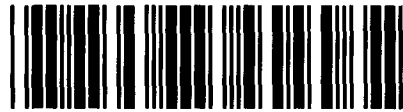


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DOCKET NO. 49290

**PETITION OF SWWC UTILITIES,
INC. DBA WATER SERVICES, INC.
APPEALING THE ORDER OF THE
CITY OF BULVERDE IN
COMPLAINT NO. 2018-01**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**COMMISSION STAFF'S RECOMMENDATION ON SUFFICIENCY OF PETITION,
CONFIDENTIAL MATERIAL DESIGNATION, PROPOSED NOTICE AND
PROCEDURAL SCHEDULE**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 1, files this Recommendation on Sufficiency of Petition, Confidential Material Designation, Proposed Notice, and Procedural Schedule. Staff recommends that the petition be deemed deficient and that the petitioner be ordered to address the identified deficiencies. In support thereof, Staff shows the following:

I. BACKGROUND

On March 5, 2019, SWWC Utilities, Inc., dba Water Services, Inc. (SWWC), filed a petition appealing the City of Bulverde's (City's) order in Complaint No. 2018-01. The City's order, issued on February 12, 2019, required SWWC to refund Sue Wahl, the complainant, in the amount of \$604.79 for overcharges related to water service.

On March 7, 2019, Order No. 1 was issued, establishing a deadline of March 19, 2019, for Staff to file a recommendation on the sufficiency of the petition, including whether the material submitted confidentially by SWWC complies with Commission rules. The order also required Staff to propose a form and method of notice, if applicable, and to propose a procedural schedule. Therefore, this pleading is timely filed.

II. PETITION DEFICIENCY RECOMMENDATION

The City's order, provided by the petitioner in its filing on March 12, 2019, references "Exhibit A," which is described as the "information on file" that the Bulverde City Council considered in determining Ms. Wahl's refund.¹ SWWC did not include "Exhibit A" from the City's order in the documentation provided in support of its appeal of the City's decision. Staff would benefit from the information considered by the Bulverde City Council in order to adequately assess

¹ Backup Documents at Bates No. 000084 (Mar. 12, 2019).

SWWC's petition. Therefore, Staff recommends that the petitioner submit additional content, specifically the documentation referred to as "Exhibit A" in the City's order.

Additionally, SWWC filed the petition as an appeal under Texas Water Code (TWC) § 13.043 and 16 Texas Administrative Code (TAC) § 24.201(a). Based on the facts presented in the petition, Staff questions whether SWWC can proceed under the cited statute and Commission rule. Both the aforementioned statute and rule state that "any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission."² Furthermore, under TWC § 13.043(e), the statute states that the Commission "shall hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken."³ The matter considered by the Bulverde City Council does not appear to have been a rate proceeding, nor was the city council tasked with fixing rates. Rather, the case seems to more accurately be described as a complaint. In fact, on September 17, 2018, Ms. Wahl filed an informal complaint with the Customer Protection Division (CPD) of the Commission.⁴ On September 19, 2018, CPD responded to the customer, stating that the Commission did not have jurisdiction since Ms. Wahl's residence was located within the city limits of Bulverde.⁵ The letter from CPD also stated that Ms. Wahl will need to contact her city council member, office of the Mayor, or City Manager for further assistance regarding her complaint.⁶ Thereafter, on October 12, 2018, the City notified SWWC that Ms. Wahl had filed a complaint regarding SWWC's water service.⁷ Ultimately, the City's order was related to Ms. Wahl's complaint, not as part of rate proceeding.

Therefore, Staff suggests that the current proceeding may more accurately be conducted as a complaint matter under 16 TAC § 22.242. If so, Staff recommends that SWWC may present the matter as a formal complaint to the Commission, without first referring the complaint for informal resolution based on an exception provided under 16 TAC § 22.242(c)(1)(D). Under the aforementioned rule, informal resolution is not required if "the complaint has been the subject of a complaint proceeding conducted by a city."⁸ Though SWWC was not the party to initially file

² TWC § 13.043(a), 16 TAC § 24.201(a).

³ TWC § 13.043(e).

⁴ Backup Documents at Bates No. 000001-000002.

⁵ Backup Documents at Bates No. 000003.

⁶ *Id.*

⁷ Backup Documents at Bates No. 000015-000017.

⁸ 16 TAC § 22.242(c)(1)(D).

the informal complaint, the basis of this proceeding is premised on the same “complaint,” or same set of facts as presented to the City by the ratepayer, Ms. Wahl.

III. CONFIDENTIAL MATERIAL DESIGNATION

In its initial petition, SWWC filed all of its supporting documentation as confidential material. Order No. 1, stated that a review of the documents raised questions whether the submitted material is confidential. Following Staff’s review of the supporting documentation, Staff corresponded with the petitioner and identified a resolution regarding the previously identified confidential material. On March 12, 2019, SWWC resubmitted the same documentation as non-confidential, thought it did redact potentially sensitive customer information. Staff recommends that SWWC sufficiently addressed the concern raised in Order No.1 regarding confidentiality of its supporting documentation.

IV. COMMENTS ON NOTICE

SWWC’s petition included a certificate of service stating that a copy of the petition was provided to the City, Ms. Wahl, and the Commission on March 5, 2019.⁹ Since a copy of the complaint was provided to the person from whom relief is sought, Staff recommends that no further notice be required.

V. PROCEDURAL SCHEDULE

In accordance with Staff’s deficiency recommendation, Staff recommends that SWWC be ordered to file a supplement addressing the identified deficiencies in the petition by April 22, 2019. Additionally, Staff recommends that a deadline be established for Staff to review SWWC’s supplemental information and make a supplemental recommendation on the sufficiency of the petition by May 6, 2019.

VI. CONCLUSION

For the reasons discussed above, Staff respectfully recommends that the petition be found deficient. Staff further recommends that the procedural schedule proposed above be adopted for further processing of this docket.

⁹ Petition at 8 (Mar. 5, 2019).

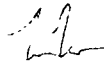
Dated: March 19, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on March 19, 2019, in accordance with 16 TAC § 22.74.



Richard A. Nemer