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PETITION OF THE CITIES OF
GARLAND, MESQUITE, PLANO,
AND RICHARDSON APPEALING
THE DECISION BY NORTH
TEXAS MUNICIPAL WATER
DISTRICT AFFECTING 2018
WHOLESALE WATER RATES

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PUBLIC UTILITY

COMMISSION OF TEXAS

**THE PETITIONING CITIES' RESPONSE
TO THE DISTRICT'S MOTION TO DISMISS**

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ATTACHMENTS

- A Order Granting Plea to the Jurisdiction (North Texas Municipal Water District v. Public Utility Commission of Texas (May 19, 2017)
- B Event Notice Pursuant to S.E.C. Rule 15c2-12 relating to North Texas Municipal Water District (Mar. 10, 2017)
- C Excerpt from Official Statement Related to North Texas Municipal Water District System Revenue Refunding and Improvement Bonds, Series 2016

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

PETITION OF THE CITIES OF	§	
GARLAND, MESQUITE, PLANO,	§	PUBLIC UTILITY
AND RICHARDSON APPEALING	§	
THE DECISION BY NORTH	§	
TEXAS MUNICIPAL WATER	§	COMMISSION OF TEXAS
DISTRICT AFFECTING 2018	§	
WHOLESALE WATER RATES	§	

**THE PETITIONING CITIES' RESPONSE
TO THE DISTRICT'S MOTION TO DISMISS**

The Cities of Garland, Mesquite, Plano and Richardson ("Petitioning Cities") hereby respond to the North Texas Municipal Water District's ("District") Motion to Dismiss ("District's Motion"). This response is timely filed.¹ The Public Utility Commission ("Commission") should deny the District's Motion.

**I.
EXECUTIVE SUMMARY**

The Petitioning Cities buy water from the District under a *de facto* perpetual wholesale contract. The District recently increased its rates for the 2017-18 fiscal year by an additional ten percent. The District has more than doubled its wholesale water rates since 2011. The District's rates set pursuant to the contract between the Petitioning Cities and the District have become unconscionable and are unjust and unreasonable. The Petitioning Cities had no choice but to appeal the District's rates to the Commission.

Without qualification, the Texas Water Code authorizes the Commission to review the District's wholesale rates.² For decades, the Legislature and the courts have recognized the jurisdiction of the Commission and predecessor agencies to review and set wholesale water rates, including rates set pursuant to contracts, and just last year the Commission affirmed its jurisdiction to review the District's rates.

In an attempt to hide its rates from Commission scrutiny, the District erroneously argues that the appeal impermissibly threatens its bonds because the Petitioning Cities are collaterally attacking a "multilateral public financing and facilities contract" and that the Commission's

¹ See 16 Tex. Admin. Code (TAC) § 22.78(a).

² Tex. Water Code §§ 12.013, 13.043(f).

jurisdiction should be limited to reviewing rates charged under “a simple, bilateral contract structure.”³ But no law so confines the Commission’s rate jurisdiction under the Texas Water Code, which is why the District’s arguments were rightly rejected by both the Commission and a Travis County District Court less than a year ago. The Commission should reject them again by denying the District’s Motion. The Commission’s jurisdiction over this case is clear.

II. BACKGROUND

On September 29, 2017, the District provided a written notice to each of the Petitioning Cities that it was again raising its rates for the provision of wholesale water.⁴ On December 15, 2017, the Petitioning Cities timely appealed the District’s rates to the Commission pursuant to Sections 12.013 and 13.043(f) of the Texas Water Code and the Commission’s rules.⁵ Having determined that the Commission has jurisdiction, Commission Staff recommended that the Commission refer the appeal to the State Office of Administrative Hearings (“SOAH”) for a public interest hearing.⁶ The Commission did so.⁷

This motion to dismiss is essentially the same motion to dismiss previously brought by the District in the existing rate appeal filed by the Petitioning Cities for the rates set by the District for the 2016-17 fiscal year.⁸ In Docket No. 46662, the District asked the Commission to dismiss the Petitioning Cities’ rate appeal, arguing that the Commission lacked jurisdiction to review its contractual rates because its contract is “incontestable.”⁹ The District simultaneously sued the Commission in Travis County District Court, arguing that the Commission lacked

³ District’s Motion at 2-3.

⁴ See Original Petition Appealing Wholesale Water Rates (“Petition”) at 119-69 (Dec. 15, 2017).

⁵ See Petition at 3.

⁶ See Commission Staff’s Recommendation at 3 (Jan. 12, 2018).

⁷ Order of Referral (Jan. 22, 2018).

⁸ *Petition of the Cities of Garland, Mesquite, Plano and Richardson Appealing the Decision by North Texas Municipal Water District Affecting Wholesale Water Rates*, Docket No. 46662, Original Petition Appealing Wholesale Water Rates (Dec. 14, 2016).

⁹ Docket No. 46662, North Texas Municipal Water District’s Response to Petition and Motion to Dismiss for Lack of Jurisdiction at 2-3 (Feb. 6, 2017).

jurisdiction to review the District's contractual rates on the same incontestability theory.¹⁰ Both the Commission and Judge Karin Crump rejected the District's arguments.¹¹

Recycling the jurisdictional theories that the Commission and Judge Karin Crump discarded last year, the District now asks the Commission to dismiss the Petitioning Cities' new rate appeal.¹²

III. RESPONSE

The District's jurisdictional arguments are not new.¹³ The Commission considered and rejected them less than a year ago, concluding that "the plain language of both TWC § 12.013 and § 13.043 confer jurisdiction upon the Commission to consider the petitioners' appeal and complaint" and that "this authority extends to rates set by contract."¹⁴ The Commission also confirmed that "[a]t the end of th[e] case, whatever the outcome, the [District's] bonds and contracts will still be valid, binding on the parties, and enforceable."¹⁵

The District's arguments for dismissal of the new appeal continue to be premised on a fallacy—that an administrative (and statutorily-authorized) appeal of contractual rates is an impermissible challenge to the contract. Its argument is foreclosed by the governing statute, the Commission's governing rules, the preamble to those rules, and case law that precipitated and interprets those rules, all of which dictate that an appeal of contractual rates is not a challenge to the contract.

