



Control Number: 47863



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**PUC DOCKET NO. 47863
SOAH DOCKET NO. 473-18-1905.WS**

2018 FEB 16 PM 2:35

PETITION OF THE CITIES OF GARLAND, MESQUITE, PLANO, AND RICHARDSON APPEALING THE DECISION BY NORTH TEXAS MUNICIPAL WATER DISTRICT AFFECTING WHOLESALE WATER RATES	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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CITY OF FORNEY'S LIST OF ISSUES

COMES NOW the City of Forney ("Forney") and files this List of Issues and would show the following:

I. BACKGROUND

On December 15, 2017, the Cities of Garland, Mesquite, Plano, and Richardson (the "Petitioners") filed a petition with the Commission for review of wholesale water rates set by the North Texas Municipal Water District (the "District") effective September 29, 2017. On January 22, 2018, the Director of Commission Advising and Docket Management (the "Director") issued an order directing the Petitioners—and authorizing Commission staff and any other interested party—to file a list of issues to be addressed in this docket by February 2, 2018. On February 1, 2018, the Director extended the deadline to February 16, 2018. Forney's list of issues is timely submitted.

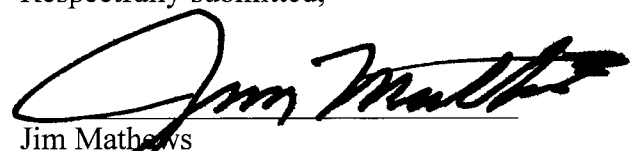
II. LIST OF ISSUES

1. Does Petitioners' failure to provide notice to the District's "other wholesale customers"—whose rates are alleged by the Petitioning Cities to be unreasonably prejudicial—deprive the Commission of jurisdiction to consider this rate appeal or otherwise render the petition administratively incomplete?¹

¹ The Commission's rule, 16 TAC § 24.130, requires the petitioner to give notice to "the party against whom the petitioner seeks relief and other appropriate parties." Petitioners have alleged that rates contained in the District's contracts with non-member customers are unreasonably prejudicial, and Petitioners seek a determination from the Commission that District's "rates," which presumably include the non-member rates, adversely affect the public interest. Petitioners further request the Commission to set new "rates," again including the non-member rates. As such, Petitioners are seeking relief from the non-member customers, who are entitled to notice of this proceeding and an opportunity to participate. At the very least, these non-member customers are "other appropriate parties."

2. Do legislative determinations that the contract setting the protested rates is valid and binding and shall not be contestable for any cause deprive PUC of jurisdiction to consider whether the protested rates adversely affect the public interest?
3. Have Petitioners met their burden of proof under 16 TAC § 24.136 to demonstrate that rates imposed by the District adversely affect the public interest by showing that the rates violate at least one of the public interest criteria provided by 16 TAC § 24.133(a)? These criteria include, but are not limited to:
 - A. Does the protested rate impair the Petitioning Cities' ability to continue to provide retail service based on the purchasers' financial integrity and operational capability?
 - B. Does the protested rate evidence the seller's abuse of monopoly power in its provision of water service based on a consideration of all relevant factors identified in 16 TAC § 24.133(a)(3), including, but not limited to:
 - i. disparate bargaining powers of the parties
 - a. Do Petitioners lack alternatives for water supply?
 - b. Does the District set rates and extend the Contract terms without input from Petitioners?
 - c. Do Petitioners lack representation on the District's board?
 - ii. the seller's failure to reasonably demonstrate the changed conditions that are the basis for the change in rates;
 - iii. incentives necessary to encourage regional projects or water conservation measures;
 - iv. rates charged in Texas by other sellers of water for resale;
 - C. Are the protested rates unreasonably preferential, prejudicial, or discriminatory compared to the rates charged to other wholesale customers?

Respectfully submitted,



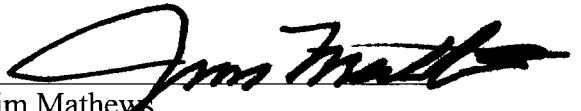
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ATTORNEYS FOR THE CITY OF
FORNEY

CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing document has been served on all parties of record in this proceeding on February 16, 2018 in accordance with 16 Tex. Admin. Code § 22.74.


Jim Mathews

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