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Addendum StartPage: 0

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PUC DOCKET NO. 42862

PUBLIC UTILITY COMMISSION
FILING CLERK

APPEAL OF WATER SEWER RATES

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§

PUBLIC UTILITY

CHARGED BY THE TOWN OF

COMMISSION

WOODLOCH NOS. 12312 AND 20141

OF TEXAS

**COMMENTS FROM TEXAS MUNICIPAL LEAGUE MEMBERS REGARDING
ORDER REQUESTING BRIEFING**

NOW COMES the Texas Municipal League (TML) and files the attached comments on the behalf of six member cities (Cities of Weimar, Sudan, Fate, Nacogdoches, Carrollton, and Johnson City) regarding the Public Utility Commission of Texas (Commission) Order Requesting Briefing on the question of "What is the Commission's jurisdiction on an appeal of a municipality's water and sewer rates over the rates of the in-town residents of the municipality?"

TML requests that the Commission consider these comments as part of its consideration of the issue. Each of these own a water or sewer utility and could be affected by the Commission's decision on the issue.

Respectfully submitted:




Scott N. Houston
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Texas Municipal League
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Austin, Texas 78754
Phone: 512-231-7400
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Email: shouston@tml.org

214

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on April 27, 2016, in accordance with 16 TAC §22.74.

A handwritten signature in black ink, appearing to read "SH" followed by a stylized surname, written over a horizontal line.

Scott N. Houston

PUC DOCKET NO. 42862

APPEAL OF WATER SEWER RATES	§	PUBLIC UTILITY
CHARGED BY THE TOWN OF	§	COMMISSION
WOODLOCH NOS. 12312 AND 20141	§	OF TEXAS

**COMMENTS OF THE TEXAS MUNICIPAL LEAGUE REGARDING
ORDER REQUESTING BRIEFING**

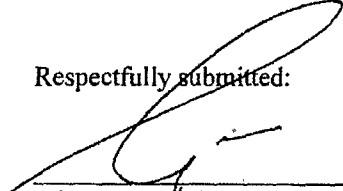
The PUC should keep their duties and obligations in line. Out of city limits water or sewer customers lack adequate representation in regards to the water and sewer rates they are charged and it is appropriate that the PUC handle appeals of out of city limits customers where there could be rate abuses.

However, the same does not apply for citizens within a municipality's city limits. They have representation and it is called the city council and mayor. The PUC has no business overstepping a municipal government's leaders. The PUC's job is well laid out before them and again, they should keep their current duties and obligations in line.

Section 13.042(f) of the Texas Water Code specifically reads that the code does not give utility commission power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits.

If legislation were to pass rewriting Section 13.042(f) of the Texas Water Code, the PUC would be involving themselves or positioning themselves to make decisions on what repairs or replacements a municipal water system needs. The PUC is not capable of deciding if a water system should or shouldn't drill new water wells or rework older water wells except in extreme cases where the water system has waited so long, that to not drill a new well or rework an existing well would be catastrophic. They are not capable of deciding over the condition of water and sewer lines, what lines need to be replaced or upsized, budgeting maintenance activities associated with fire hydrants, tanks, wells, or overseeing organizational needs, day-to-day operations, number of employees, salaries, benefits and healthcare costs paid by the municipality. These are all issues that the PUC will have to understand of each case that is brought before them to take jurisdiction away from municipal leaders.

Respectfully submitted:



Mike Barrow, CPM
City Manager
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April 27, 2016

PUC DOCKET NO. 42862

APPEAL OF WATER SEWER RATES	§	PUBLIC UTILITY
	§	
CHARGED BY THE TOWN OF	§	COMMISSION
	§	
WOODLOCH NOS. 12312 AND 20141	§	OF TEXAS

COMMENTS OF THE CITY OF SUDAN REGARDING
ORDER REQUESTING BRIEFING

NOW COMES the City of Sudan (City) and files our comments regarding the Public Utility Commission of Texas (Commission) Order Requesting Briefing on the question of "What is the Commission's jurisdiction on an appeal of a municipality's water and sewer rates over the rates of the in-town residents of the municipality?" The City is an incorporated municipality in West Texas with a population of 958. The City operates water and sewer utilities and has an important interest in maintaining our jurisdiction over the in-city rates of our municipally owned utilities.

