



Control Number: 49043



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<b>PETITION OF THE CITIES OF GARLAND, MESQUITE, PLANO, &amp; RICHARDSON APPEALING THE DECISION BY NORTH TEXAS MUNICIPAL WATER DISTRICT AFFECTING WHOLESALE WATER RATES</b>	§ § § § § § §	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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### COMMISSION STAFF'S SUFFICIENCY AND REFERRAL RECOMMENDATION

**COMES NOW** the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Order No. 1, Staff's Sufficiency and Referral Recommendation. Staff recommends that the petition be found sufficient and that this docket be referred to the State Office of Administrative Hearings (SOAH) for an evidentiary hearing. In support thereof, Staff shows the following:

#### I. BACKGROUND

On December 20, 2018, the Cities of Garland, Mesquite, Plano, and Richardson filed a petition with the Commission appealing wholesale water rates charged by North Texas Municipal Water District (NTMWD), pursuant to Texas Water Code (TWC) §§ 12.013(a) and 13.043(f). Petitioner requests that the Commission find that the rates adversely affect the public interest. On January 14, 2019, Order No. 1 was issued requiring Staff to file a recommendation by January 25, 2019, regarding whether the appeal meets the requirements of 16 Texas Administrative Code (TAC) § 24.305. Therefore, this pleading is timely filed.

#### II. SUFFICIENCY AND REFERRAL RECOMMENDATION

Under 16 TAC § 24.307(a), when a petition or appeal of a wholesale water rate is filed, the Commission must determine within 30 days of filing whether the petition contains all of the information required by 16 TAC § 24.305. If the Commission determines that the petition meets the requirements of Section 24.305, then the Commission will forward the petition or appeal to SOAH for an evidentiary hearing.<sup>1</sup>

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<sup>1</sup> 16 TAC § 24.307(a).

Section 24.305 requires the petitioner to: (1) file a written petition with the Commission,<sup>2</sup> (2) serve a copy of the petition on the party against whom the petitioner seeks relief and other appropriate parties,<sup>3</sup> (3) clearly state the statutory authority invoked,<sup>4</sup> (4) include specific factual allegations and the relief sought,<sup>5</sup> (5) attach any applicable contract to the petition,<sup>6</sup> and, (6) for an appeal filed pursuant to TWC § 13.043(f), such appeal must be filed within the time frame provided in the statute.<sup>7</sup> Pursuant to TWC § 13.043(f), an appeal under that subsection “must be initiated within 90 days after the date of notice of the decision is received from the provider of water or sewer service by the filing of a petition by the retail public utility.”<sup>8</sup>

As supported by the attached memorandum of Greg Charles and Emily Sears of the Commission’s Water Utility Regulation Division, Staff reviewed the petition and determined that the Cities’ petition meets the requirements of 16 TAC §§ 24.130 and 24.131(a). The Cities filed a written petition with the Commission, served a copy of such petition on NTMWD, stated the statutory authority invoked, included specific factual allegations and the relief sought, and included with its petition a copy of the applicable contract (*see* Attachments A & B of the petition).<sup>9</sup> Furthermore, Attachment C to the petition is a copy of the notice that the City received from NTMWD regarding the rate change at issue. This notice was dated September 28, 2018. The Cities filed their petition with the Commission on December 20, 2018; therefore, the timing requirement of TWC § 13.043(f) is satisfied because the appeal was initiated within 90 days after the appellant received notice of the subject of the appeal from the appellee. In accordance with Staff’s determination that the Cities’ petition satisfies the requirements of 16 TAC § 24.305, Staff respectfully recommends that this proceeding be referred to SOAH for an evidentiary hearing pursuant to 16 TAC § 24.307(a).

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<sup>2</sup> 16 TAC § 24.305(a).

<sup>3</sup> *Id.*

<sup>4</sup> 16 TAC § 24.305(b).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 16 TAC § 24.305(c).

<sup>8</sup> TWC § 13.043(f).

<sup>9</sup> *See generally* Petition.

### **III. CONCLUSION**

For the reasons stated above, Staff respectfully recommends that the Cities' petition be found sufficient under 16 TAC § 24.305 and that this proceeding accordingly be referred to SOAH for an evidentiary hearing pursuant to 16 TAC § 24.307(a).

Dated: January 25, 2019

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

Karen S. Hubbard  
Managing Attorney

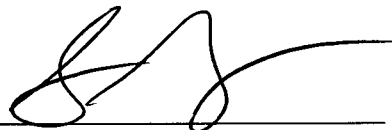


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**DOCKET NO. 49043**

### **CERTIFICATE OF SERVICE**

I certify that a copy of this document was served on all parties of record in this proceeding on January 25, 2019, in accordance with the requirements of 16 TAC § 22.74.



Steven M. Gonzalez

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Steven Gonzalez, Attorney  
Legal Division

**Thru:** Debi Loockerman, Financial Manager  
Heidi Graham, Technical Manager  
Water Utility Regulation Division

**FROM:** Greg Charles, Engineer  
Emily Sears, Financial Examiner  
Water Utility Regulation Division

**DATE:** January 25, 2019

**RE:** **Docket No. 49043:** *Petition of the Cities of Garland, Mesquite, Plano, and Richardson Appealing the Decision by North Texas Municipal Water District to Change Wholesale Water Rates*

On December 20, 2018, the Cities of Garland, Mesquite, Plano, and Richardson (collectively, Petitioners) filed a petition to appeal the rate change of wholesale water rates with the Public Utility Commission of Texas (PUC) pursuant to Texas Water Code (TWC) §§ 12.013(a) and 13.043(f) and 16 Texas Administrative Code (TAC) § 24.311. The petition appeals the North Texas Municipal Water District's (District) wholesale water rates charged to the Petitioners. With this petition, the Petitioners request that the Commission find the District's rates adversely affect the public interest, convene a cost-of-service hearing, and then set new rates.

The filing contained a petition and delivery certification, indicating that a copy of the petition was served to the District. The petition provided specific factual allegations and states the relief sought by the Petitioners. The Petitioners allege that the rates impair their ability to continue to provide service to their retail customers, the District abuses its monopoly power, and the District's rates are unreasonably preferential, prejudicial and discriminatory. A copy of the original contract between the District and the Petitioners, a facilities amendatory contract between the District and the Petitioners, the September 28, 2018 announcement of Fiscal Year 2019 rate increase, a copy of the City of Garland's 2017 bond rating, and a copy of the settlement agreement between the District, the National Wildlife Federation, and the Lone Star Chapter of the Sierra Club were filed. Additionally, TWC § 13.043(f) requires the petition be filed within 90 days of the date that the affected retail political subdivision was noticed of the decision of the rate making authority. Notice of the rate adjustment was dated September 28, 2018. The Petitioners filed the petition on December 20, 2018 which meets the filing requirements of TWC § 13.043(f).

Staff has reviewed the appeal and has determined that the petition conforms to 16 TAC § 24.305. This review is limited to the sufficiency of the petition as required by 16 TAC §§

# ***Public Utility Commission of Texas***

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## **Memorandum**

24.307 and 24.305. Staff has not determined whether or not specific elements included in the petition, or the resulting rates, are reasonable and necessary.