¹⁰ *N. Tex. Mun. Water Dist. v. Pub. Util. Comm'n*, No. D-1-GN-17-000877 (419th Dist. Ct., Travis County, Tex., filed Mar. 1, 2017).

¹¹ Docket No. 46662, Preliminary Order (June 29, 2017); Order Granting Plea to the Jurisdiction, *N. Tex. Mun. Water Dist. v. Pub. Util. Comm'n*, No. D-1-GN-17-000877 (419th Dist. Ct., Travis County, Tex., May 19, 2017) (attached as Attachment A). The Petitioning Cities' appeal in Docket No. 46662 is set for a public interest hearing on the merits before SOAH in May.

¹² In a footnote, the District states that the jurisdictional issues raised "are also germane to the ongoing proceeding in Docket No. 46662" and that "[t]he District maintains its position that the Commission lacks jurisdiction to consider both dockets and that both should be dismissed...." District's Motion at 4, n.3. The Commission denied the District's motion to dismiss in Docket No. 46662. *See* Docket No. 46662, Preliminary Order (June 29, 2017). At the least, it is not procedurally proper to move to dismiss Docket No. 46662 in a footnote to a motion filed in Docket No. 47863.

¹³ District's Motion at 4, n.3 ("The District similarly moved to dismiss that Docket [46662] for the same reasons it now so moves in this matter.").

¹⁴ Preliminary Order at 3.

¹⁵ *Id.* at 15.

A. Section 13.043(f) of the Texas Water Code Authorizes the Commission to Review the District's Rates

Decades ago, the Texas Legislature authorized agency review of wholesale water rates under Section 13.043(f) of the Texas Water Code.¹⁶ The Commission has been the agency charged with reviewing such rates since September 1, 2014.¹⁷ Section 13.043(f) provides:

A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state . . . may appeal to the utility commission a decision of the provider of water or sewer service affecting the amount paid for water or sewer service.¹⁸

Pursuant to Section 13.043(f), the Petitioning Cities (each, a retail public utility) have appealed the District's (a political subdivision) decision affecting the amount paid for water service. On its face, Section 13.043(f) authorizes the Commission to review the District's rates.

The District claims that the Commission lacks jurisdiction because "[t]his matter does not involve a complaint about a rate."¹⁹ Its claim contradicts the petition initiating these proceedings, in which the Petitioning Cities expressly asked the Commission "to find that the District's rates adversely affect the public interest, convene a cost-of-service hearing, and then set new rates consistent with the ratemaking mandates of Chapters 12 and 13 of the Texas Water Code."²⁰ It also contradicts the second sentence of the District's Motion, where the District correctly characterized this appeal as "challenging the District's fiscal year 2018 wholesale water rate"²¹

The District also claims that the Commission lacks jurisdiction because its enabling act makes its contract incontestable, that the rate appeal is a collateral attack on an incontestable

¹⁶ See Act effective Sept. 1, 1989, 71st Leg., R.S., ch. 567, § 6, 1989 Tex. Gen. Laws 1883, 1887-88.

¹⁷ See Tex. Water Code § 13.043(f); see also Act of May 25, 2013, 83rd Leg., R.S., ch. 170, § 2.96, 2013 Tex. Gen. Laws 725, 769-70 ("On September 1, 2014, the following are transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas: (1) the powers, duties, functions, programs, and activities of the Texas Commission on Environmental Quality relating to the economic regulation of water and sewer service, including . . . the determination of rates and the administration of hearings and proceedings involving those matters under Section 12.013 and Chapter 13, Water Code.").

¹⁸ Tex. Water Code § 13.043(f).

¹⁹ District's Motion at 3.

²⁰ Petition at 12.

²¹ District's Motion at 2.

contract, and that the contract's incontestability moots an appeal of the contract's validity.²² Whether the contract is "incontestable" is irrelevant to the Commission's statutory rate appeal jurisdiction because the appeal does not challenge the validity of the contract and there is no law limiting the Commission's statutory authority only to review of rates set pursuant to *certain* contracts.

1. The District, Not the Contract, Sets the Rates

The District's contract contains rate setting provisions, but the District's rates are not set in the contract. Indeed, the District annually changes the rates. The contract obligates the Petitioning Cities to pay the District's operation and maintenance costs and debt service costs ("Annual Requirement") in proportionate shares.²³ The contract also reflects that the Annual Requirement will change over time: "[I]n compliance with the District's duty to fix and from time to time revise the rates of compensation or charges for water sold and services rendered and made available by the District, the Annual Requirement will change from time to time. . . ."²⁴

The Annual Requirement drives the District's budget, so the District sets the rate *each year* after its budgeting process.²⁵ Thus, the District unilaterally and annually sets the rates pursuant to the contract. Courts and administrative agencies, including the Commission, have confirmed both the Commission's jurisdiction to adjudicate appeals of such rates and that those appeals are not challenges to the underlying contracts.

2. Courts Have Confirmed That an Agency's Review of Contractual Rates Is Not a Challenge to the Contract

In the seminal case interpreting the governing statute, *Texas Water Commission v. City of Fort Worth*, the Third Court of Appeals held that appeals of contractual rates are *not* challenges to the underlying contract and do not affect contractual rights.²⁶ There, the City of Fort Worth made arguments similar to the District's, claiming that the Texas Water Commission could not revise a contractual rate "because Section 791.026 of the Texas Government Code ... places such contract rates beyond the Commission's jurisdiction" and that the Commission's "review

²² *Id.* at 3-4.

²³ District's Motion, Attachment A at Section 9.

²⁴ *Id.*

²⁵ Petition at 119-69.