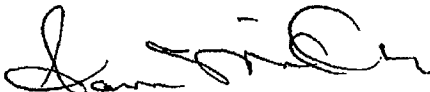
Rather than provide lengthy and duplicated comments, the City concurs with the comments of the Town of Woodloch and takes the same position as Texas Municipal League (TML). The City's position is that the Commission has no jurisdiction over the in-city rates and services provided by a municipally owned water or sewer utility, pursuant to the Texas Water Code and the legislative history of utility regulation in Texas.

The Commission's Order Requesting Briefing specifically asks for comments to address Water Code Section 13.043(e) and (j). Section 13.043 does not grant in-city jurisdiction to the Commission. The enactment of the 1975 Public Utilities Regulatory Act (PURA), which included water and sewer utilities until 1985, limits the Commission's jurisdiction over municipally owned utilities. Section 13.042(f) limits the Commission's jurisdiction over municipally owned utilities. The language in Section 13.042(f) was Section 20 in the original PURA. It was added as part of a compromise to gain the support of cities and TML. Cities and TML opposed state regulation of municipally owned utilities. It ended with the insertion of Section 20. In 1981, the chairman of the Commission submitted a request to the attorney general seeking an opinion on the scope of the Commission's jurisdiction over the rates of municipally owned utilities. In its analysis, the attorney general examined the language in PURA Section 20, which expressly limits the Commission's jurisdiction. The Commission only has the power to fix the rates that a municipally owned utility charges customers taking service outside of the city limits, and then only those rates that are the subject of a valid petition.

Section 552.001(a) of the Local Government Code grants authority to a municipally owned water or sewer utility and provides that a "municipality may purchase, construct, or operate a utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interests of the municipality."

For the above reasons, the City's position is that the Commission has no authority over the in-city customers of a municipally owned utility. The City hereby incorporates by reference the comments of the City of Woodloch, and respectfully asks the Commission to consider these comments.

Sincerely,



Sam Miller, Mayor

City of Sudan

P. O. Box 59

Sudan, Texas 79371

806-227-2112, fax 806-227-2164

PUC DOCKET NO. 42862

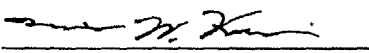
APPEAL OF WATER SEWER RATES	§	PUBLIC UTILITY
CHARGED BY THE TOWN OF	§	COMMISSION
WOODLOCH NOS. 12312 AND 20141	§	OF TEXAS

**COMMENTS OF THE CITY OF FATE REGARDING
ORDER REQUESTING BRIEFING**

NOW COMES the City of Fate "Fate" and files our comments regarding the Public Utility Commission of Texas (Commission) Order Requesting Briefing on the question of "What is the Commission's jurisdiction on an appeal of a municipality's water and sewer rates over the rates of the in-town residents of the municipality?"

Fate is a municipal local government chartered in the State of Texas with a Council-Manager form of government with 10,700 residents in the Dallas-Fort Worth Metroplex in Rockwall county. We serve over 3,500 water connections to residential and business customers and have both in-city and out-of-city customers. In the 2010 U.S. Census, Fate was listed as the fastest growing city in Texas and one of the fastest in the United States. The law in Texas gives the locally elected non-partisan City Council members control of water and sewer rates in Fate.

We believe our elected community members are not just extremely close to the people, they are the people, and they are the ultimate authority and possess the accountability for all the development and infrastructure decisions within our community. We would ask that the Commission respect local control and the law of the land, and not attempt to dictate water or sewer rates inside city limits.



