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DOCKET NO. 49290

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

PUBLIC UTILITY COMMISSION  
OF TEXAS

**SWWC UTILITIES, INC., DBA WATER SERVICES, INC.'S  
MOTION TO REINSTATE**

SWWC Utilities, Inc., dba Water Services, Inc. (Water Services) files this Motion to Reinstatement. In support thereof, Water Services would respectfully show as follows:

**I. SUMMARY OF THIS MOTION**

The Commission granted Water Services's request for withdrawal and dismissed the appeal without prejudice on May 3, 2019. This case should and must be reinstated because Water Services's appeal was proper under Texas Water Code (TWC) §13.043 and 16 Tex. Admin. Code (TAC) § 24.101(a), and should not have been withdrawn. The City of Bulverde's (City or Bulverde) investigation, hearing, and ultimate ruling on the billing complaint of a residential retail water customer constitutes a "rate proceeding" and is therefore subject to appeal by Water Services.

**II. BACKGROUND**

**A. Procedural History**

This proceeding was filed with the Commission by Water Services on March 5, 2019, as an appeal of a ratemaking decision pursuant to TWC § 13.043 and 16 TAC § 24.201(a).

On March 19, 2019, Commission Staff recommended the petition be considered deficient and be refiled as a complaint rather than a ratemaking appeal, stating:

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,

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without first referring the complaint for informal resolution based on an exception provided under 16 TAC § 22.242(c)(1)(D).<sup>1</sup>

On April 5, 2019, the Commission issued an order finding Water Services' application deficient and requiring a response to Staff's recommendation regarding refiling the matter as a complaint.<sup>2</sup>

On May 1, 2019, Water Services withdrew its petition and stated its intention to refile the matter as a formal complaint before the Commission, pursuant to Staff's recommendation.<sup>3</sup> On May 3, 2019, in Order No. 2 the Commission granted Water Services's withdrawal and dismissed the petition without prejudice.<sup>4</sup>

## **B. Dispute History**

This appeal was brought by Water Services under TWC § 13.043 and 16 TAC § 24.201(a) for Commission de novo review of an order of the City resulting from the complaint raised by Water Services's retail water customer, Sue Wahl (Customer).

On September 17, 2018, the Customer filed a complaint with the Customer Protection Division (CPD) of the Commission. The Customer alleged that because Water Services replaced meters with "Smart Meters," she has been billed excessive amounts five different times. She indicated that the latest bill was for \$444.38 and that she was charged for using 52,000 gallons of water and 42,000 gallons in the previous month (August).

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<sup>1</sup> Commission Staff's Recommendation on Sufficiency of Petition, Confidential Material Designation, Proposed Notice and Procedural Schedule at 2 (Mar. 19, 2019).

<sup>2</sup> Order No. 2 Finding Petition Deficient and Establishing an Opportunity to Cure (Apr. 5, 2019).

<sup>3</sup> Letter of Withdrawal of Original Petition (May 1, 2019).

<sup>4</sup> Commission Order No. 2.

On September 18, 2018, the CPD referred the matter to Water Services's Customer Care coordinators. After review, Water Services determined the specific customer was located within the City and that the City had the jurisdiction to review the matter.

On September 19, 2018, the CPD responded to the Customer that the matter had been received, but that it had no jurisdiction because the Customer's residence was within Bulverde. The Customer was given the contact information for the City. CPD also informed Water Services by email that it had closed the complaint.

On October 12, 2018, Bulverde sent a letter to Water Services indicating that it had received a complaint from the same in-city Customer and gave instructions to investigate and how to respond.

On October 18, 2018, Water Services responded in a letter addressed to Mr. Danny Betts, the Bulverde City Manager, outlining the findings from its investigations. The conclusions were that the meter was reading accurately and the billed usage had occurred.

On December 3, 2018, Bulverde notified Water Services that it had received the complaint on this same matter and pursuant to its ordinances it would consider the complaint.

On December 17, 2018, the meter at the service location was tested by a third-party testing firm at Water Services's request. The test indicated the meter met American Water Works Association (AWWA) standards.

On December 20, 2018, Water Services responded to the City's notification with a letter reemphasizing the findings and conclusions that the meter readings were accurate and the billed usage had occurred. Attached to the letter were copies of the third-party meter test, the data logs, the Customer's bills, and other documents.

On Friday, February 8, 2019, the City sent a letter by priority mail to Water Services that it intended to review and rule on the formal complaint on Tuesday, February 12, 2019, at a formal hearing.