²⁶ 875 S.W.2d 332, 335 (Tex. App.—Austin 1994, writ denied).

unconstitutionally interferes with [the City's] contractual obligations.”²⁷ The Third Court of Appeals rejected these arguments and confirmed that (1) “[t]he [Texas] Water Code gives the Commission jurisdiction over contractual rates,” (2) Section 13.043(f) “does not violate the constitutional limitation on laws affecting contractual obligations,” (3) “Texas courts have reaffirmed the constitutionality of agency review of reasonableness of contractual rates where the public interest is affected,” and (4) Section 13.043(f) “does not impair any existing contractual obligation; it merely provides that the Commission may review decisions affecting water and sewer rates.”²⁸

By citation to *Fort Worth*, the District’s Motion argues that a finding by the Commission that the District’s rates adversely affect the public interest would result in the contract being “set aside.”²⁹ But that’s not what *Fort Worth* says. Although that outcome is discussed in *High Plains Natural Gas Company v. Railroad Commission of Texas*, there the statute in question gave the Railroad Commission the power to “review, revise, and regulate all orders and agreements of companies that set gas pipeline rates.”³⁰ The *Fort Worth* court actually distinguished *High Plains*.³¹

Without citation, the District’s Motion also alleges that “the Commission’s wholesale rate authority does not extend to any and all contractual rates.”³² But that contradicts *Fort Worth*, where the court held that Section 13.043(f) “expressly authorizes the Commission to review any

²⁷ *Id.* at 335.

²⁸ *Id.* at 335-36.

²⁹ District’s Motion at 14, n. 46.

³⁰ 467 S.W.2d 532, 537 (Tex. App.—Austin 1971, writ ref’d n.r.e.).

³¹ *Fort Worth*, 875 S.W.2d at 336 (“Unlike the statute in *High Plains*, [Section 13.043 of the Texas Water Code] expressly requires the Commission to make a finding that the provider city’s rates are unreasonably preferential, prejudicial, or discriminatory before modifying these rates so that they are just and reasonable. We need not imply such a requirement, as we did in *High Plains*, to ensure that the statute does not violate article I, section 16 of the Texas Constitution.”).

³² District’s Motion at 8. Elsewhere, the District (mis)cites *Leonard v. Cornyn* to support the notion that its incontestable contract deprives the Commission of jurisdiction. District’s Motion at 10. The court in *Leonard*, however, did not apply Section 12.013 or 13.043(f) of the Texas Water Code and resolved a dispute over the validity of bonds. *Leonard v. Cornyn*, 47 S.W.3d 524, 528 (Tex.App.—Austin 1999, pet. denied) (“The procedures and requirements set out in article 717k-8 are therefore designed to provide an orderly, efficient system for assuring that the *bonds* have been issued with the requisite authority and in compliance with what the law requires. By this means, protection is given alike to taxpayers, the counties and municipalities that issue the *bonds*, and those who take them. Without such a system, the questions of validity and enforceability would have to be determined through litigation.”) (emphasis added). The Petitioning Cities are challenging rates, not bonds.

decision of a provider that affects the amount a recipient public utility pays for service.”³³ Indeed, *Fort Worth*’s central holding is that Section 13.043(f) “does not impair any existing contractual obligation; it merely provides that the Commission may review decisions affecting water and sewer rates.”³⁴ The Commission’s confirmation of its jurisdiction over the District’s rates in Docket No. 46662—where the Commission stated that it “does not agree that the provisions of the district’s [enabling act] ... and other law that prohibit a contest of the district’s bonds and pledged contracts supersede or render ineffective provisions of either TWC § 12.013 or § 13.043 that authorize the Commission to hear this appeal and complaint”³⁵—was and is consistent with *Fort Worth*.

3. **In the Preamble to the Rules Governing This Appeal, the Texas Water Commission Confirmed That Review of Rates Set Pursuant to a Contract Is Not a Challenge to the Contract**

In the wake of the *Fort Worth* case, the Texas Water Commission promulgated the rules governing this rate appeal. The rules require a two-phase hearing process when, as here, a rate charged pursuant to a contract is appealed. The initial phase of the appeal is “an evidentiary hearing on public interest to determine whether the protested rate adversely affects the public interest.”³⁶ Only after determining that the rate adversely affects the public interest will the Commission remand the appeal to SOAH “for further evidentiary proceedings on the rate,”³⁷ after which the Commission must “set a rate consistent with the ratemaking mandates of [Texas Water Code], Chapters 12 and 13.”³⁸

In the rulemaking preamble, the Texas Water Commission directly addressed agency jurisdiction, stating that “[t]he courts continue to recognize the commission’s jurisdiction in these matters and have reconciled that jurisdiction with the argument that commission review interferes with a constitutional right of contract.”³⁹ The Texas Water Commission also explained the purpose of these rules in the rulemaking preamble, noting that the Commission could review

³³ *Fort Worth*, 875 S.W.2d at 334 (emphasis added).

³⁴ *Id.* at 335-36.

³⁵ Preliminary Order at 3.

³⁶ 16 TAC §§ 24.131(b) & 24.132(a).

³⁷ *Id.* § 24.134(b).

³⁸ *Id.* § 24.134(e).

³⁹ See 19 Tex. Reg. 6227 (Aug. 9, 1994).

rates set pursuant to a contract where the seller has “monopoly power over the purchaser” and “the purchaser substantially has no alternatives to obtain water or sewer service because it has entered into a long term agreement with the seller.”⁴⁰ It was in that context that the Texas Water Commission adopted the two-phase hearing process that starts with an evidentiary hearing on public interest, which “focus[es] on the actual facts which will show whether the protested rate reflects this latter type of agreement so much that it invokes the public interest.”⁴¹ Thus, although the District says that a Commission finding that the rates adversely affect the public interest would result in the contract being “set aside,”⁴² in reality the governing rules were designed both to allow for review of contractual rates⁴³ and to ensure deference to contracts when appropriate.

4. The Canyon Regional Court Affirmed the Validity of the Commission’s Rate Appeal Rules

Over a decade after the rules were promulgated, a Texas court affirmed their validity in *Canyon Regional Water Authority v. Guadalupe-Blanco River Authority*.⁴⁴ In that case, the Canyon Regional Water Authority (“Water Authority”) appealed a rate increase imposed by the Guadalupe-Blanco River Authority under predecessor rules. As with the District’s contract, the Water Authority’s contract contained a rate-setting framework, including annual adjustment provisions, but the rates were not set in the contract.⁴⁵

The Water Authority argued that a public interest hearing (1) was not required because the rate was not set pursuant to the contract and (2) exceeded the agency’s statutory authority

⁴⁰ *Id.* at 6228.

