



Control Number: 49154



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**SOAH DOCKET NO. 473-19-5677.WS**  
**DOCKET NO. 49154**

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<b>RATEPAYERS' APPEAL OF THE DECISION BY LAGUNA MADRE WATER DISTRICT TO CHANGE RATES</b>	§ § § § §	<b>BEFORE THE STATE OFFICES  OF  ADMINISTRATIVE HEARINGS</b>
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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 8**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas, representing the public interest, and files this Response to Order No 8. In support thereof, Staff would show the following:

**I. BACKGROUND**

On January 29, 2019, South Padre Island Golf Course via SPI Golf Homeowners JV, Inc. (Ratepayers) filed a petition contesting a rate action by Laguna Madre Water District (District). The petition was filed pursuant to Texas Water Code (TWC) § 13.043 and § 13.186. On March 8, 2019, the Ratepayers filed an amended petition contesting a rate action by the District pursuant to TWC § 12.013, chapters 11 and 12 of the TWC, and the Public Utility Commission's Substantive Rules. On June 21, 2019, this matter was referred to the State Office of Administrative Hearings (SOAH).

**II. SECTION 49.2122 IS NOT APPLICABLE TO THIS PROCEEDING**

As stated above, this appeal was originally filed pursuant to TWC § 13.043 and § 13.186. Order No. 5, issued on April 23, 2019, ruled on jurisdictional questions raised in motions to dismiss filed by the District and Staff, denying the motions to dismiss and stating that TWC § 12.013 was the appropriate statute under which the appeal should be filed.

As stated in Order No 5:

The first amended petition (1) abandons the claims under TWC §§ 13.043 and 13.186; (2) continues to assert a violation of Texas Government Code § 551.143 (the Open Meeting Act violation); and (3) asserts that the Commission should, under the authority vested by TWC § 12.013, set the rate for the raw water Petitioners buy from Laguna Madre for irrigation use.<sup>1</sup>

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<sup>1</sup> Order No. 5 Denying Motions to Dismiss at 1 (Apr. 23, 2019).

As a result, the appeal was amended to be filed pursuant to TWC § 12.013. Therefore, the appeal is now being considered under TWC § 12.013.

The Preliminary Order issued by the Commission on August 8, 2019 only identifies issues to be addressed under TWC § 12.013 and 16 Texas Administrative Code (TAC) § 24.107.<sup>2</sup>

In Order No. 8, the Administrative Law Judge (ALJ) cited 16 TAC § 24.101(i) as the source for questioning the applicability of TWC §49.2122.<sup>3</sup> Section 24.101 is titled “Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.” Section 24.101(i) says:

*In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails. (emphasis added)*

Because both Order No. 5 and the Preliminary Order issued by the Commission specifically asserts jurisdiction to set water rates under TWC §12.013(a), and not TWC § 13.043, 16 TAC § 24.101(i) does not apply to this case. Thus, the issue of TWC § 49.2122 prevailing is not applicable to this proceeding and TWC § 49.2122 does not apply.

### **III. THE STANDARD OF PROOF AND BURDEN OF PROOF SHOULD REMAIN THE SAME**

Because TWC § 49.2122 does not apply, the standard of proof should remain as “just and reasonable,” as outlined in issue number 2 of the Preliminary Order.<sup>4</sup> Issue number 2 says, “Are the raw water rates charged by Laguna Madre *just and reasonable*? If not, what is the just and reasonable rate Laguna Madre should charge SPI? TWC § 12.013; 16 TAC § 24.107(a)(6)?”

Similarly, the burden of proof should remain on the Ratepayer as required by 16 TAC § 24.107.

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<sup>2</sup> Preliminary Order at 2 — 5 (Aug. 8, 2019).

<sup>3</sup> Order No. 8 Requiring Briefing at 1 (Dec. 20, 2019).

<sup>4</sup> Preliminary Order at 3 (Aug. 8, 2019).

#### **IV. PROCEDURAL SCHEDULE**

Because Staff asserts that TWC § 49.2122 does not apply and does not recommend substantial changes in the standard of proof or burden of proof, there is no need for a change to the procedural schedule.

#### **V. CONCLUSION**

Staff requests that the ALJ issue an order finding that TWC § 49.2122 is not applicable to this docket, that the standard of proof and burden of proof remain on the Ratepayers, and that no changes are made to the procedural schedule.

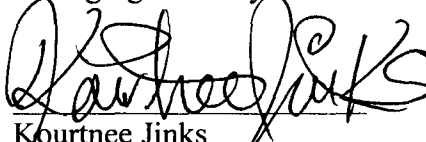
Date: January 24, 2020

Respectfully Submitted,

#### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

Thomas S. Hunter  
Division Director

Rachelle Nicolette Robles  
Managing Attorney

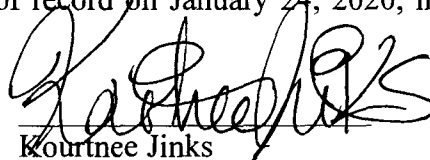
A handwritten signature in black ink, appearing to read 'Kourtnee Jinks', is written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I, Kourtnee Jinks, staff attorney for the Public Utility Commission of Texas, certify that a copy of this document was served on all parties of record on January 24, 2020, in accordance with the requirements of 16 TAC § 22.74.

  
Kourtnee Jinks