



Control Number: 49554



Item Number: 11

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DOCKET NO. 49554

COMPLAINT OF SWWC UTILITIES,
INC., DBA WATER SERVICES, INC.
AGAINST THE CITY OF BULVERDE
AND SUE WAHL

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PUBLIC UTILITY COMMISSION

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BRIEF

OF

SWWC UTILITIES, INC. DBA WATER SERVICES, INC.

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SEPTEMBER 5, 2019

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**COMPLAINT OF SWWC UTILITIES, § BEFORE THE
INC., DBA WATER SERVICES, INC. §
AGAINST THE CITY OF BULVERDE § PUBLIC UTILITY COMMISSION
AND SUE WAHL §
§ OF TEXAS
§**

**WATER SERVICES'S
BRIEF PURSUANT TO ORDER NO. 4**

SWWC Utilities, Inc., dba Water Services, Inc. (Water Services), Complainant in the above-styled and numbered cause, files this Brief pursuant to Order No. 4 dated August 15, 2019.

I. EXECUTIVE SUMMARY

Water Services is complaining of violations of the Commission’s Customer Protection rules, which are applicable to the City of Bulverde (City or Bulverde), under Chapter 24 Subchapter F of the Commission’s Substantive Rules. Specifically, the City’s findings fail to accurately calculate bills in violation of 16 Tex. Admin. Code (TAC) § 24.165(a), and are not based on actual meter reads in violation of 16 TAC § 24.169(a)(1). Water Services is entitled to proceed with this complaint as the City’s actions violate a “regulation of the Commission” under 16 TAC § 22.242.

Water Services, concurrently with the filing of this brief, has filed a motion to reinstate Public Utility Commission (Commission) Docket No. 49290, *Petition of SWWC Utilities, Inc. dba Water Services, Inc. Appealing the Order of the City Of Bulverde Complaint No. 2018-01* (Appeal), as that proceeding was proper under Texas Water Code (TWC) §13.043 and 16 TAC § 24.101(a), and should not have been withdrawn. Bulverde’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. If the Commission determines it does not have jurisdiction to process Water Services’s complaint in the instant docket, the Commission should reinstate Water Services’s Appeal in Docket No. 49290 and regard this brief as Water Services’s response to Commission Staff’s recommendation, per Order No. 2 in that docket.

II. PROCEDURAL HISTORY

PUC Docket No. 49290

On March 5, 2019, Water Services filed a petition appealing the order of the City of Bulverde pursuant to TWC § 13.043 and 16 TAC § 24.101(a), in Commission Docket No. 49290.¹

On March 19, 2019, Commission Staff recommended the petition be considered deficient and be refiled as a formal 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, without first referring the complaint for informal resolution based on an exception provided under 16 TAC § 22.242(c)(1)(D).²

On April 5, 2019, the Commission issued an order finding Water Services's application deficient and requiring a response to Staff's recommendation regarding refileing the matter as a complaint.³

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.⁴

PUC Docket No. 49554

On May 20, 2019, Water Services filed its formal complaint against Bulverde in Commission Docket No. 49554.⁵

¹ *Petition of SWWC Utilities, Inc. dba Water Services, Inc. Appealing the Order of the City of Bulverde in Complaint No. 2018-01*, Docket No. 49290 (May 3, 2019).

² *Id.*, Commission Staff's Recommendation on Sufficiency of Petition, Confidential Material Designation, Proposed Notice and Procedural Schedule at 2 (Mar. 19, 2019).

³ *Id.*, Order No. 2 Finding Petition Deficient and Establishing an Opportunity to Cure (Apr. 5, 2019).

⁴ *Id.*, Letter of Withdrawal of Original Petition (May 1, 2019).

⁵ *Complaint of SWWC Utilities, Inc. dba Water Services, Inc. Against the City of Bulverde and Sue Wahl* (May 20, 2019).

On June 17, 2019, Commission Staff recommended Water Services’s filing be deemed sufficient and recommended referral to the State Office of Administrative Hearings (SOAH), stating: “Staff concludes that Water Services has complied with the informal resolution requirements and that Commission has jurisdiction over this matter under 16 TAC § 22.242.”⁶

On June 18, 2019, the Commission issued an order finding the application sufficient and determining the Commission has jurisdiction, stating: “Additionally, because the complaint complies with the Commission's informal resolution requirements, the Commission has jurisdiction over this matter under 16 TAC § 22.242.”⁷

Despite its previous ruling finding jurisdiction, on August 15, 2019, the Commission issued an order requiring further briefing on the Commission’s jurisdiction.⁸

III. ARGUMENT

A. Water Services’s Complaint Alleges Violations of the Commission’s Customer Protection Rules.

In Commission Order No. 4, the Commission requested that Water Services explain “why it believes the Commission has the legal authority to overturn the city order that is at issue in this complaint,” pursuant to 16 TAC § 22.242.⁹ As stated in Commission Order No. 4, under 16 TAC § 22.242,

[A]ny affected person may complain to the commission . . . setting forth any act or thing done . . . by any person under the jurisdiction of the commission in violation or claimed violation of any law which the commission has jurisdiction to administer or of any order, ordinance, rule, or regulation of the commission.¹⁰

⁶ Statement of Position and Referral Recommendation at 2 (Jun. 17, 2019).