⁴¹ *Id.*

⁴² District’s Motion at 14.

⁴³ Indeed, the Commission is often apprised of contractual provisions in its public interest review as that context assists the Commission in assessing abuse of monopoly power and whether rates are unreasonably discriminatory – the governing considerations in the public interest test. *See, e.g., Appeal of Multi-County Water Supply Corp. to Review The Wholesale Water Rate Increase Imposed by the City of Hamilton*, SOAH Docket No. 582-09-2557, Proposal for Decision at 8-9 (Apr. 13, 2010) (PFD) (discussing whether the terms of the contract created monopoly power); *see also Petition of Travis County Municipal Utility District No. 12 Appealing Change of Wholesale Water Rates Implemented by the West Travis County Public Utility Agency; City of Bee Cave, Texas; Hays County, Texas; and West Travis County Municipal Utility District No. 5*, Docket No. 42866, Proposal for Decision at 12-13 (Sept. 30, 2015) (PFD) (examining the terms of the contract to assess whether disparate bargaining power existed).

⁴⁴ 286 S.W.3d 397 (Tex. App.—Corpus Christi 2008, no pet.).

⁴⁵ *Id.* at 400-01.

because it impeded the Water Authority's contract.⁴⁶ The court rejected both arguments. In holding that a public interest hearing was required, the court stated that where the contract "d[id] not provide a permanent, fixed number," the rate was set *pursuant* to the contract and required a public interest hearing under the challenged rule.⁴⁷ Further, in holding that the public interest hearing did not impede any contractual right of the Water Authority, the court noted that the challenged rule was "a permissible administrative rule given that the water code's regulatory scheme favors contracts between governmental entities for the supply of water," that "the Commission promulgated an administrative rule that, at least in its opinion, protects legislatively created contractual rights between governmental entities," and that "there is no compelling reason to disturb the rate-reviewing scheme."⁴⁸

The District's characterization of the Petitioning Cities' appeal as a "collateral attack" that will lead to the Commission "set[ting] aside" the contract⁴⁹ contradicts the holding in *Canyon Regional Water Authority*. Its characterization also conflicts with its own Security and Exchange Commission disclosures, where the District called the Petitioning Cities' initial appeal an "appeal [of] the *charges* imposed on the [Cities] *pursuant to* the Regional Water Supply Facilities Amendatory Contract."⁵⁰

B. Section 12.013 of the Texas Water Code Also Authorizes the Commission to Review the District's Rates

The Petitioning Cities also appealed the District's rates under Section 12.013 of the Texas Water Code, which independently authorizes the Commission to review and fix rates for the furnishing of water and which provides that "[t]he utility commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code."⁵¹ This is a broad grant of authority.⁵²

⁴⁶ *Id.* at 403, 405.

⁴⁷ *Id.* at 403 (explaining that "[w]hile many written contracts contain a fixed price, some contracts contain a pricing scheme that is commonly known as an 'open term price.'").

⁴⁸ *Id.* at 405-06.

⁴⁹ District's Motion at 15.

⁵⁰ See Event Notice Pursuant to S.E.C. Rule 15c2-12 relating to North Texas Municipal Water District (Mar. 10, 2017) (emphasis added) (Attachment B).

⁵¹ Chapter 12 of the Texas Water Code provides that "[t]he utility commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the utility commission to be appropriate under the circumstances of the case being reviewed." Tex. Water Code § 12.013(c). And Chapter 11 of the Texas Water Code lists purposes for which water may be

Again, the District's basis for dismissal is that its enabling act makes its wholesale water supply contract with the Petitioning Cities "incontestable" and shields its contractual rates from Commission review.⁵³ That is wrong for the reasons above and because the District's enabling act actually incorporates the Commission's jurisdiction under Section 12.013.

The Legislature amended the District's enabling act in 1975 to provide that "[n]othing in this Act shall relieve the district from compliance with the provisions of Chapters 5, 6, and 50, Water Code, as amended."⁵⁴ At that time, Section 6.056 of the Texas Water Code provided that "[t]he commission shall fix reasonable rates for the furnishing of water for any purpose mentioned in Chapter 5 or 6 of this code."⁵⁵ The Legislature later transferred Section 6.056 to become Section 12.013(a) of the Texas Water Code,⁵⁶ which to this day authorizes the Commission to "fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12."⁵⁷ Thus, the very legislation the District contends makes its contract incontestable actually confirms the Commission's jurisdiction to review and set rates.⁵⁸

C. *Even the Contract Confirms the Commission's Jurisdiction*

Section 15 of the contract provides:

This Contract is subject to all applicable Federal and State laws
and any applicable permits, ordinances, rules, orders, and

appropriated, including for municipal, agricultural, and industrial uses. The District holds state water use permits authorizing diversion and use of water for "municipal, industrial and agricultural purposes." See TCEQ Water Use Permit No. 12151. Thus, "purpose[s] mentioned in Chapter 11 or 12" exist for the Commission to fix the District's rates under Section 12.013.

⁵² *Tex. Water Comm'n v. Boyt Realty Co.*, 10 S.W.3d 334, 338 (Tex. App.—Austin 1993, no writ) (citing Section 12.013, and stating that "[t]he Legislature granted the Commission broad authority in this area.").

⁵³ District's Motion at 3.

⁵⁴ See Act of April 23, 1975, 64th Leg., R.S., ch. 90, §1(n) 1975 Tex. Gen. Laws 238, 241.

⁵⁵ See Tex. Water Code § 6.056 (1974).

⁵⁶ See Tex. Water Code § 12.013 (VTCA 1987) ("Derivation: Former Section 6.056, as amended by Acts 1977, 65th Leg., p. 1650, ch. 647, § 1.").

⁵⁷ Tex. Water Code § 12.013(a).

