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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
OF TEXAS**

**COMMISSION STAFF'S STATEMENT OF POSITION
AND REFERRAL RECOMMENDATION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Statement of Position and Referral Recommendation. Staff recommends that this docket be referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits. In support thereof, Staff shows the following:

I. BACKGROUND

On May 20, 2019, SWWC Utilities, Inc. dba Water Services, Inc. (Water Services) filed a formal complaint¹ with the Commission requesting that the Commission overturn the February 12, 2019 order² issued by the City of Bulverde, Texas (the City). Specifically, Water Services files this complaint against (1) the City, which ruled that Water Services overcharged its customer Sue Wahl in the amount of \$604.79 and ordered Water Services to refund that amount to the customer; and (2) Sue Wahl, who alleged she was overcharged by Water Services during several months of 2018 in a billing complaint filed with the City. Water Services filed this formal complaint pursuant to 16 Texas Administrative Code (TAC) § 22.242.

On May 21, 2019, Order No. 1 was issued, requiring the City and Ms. Wahl to file responses to the complaint by June 10, 2019. On June 6, 2019, the City filed its response. On June 10, 2019, Ms. Wahl filed her response.

On May 21, 2019, Order No. 2 was issued, requiring Staff to file a statement of position regarding the Complaint by June 17, 2019. Therefore, this pleading is timely filed.

¹ Complaint of SWWC Utilities Inc. dba Water Services Inc. against the City of Bulverde and Sue Wahl (May 20, 2019) (“Complaint”).

² Notice of Appearance and Response of City of Bulverde, Texas at Exhibit 1 (Jun. 6, 2019).

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II. COMPLIANCE WITH INFORMAL RESOLUTION REQUIREMENTS AND JURISDICTION

Water Services files this formal Complaint without first referring it for informal resolution based on the exception under 16 TAC § 22.242(c)(1)(D), which allows a complainant to present a formal complaint to the Commission without first referring the complaint for informal resolution if the complaint has been the subject of a complaint proceeding conducted by a city. The Complaint is the subject of a complaint proceeding conducted by the City of Bulverde, specifically the complaint Sue Wahl filed with the City against Water Services regarding her water bills. Therefore, 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.

III. COMPLAINT

Water Services requests that the Commission overturn the City Order requiring Water Services to refund Ms. Wahl in the amount of \$604.79, and that the Commission order Ms. Wahl to pay all past due charges incurred for the provision of water service during the period of dispute in this case.³

Water Services attached to its complaint supporting documentation, including a copy of the informal complaint form Ms. Wahl completed with the Commission's Customer Protection Division (CPD).⁴ In her informal complaint with CPD, Ms. Wahl alleged that she was billed excessive amounts on five different occasions since Water Services replaced her meter with a "Smart Meter."⁵ Ms. Wahl stated that she was billed in excessive amounts five different times, including charges for 52,000 and 41,000 gallons of water, when she had previously been charged for 19,000 to 35,000 gallons of water.⁶ Ms. Wahl further claimed that there was a water leak before the meters between her property and her neighbors' property, which took six days to fix.⁷ Ms. Wahl claimed that she is the only person in her home, that she is at work away from home for

³ Complaint at 5-6.

⁴ Complaint at 8-9.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

the majority of the day, and that the spike in water usage had occurred “after these new meters were put in.”⁸

CPD closed Ms. Wahl’s informal complaint and referred her to the City, which had original jurisdiction to review the matter.⁹ Water Services stated that it had a data log run on Ms. Wahl’s meter, which showed her daily water use for the previous five and a half months.¹⁰ Copies of the data logs, dated October 4, 2018, are attached to the complaint.¹¹

On October 5, 2018, Water Services sent Ms. Wahl a letter outlining its conclusions from its investigation; this letter is attached to the Complaint.¹² In its letter, Water Services clarifies that it did not replace her meter with a “Smart Meter,” but rather “just the register portion of the meter was upgraded” per the notice that accompanied the monthly invoices sent to customers. Water Services states that the register of the meter installed at Ms. Wahl’s address is an Automatic Meter Reader (AMR) register that “send an electronic signal to meter reading software each month allowing for the meters to be read without the need for human intervention,” which “saves not only time and resources but also inhibits the human element of someone incorrectly keying in a read.”¹³ Regarding the leak Ms. Wahl referenced in her informal complaint with CPD, Water Services stated that according to their records, there have not been any leaks nor subsequent repairs.¹⁴ Water Services stated that their records reflect that there was a main line leak repair and flushing within the area that affected a different street, not Ms. Wahl’s property.¹⁵ In its letter, Water Services concluded that there were no indications of a leak that affected Ms. Wahl’s property, that the meter was reading accurately and the billed usage had occurred.¹⁶

On October 18, 2018, Water Services sent the City a letter outlining the actions Water Services has taken in response to Ms. Wahl’s concerns.¹⁷ Water Services reiterated that the meter was reading accurately and that the billed usage had occurred, including the high reads of 41,000

⁸ *Id.*

⁹ Complaint at 4.

