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

**PROTESTANTS' RESPONSE TO REQUESTED BRIEFING**

**TO THE HONORABLE COMMISSIONERS OF THE PUBLIC UTILITY COMMISSION:**

Catherine Lewkowski, one of the three representatives of the outside rate payers of the Town of Woodloch, files this brief in response to Commission's Brief Request:

On April 14, 2016, the Commissioners voted to extend time to consider Woodloch's motion for rehearing. At the open meeting the Commissioners indicated that the parties be given the opportunity to provide briefing on the issue listed below:

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? In answering this question, please address the provisions found in TWC §13.043(e) and (j).

As the representative of the outside customers (acting Pro Se), I would like the opportunity to weigh in on why the answer to this question of law should not impact the Commission's Final Order regarding the rates for outside city customers.

It was shown at the hearing on the merits that Woodloch has only one class of customers

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served by one water and sewer utility system. This system consists of one wastewater treatment plant located within the corporate limits of Woodloch and one water supply plant located outside the corporate limits. There is no difference in the cost of service for the inside or outside customers. The Commission determined that there is only one class of customers and the rates should be the same for nonresidents as it is for residents. The fact that most customers reside outside the corporate limits of the town does not negate the one class.

The Commission has appellate jurisdiction over ratepayers who appeal the rates of a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality (TWC §13.043(b)(3)). Regardless of whether the Commission has jurisdiction over the inside city limit customers, it is clear the Commission does have jurisdiction over the outside customers. The Commission is given the authority to fix rates, establish the effective date, order refunds, allow surcharges to recover lost revenues and "may" allow for recovery of appeal proceedings costs (TWC §13.043(e)). The Commission's Final Order establishes appropriate rates in order to meet Woodloch's revenue requirement. The Final Order also establishes the effective date, the refunds due, and a surcharge to recover rate appeal expenses.

Woodloch has filed a motion for rehearing stating that the Commission does not have the authority to set rates, refunds or surcharges to the inside customers. If it is determined that Woodloch has exclusive jurisdiction over the rates for residents residing within its corporate limits and then opts out of adopting the rate design as set forth in the Final Order, Woodloch would be compromising the system's revenue requirement and their own financial integrity. It would be unfair, unjust and unreasonable to force the outside customers to make up the difference. As there is only one utility system providing services to both inside city customers and outside city customers, the outside city customers' rates should be equal to and no more than the rates

Woodloch sets for the inside city customers.

The Commission's jurisdiction over in-city customers also should not affect the rate case expenses to be paid by the outside customers. The Commission's Final Order provides for Woodloch to recover \$215,809 in rate appeal expenses from all customers during a 36-month period. *Example: \$215,809 rate appeal recovery costs divided by 244 total inside and outside customers = \$884.46 divided by 36 months = \$24.57 surcharge per customer inside and outside city limits.* If the Commission determines that rate appeal surcharges should be refunded and a new surcharge placed on customers' bills for rate appeal expenses, Protestants would ask that the recovery provision in the Final Order be followed. Again, if Woodloch opts out of recovering any of these costs from the inside city customers, the outside city customers should not have the burden of the entire recovery of costs but only that portion they have been ordered under the directions given in the Final Order. *Example: 171 outside customers' x \$24.57 surcharge = \$4,201 x 36 months = \$151,253 recoverable rate appeal costs from the outside customers.*

The granting of recovery of rate case expenses by the Commission is discretionary. The rate case expenses in this case are disproportionate, excessive, and unwarranted in that Woodloch incurred these expenses defending unreasonable positions, such as recovery of a non-existent TWDB loan. Woodloch has already recovered approximately \$120,000 in rate case expenses from the 171 outside customers. This is a very small utility and imposing the rate appeal costs on just the outside customers has created a great financial hardship on the outside residents. Imposing the full amount of rate appeal expenses on such a small number of customers is punitive, especially given the fact that Protestants prevailed on most of the issues.

Woodloch is now claiming financial hardship, however, the town has collected approximately \$400,000 of additional water and sewer revenues over and above the revenue

requirement set in the Final Order. Woodloch has also over collected approximately an additional \$2,350.00 in LSGCD fees and \$52,000.00 in SJRA/GRP pass-through fees. At the hearing on the merits, it was found that these surcharges are not being used for their purported purpose and are not being passed through to any entities. Woodloch has been collecting these additional revenues and pass-through fees for more than three years. Over the course of this appeal, Woodloch has not made a single loan payment to the TWDB because the loan never materialized. Woodloch also has not shown that they have made any extensive or expensive repairs and yet Woodloch claims to be in a state of financial hardship. The fact that Woodloch has mismanaged the revenues they received and did not prepare for eventual rate changes and possible refunds over the last three years that this appeal has been in progress is not an appropriate basis for allowing Woodloch to maintain the benefit of charging unjust and unreasonable rates.

The Commission's Final Order protects the financial integrity of the system as it has set the rates needed to meet the revenue requirement (TWC §13.043(j)). The Final Order as it relates to the outside customers should stand and should be put in effect immediately in order to afford some relief to the outside customers who have been paying the extremely high rate for more than three years.

Respectfully Submitted,



Catherine Lewkowski  
10228 Woodhollow Dr.  
Conroe, TX 77385  
(936) 522-6186

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document will be served on all parties of record by first class mail on this the 28<sup>th</sup> day of April 2016.

  
Catherine Lewkowski