⁵⁸ See *Trinity River Auth. v. Tex. Water Rights Comm'n*, 481 S.W.2d 192, 194-96 (Tex. App.—Austin 1972, writ ref'd n.r.e.) (holding that, contrary to the Trinity River Authority's argument that its enabling act deprived the commission of rate making jurisdiction, nothing in the enabling act conflicted with the regulatory scheme for the fixing of water rates, including the scheme under Section 6.056 [now, Section 12.013] of the Texas Water Code).

regulations of any local, state, or federal governmental authority having or asserting jurisdiction⁵⁹

Thus, the contract that the District argues shields its rates from Commission review actually confirms the Commission's jurisdiction.

D. The Commission's Rate Review Will Not Impair the District's Bonds

In the end, the District's contention is that any challenge to its contract threatens its ability to service existing bond debt and to issue new bonds because its bonds are secured by the contract's proceeds.⁶⁰

The District's contention is irrelevant. The Legislature in Sections 12.013 and 13.043(f) of the Texas Water Code did not deprive the Commission of jurisdiction when a water district has issued or will issue bonds. As the Commission stated in its Preliminary Order in Docket No. 46662, the District's position would "add language to both section 12.013 and 13.043 that the authority granted in each section does not apply to any municipality or political subdivision of the state that issues bonds," which would be an "absurd result" as "[i]t is likely that any municipality or political subdivision of this state that is authorized to issue bonds has the protection of at least one incontestability provision" and "[u]nder the district's reading, none of those entities would be subject to the Commission's rate authority"⁶¹

The District's contention is also unfounded. First, the general covenants of the resolution authorizing issuance of the District's bonds provide that the contract's payment provisions may be modified or amended.⁶² Second, the Commission's rules require the Commission to set a rate considerate of the District's bond costs: the Commission's rate appeal rules require the Commission to set rates consistent with Chapter 12 of the Texas Water Code,⁶³ which mandates that the Commission "may not fix a rate ... which is less than the amount required to meet the

⁵⁹ Attachment A to District's Motion, Section 15.

⁶⁰ District's Motion at 9 ("Because of the District's bond-issuing responsibilities, the Facilities Contract, including its rate provisions, is made incontestable by the District's enabling legislation.").

⁶¹ Preliminary Order at 18. The Commission's experience disproves the District's baseless statement that its jurisdictional arguments regarding contract incontestability "would not apply to many, if not the majority of, wholesale water contracts in this state." District's Motion at 16.

⁶² See, e.g., Resolution No. 16-44 Authorizing Issuance of 2016 Bonds, Gen. Covenants § 24(m) at 32 (Oct. 27, 2016) ("[T]he Contracts may be modified or amended to change the allocation of the Annual Requirement (as defined in the Contracts) among the Member Cities by changing the basis for determination of each Member City's minimum amount of each Annual Requirement.") (Attachment C).

⁶³ 16 TAC § 24.134(e),

debt service and bond coverage requirements of that political subdivision's outstanding debt."⁶⁴ Finally, as the Commission stated in Docket No. 46662, the District is mistaken to imply "that this Commission may not understand the importance and intricacies of debt financing" because "[t]he Commission understands the debt market, borrowers' financial ratings, risk factors, and other such matters and deals with these massive amounts of debt in setting rates on a regular and recurring basis and has for nearly fifty years."⁶⁵

IV. CONCLUSION

The District's incorrect theories regarding the jurisdiction of the Commission over this case conflict with the governing statute, the Commission's rate appeal rules, and relevant case law. The Commission rightly rejected them less than a year ago. As the Commission observed in its Preliminary Order in Docket No. 46662, the District actually should be "agnostic" with respect to its rates and rate allocation "so long as sufficient funds are obtained to properly service and secure its outstanding bonds"⁶⁶ Yet, under the same discredited theories, the District continues to try to hide its rates from Commission scrutiny. The District's Motion should be denied because Sections 12.013 and 13.043(f) of the Texas Water Code clearly grant jurisdiction to the Commission to hear the Petitioning Cities' appeal and to review and set just and reasonable rates.

⁶⁴ Tex. Water Code § 12.013(c).

⁶⁵ Preliminary Order at 10.

⁶⁶ Preliminary Order at 11.

Respectfully submitted,



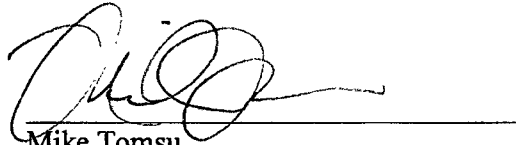
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Attorneys for the Petitioning Cities

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties of record in this proceeding on March 2, 2018, in accordance with 16 Tex. Admin. Code § 22.74.



Mike Tomsu

ATTACHMENT A

**Order Granting Plea to the
Jurisdiction (North Texas Municipal
Water District v. Public Utility
Commission of Texas) (May 19, 2017)**

Filed in The District Court
of Travis County, Texas

MAY 19 2017

At 10:55 A.M.
Velva L. Price, District Clerk

FA

CAUSE NO. D-1-GN-17-000877

**NORTH TEXAS MUNICIPAL
WATER DISTRICT,**

Plaintiff,

v.

**PUBLIC UTILITY COMMISSION
OF TEXAS,**

Defendant.

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IN THE DISTRICT COURT OF

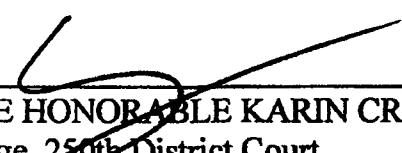
TRAVIS COUNTY, TEXAS

419th JUDICIAL DISTRICT

ORDER GRANTING PLEA TO THE JURISDICTION

Before the Court is the Cities of Garland, Mesquite, Plano, and Richardson's Plea to the Jurisdiction ("*Plea to the Jurisdiction*"). Having considered the Plea to the Jurisdiction and related briefing, the pleadings on file, and the arguments of counsel, the Court hereby GRANTS the Plea to the Jurisdiction and DISMISSES this lawsuit for lack of subject matter jurisdiction.

Dated: May 19th 2017.


THE HONORABLE KARIN CRUMP
Judge, 250th District Court

ATTACHMENT B

**Event Notice Pursuant to S.E.C. Rule 15c2-12
relating to North Texas Municipal Water
District (Mar. 10, 2017)**

Rule 15c2-12 Filing Cover Sheet

This cover sheet is sent with all submissions made to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access ("EMMA") pursuant to Securities and Exchange Commission (SEC) Rule 15c2-12 or any analogous state statute.