Michael W. Kovacs
City Manager

APPEAL OF WATER SEWER RATES	§	PUBLIC UTILITY
CHARGED BY THE TOWN OF	§	COMMISSION
WOODLOCH NOS. 12312 AND 20141	§	OF TEXAS

**COMMENTS OF THE CITY OF NACOGDOCHES REGARDING
ORDER REQUESTING BRIEFING**

NOW COMES the City of Nacogdoches (hereinafter referred to as the City) and files its comments regarding the Public Utility Commission of Texas (hereinafter referred to as the Commission) Order Requesting Briefing on the question of “What is the Commission’s jurisdiction on an appeal of a municipality’s water and sewer rates over the rates of the in-town residents of the municipality?” The City is a home rule municipality located in the State of Texas which operates water and sewer utilities. Therefore, the City has an important interest in maintaining its jurisdiction over the in-city rates of its municipally owned utilities.

Rather than provide lengthy and duplicative comments, the City concurs with the comments of the Town of Woodloch. Moreover, the City fully concurs with the comments filed by the Texas Municipal League. The City’s position is that the Commission has no jurisdiction over the in-city rates and services provided by a municipally owned water or sewer utility. This axiomatic position is simple to understand pursuant to a plain reading of the Texas Water Code and the legislative history of utility regulation in Texas.

The Commission’s Order Requesting Briefing specifically asks for comments to address Water Code Section 13.043(e) and (j). However, Section 13.042(f) puts all subsequent sections in Chapter 13 into context. That section, which expressly limits the Commission’s jurisdiction over municipally owned utilities, provides that:

(f) This *subchapter does not give the utility commission power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits* or to affect or limit the power, jurisdiction, or duties of a municipality that regulates land and supervises water and sewer utilities within its corporate limits, except as provided by this code.

The inquiry into the Commission's authority within a city's limits begins and ends with the provision above. Section 13.043 is in the same subchapter as Section 13.042. As such, Section 13.043 would have to expressly grant in-city jurisdiction to the Commission. It does not.

The legislative history of the enactment of the 1975 Public Utilities Regulatory Act (PURA), which included water and sewer utilities until 1985, shows that the legislature unquestionably wanted to limit the Commission's jurisdiction over municipally owned utilities. The language in Section 13.042(f) was Section 20 in the original PURA. It was added as part of a compromise to gain the support of cities and Texas Municipal League.¹

Cities were concerned that PURA might change the utility regulatory system so that municipally owned utilities could become subject to state regulation.² While Texas Municipal League's members may have been divided on some issues, they were not divided on opposing state regulation of municipally owned utilities.³ The battle of the scope of the Commission's jurisdiction lasted through three conference drafts of the bill. It ended with the insertion of Section 20. The leading expert on the legislative history of PURA notes that "[t]his sequence of events suggests that appeal was meant only for those outside city limits."⁴

The Commission has requested specific comments on Section 13.043, and each relevant subsection is reviewed here:

- Subsection (b): Provides that only identified ratepayers may appeal. In relation to a municipally owned utility, those include only customers who reside outside the city's limits under Subsection (b)(3).

¹ Jack Hopper, *A Legislative History of the Texas Public Utility Regulatory Act of 1975*, 28 Baylor L. Rev. 777, 785, 807-815 (1976).

² *Id.* at 807.

³ *Id.* at 810.

⁴ *Id.*

- Subsections (b-1), (b-2), and (b-3): Requires a city to disclose customers who reside outside the city and governs release of that information. This requirement ensures that the PUC can identify those customers subject to its jurisdiction. Those do not include in-city customers.
- Subsection (c) - (e): These provisions, including Subsection (e), refer back to appeals under Subsection (b) by customers who reside outside the city's limits.
- Subsection (j): This provision mandates that the Commission ensure that rates are just and reasonable in an appeal by customers who reside outside the city's limits. It grants no additional jurisdictional authority greater than that in Section 13.042.

The provisions above are clear and have never been read to grant the Commission authority over customers in a city's limits. In fact, Section 552.001(a) of the Local Government Code is the express grant of authority to a municipally owned water or sewer utility and provides that a "municipality may purchase, construct, or operate a utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interests of the municipality."

