



Control Number: 49554



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DOCKET NO. 49554

COMPLAINT OF SWWC UTILITIES, INC., DBA WATER SERVICES, INC. AGAINST THE CITY OF BULVERDE AND SUE WAHL	§ § § § §	BEFORE THE  PUBLIC UTILITY COMMISSION  OF TEXAS
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**SWWC UTILITIES, INC., DBA WATER SERVICES, INC'S  
EXCEPTIONS TO THE PROPOSAL FOR DECISION**

SWWC Utilities, Inc., d/b/a Water Services, Inc. (Water Services) timely files the following exceptions to the Public Utility Commission's (Commission) Proposal for Decision (PFD) issued on October 24, 2019, in the above-referenced matter and respectfully shows the following:

**I. EXECUTIVE SUMMARY**

Water Services excepts to the Commission's PFD and its recommendation that the Commission dismiss the complaint due to a lack of jurisdiction. 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 of Bulverde's (City or Bulverde) actions are in violation of 16 Texas Administrative Code (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.

**II. EXCEPTIONS TO THE PFD**

**Exception No. 1 – Water Services excepts to the PFD's proposed Conclusions of Law Nos. 4, 5, 7, and 9, as well as the PFD's Ordering Paragraphs Nos. 1 and 2, resulting in the dismissal of the Complaint.**

The PFD's proposed Conclusions of Law Nos. 4, 5, 7, and 9, as well as the PFD's Ordering Paragraphs Nos. 1 and 2, all incorrectly conclude that the Commission lacks jurisdiction over the Complaint.

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."<sup>1</sup> 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.<sup>2</sup> 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."<sup>3</sup> 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.

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

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<sup>1</sup> Tex. Water Code § 13.041(a) (West 2008) (TWC).

<sup>2</sup> *Id.*

<sup>3</sup> *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).

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)."<sup>4</sup> 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.<sup>5</sup>

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 test verified that the meter was recording usage accurately and data logs showed 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."

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<sup>4</sup> 16 TAC § 24.377.

<sup>5</sup> 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 PFD claims that Water Services’s reliance on TWC 13.041(a) is misplaced, claiming that Water Services has failed to prove that consideration of the City’s order is within the Commission’s jurisdiction.<sup>6</sup> 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.*”<sup>7</sup> The Commission has both the authority to implement rules, in this case its Customer Protection rules, and the implied power to issue orders interpreting those rules. The Commission has the explicit and implicit jurisdiction to develop its own rules and then subsequently interpret those rules, including whether or not an entity has correctly applied those rules.

Water Services requests that the Commission not adopt the PFD’s conclusion that it lacks jurisdiction and order the parties to proceed with a hearing to determine whether the City correctly applied the Commission’s rules.

**Exception No. 2 – Water Services excepts to the PFD’s proposed Conclusion of Law No. 8 concluding that Water Services is not attempting an appeal under TWC § 13.043(a).**

Conclusion of Law No. 8, disregards the *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 (Appeal), and Water Services’s attempt to reinstate that docket.

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<sup>6</sup> PFD at 6 (Oct. 24, 2019).

<sup>7</sup> TWC § 13.041(a) (emphasis added).

The Commission should reinstate Water Services’s appeal of the City’s 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.”<sup>8</sup> 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.”<sup>9</sup> 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>10</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>11</sup> 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, 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. Proposed Conclusion of Law No. 8, while stating that an appeal under TWC § 13.043(a) is not being sought “In this docket,” does not accurately reflect Water Services’s attempts to appeal the City’s ruling.

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<sup>8</sup> *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 at 4 (Sept. 5, 2019).*

<sup>9</sup> TWC Ann. § 13.043 (West 2008 & Supp. 2018).

<sup>10</sup> TWC §13.002(17) (emphasis added).

<sup>11</sup> TWC §13.002(16).

Water Services's proposes the following changes to Conclusion of Law No. 8:

8. In this docket, Water Services is not attempting to appeal to the Commission a municipality's final decision in a "rate proceeding" under TWC §13.043(a), but has sought such appellate relief from the Commission in *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, a Motion to Reinstate that proceeding is pending before the Commission.*

**Exception No. 3 – Water Services excepts to the PFD's failure to address the request for a declaratory order.**

In its Response to Commission Staff's Motion to Dismiss, Water Services requested a declaratory order be issued "ruling as to [the Commission's] authority to review municipal decisions relating to customer billing complaints."<sup>12</sup> The PFD proposes to dismiss the entire Complaint proceeding, insinuating that all issues within the proceeding should be dismissed pursuant to 16 TAC § 22.181(f)(2), yet the PFD does not make an affirmative statement on Water Services's request for a declaratory order. Water Services's request for a declaratory order is an issue in this proceeding, and should be given consideration not only for the case in controversy for Water Services, but for other water utilities facing similar issues. Adoption of a PFD without addressing the request for a declaratory order would be in contradiction of 16 TAC § 22.181(f)(2), and would be in error.

Alternatively, the Commission is within its jurisdiction to "make findings of fact and decisions with respect to administering this chapter or the rules..."<sup>13</sup> Water Services has made an allegation that the City has failed to comply with 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

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<sup>12</sup> 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 at 3 (Oct. 23, 2019).

<sup>13</sup> TWC § 13.041(c).

tariff rates pursuant to accurate meter readings. Bulverde's decision does not comply with those customer service rules, and the Commission, pursuant to TWC § 13.041(c), may issue an order directing the City on how to interpret and enforce the Commission's Substantive Rules.

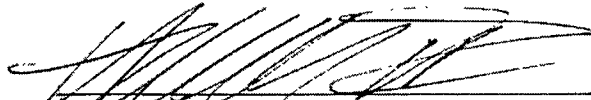
Water Services requests that the Commission not adopt the PFD and order the parties to proceed with a hearing to determine whether declaratory relief should be granted.

### III. CONCLUSION AND PRAYER

Water Services respectfully requests that the Commission not adopt the PFD and order the parties to a hearing on the merits, and grant any other relief to which Water Services may be entitled.

Respectfully submitted,

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



**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served on all parties of record on this 6<sup>th</sup> day of November, 2019.



WILLIAM A. PAULK, III