Issuer Name: North Texas Municipal Water District, Texas

Issue(s): \$111,780,000 Water System Revenue Bonds, Series 2008
\$9,930,000 Water System Revenue Bonds, Series 2009A
\$43,980,000 Water System Revenue Bonds, Series 2009B
\$34,330,000 Water System Revenue Refunding and Improvement Bonds, Series 2009C
\$109,520,000 Water System Revenue Bonds, Taxable Series 2009D (BABs)
\$108,345,000 Water System Revenue Bonds, Taxable Series 2010A (BABs)
\$31,720,000 Water System Revenue Bonds, Series 2010
\$358,835,000 Water System Revenue Refunding and Improvement Bonds, Series 2012
\$171,430,000 Water System Revenue Refunding and Improvement Bonds, Series 2014
\$302,125,000 Water System Revenue Refunding and Improvement Bonds, Series 2015
\$330,560,000 Water System Revenue Refunding and Improvement Bonds, Series 2016

Filing Format ☒ electronic ☐ paper; If available on the Internet, give URL: _____

CUSIP Numbers to which the information filed relates (optional):

☐ Nine-digit number(s) (attach additional sheet if necessary):

☒ Six-digit number if information filed relates to all securities of the issuer: 662903

* * *

Description of Material Event Notice/Other Material Information

1. ☐ Principal and interest payment delinquencies
2. ☐ Non-payment related defaults
3. ☐ Unscheduled draws on debt service reserves reflecting financial difficulties
4. ☐ Unscheduled draws on credit enhancements reflecting financial difficulties
5. ☐ Substitution of credit or liquidity providers, or their failure to perform
6. ☐ Adverse tax opinions or events affecting the tax-exempt status of the security
7. ☐ Modifications to rights of security holders
8. ☐ Bond calls
9. ☐ Defeasances
10. ☐ Release, substitution, or sale of property securing repayment of the securities
11. ☐ Rating changes
12. ☐ Tender Offers
13. ☐ Bankruptcy, insolvency, receivership or similar event of the obligated person
14. ☐ Merger, consolidation or acquisition of the obligated person or issuer, if material
15. ☐ Appointment of a successor or additional trustee or name change of a trustee, if material
16. ☐ Notice of non-compliance: failure to provide annual financial information
17. ☒ Other material event or information (specify): legal actions relating to the District's Water System

* * *

Financial & Operating Data Disclosure Information

- ☐ Annual Financial Report or CAFR
☐ Financial Information & Operating Data
☐ Other (describe): _____

Fiscal Period Covered: _____
☐ Monthly ☐ Quarterly ☐ Annual ☐ Other: _____

* * *

I hereby represent that I am authorized by the issuer or its agent to distribute this information publicly:

Name: Tanya Calvit Title: Director – Continuing Disclosure Services
Employer: FSC Continuing Disclosure Services, A Division of Hilltop Securities Inc.
Voice Telephone Number: 214-953-4037
Email Address: tanya.calvit@hilltopsecurities.com

NTMWD00003522

Event Notice
Pursuant to S.E.C. Rule 15c2-12
relating to
North Texas Municipal Water District

March 10, 2017

This Event Notice is given by North Texas Municipal Water District (the "District") pursuant to Rule 15c2-12 of the Securities and Exchange Commission to provide information with respect to recent legal actions relating to the District's Water System and bonds issued in support of the Water System. This notice is limited to the Water System and is not directed at bonds issued for any other District system.

On December 14, 2016, District member cities Garland, Mesquite, Plano and Richardson (collectively the "PUC Petitioners") filed a petition at the Public Utility Commission (the "PUC") to appeal the charges imposed on the PUC Petitioners pursuant to the Regional Water Supply Facilities Amendatory Contract (the "Contract"). *See* PUC Petition, PUC Docket No. 46662, **Exhibit A**. The District disputes the allegations contained in the PUC Petition and, on February 6, 2017, filed a Motion to Dismiss in response thereto. *See* PUC Response, **Exhibit B**. All other member cities of the District have intervened in the PUC action. The PUC has not taken jurisdiction of the matter or issued any substantive ruling as of the date of this filing. All pleadings in the PUC action are available at the PUC's website, www.puc.texas.gov.

On March 1, 2017, in further defense of the PUC action and to seek prompt resolution of the issue, the District filed suit for expedited declaratory relief pursuant to Chapter 1205, Texas Government Code ("Chapter 1205"), seeking a declaration as to the validity of the Contract and the method of cost allocation contained therein. *See* Chapter 1205 Petition, *Ex Parte North Texas Municipal Water District*, Cause No. D-1-GN-17-000861, in the 98th District Court of Travis County, Texas, **Exhibit C**. Notice of this proceeding has been provided to all required parties and the court has set the matter for trial on March 27, 2017.

Also on March 1, 2017, the District filed a Petition for Declaratory Judgment, Application for Temporary Restraining Order, Temporary Injunction and Permanent Injunction against the PUC pursuant to section 2001.038 of the Texas Administrative Procedure Act (APA) seeking injunction or dismissal of the PUC action. *See* APA Petition, *North Texas Municipal Water District v. Public Utility Commission of Texas*, Cause No. D-1-GN-17-000877, in the 419th District Court of Travis County, Texas, **Exhibit D**. On March 7, 2017, the PUC filed a responsive pleading challenging the requested relief. *See* APA Response, **Exhibit E**. Also on March 7, 2017, the PUC Petitioners filed a petition to intervene in the APA action. At a hearing held on March 8, 2017, the court denied the District's request for a temporary restraining order. A hearing on the temporary injunction has been set for March 30, 2017.

All pleadings in the 1205 action and the APA action are publicly available at their respective venues. The District cannot predict the ultimate outcome of the aforementioned actions or time frame for final resolution.

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This information set forth herein has been obtained from records of the Issuer and other sources that are considered reliable. Any statement in this Material Event Notice which includes a matter of opinion, whether or not expressly so stated, is intended as such, and not as a representation of fact. The information contained in this Material Event Notice is provided as of the respective dates specified herein and is subject to change without notice, and the filing of this Material Event Notice shall not, under any circumstances, create any implication that there has been no change in the affairs of the Issuers or in the other matters described herein since the date as of which such information is provided.

