



Control Number: 49043



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**DeAnn T. Walker**  
Chairman  
**Arthur C. D'Andrea**  
Commissioner  
**Shelly Botkin**  
Commissioner  
**John Paul Urban**  
Executive Director



## *Public Utility Commission of Texas*

TO: Central Records

FROM: Mark Hovenkamp  
Commission Advising

RE: Correspondence related to P.U.C. Docket No. 49043; SOAH Docket No. 473-19-2805.WS – *Petition of the Cities of Garland, Mesquite, Plano and Richardson Appealing the Decision by North Texas Municipal Water District Affecting Wholesale Water Rates*

DATE: November 5, 2020

Chairman Walker and Commissioners D'Andrea and Botkin received the attached email correspondence pertaining to the above-styled docket.

Please note that a member or employee of a state agency assigned to render a decision in a contested case may not directly or indirectly communicate in connection with an issue of fact or law with any state agency, person, party, or representative of those entities, except on notice and opportunity for each party to participate. See Administrative Procedures Act, Texas Government Code § 2001.061.

Commission Advising is filing the correspondence. Parties will not be served copies of the attached document, but can access it through the PUC Interchange at <http://interchange.puc.texas.gov/>.

cc: All Parties (without attachment)

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27

November 5, 2020

Chairman DeAnn T. Walker  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711-3325

Commissioner Shelly Botkin  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711-3325

Commissioner Arthur C. D'Andrea  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711-3325

Re: JOINT REPORT TO THE COMMISSION AND AGREED MOTION TO WITHDRAW APPEALS AND DISMISS PROCEEDINGS WITH PREJUDICE; PUC Docket No. 46662, 47863,49043,50382; SOAH Docket No. 473-17-4964.WS

Dear Madam Chairman Walker and Commissioners D'Andrea and Botkin,

I am writing to you as a citizen of Rowlett, Texas, and the representative of the 3,900 plus signees of the "Take or Pay" change.org petition in response to the JOINT REPORT TO THE COMMISSION AND AGREED MOTION TO WITHDRAW (Item 691 in docket 46662 hereinafter known as the "Joint Report") filed by the cities of Garland, Mesquite, Plano and Richardson. I will be as brief as possible.

On March 15, 2019, the State Office of Administrative Hearings issued a Proposal for Decision-Public Interest Phase (PFD) detailing the issues that led the Court to conclude that the "rates charged under the Contract are not just and reasonable; are unreasonably preferential, prejudicial, or discriminatory; and are not sufficient, equitable and consistent in application to each class of customers. Therefore the ALJs find that the rates are adverse to the public interest." The Commission agreed with the SOAH finding when "On February 27, 2020, the Commission determined that the rates protested rates by petitioner are adverse to the public interest". The Commission began the process for outlining the specifics to include in the order remanding the issue to the SOAH for execution of a cost of service review, requesting Commission Staff to begin drafting the necessary order. On April 17, 2020, Commission reversed course and ordered the original parties to select a mediator. According the Joint Report, the Petitioning Cities, Member Cities and District "are pleased to report that they have resolved all of the outstanding issues in these proceedings by agreement." **This assertion in the Joint Report is factually incorrect.**

The Take or Pay provision of the contract used by the District for all Member and Customer cities of the District was central to the Commission's finding that the rates are adverse to the public interest, producing disparate wholesale water rates for different customers and discouraging conservation. The agreement between the parties in the Joint Report does nothing to eliminate the Take or Pay provision.

from the contracts of the Customer cities and so DOES NOT resolve all of the outstanding issues that led the Commission to conclude that the rates are adverse to the public interest. In another filing under this docket, the Cities of Rowlett, Lucas and Fate report that they were specifically and repeatedly excluded from the negotiations by the parties to the Joint Report, despite being adversely affected by the Take or Pay provision of the District's contract.

**My request to you is to table the motion to dismiss with prejudice by the parties to the Joint Report until such time as the District has reached agreement with each of the Customer cities to eliminate the Take or Pay provision from their District contracts.** According to the press release the District published on October 29, 2020, "NTMWD will soon begin discussions with customer communities and offer them the option to revise their contracts to reflect the new member city structure." If this truly is the case, then tabling the motion to dismiss for a few months while these discussions are completed seems reasonable in light of the already four year tenure of this docket. Otherwise, I fully expect that granting the motion to dismiss prior to completing the contract modifications with the Customer cities will result in petitions being filed by the Customer cities adversely affected by the Take or Pay provision and set this process back to where it was when it started in December 2016.

To my knowledge, the agreement referenced in the Joint Report also fails to address the other public interest issues surrounding this docket that I referenced in my March 6, 2020 letter (Item #631 in this docket) to you: a premium charge to customer cities under the guise of a risk premium when in fact the bonds issued are revenue bonds, barriers to membership established to maintain the monopoly power of the current Member cities and lack of an independent review of budget, ethics and contract practices even though the State of Texas is investing \$1.6 billion in the District's latest project.

Thank you for allowing me the opportunity to provide comment.

Sincerely,



Brian L. Galuardi  
[bgaluardi@verizon.net](mailto:bgaluardi@verizon.net)

cc The Honorable Tammy Dana-Bashian  
"Take or Pay" Petition Signers