



Control Number: 49554



Item Number: 12

Addendum StartPage: 0

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
OF TEXAS

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COMMISSION STAFF'S BRIEF IN RESPONSE TO ORDER NO. 4

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Brief in Response to Order No. 4 and would show the following:

I. PROCEDURAL BACKGROUND

On May 20, 2019, SWWC Utilities, Inc. dba Water Services, Inc. (Water Services) filed a formal complaint with the Commission regarding the February 12, 2019 order issued by the City of Bulverde, Texas (the City) to resolve Formal Complaint No. 2018-01 filed against Water Services by Sue Wahl (Ms. Wahl). Specifically, Water Services is requesting that the Commission (1) overturn the City's order requiring Water Services to refund \$604.79 to Ms. Wahl; and (2) order Ms. Wahl to pay all charges associated with the disputed amount of water usage. Water Services filed this formal complaint pursuant to 16 Texas Administrative Code (TAC) § 22.242.

Order No. 1, issued May 21, 2019, required the City and Ms. Wahl to file responses to the complaint by June 10, 2019. The City filed its response on June 6, 2019, and Ms. Wahl filed her response June 10, 2019. On June 17, 2019, Staff filed its statement of position requesting referral of this proceeding to the State Office of Administrative Hearings for a hearing on the merits.

In Order No. 4 issued on August 15, 2019, the Commission administrative law judge (ALJ) requested additional briefing from the parties explaining why the Commission has the legal authority to overturn the City's order and identifying specific statutes and rules vesting the Commission with such authority. In addition, Order No. 4 established the following briefing deadlines: Water Services, September 5, 2019; the City and Ms. Wahl, September 12, 2019;¹ and Staff, September 26, 2019. Therefore, this pleading is timely filed.

¹ Staff notes that the City and Ms. Wahl did not file briefs in response to Order No. 4.

12

II. FACTUAL BACKGROUND

On November 19, 2018, Ms. Wahl filed Formal Complaint No. 2018-01 (the Complaint) with the City disputing her water bill dated September 17, 2018, for 52,000 gallons of usage during the period August 10, 2018 through September 9, 2018.² The Complaint was filed pursuant to Texas Water Code (TWC) § 13.042 and Article 13.08 of the City's Code of Ordinances.³ Ms. Wahl disputed the high usage and asserted that she did not start receiving bills showing excessive usage until Water Services replaced her meter with an advanced or "smart" meter.⁴ The City's order issued on February 12, 2019, found that Water Services had overcharged Ms. Wahl in the amount of \$604.79.⁵

III. ARGUMENT

The Commission does not have the authority to review and overturn the City's order requiring Water Services to refund \$604.79 to Ms. Wahl. Under 16 TAC § 22.242(a), an affected person may complain to the Commission of any act done by a person under the jurisdiction of the Commission in violation of any law which the Commission has jurisdiction to administer or any rule of the Commission.⁶ In general, a municipality has "exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits" unless the municipality voluntarily surrenders jurisdiction to the Commission.⁷ In addition, the Commission has appellate jurisdiction "to review orders or ordinances of those municipalities *as provided in this chapter.*"⁸ The Commission's appellate

² Notice of Appearance and Response of City of Bulverde, Texas, Exhibit 1 at 13-14 and 32 (Jun. 6, 2019) (City's Response).

³ City's Response, Exhibit 1 at 1.

⁴ Response of Sue Wahl at 2-3 and 26 (Jun. 14, 2019). Ms. Wahl's response did not include consecutive page numbers, and all citations are to the page numbers of the PDF version of AIS Item No. 5.

⁵ Notice of Appearance and Response of City of Bulverde, Texas, Exhibit 1 at 5 (Jun. 6, 2019).

⁶ 16 TAC § 24.242(a)-(b).

⁷ TWC § 13.042(a).