ATTACHMENT C

Excerpt from Official Statement Related to North Texas Municipal Water District System Revenue Refunding and Improvement Bonds, Series 2016

OFFICIAL STATEMENT

Dated October 27, 2016

Ratings:
Moody's: "Aa2"
S&P: "AAA"
(See "OTHER INFORMATION -
Ratings" herein)

NEW ISSUE - Book-Entry-Only

In the opinion of Bond Counsel, interest on the Bonds will be excludable from gross income for purposes of federal income taxation under statutes, regulations, published rulings and court decisions existing on the date of such opinion, subject to the matters described under "Tax Matters" herein, including the alternative minimum tax on corporations.



\$330,560,000
NORTH TEXAS MUNICIPAL WATER DISTRICT
WATER SYSTEM REVENUE REFUNDING AND IMPROVEMENT BONDS, SERIES 2016

Dated Date: October 15, 2016

Due: September 1, as shown below

Interest Accrues: Delivery Date (defined below)

PAYMENT TERMS . . . Interest on the \$330,560,000 North Texas Municipal Water District Water System Revenue Refunding and Improvement Bonds, Series 2016, (the "Bonds") will accrue from the date of initial delivery thereof (the "Delivery Date"), will be payable on March 1 and September 1 of each year commencing March 1, 2017, until maturity or prior redemption and will be calculated on the basis of a 360-day year consisting of twelve 30-day months. The definitive Bonds will be initially registered and delivered only to Cede & Co., the nominee of The Depository Trust Company ("DTC") pursuant to the Book-Entry-Only System described herein. Beneficial ownership of the Bonds may be acquired in denominations of \$5,000 or integral multiples thereof. No physical delivery of the Bonds will be made to the owners thereof. Principal of and interest on the Bonds will be payable by the Paying Agent/Registrar to Cede & Co., which will make distribution of the amounts so paid to the beneficial owners of the Bonds. See "The Bonds - Book-Entry-Only System" herein. The initial Paying Agent/Registrar is The Bank of New York Mellon Trust Company, National Association, Dallas, Texas (see "THE BONDS - Paying Agent/Registrar").

AUTHORITY FOR ISSUANCE . . . The Bonds are special obligations of the North Texas Municipal Water District (the "District") secured by and payable, both as to principal and interest, solely from and secured by a first lien on and pledge of the "Pledged Revenues" as defined in the Resolution authorizing the issuance of the Bonds, which includes the "Net Revenues of the District's Water System" and certain other revenues derived from the ownership and operation of the District's Water System, including amounts payable under water supply contracts with the thirteen Member Cities (as defined herein), other customer cities and other customers. The District has not covenanted or obligated itself to pay the Bonds from monies raised or to be raised from taxation or from any other source of funds of the District other than "Pledged Revenues." See "THE BONDS - Security and Source of Payment".

PURPOSE . . . Proceeds from the sale of the Bonds will be used for the purpose of providing funds for (i) construction of the Wylie Water Treatment Plant No. 4 70 MGD Expansion, construction of the Trinity River Main Stem Pump Station and Pipeline, construction of the North System Exchange Parkway 13.5 MG Ground Storage Facilities, construction of the North McKinney Pipeline, and other System improvements; (ii) refunding a portion of the District's outstanding debt (the "Refunded Obligations") for debt service savings; (iii) funding a debt service reserve fund, and (iv) paying the costs incident to the issuance and delivery of the Bonds

MATURITY SCHEDULE

CUSIP Prefix: 662903⁽¹⁾

Amount	Maturity September 1	Rate	Yield	CUSIP Suffix ⁽¹⁾	Amount	Maturity September 1	Rate	Yield	CUSIP Suffix ⁽¹⁾
\$ 7,185,000	2017	5.00%	0.85%	QL0	\$ 10,245,000	2028	4.00%	2.21% ⁽²⁾	QX4
3,925,000	2018	5.00%	0.99%	QM8	10,765,000	2029	5.00%	2.30% ⁽²⁾	QY2
6,605,000	2019	5.00%	1.06%	QN6	11,310,000	2030	5.00%	2.38% ⁽²⁾	QZ9
6,935,000	2020	5.00%	1.24%	QP1	11,870,000	2031	5.00%	2.45% ⁽²⁾	RA3
7,275,000	2021	5.00%	1.34%	QQ9	12,460,000	2032	5.00%	2.52% ⁽²⁾	RB1
7,645,000	2022	5.00%	1.45%	QR7	13,085,000	2033	5.00%	2.58% ⁽²⁾	RC9
8,025,000	2023	5.00%	1.59%	QS5	13,745,000	2034	5.00%	2.66% ⁽²⁾	RD7
8,425,000	2024	5.00%	1.77%	QT3	14,440,000	2035	5.00%	2.70% ⁽²⁾	RE5
8,850,000	2025	5.00%	1.90%	QU0	15,180,000	2036	5.00%	2.73% ⁽²⁾	RF2
9,290,000	2026	5.00%	2.01%	QV8	15,960,000	2037	5.00%	2.76% ⁽²⁾	RG0
9,760,000	2027	5.00%	2.12% ⁽²⁾	QW6					

\$50,925,000 4.00% TERM BONDS DUE SEPTEMBER 1, 2041 PRICED TO YIELD 3.10% - CUSIP #66903RL9⁽¹⁾

\$66,655,000 4.00% TERM BONDS DUE SEPTEMBER 1, 2046 PRICED TO YIELD 3.15% - CUSIP #66903RR6⁽¹⁾

(1) CUSIP is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by S&P Capital IQ on behalf of the American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. CUSIP numbers are provided for convenience of reference only. None of the District, the Financial Advisor, or the Initial Purchaser is responsible for the selection or correctness of the CUSIP numbers set forth herein.

