALJ and the Commission have indicated should not be charged and by delaying the refund of amounts that have already been paid that have been found unreasonable. Woodloch's refusal to provide information to the PUC Staff should not be rewarded with a delay of the Commission's consideration and issuance of a final order.

In an attempt to justify its lack of cooperation with Staff's information request, Woodloch states that it has limited resources and only one part-time employee who handles billing and

⁴ *Id.* at 2-3.

related matters.⁵ However, the information that Staff is requesting should not be time consuming to gather. If it is time consuming to gather, it is an indication that the utility's books may not be adequately maintained. As a result, the Commission may want to consider ordering an audit of Woodloch's utility records. An audit would also be supported by the fact that Woodloch has been charging OC customers unauthorized rate case expenses since 2014, and further has been collecting surcharges from all customers that on the one hand overcollect (i.e. the LSGCD surcharge) and on the other hand collect for a nonexistent expense (i.e. the SJRA surcharge). In addition, the Commission may want to consider requiring quarterly, rather than semiannual, reporting of Woodloch's compliance with the final order that the Commission ultimately issues, so that there is sufficient oversight of the refunds and surcharges that will be due.

Moreover, OPUC is greatly concerned about the burden of the rate case expenses that have been, and are continuing to be, generated in this case. Based on the PFD and the Commission's draft order, the utility's total revenue requirement in this proceeding would be \$248,979, while its rate case expenses through the date of hearing are already \$215,810. Woodloch has only 244 customers from which to collect these amounts. This places an inordinate burden on customers who seek to challenge the utility's proposed rates, and could disincentive customers from contesting unreasonable, discriminatory or preferential rates. Under the Texas Water Code, a utility may recover rate case expenses only if they are reasonable.⁶ The burden of proving the reasonableness of rate case expenses lies with the utility. It is questionable whether rate case expenses that are nearly equal to, and ultimately may exceed, a utility's revenue requirement are reasonable, particularly for a system that serves only 244 customers. In addition, there is an issue of whether it is reasonable for Woodloch to expend further rate case expenses so that its counsel may file a pleading attempting to justify withholding information from PUC Staff rather than incurring the expense of providing the information. As a result, OPUC requests that the Commission issue its final order at the March 3, 2016 open meeting in order to minimize the additional rate case expenses that may be incurred due to any delay.

⁵ *Id.* at 2.

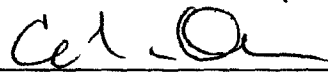
⁶ Tex. Water Code § 13.043(e).

III. Conclusion

OPUC requests that the Commission proceed with hearing this docket at the March 3, 2016 open meeting and that the Commission issue a final order consistent with its discussion at the February 11, 2016 open meeting. Further, OPUC requests that the Commission order an audit of Woodloch's utility records to ensure that they are being adequately and accurately maintained, and further that the Commission require quarterly, rather than semiannual, reporting of Woodloch's compliance with the Commission's final order.

Respectfully submitted,

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CERTIFICATE OF SERVICE
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I certify that on March 1, 2016, a true copy of the Office of Public Utility Counsel's Amicus Brief in Response to Town of Woodloch's Reply to Commission Staff's Requested Calculations and Objection to March 3, 2016 Agenda Setting was served on all parties of record via hand delivery, facsimile, or United States First-Class Mail.



Cassandra Quinn