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DOCKET NO. 49225

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

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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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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**PUBLIC UTILITY COMMISSION
OF TEXAS**

CITY OF CELINA'S RESPONSE TO MOTION TO CONSOLIDATE

NOW COMES, the City of Celina ("City" or "Celina") and files this Response to Motion to Consolidate and would respectfully show as follows:

Petitioner Ratepayers and Municipal Utility District No. 1 jointly filed a Motion to Consolidate on June 27, 2019. The Commission offices were closed for Independence Day on July 4, 2019 and July 5, 2019. This Response to Motion to Consolidate is therefore timely filed.

I. Grant Motion to Dismiss, Transfer Case to SOAH

The City requests that its Motion to Dismiss Docket No. 49448 be granted, rendering any consolidation of dockets moot. It has come to the attention of the City that the MUD's attempt to misuse and misconstrue the statute that requires it to be a customer of the City when in fact it is not, as well as the City's Motion to Dismiss the MUD's attempt, have far-reaching implications for numerous city-owned water utilities with similar ordinances governing their extraterritorial municipal utility districts. A ruling denying the City's Motion to Dismiss would

adversely affect numerous such ordinances throughout Texas which were explicitly based on the statute in question. The statute and the Commission's rule implementing that statute were clearly written to prohibit MUDs from having standing to complain about a city's extraterritorial water rates if they themselves are not water customers of that city.

The City also reiterates its request that this matter be transferred to the State Office of Administrative Hearings ("SOAH") for further proceedings.

II. Motion to Consolidate Must be Denied for Lack of Standing

The City filed a Motion to Dismiss on May 6, 2019 in Docket No. 49448.¹ As stated in that motion, the MUD has no standing to proceed with an appeal at the Commission. Under TWC § 13.044, the MUD's agreement with the City consenting to the creation of the MUD must require the MUD to purchase water or sewer service from the City.² The agreement between the MUD and the City creating the MUD does *not* require the MUD to purchase water from the City, and in fact, the contract *prohibits* the MUD from selling water.³ That motion has yet to be ruled on. Accordingly, the MUD lacks standing to bring this motion to consolidate because the case that it argues should be consolidated should actually be dismissed.

¹ *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, City of Celina's Response to Petition of Collin County MUD #1 and Motion to Dismiss (May 6, 2019)(filing no. 3).

² See TWC § 13.044 (a), which reads:

Sec. 13.044. RATES CHARGED BY MUNICIPALITY **TO** CERTAIN SPECIAL DISTRICTS. (a) This section applies to rates charged by a municipality for water or sewer service to a district created pursuant to Article XVI, Section 59, of the Texas Constitution, or to the residents of such district, which district is located within the corporate limits or the extraterritorial jurisdiction of the municipality **and** the resolution, ordinance, or agreement of the municipality consenting to the creation of the district requires the district to purchase water or sewer service from the municipality." (emphasis added.) Subsection (a) controls the applicability of subsection (b).

³ See City of Celina's Response to Petition of Collin County MUD #1 and Motion to Dismiss, Docket No. 49448, filing no. 3 (May 6, 2019).

III. Consolidation is Not Appropriate Under PUC Proc. R. §22.34 (a)

In addition to lacking standing to consolidate, the MUD's motion should be denied for failing to meet the standards set out in PUC Proc. R. § 22.34 (a), which reads in pertinent part:

“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.”⁴

As explained below, the motion to consolidate fails on each element. The motion should be denied.

A. The Cases Lack Important Commonality in Questions of Law and Fact

The Ratepayers have filed their appeal pursuant to TWC § 13.043(b)(3) and 16 TAC § 24.101 regarding their water and sewer rates. The MUD, on the other hand, has filed an appeal under TWC §§ 13.044 and 16 TAC § 24.45, making the empty-handed claim that it may appeal under a statute that does not actually apply to it. The MUD is not a water customer of the City. The statute that the MUD says grants it the authority to file its petition, however, requires it to purchase water from the City.⁵ This means the MUD's petition fails as a matter of law, leaving nothing to consolidate with the Ratepayers' appeal. Even if this were not the case, the facts associated with the MUD are so different from the Ratepayers, who *are* customers, that the two petitions lack a crucial common set of facts. The mere fact that the MUD has filed its own docket and now seeks to consolidate it with the Ratepayers' case neither creates standing for the MUD nor does it confer upon the MUD the rights and interests of a customer. Ultimately the

⁴ PUC Proc. R. § 22.34 (a).

⁵ See TWC § 13.044 (a).

MUD's case would have no commonality of facts or law with the Ratepayers' appeal and the two must not be consolidated.

B. Consolidation Would Produce Increased Inefficiencies and Cause Greatly Increased Costs to the City

The MUD is not a customer of the City's water or sewer service so its case would rely on an inapplicable statute and rule, and its arguments against the City would not involve its consumption of service, as the Ratepayers would argue on their own behalf. Combining these disparate arguments would increase confusion in the case and would increase the cost to the City in defending its rates. This unnecessary additional complexity would inevitably cause additional delays in the processing of the Ratepayers' appeal and the City's ability to defend the reasonableness of its rates. If the MUD's goal here is to subsidize the Ratepayers' appeal, that is outside the purview of the Commission (and consolidation would be the most costly and inefficient way to achieve that goal anyway). The most efficient path in this case would be to deny the MUD's unfounded appeal as well as its motion to consolidate and proceed with the Ratepayer's appeal alone.

C. The City's Ability to Process its Case Would be Unduly Prejudiced

Consolidating a case that on its face should be dismissed with a pending case brought by Ratepayers would be highly prejudicial to the City's ability to respond. Because the City's Motion to Dismiss has not yet been ruled on, the City would be unduly prejudiced if it were required to appeal an adverse ruling on its motion if that appeal were unnecessarily combined with a pending case brought by the Ratepayers. It would cause unnecessary confusion for the Commissioners and Courts if an appeal of an adverse ruling on the dismissal of the MUD's

unfounded petition was combined with the City's direct case regarding the reasonableness of its rates in response to the Ratepayers' appeal. Thus, the City's ability to defend its rates would be unduly prejudiced if the cases were consolidated.

IV. CONCLUSION

Consolidation Would Be Unwarranted and Unreasonable

The City has filed a Motion to Dismiss the MUD's unfounded appeal. That motion has yet to be ruled on. No consolidation should be considered before that motion has been ruled on. If that motion to dismiss is not granted, then the motion to consolidate should await any appeals of an adverse ruling on the motion to dismiss. The motion to consolidate should be denied because it fails to meet any of the criteria set out in the Commission's rule on consolidation. The two cases lack important commonality in law and facts. Combining the cases would cause unnecessary inefficiencies and delays. Furthermore, combining the two disparate cases would increase costs and unduly prejudice the City's ability to defend the reasonableness of its rates, and those increased costs would ultimately be borne by the City's customers.

WHEREFORE, PREMISES CONSIDERED, the City prays that the Commission deny the Motion to Consolidate, transfer the Ratepayers' appeal (in the instant docket) to SOAH for further proceedings, and grant the City such other relief to which the City may be justly entitled.

Respectfully submitted,

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ATTORNEYS FOR CITY OF CELINA

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on all parties of record on this 8th day of July, 2019, in accordance with 16 Tex. Admin. Code § 22.74.

Scott Smyth