(2) Yield shown to first optional redemption date of September 1, 2026. Initial reoffering yield represents the initial offering yield to the public which has been established by the Initial Purchaser for offers to the public and which may be subsequently changed by the Initial Purchaser and is the sole responsibility of the Initial Purchaser. The initial reoffering yields indicated above represent the lower of the yields resulting when priced to maturity or to the first call date.

REDEMPTION OPTION . . . The District reserves the right, at its option, to redeem Bonds having stated maturities on and after September 1, 2027, in whole or in part, in principal amounts of \$5,000 or any integral multiple thereof, on September 1, 2026, or any date thereafter, at a price equal to the principal amount thereof plus accrued interest to the date of redemption (see "The Bonds - Optional Redemption"). In addition, the Bonds maturing on September 1, 2041 and September 1, 2046 are also subject to mandatory sinking fund redemption in part prior to maturity at the price of par plus accrued interest to the redemption date (see "THE BONDS - Mandatory Sinking Fund Redemption").

LEGALITY . . . The Bonds are offered for delivery when, as and if issued and received by the Initial Purchaser (as defined herein) and subject to the approving opinion of the Attorney General of Texas and the opinion of McCall, Parkhurst & Horton L.L.P., Dallas, Texas, Bond Counsel (see Appendix C, "Form of Bond Counsel's Opinion")

DELIVERY . . . It is expected that the Bonds will be available for delivery through The Depository Trust Company on November 30, 2016.

(m) **CONTRACTS.** It will comply with the terms and conditions of the Contracts, and any amendments thereto, and will cause the Member Cities and other cities and customers to comply with all of their obligations thereunder by all lawful means; provided that the Contracts will not be rescinded, modified, or amended in any way which would materially affect adversely the operation of the System or the rights of the owners of the Parity Bonds and Additional Bonds; provided further that, without violating this Section 24(m), the Contracts may be modified or amended to change the allocation of the Annual Requirement (as defined in the Contracts) among the Member Cities by changing the basis for determination of each Member City's minimum amount of each Annual Requirement.

(n) **ANNUAL BUDGET.** On or before the first day of the second calendar month prior to the beginning of each fiscal year, it will prepare the preliminary Annual Budget of Operation and Maintenance Expenses of the System for the ensuing fiscal year, and any amounts required to be deposited to the credit of the Contingency Fund during the ensuing fiscal year, and such budget shall include a showing as to the proposed expenditures for such ensuing fiscal year. In the Annual Budget for each fiscal year provisions shall be made for payment of the. If the owners of ten per centum (10%) in aggregate principal amount of the Parity Bonds and Additional Bonds then outstanding shall so request on or before the 15th day of the aforesaid month, the Board shall hold a public hearing on or before the 15th day of the following month, at which any such owner may appear in person or by agent or attorney and present any objections he may have to the final adoption of such budget. Notice of the time and place of such hearing shall be published twice, once in each of two successive weeks, in daily newspapers (and if no daily newspaper is published in any one of such cities, in a weekly newspaper published in such cities) of general circulation published in Dallas, Texas, the date of the first publication to be at least fourteen days before the date fixed for the hearing, and copies of such notice shall be mailed at least ten days before the hearing to each owner of a Parity Bond or Additional Bond who shall have filed his or her name and address with the Secretary of the Board for such purpose. The Issuer further covenants that on or before the first day of each fiscal year it will finally adopt the Annual Budget of Operation and Maintenance Expenses of the System for such fiscal year (hereinafter sometimes call the "Annual Budget") and that except as otherwise provided herein the total expenditures in any division thereof will not exceed the total expenditures in the corresponding division in the preliminary budget. If for any reason the Board shall not have adopted the Annual Budget before the first day of any fiscal year, the budget for the preceding fiscal year shall be deemed to be in force until the adoption of the Annual Budget. The Operation and Maintenance Expenses of the System incurred in any fiscal year will not exceed the reasonable and necessary amount thereof, and the Board will not expend any amount or incur any obligation for maintenance, repair, and operation in excess of the amounts provided therefor in the Annual Budget; provided, however, that if at any time the Board shall determine that the amount of the appropriation for any item in the Annual Budget is in excess of the amount which will be required for such item, the Board may by resolution reduce such appropriation and make an appropriation for any item or items not covered by the Annual Budget or increase the appropriation for any other item or items by an amount not exceeding the amount of such reduction; and provided, further, that the Board may at any time by resolution adopt an Amended or Supplemental Annual Budget for the remainder of the then current fiscal year in case of an emergency caused by some extraordinary occurrence which shall be recited in such resolution.

AMENDMENT OF RESOLUTION. (a) The owners of Parity Bonds and Additional Bonds aggregating 51% in principal amount of the aggregate principal amount of then outstanding Parity Bonds and Additional Bonds shall have the right from time to time to approve any amendment to any resolution authorizing the issuance of any Parity Bonds or Additional Bonds, which may be deemed necessary or desirable by the Issuer, provided, however, that nothing herein contained shall permit or be construed to permit the amendment of the terms and conditions in said resolutions or in the Parity Bonds or Additional Bonds so as to:

- (1) Make any change in the maturity of the outstanding Parity Bonds or Additional Bonds;
- (2) Reduce the rate of interest borne by any of the outstanding Parity Bonds or Additional Bonds;
- (3) Reduce the amount of the principal payable on the outstanding Parity Bonds or Additional Bonds;
- (4) Modify the terms of payment of principal of or interest on the outstanding Parity Bonds or Additional Bonds, or impose any conditions with respect to such payment;
- (5) Affect the rights of the holders of less than all of the Parity Bonds and Additional Bonds then outstanding;
- (6) Change the minimum percentage of the principal amount of Parity Bonds and Additional Bonds necessary for consent to such amendment.

(b) If at any time the Issuer shall desire to amend a resolution under this Section, the Issuer shall cause notice of the proposed amendment to be published in a financial newspaper or journal published in the City of New York, New York, once during each calendar week for at least two successive calendar weeks. Such notice shall briefly set forth the nature of the proposed amendment and shall state that a copy thereof is on file at the principal office of each paying agent for any of the Parity Bonds or Additional Bonds for inspection by all owners of Parity Bonds and Additional Bonds. Such publication is not required, however, if notice in writing is given to each holder of Parity Bonds and Additional Bonds.