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DOCKET NO. 49554

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BEFORE THE
PUBLIC UTILITY COMMISSION
FILING CLERK
PUBLIC UTILITY COMMISSION
OF TEXAS

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

**SWWC UTILITIES, INC., DBA WATER SERVICES, INC'S RESPONSE TO
COMMISSION STAFF'S MOTION TO DISMISS AND REPLY TO COMMISSION
STAFF'S RESPONSE TO SWWC UTILITIES INC., DBA WATER SERVICES'S
MOTION TO REINSTATE AND REQUEST FOR DECLARATORY ORDER**

SWWC Utilities, Inc., d/b/a Water Services, Inc. (Water Services) timely files this Response to Public Utility Commission (Commission) Staff's Motion to Dismiss, pursuant to Order No. 5 Allowing a Response to Commission Staff's Motion to Dismiss and Order No. 6 Granting Extension and Extending Time for Response to Commission Staff's Motion to Dismiss in Commission Docket No. 49554 ("Complaint"). This pleading is also being filed in reply to Commission Staff's Response to SWWC Utilities, Inc., dba Water Services's Motion to Reinstate in Commission Docket No. 49290 ("Appeal").¹ In support thereof, Water Services would respectfully show the following:

I. EXECUTIVE SUMMARY

The Commission Staff's positions in both the Complaint and the Appeal, if adopted by the Commission, would leave Water Services without a procedural vehicle to remedy the improper decision reached by the City of Bulverde (Bulverde or City). As laid out in Water Services's

¹ *Petition of SWWC Utilites, 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 (Sept. 13, 2019).*

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briefing in both the Complaint and the Appeal, the Commission has jurisdiction to address the City's decision from the complaint raised by Water Services's retail water customer.

II. ARGUMENT²

Water Services is seeking relief from the Commission within its jurisdiction. The Commission "may regulate and supervise the business of each water and sewer utility within its jurisdiction, including ratemaking and other economic regulation . . . [and] may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers and jurisdiction."³ The Commission's jurisdiction is broad, and the legislature also impliedly intends that an agency should have whatever power is reasonably necessary to fulfill a function or perform a duty that the legislature has expressly placed in the agency and to protect its jurisdiction.⁴ Relying on that statutory authority, the Commission has already determined that it "has the implied power to interpret the effect of other statutes, if necessary, to carry out its expressly authorized duties, including the determination of whether it has the authority to act in [a] particular matter."⁵ The Commission thus has the implied authority to review and interpret the City's actions to determine whether they affect the Commission's expressly authorized duties, in this case the business of a water utility.

Additionally, as already presented in this proceeding, the Commission has jurisdiction over the Complaint pursuant to 16 TAC § 22.242, as Water Services has raised a prima facie case 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. The Commission has jurisdiction to interpret and enforce its rules, and the City's

² Water Services incorporates by reference its briefing included in its Motion to Reinstate the Appeal, a copy of which is attached to this response as Attachment I.

³ Tex. Water Code § 13.041(a) (West 2008).

⁴ *Id.*

⁵ *Petition of the Cities of Garland, Mesquite, Plano & Richardson Appealing the Decision by N. Texas Mun. Water Dist. Affecting Wholesale Water Rates*, Docket No. 46662, Preliminary Order at 9 (Jun. 29, 2017).

misapplication or refusal to apply those rules subjects it to the Commission's complaint jurisdiction.

The Commission also has jurisdiction over the Appeal. 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.⁶

The Commission Staff is of the opinion that neither the Complaint⁷ nor the Appeal⁸ are appropriate for the Commission to address, but leave Water Services with no avenue for relief. The Commission has broad jurisdiction over the regulation of retail water utility service, yet decisions by municipalities concerning the Commission's customer service rules, or "ratemaking" decisions are not within that jurisdiction? Water Services is seeking regulatory certainty for all its customers, and it is in the interest of the Commission to determine to what extent it has authority to judicially review municipal decisions affecting the rates, operations, and services of retail water utilities within its jurisdiction.

III. CONCLUSION

Water Services respectfully requests that Commission Staff's Motion to Dismiss be denied, that the Appeal be reinstated, and in the alternative that the Commission issue a declaratory order ruling as to its authority to review municipal decisions relating to customer billing complaints, and that it be granted any other relief to which it may be entitled.

⁶ See *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 (Sept. 5, 2019).

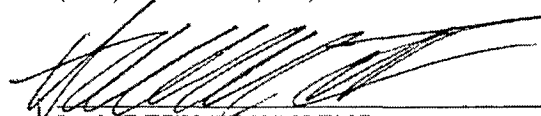
⁷ See Commission Staff's Brief in Response to Order No. 4 at 4 (Sept. 26, 2019).

⁸ See Docket No. 49290, Commission Staff's Recommendation on Sufficiency of Petition, Confidential Material Designation, Proposed Notice and Procedural Schedule at 2 (Mar. 19, 2019).

Respectfully submitted.

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**ATTORNEYS FOR SWWC UTILITIES, INC.
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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2019, a true and correct copy of the foregoing document has been served on all parties of record via electronic mail.



WILLIAM A. FAULK, III