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DOCKET NO. 49225

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PETITION BY OUTSIDE CITY  
RATEPAYERS APPEALING THE  
WATER AND WASTEWATER RATES  
ESTABLISHED BY THE CITY OF  
CELINA

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PUBLIC UTILITY COMMISSION  
FILING CLERK

OF TEXAS

DOCKET NO. 49448

PETITION BY COLLIN COUNTY  
MUNICIPAL UTILITY DISTRICT NO.  
1 APPEALING THE WATER AND  
WASTEWATER RATES  
ESTABLISHED BY THE CITY OF  
CELINA

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BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

**PETITIONERS' JOINT MOTIONS TO CONSOLIDATE,  
TO ALIGN PARTIES, AND TO DESIGNATE A PARTY REPRESENTATIVE**

TO THE HONORABLE JUDGE BURKHALTER:

COME NOW, the Outside City Ratepayers ("Ratepayers") and Collin County Municipal Utility District No. 1 (the "District") (collectively, the "Petitioners") and file this Joint Motion to Consolidate, to Align Parties, and to Designate a Party Representative in the above-referenced dockets, and would respectfully show the following:

**I. BACKGROUND**

On November 13, 2018, the City Council of the City of Celina ("Celina" or the "City") adopted City Ordinance 2018-66 increasing water and wastewater rates for Petitioners. These rates went into effect on January 1, 2019. On February 14, 2019, the Ratepayers, all residents of the District living outside the corporate boundary of Celina, filed their Original Petition and Request for Interim Rates. The Ratepayers filed an Amended Petition and Request for Interim Rates on March 15, 2019 appealing the City's new higher rates. On April 5, 2019, the City filed a Notice of Corrected Effective Date of the rates subject of Ordinance 2018-66. On April 16, 2019, Commission Staff filed in Docket No. 49225 its response to Commission Order No. 3 recommending that both Ratepayer's Original and Amended Petitions be found administratively

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complete and the case be referred to the State Office of Administrative Hearings (“SOAH”) for hearing. On April 17, 2019, the Commission Administrative Law Judge (“ALJ”) of the Public Utility Commission of Texas (“Commission”) issued Order No. 4 in Docket No. 49225 deeming Ratepayers’ Petitions administratively complete.

On April 15, 2019, the District filed its Petition and Request for Interim Rates also appealing the City’s water and wastewater rates. On June 17, 2019, Commission Staff filed its recommendation that the District’s Petition be found administratively complete and the case be referred to SOAH. On June 18, 2019, the Commission ALJ deemed the petition complete. All parties agree that the cases should be referred to SOAH, but neither the Ratepayer’s nor the District’s administratively complete petition has been referred at this time.

## II. AUTHORITIES

Pursuant to Section 22.34(a) of Title 16 of the Texas Administrative Code (“TAC”), the Commission may consolidate proceedings pursuant to certain criteria:

(a) Consolidation. A motion for consolidation of proceedings shall be in writing. With prior notice to the parties, the presiding officer may order the consolidation of proceedings on his or her own initiative. Proceedings may be consolidated if the presiding officer finds that: the proceedings involve common questions of law or fact; consolidation would serve the interest of efficiency or prevent unwarranted expense and delay; and, the applicant's ability to present its case and other parties' ability to respond to the applicant's case are not unduly prejudiced. Proceedings shall be consolidated if requested based on the agreement of all parties, and if such consolidation would not unreasonably curtail the time available to process one or more of the proceedings proposed for consolidation.<sup>1</sup>

The Commission has consolidated rate appeals filed pursuant to TWC § 13.044 in prior dockets.<sup>2</sup>

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<sup>1</sup> 16 TAC § 22.34(a).

<sup>2</sup> See *North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District Appealing the Wholesale Water and Wastewater Rates Imposed by the City of Austin*, Docket No. 42857, Order on Rehearing at 4, 5 (January 14, 2016).

Under 16 TAC 22.105, the Commission may align parties that have the same positions on issues of fact or law.<sup>3</sup>

To the extent alignment is determined to be necessary, the presiding officer shall order alignment of the parties at the earliest reasonable opportunity so as to avoid unnecessary duplication of effort and to allow aligned parties an adequate opportunity to prepare for hearing. The presiding officer may limit the number of representatives of aligned parties who conduct cross-examination of any particular witness during the hearing on the merits.<sup>4</sup>

### III. MOTIONS

#### A. Motion to Consolidate

The above-docketed rate appeals involve common issues of law or fact.<sup>5</sup> The two appeals involve common issues of fact. The Ratepayers and the District appealed the same rates and same rate making action taken by Celina.<sup>6</sup> Both Petitioners appealed the rates that the Celina City Council adopted in City Ordinance 2018-66.<sup>7</sup> The Ratepayers are all residents of the District. As Petitioners explained in both petitions, the City used an illegal and arbitrary multiplier of 150% of the in-City rates to establish out-of-City rates for Petitioners.<sup>8</sup> The rates are not just and reasonable, and the rates are not based upon the cost of providing service to the residents of the District.