The present docket is not the first time the Commission has asked whether it gains jurisdiction over all of a municipally owned utility's rates once appellate jurisdiction has been perfected for outside-the-city rates. In 1981, the chairman of the Commission submitted a request to the attorney general seeking an opinion on the scope of the Commission's jurisdiction over the rates of municipally owned utilities. Specifically, the Commission asked the following question:

Since the Commission has jurisdiction over an appeal from a municipal rate order regarding a municipally owned utility, ***does this jurisdiction include jurisdiction to set rates charged both outside and within municipal limits?***⁵

In its analysis, the attorney general examined the language in PURA Section 26(e),⁶ which required the Commission to "fix such rates as the municipality should have fixed" and noted that the language might "impliedly" confer jurisdiction on the Commission over inside the city rates. The attorney general, however, dismissed this implication based on the language of PURA Section 20, which expressly limited the Commission's jurisdiction. The opinion stated that:

⁵ Tex. Att'y Gen. Op. No. MW-406 (1981).

⁶ That provision now resides in Texas Water Code Section 13.043(e).

Whenever the act seeks to make exceptions to these exclusions, *it does so expressly*, as in section 27(f)⁷ concerning reports to the commission, and section 49(a)⁸ involving certification. It does not follow that there could be an implied inclusion of a subject that had previously been expressly excluded.⁹

The Commission is seeking briefing on the very same question that was asked and answered in 1981. The answer today is the same as it was then. If the legislature intended to broaden the Commission's jurisdiction in Section 13.043(e) or (j), the legislature would have clearly and expressly done so. The Commission only has the power to fix the rates that a municipally owned utility charges customers taking service outside of the city limits, and then only those rates that are the subject of a valid petition.

For the above reasons, the City's position is that the Commission has no authority over the in-city customers of a municipally owned utility. The City hereby incorporates by reference the comments of the City of Woodloch and the comments of the Texas Municipal League, and respectfully asks the Commission to consider these comments.

Respectfully submitted:



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April 27, 2015

⁷ Now codified as Tex. Util. Code §§32.102-32.103 and previously codified at Tex. Water Code §13.131(g).

⁸ Now codified as Tex. Util. Code §37.051(b) and Tex. Water Code §13.242(a).

⁹ Tex. Att'y Gen. Op. No. MW-406 (1981) (emphasis added).

PUC DOCKET NO. 42862

APPEAL OF WATER SEWER RATES	§	PUBLIC UTILITY
CHARGED BY THE TOWN OF	§	COMMISSION
WOODLOCH NOS. 12312 AND 20141	§	OF TEXAS

**COMMENTS OF THE CITY OF CARROLLTON REGARDING ORDER
REQUESTING BRIEFING**

On behalf of the City of Carrollton, I am writing to express the City's concern and opposition to the PUC expanding its authority to include regulating water and sewer rates set by municipalities over its in-town residents. The Texas Legislature has provided that municipalities have exclusive original jurisdiction over water rates within its corporate limits, pursuant to Texas Water Code Section 13.042(a). Therefore, such expansion is not in conformance with state law.

The City of Carrollton is a home rule municipality with elected officials that are directly accountable to the rate-paying public through municipal elections. In addition, these officials are available to receive input at the "Visitor's Forum" portion of every council meeting and through a variety of means that are provided to citizens for contacting both elected and appointed city officials. These same elected officials, who set the rates, are also ratepayers themselves.

In Carrollton, we strongly believe that the government closest to the people is the government most responsive to the people - local government. As such, we do not feel it would be beneficial or responsible to transfer a significant power to an appointed body in Austin that will not be as familiar with the complex set of considerations that ultimately result in a municipality's water and wastewater rates. The City's position is supported in Section 13.042(f) of the Texas Water Code, which clearly provides that it "does not give the utility commission power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits."

In closing, the City strongly urges the Commission to respect the authority and responsibility given by the Texas Legislature to municipalities to set rates for its residents.

