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*Public Utility Commission of Texas*

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**TO:** Stephen Journeyay  
Commission Counsel  
  
All Parties of Record

**FROM:** Hunter Burkhalter *LB*  
Administrative Law Judge

**RE:** Docket No. 49554 – *Complaint of SWWC Utilities, Inc. dba Water Services, Inc. Against the City of Bulverde and Sue Wahl*

**DATE:** November 19, 2019

On October 24, 2019, I issued the Proposal for Decision (PFD) in this case. On November 6, 2019, SWWC Utilities, Inc. dba Water Services, Inc. filed exceptions to the PFD. Commission Staff had no exceptions to the PFD. On November 18, 2019, Commission Staff replied to Water Service's exceptions.

In its exceptions, Water Services primarily repeats arguments already analyzed and rejected in the PFD. Those arguments do not, therefore, merit further discussion here. A few points raised in the exceptions, however, merit a response.

First, Water Services complains that Conclusion of Law No. 8 from the PFD "disregards" the utility's petition in Docket No. 49290 and "does not accurately reflect Water Services' attempts to appeal the City's ruling." I find these assertions surprising. Water Services initiated two dockets arising out of its dispute with Sue Wahl and the City of Bulverde—the present docket, and Docket No. 49290.<sup>1</sup> As I explained in detail in the PFD, in Docket No. 49290 Water Services challenged the city's order as an appeal of a rate-making decision by a municipality under Texas Water Code (TWC) § 13.043. The utility did not raise that same argument in the present case (Docket No. 49554). That is why, in the PFD, I acknowledged that Water Services was making an argument under TWC § 13.043 in a separate docket and carefully declined to take any position on that argument in this case.<sup>2</sup> Conclusion of Law No. 8 reads: "*In this docket, Water Services is not*

<sup>1</sup> *Petition of SWWC Utilities, Inc. dba Water Services, Inc. Appealing the Order of the City of Bulverde in Compliant No. 201801, Docket No. 49290 (pending).*

<sup>2</sup> See PFD at 1-2, 5, and fn. 7.



attempting to appeal to the Commission a municipality's final decision in a 'rate proceeding' under TWC § 13.043(a)."<sup>3</sup> This is an accurate statement, and it in no way disregards Docket No. 49290. I see no reason why a conclusion of law in one docket should identify arguments made in a separate docket, and Water Services provides none.

In its exceptions Water Services next provides argument as to why Docket No. 49290 should be reinstated. Because those arguments have nothing to do with the present case or the PFD, they need not be responded to here.

Finally, the "conclusion" section at the end of Water Services' response to Commission Staff's motion to dismiss included a request that, in the alternative that the motion to dismiss was granted, the Commission "issue a declaratory order ruling as to its authority to review municipal decisions relating to customer billing complaints." In its exceptions, Water Services complains that the PFD is improper because it does not address this request for declaratory relief. I disagree. Candidly, because it was only a portion of a sentence in the conclusion to Water Services' response to a motion to dismiss, I did not notice the request for declaratory relief at the time I drafted the PFD. Nevertheless, I do not consider a request for declaratory relief to have been properly plead in this case. This case constitutes a formal complaint brought under 16 Texas Administrative Code (TAC) § 22.242. Under that section, a complainant must provide "a statement of the relief that the complainant is seeking." Water Services' complaint asks that the city's order be overturned, and that Ms. Wahl be ordered to pay all charges due to Water Services. The complaint does not request any form of declaratory relief. I leave it to your discretion as to whether you think it appropriate to issue a declaratory order regarding the Commission's authority to review municipal decisions relating to customer billing complaints.

For these reasons, I conclude that no changes to the PFD are warranted, and it remains ready for the Commission's consideration.

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<sup>3</sup> Emphasis added.

<sup>4</sup> Water Services' complaint at 4-5.