⁸ TWC § 13.042(d) (emphasis added).

jurisdiction is established in TWC § 13.043, which addresses the right to appeal a municipality's decision in a rate proceeding.⁹

No party has claimed that the City has surrendered its original jurisdiction to the Commission. Furthermore, the City's order is not a decision in a rate proceeding; it is a decision regarding whether Ms. Wahl's bill was calculated based on the actual amount of water she used. Therefore, the Commission does not have original or appellate jurisdiction over the City's order resolving the Complaint.

In its brief, Water Services cites to 16 TAC § 24.377, which states that the Commission's rules relating to service and responses to requests for service—including Subchapters F and G of Chapter 24—are applicable to a utility operating within a municipality unless the municipality has adopted its own rules.¹⁰ This rule is based on TWC § 13.082(b), which reads as follows:

If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the utility commission under this chapter to the extent that this chapter applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the utility commission or other standards and rules not inconsistent with them. The utility commission's rules relating to service and response to requests for service for utilities operating within a municipality's corporate limits apply unless the municipality adopts its own rules.¹¹

This statute prescribes the rules a municipality must apply when considering issues related to utility service and responses to requests for service. It does not grant the Commission authority over the decisions a municipality makes pursuant to the Commission's customer service rules nor does it grant the Commission the authority to review an order by a municipality that is based on the municipality's application of those rules. In fact, it specifically states that local utility service within the boundaries of a municipality is *exempt* from regulation by the Commission. Therefore, Water Services' reliance on this statute is misplaced.

⁹ TWC § 13.043(a).

¹⁰ Brief of SWWC Utilities, In. dba Water Services, Inc. at 6 (Sep. 5, 2019) (WSI Brief).

¹¹ TWC § 13.082(b).

Finally, Staff notes that the Commission's procedural rules appear to contemplate a scenario where the decision of a municipality is reviewed by the Commission. For example, 16 TAC § 22.242(c)(1)(D) waives the informal resolution requirement if "the complaint has been the subject of a complaint proceeding conducted by a city."¹² Likewise, 16 TAC § 22.242(e)(1)(A)(i) allows a person who receives water service from a utility within the boundaries of a municipality with original jurisdiction over the utility to present a formal complaint to the Commission only after the municipality issues a decision on the complaint.¹³ The latter provision would not apply to this complaint because Water Services does not receive water service from a utility. However, there is nothing in the plain language of the former provision that leads to a similar conclusion. Nevertheless, 16 TAC § 22.242 does not negate the jurisdictional provisions of the TWC.¹⁴ Thus, the Commission's procedural rules do not impact the conclusion that the Commission does not have jurisdiction over Water Services' complaint against the City.

IV. WATER SERVICES' REQUEST FOR ALTERNATIVE RELIEF

Water Services requests that the Commission reinstate Water Services' appeal in Docket No. 49290 should the Commission determine that it does not have jurisdiction to process this complaint.¹⁵ Staff filed a response to Water Service motion to reinstate on September 12, 2019,¹⁶ and therefore, does not address the request here.

¹² 16 TAC § 22.242(c)(1)(D).

¹³ 16 TAC § 22.242(e)(1)(A)(i).

¹⁴ The Commission's procedural rules regarding complaints are applicable to complaints filed against electric and telecommunications utilities in addition to water, and it may be that subsections (c)(1)(D) and (e)(1)(A)(i) of 16 TAC § 22.242 have meaning within the statutory framework of the Texas Utilities Code. However, Staff has limited its analysis to the TWC for the purposes of this brief because this is a complaint involving a water utility.

¹⁵ WSI Brief at 3, 7-8.

¹⁶ *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, Response to SWWC Utilities, Inc. dba Water Services's Motion to Reinstate (Sep. 12, 2019).

V. MOTION TO DISMISS

In the event that the ALJ finds that the Commission does not have jurisdiction over Water Services' complaint, Staff moves to dismiss the complaint for lack of jurisdiction under 16 TAC § 22.181(d)(1).

VI. CONCLUSION

For the reasons detailed above, Staff respectfully requests the entry of an order finding that the Commission does not have jurisdiction over Water Services' complaint and granting Staff's motion to dismiss.

Dated: September 26, 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 September 26, 2019, in accordance with 16 TAC § 22.74.


Eleanor D'Ambrosio