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<sup>3</sup> 16 TAC § 22.105.

<sup>4</sup> 16 TAC § 22.105.

<sup>5</sup> 16 TAC § 22.34(a).

<sup>6</sup> See *Petition of Outside City Ratepayers Appealing the Water and Wastewater Rates Established by the City of Celina*, Docket No. 49225, First Amended Petition, at 4 (Mar. 15, 2019); see also *Petition of Collin County Municipal Utility District No. 1 Appealing Water and Wastewater Rates of the City of Celina and Request for Interim Rates*, Docket No. 49448, Original Petition, at 5 (Apr. 15, 2019) (The Ratepayers are District residents who purchase water and wastewater service directly from the City. The Ratepayers live within a district contractually required to obtain water and wastewater service from the City under the District's creation agreement).

<sup>7</sup> See Ordinance No. 2018-66, City of Celina, Texas, November 13, 2018; see also Appendix A Fee Schedule, City of Celina Code of Ordinances, <https://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=celinaset> (last visited March 15, 2019).

<sup>8</sup> Docket No. 49225, First Amended Petition, at 4 (Mar. 15, 2019); Docket No. 49448, Original Petition, at 3 (Apr. 15, 2019).

In both appeals, the standard of review is the same -- the Commission shall hear the appeal de novo.<sup>9</sup> Similarly, in both appeals, the Commission shall fix the rates that the City may charge,<sup>10</sup> and the Commission may impose interim rates.<sup>11</sup> Both appeals are cost of service cases where the City must prove that its rates are just and reasonable based on the actual cost of service.<sup>12</sup>

Consolidating the two rate appeals would further serve the interest of efficiency and prevent unwarranted expense and delay. The parties and their legal representatives are all the same people, and the subject matter is identical. Presenting and responding to written testimony and attending one hearing instead of two would reduce rate case expenses for the City, the Petitioners, and the Commission. One consolidated docket will also eliminate the potential for inconsistent legal rulings on underlying facts that are identical in both cases. Finally, consolidation would not unduly prejudice any party in the presentation of their respective case or in responding to others, as one hearing affords due process to all. Two hearings would be a duplicative and wasteful of public and private resources.

**B. Motion to Align Petitioning Parties and Designate Party Representative**

Should the Commission grant the Motion to Consolidate, the Petitioners respectfully request that the Commission align the petitioning parties and designate the District as the Petitioners' representative. Both the ratepayers and the District have the same positions on issues of fact or law. Alignment would avoid unnecessary duplication of effort by all parties and would allow all parties an adequate opportunity to prepare for hearing and conduct cross-examination during the hearing on the merits.

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<sup>9</sup> TWC §§ 13.043(a) and 13.044(b).

<sup>10</sup> *Id.*

<sup>11</sup> TWC §§ 13.041(a) and (c) and 13.043(h); 16 TAC § 24.37(d).

<sup>12</sup> TWC § 13.043 (e) and 13.044 (b).

#### **IV. CONCLUSION**

These appeals are a prime example of when the Commission should consolidate two dockets with common issues of law or facts to serve the interest of efficiency and prevent unwarranted expense or delay without undue prejudice to any party. Both petitions are administratively complete but not yet referred to SOAH. However, upon referral, separate ALJs at SOAH could set differing procedural schedules. Now is the right time for consolidation. The Ratepayers and the District meet the Commission's criteria for consolidation, and the Commission should consolidate the two appeals into one docket.

#### **V. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully pray that the Commission consolidate Docket Nos. 49225 and 49448 into one rate appeal proceeding, and, if the Commission grants consolidation, align the Petitioners, name the District as Petitioners' representative, and grant such other and further relief as Petitioners may show themselves to be entitled.

Respectfully submitted,

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By: 

Randall B. Wilburn

**COUNSEL FOR PETITIONERS**

**CERTIFICATE OF SERVICE**

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, and/or Certified Mail Return Receipt Requested on all parties on the 27<sup>th</sup> day of June 2019.

A handwritten signature in dark ink, appearing to read 'R. Wilburn', written over a horizontal line.

Randall B. Wilburn