⁷ Order No. 3 Finding Complaint Compliant and Establishing Jurisdiction (Jun. 18, 2019).

⁸ Order No. 4 Requiring Additional Briefing from the Parties (Aug. 15, 2019).

⁹ See Order No. 4 Requiring Additional Briefing from the Parties at 1 (Aug. 15, 2019).

¹⁰ *Id.*

Water Services is complaining that the City violated the Commission's Customer Protection rules, which are applicable to Bulverde under Chapter 24 Subchapter F of the Commission's Substantive Rules.

Section 24.377 states, "[t]he commission's rules relating to service and response to requests for service will apply to utilities operating within the corporate limits of a municipality unless the municipality adopts its own rules. The Commission's rules include Subchapters F and G of this chapter (relating to Customer Service and Protection and Quality of Service)." Based on Water Services's review of Bulverde's Code of Ordinances, the City has not adopted any "Customer Service Protection" rules, thus the Commission's rules apply.¹¹

Water Services complains specifically of violations of two distinct provisions of the Commission's customer service rules: 1) the City's order fails to accurately calculate bills in violation of 16 TAC § 24.165(a), and 2) the City's order is not based on actual meter reads in violation of 16 TAC § 24.169(a)(1). In forcing Water Services to refund a customer for properly charged tariff rates pursuant to accurate meter readings, Bulverde's decision does not comply with those customer service rules.

Section 24.165(a) states, "[b]ills must be calculated according to the rates approved by the regulatory authority and listed on the utility's approved tariff." On February 12, 2019, the City Council of Bulverde, after considering the information on file, decided that Water Services overcharged the complainant in the amount of \$604.79 and ordered Water Services to refund that amount to the customer. Despite the City's conclusion to the contrary, an independent third-party study verified that the meter readings were accurate and the billed usage had occurred in compliance with Water Services's tariff. Therefore, by ordering Water Services to refund the customer, the City authorized a customer to pay an amount not calculated according to the rates approved by the City as the "regulatory authority."

¹¹ See generally Bulverde, Tex., Code of Ordinances (2019).
<https://z2.franklinlegal.net/franklin/Z2Browser2.html?showset=bulverdeset>

Similarly, Section 24.169(a)(1) states, “[a]ll charges for water service shall be based on meter measurements, except where otherwise authorized in the utility's approved tariff.” The City’s conclusion that the customer was overbilled is not supported by the evidence. Based on the independent third-party study, Water Services’s meter readings were accurate and the billed usage occurred in compliance with Water Services’s tariff. Therefore, the City’s order was not “based on meter measurements,” and is in violation of the Commission’s substantive rules.

The Commission has jurisdiction over this complaint pursuant to 16 TAC § 22.242, as Water Services has raised a threshold complaint alleging that the City’s actions are in violation of 16 TAC §§ 24.165(a) and 24.169(a)(1) of the Commission’s customer protection rules, which are applicable to Bulverde under 16 TAC § 24.377. Therefore, this complaint should proceed to a contested case proceeding for a final determination of the law and facts.

B. Water Services’s Appeal Was Proper

Alternatively, the Commission should reinstate Water Services’s appeal of the City’s order in Docket No. 49290 (Appeal). As described in Water Services’s Motion to Reinstate that Appeal, Water Services’s withdrawal of the Appeal was founded upon Commission Staff’s determination that the City’s actions did not constitute a “rate proceeding.”¹² Under a plain reading of the Texas Water Code and the Commission’s Substantive Rules, 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.

Pursuant to TWC §13.043, “any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the utility commission.”¹³ 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

¹² *Petition of SWWC Utilities, Inc. dba Water Services, Inc. Appealing the Order of the City of Bulverde in Complaint No. 2018-01*, Docket No. 49290, SWWC Utilities, Inc., dba Water Services, Inc.’s Motion to Reinstate (Mar. 5, 2019).

¹³ Tex. Water Code Ann. § 13.043 (West 2008 & Supp. 2018)

public utility for any service, product, or commodity.”¹⁴ 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.”¹⁵ Water Services’s Appeal addressed 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 is subject to appeal under TWC §13.043, as it constitutes a “rate proceeding.”

Therefore, as more fully discussed in Water Services’s Motion to Reinstate in Docket No. 49290, the Commission should reinstate the Appeal and proceed with a de novo determination regarding the billed charges made by Water Services to the customer involved in the original complaint.

IV. CONCLUSION

Water Services requests that (1) the Commission take jurisdiction over this complaint pursuant to 16 TAC § 22.242, as Water Services has raised a threshold complaint alleging that the City’s actions are in violation of 16 TAC §§ 24.165(a) and 24.169(a)(1) of the Commission’s customer protection rules, which are applicable to Bulverde under 16 TAC § 24.377; or (2) alternatively, the Commission grant its requested reinstatement of the Appeal in Docket No. 49290, as it was proper under TWC §13.043 and 16 TAC § 24.101(a). Water Services further requests any and all relief to which it may be entitled.

¹⁴ TWC §13.002(17) (emphasis added).

¹⁵ TWC §13.002(16).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th 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