Sincerely,



Matthew Marchant
Mayor, City of Carrollton, Texas

PUC DOCKET NO. 42862

APPEAL OF WATER SEWER RATES	§	PUBLIC UTILITY
CHARGED BY THE TOWN OF	§	COMMISSION
WOODLOCH NOS. 12312 AND 20141	§	OF TEXAS

**COMMENTS OF THE CITY OF JOHNSON CITY REGARDING
ORDER REQUESTING BRIEFING**

NOW COMES the City of Johnson City and files our comments regarding the Public Utility Commission of Texas (Commission) Order Requesting Briefing on the question of “What is the Commission’s jurisdiction on an appeal of a municipality’s water and sewer rates over the rates of the in-town residents of the municipality?” The City of Johnson City is a General Law city with a population of just over 1700. Johnson City operates its own municipal water and sewer utilities; therefore, the City has an important interest in maintaining its jurisdiction over the in-city rates of its municipally owned utilities.

The City of Johnson City agrees with the comments of the Town of Woodloch. The City’s position is that the Commission has no jurisdiction over the in-city rates and services provided by a municipally owned water or sewer utility.

The Commission’s Order Requesting Briefing specifically asks for comments to address Water Code Section 13.043(e) and (j). However, Section 13.042(f) puts all subsequent sections in Chapter 13 into context. That section, which expressly limits the Commission’s jurisdiction over municipally owned utilities, provides that:

(f) This *subchapter does not give the utility commission power or jurisdiction to regulate or supervise the rates or service of a utility owned and operated by a municipality, directly or through a municipally owned corporation, within its corporate limits* or to affect or limit the power, jurisdiction, or duties of a municipality that regulates land and supervises water and sewer utilities within its corporate limits, except as provided by this code.

The inquiry into the Commission's authority within a city's limits begins and ends with the provision above. Section 13.043 is in the same subchapter as Section 13.042. As such, Section 13.043 would have to expressly grant in-city jurisdiction to the Commission. It does not. The Commission has requested specific comments on Section 13.043, and each relevant subsection is reviewed here:

- Subsection (b): Provides that only identified ratepayers may appeal. In relation to a municipally owned utility, those include only customers who reside outside the city's limits under Subsection (b)(3). Subsections (b-1), (b-2), and (b-3): Requires a city to disclose customers who reside outside the city and governs release of that information. This requirement ensures that the PUC can identify those customers subject to its jurisdiction. Those do not include in-city customers.
- Subsection (c) - (e): These provisions, including Subsection (e), refer back to appeals under Subsection (b) by customers who reside outside the city's limits.
- Subsection (j): This provision mandates that the Commission ensure that rates are just and reasonable in an appeal by customers who reside outside the city's limits. It grants no additional jurisdictional authority greater than that in Section 13.042.

The provisions above are clear and have never been read to grant the Commission authority over customers in a city's limits. In fact, Section 552.001(a) of the Local Government Code is the express grant of authority to a municipally owned water or sewer utility and provides that a "municipality may purchase, construct, or operate a utility system inside or outside the municipal boundaries and may regulate the system in a manner that protects the interests of the municipality."

If the legislature intended to broaden the Commission's jurisdiction to include the rates imposed upon residents living within the limits of a City that owns a municipal water/sewer utility in Section 13.043(e) or (j), the legislature would have clearly and expressly done so. The Commission only has the power to fix the rates that a municipally owned utility charges customers taking service outside of the city limits, and then only those rates that are the subject of

a valid petition.

For the above reasons, the City of Johnson City believes that the Commission has no authority over the in-city customers of a municipally owned utility. Further, the City of Johnson City hereby incorporates by reference the comments of the City of Woodloch, and respectfully asks the Commission to consider these comments.

Respectfully submitted:

/s/ Mayor Dawn Capra
Mayor Dawn Capra
City of Johnson City
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Johnson City, TX 78636
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mayor@johnsoncitytx.org