On February 14, 2019, the City sent a copy of the Order that it issued on February 12, 2019, in the subject complaint (Bulverde's Complaint No. 2018-01). The City ordered Water Services to reduce the amount the complainant owed Water Services by \$604.79.

On February 20, 2019, Water Services credited the complainant's account for \$604.79, and on February 26, 2019, Water Services notified Bulverde by mail that it had credited the account and also sent a copy to the complainant.

Water Services is seeking review and reversal of certain findings made by the City at its “rate proceeding” conducted on February 12, 2019. Specifically, Water Services contends that the City failed to find that the retail water customer was properly billed metered usage at the rates authorized in Water Services’s City-approved tariff.

### **III. THE WITHDRAWAL WAS IMPROPER AND THE CASE SHOULD BE REINSTATED**

Water Services’s withdrawal of the Appeal was founded solely upon Commission Staff’s determination that the City’s actions did not constitute a “rate proceeding.”<sup>5</sup> Despite Commission Staff’s position, a plain reading of the Texas Water Code and the Commission’s Substantive Rules demonstrates that the City’s investigation, hearing, and ultimate ruling on the billing complaint of a residential retail water customer constitutes a “rate proceeding” and is therefore subject to appeal by Water Services.

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<sup>5</sup> Commission Staff’s Recommendation on Sufficiency of Petition, Confidential Material Designation, Proposed Notice and Procedural Schedule at 2 (Mar. 19, 2019).

Section 13.043 of TWC provides, in part, that “[a]ny party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the utility commission.” The TWC defines a “rate” as “every compensation, tariff, charge, fare, toll, rental, and classification or any of those items demanded, observed, *charged*, or *collected* whether directly or indirectly by any retail public utility for any service, product, or commodity...”<sup>6</sup> A “proceeding” is defined as “any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this chapter and includes the denial of relief or the dismissal of a complaint.”<sup>7</sup>

The subject of Water Services’s appeal is the City’s hearing and investigation of amounts “charged” and “collected” by Water Services for a retail water customer within the City’s original jurisdiction, and, therefore, constitutes a “rate proceeding” subject to appeal under TWC § 13.043. The City sent a letter by priority mail to Water Services that it intended to review and rule on the formal complaint of Ms. Wahl on February 12, 2019, at a formal hearing. The City conducted that hearing, and on February 14, 2019, the City sent a copy of the Order that it issued on February 12, 2019, requiring that Water Services reduce the amount Ms. Wahl owed Water Services by \$604.79.<sup>8</sup> The City’s Order was based on the information included in its records that were attached to the Order as well as the recommendation of City staff, and ultimately found that Water Services overcharged Ms. Wahl.

The City’s decision-making process relating to Ms. Wahl’s complaint meets the definition of a “rate proceeding,” pursuant to TWC §13.002(16)-(17). The City conducted a “hearing” and “investigation” of the original customer complaint, and its ultimate order provided findings of fact and a decision as to how the complaint should be adjudicated, all of which

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<sup>6</sup> TWC §13.002(17) (emphasis added).

<sup>7</sup>TWC §13.002(16).

<sup>8</sup>A copy of the City’s Order in Complaint No. 2018-01 is attached hereto as Attachment “A.”

related to amounts “charged” and “collected” by Water Services for retail water service at Ms. Wahl’s metering point.

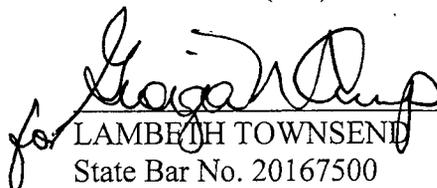
Therefore, the Commission should reinstate the Appeal and proceed with a de novo determination as to the billed charges made by Water Services to the Customer involved in the original complaint.

**IV. CONCLUSION AND PRAYER**

Water Services requests that the Commission reinstate the Appeal in Commission Docket No. 49290, as it was proper under TWC §13.043 and 16 TAC § 24.101(a), and regard this motion as Water Services’s response to Commission Staff’s recommendation, as required by Order No. 2. Water Services further requests any and all relief to which it may be entitled.

Respectfully submitted,

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**ATTORNEYS FOR SWWC UTILITIES, INC.,  
DBA WATER SERVICES, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of September, 2019, a true and correct copy of the foregoing document was transmitted to the parties of record in accordance with 16 Tex. Admin. Code § 22.74.

  
LAMBETH TOWNSEND