

Control Number: 49154



Item Number: 9

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**RATEPAYERS' APPEAL OF THE  
DECISION BY LAGUNA MADRE  
WATER DISTRICT TO CHANGE  
RATES**

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**PUBLIC UTILITY COMMISSION 17  
OF TEXAS**

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FILING CLERK

## **COMMISSION STAFF'S RECOMMENDATION AND MOTION TO DISMISS**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this recommendation and motion to dismiss. Staff recommends that the application be found administratively incomplete and moves that this proceeding be dismissed for lack of jurisdiction. In support thereof, Staff would show the following:

### **I. BACKGROUND**

On January 29, 2019, a petition to appeal rates was filed by South Padre Island Golf Course via the SPI Golf Homeowners JV, Inc. (SPI). SPI challenged a decision by Laguna Madre Water District's board of directors which increased SPI's rates for untreated irrigation water. SPI believed that the increase was made due to a personal conflict between SPI and Laguna Madre. As authority for its appeal, SPI invoked Texas Water Code (TWC) §§ 13.043 and 13.186, as well as the Public Utility Commission's (Commission) administrative rules.

Order No. 1, issued on January 31, 2019, required Staff to comment on the administrative completeness of the petition by February 28, 2019. The honorable judge further ordered Staff to state its position on whether, in light of the fact that the petition complains about rates charged for non-potable water, the Commission has jurisdiction to consider the appeal, and whether the appeal may be brought under TWC §§ 13.043 and 13.186.

### **II. ARGUMENT CONCERNING JURISDICTION**

Staff believes that the Commission does not have jurisdiction to consider SPI's appeal. TWC § 13.043(b) provides that "ratepayers" may appeal the water "rate" decisions of certain entities.<sup>1</sup> However, the statute defines "rate" in such a way as to make clear that SPI is not truly a ratepayer appealing a rate decision.

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<sup>1</sup> TWC § 13.043(b).

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As the Corpus Christi Court of Appeals has held, chapter 13's "definition of 'rate' only includes charges attributable to potable water and sewage services."<sup>2</sup> The court deduced this proposition from its reading of chapter 13's definition section. There, "rate" is defined as "every compensation . . . collected whether directly or indirectly by any retail public utility for any service, product, or commodity described in Subdivision (23) of this section."<sup>3</sup> Subdivision 23 in turn refers only to potable water service and sewer services; it does not include service for irrigation water.<sup>4</sup> It therefore follows that within chapter 13, the terms "rate" refers only to what is paid for potable water services or sewer services, and "ratepayer" refers only to those who pay for such services. Because SPI is not appealing a decision concerning potable water services or sewer services, it is not a ratepayer with a right to appeal a rate decision under § 13.043(b).

SPI also invokes § 13.186 as a source of jurisdiction. But even assuming for the sake of argument that § 13.186 operates as an independent grant of jurisdiction,<sup>5</sup> the same analysis concerning the term "rate" would prevent SPI from accessing that jurisdiction. Section 13.186 provides that where the Commission determines that "rates" are unreasonable or in violation of the law, the Commission may set just and reasonable rates.<sup>6</sup> Because SPI is not challenging the reasonableness of the amounts collected for potable water services or sewer services, it is not contesting the reasonableness of a rate under the meaning of chapter 13, and TWC § 13.186 therefore does not apply.

The two statutory sections cited by SPI do not provide the Commission with jurisdiction, and Staff has not identified any other provision which would offer a valid basis for the exercise of jurisdiction.<sup>7</sup> Staff therefore believes that the application is administratively incomplete. Further,

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<sup>2</sup> *San Patricio Mun. Water Dist. v. City of Corpus Christi*, No. 13-10-00272-CV, 2011 WL 193112, at \*4 (Tex. App.—Corpus Christi Jan. 13, 2011, pet. denied) (mem. op.).

<sup>3</sup> TWC § 13.002(17).

<sup>4</sup> *Id.* § 13.002(23).

<sup>5</sup> Agencies may exercise only those powers the law confers upon them in *clear* statutory language and those reasonably necessary to fulfill a function that the Legislature has expressly placed with the agency, and it is far from clear whether § 13.186 operates as a grant of jurisdiction. See *In re Entergy Corp.*, 142 S.W.3d 316, 322 (Tex. 2004) (orig. proceeding). In assessing whether a statute bestows jurisdiction, our first task is to assess "the plain and common meaning of the statute's words," *see id.*, but the plain language of § 13.186 contains no mention of jurisdiction. See TWC § 13.186. Indeed, within chapter 13, the subject of jurisdiction is generally addressed in subchapter C, which is titled "Jurisdiction," but § 13.186 is instead found in subchapter F, which is titled "Proceedings Before Regulatory Authority." See generally TWC §§ 13.041–.046.

<sup>6</sup> TWC § 13.186(a).

<sup>7</sup> Staff acknowledges that another section of the TWC provides the Commission with jurisdiction to set reasonable rates concerning certain sales of untreated water: TWC § 12.013—a section which is not governed by the potable-water definition of rates. *Id.* § 12.013(a). However, the Commission's jurisdiction under § 12.013 is

dismissal of a proceeding is appropriate where the Commission lacks jurisdiction.<sup>8</sup> Consequently, Staff moves that the presiding officer dismiss this proceeding.<sup>9</sup>

### **III. CONCLUSION**

Because the Commission lacks jurisdiction over SPI's appeal, Staff prays that the honorable judge enter an order dismissing this proceeding.

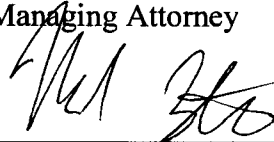
Dated: March 6, 2019

Respectfully Submitted,

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

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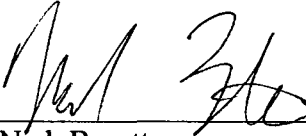
specifically limited to water furnished "to another political subdivision on a wholesale basis." *Id.* § 12.013(d). SPI cannot argue that it qualifies as a political subdivision of the state, and it therefore cannot avail itself of the jurisdiction provided by § 12.013. *See, e.g.,* Tex. Gov't Code Ann. § 305.026(b) (West, Westlaw current through 2017 1st C.S.) ("In this section, 'political subdivision' includes: a municipality; a county; and a special district created under the constitution or laws of this state . . .").

<sup>8</sup> 16 Tex. Admin. Code § 22.181(d)(1).

<sup>9</sup> *Id.* § 22.181(a).

### **CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on March 6, 2019, in accordance with 16 TAC § 22.74.

  
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Nick Buratto