¹⁰ Complaint at 4.

¹¹ *Id.* at 12-18.

¹² *Id.* at 19-20.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complaint at 50.

and 52,000 gallons.¹⁸ Water Services stated that “Ms. Wahl is generally a high water user with an average close to 20,000 gallons and spikes up to 35,000 gallons in the summer.”¹⁹

On December 17, 2018, Water Services had the meter at the service location tested by a third-party testing firm.²⁰ Water Services contends that the test indicated the meter met American Water Works Association standards.²¹ A copy of the test results by Fluid Meter Service Corp. is attached to the Complaint.²²

On December 20, 2018, Water Services sent the City a second letter upon discovering that Ms. Wahl had initiated a complaint against it with the City.²³ In its letter, Water Services reiterated its findings and conclusions stated in its October 18, 2018 letter to the City.²⁴

Water Services alleges that there is no documentation in the record of the complaint with the City that indicates how the amount of the refund ordered was determined by the City.²⁵

IV. THE CITY’S RESPONSE

Order No. 1 required the City and Ms. Wahl to file a response to the complaint no later than June 10, 2019. Specifically, the ALJ required the City and Ms. Wahl to address (1) the Commission’s jurisdiction over this proceeding; (2) allegations raised in the complaint; (3) applicable statutes, rules, orders, and tariff provisions; (4) copies of any rates or tariffs that are the subject of this complaint; and (5) any other matters relevant to the complaint.

The City filed its response on June 6, 2019.²⁶ In its response, the City acknowledges the Commission’s jurisdiction over this formal complaint under 16 TAC § 22.242.²⁷ The City disputes the assertion of Water Services that there is no documentation in the record that indicates how the City determined the refund amount of \$604.79 awarded to Ms. Wahl, and attaches to its response documentation and evidence relied on by the City in issuing its order. Specifically, it attaches the City Order as Exhibit 1 and Article 13.08, Code of Ordinances of the City of Bulverde, Texas, as

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 5.

²¹ Complaint at 5.

²² *Id.* at 129.

²³ *Id.* at 123.

²⁴ *See id.*

²⁵ Complaint at 5.

²⁶ Notice of Appearance and Response of City of Bulverde, Texas (Jun. 6, 2019).

²⁷ *Id.* at 1.

Exhibit 2. The City states that it considered the statements and deliberations of the members of the City council and testimony offered at the hearing on February 12, 2019.²⁸ The City notes that Water Services did not appear at the City council meeting to decide the initial complaint filed by Ms. Wahl.²⁹

V. SUE WAHL'S RESPONSE

Ms. Wahl filed her response on June 14, 2019.³⁰ In her response, Ms. Wahl disputes the claim of Water Services that her billing and usage were accurate. She clarifies that she is away from home from eight to ten hours a day during the week and Saturdays, and would therefore be unable to use as much water as Water Service claims she uses.³¹ Included in her response is a statement from Chambliss Plumbing Company that there were no leaks on her property, dated September 19, 2018.³² Ms. Wahl also attached information from an online forum and a review website from individuals claiming that they have also experienced issues with Water Services.³³ This information consists of online complaints and reviews, dated 2018 and 2019, regarding high water charges from Water Services.³⁴

VI. STAFF'S STATEMENT OF POSITION

Based on the filings of the parties, the parties dispute whether Water Service overcharged Ms. Wahl in the amount of \$604.79. Because the facts are in dispute, an evidentiary record must be developed. Accordingly, Staff recommends that this docket be referred to SOAH for an evidentiary hearing on the merits.

VII. CONCLUSION

Staff confirmed that Water Services complied with the requirements for informal resolution and determined that the Commission has jurisdiction over its complaint. For the reasons stated

²⁸ *Id.* at 2.

²⁹ *Id.*

³⁰ Sue Wahl's Response to Complaint of SWWC Utilities, Inc. dba Water Services, Inc. against The City of Bulverde and Sue Wahl at 1 (Jun. 1, 2019)

³¹ *See* Sue Wahl's Response at 1.

³² *See id.* at 12.

³³ *See id.* at 67-81.

³⁴ *Id.*

above, Staff respectfully recommends that this docket be referred to SOAH for a hearing on the merits.

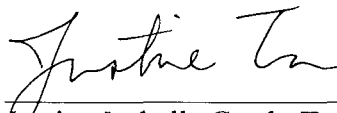
Dated: June 17, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney

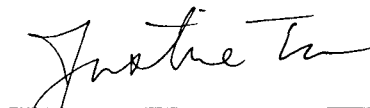


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on June 17, 2019, in accordance with 16 TAC § 22.74.



Justine Isabelle Caedo Tan