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**PUC DOCKET NO. 50788  
SOAH DOCKET NO. 473-20-4071.WS**

<b>RATEPAYERS APPEAL OF THE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>DECISION BY WINDERMERE</b>	<b>§</b>	
<b>OAKS WATER SUPPLY</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CORPORATION TO CHANGE</b>	<b>§</b>	
<b>WATER AND SEWER RATES</b>	<b>§</b>	

**COMMISSION STAFF'S REPLY TO EXCEPTIONS  
TO THE PROPOSAL FOR DECISION**

Dated: May 25, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**COMMISSION STAFF’S REPLY TO EXCEPTIONS  
TO THE PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The Staff (Staff) of the Public Utility Commission of Texas (Commission) respectfully replies to Ratepayers’ exceptions to the proposal for decision (PFD). The only other party in the docket, Windermere Oaks Water Supply Corporation (Windermere), did not file exceptions; it filed only a minor correction.

**II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

No reply.

**III. SCOPE OF REVIEW**

No reply.

**IV. BURDEN OF PROOF**

No reply.

**V. DISCUSSION**

**A. The Rate Decision**

No reply.

**B. Threshold Issue**

Staff agrees with Ratepayers that there should be no threshold determination for rates appealed under Texas Water Code (TWC) § 13.043(b) as to whether those rates are unreasonably preferential, prejudicial, or discriminatory because TWC § 13.043(e) requires a de novo review of those rates by the Commission. As further argued by Ratepayers, *TWC v. Fort Worth*,<sup>1</sup> which addressed an appeal under TWC § 13.043(f), does not apply in the current docket because TWC

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<sup>1</sup> *Tex. Water Comm’n v. City of Fort Worth*, 875 S.W.2d 332, 335-336 (Tex. App.—Austin 1994, writ denied). (*TWC v. Fort Worth*).

§ 13.043(e) did not apply to the appeal addressed in that opinion. Instead, that opinion addressed a contract between two utilities. In addition, Staff agrees with Ratepayers that TWC § 13.0431, enacted after *TWC v. Fort Worth*, reinforces the difference between an appeal under TWC § 13.043(b) and (f).

Assuming a threshold requirement that the appealed rates be unreasonably preferential, prejudicial, or discriminatory, Ratepayers argue that multiple classes of customers exist because there are multiple “categories” of customers and that Ratepayers can therefore satisfy the threshold test by showing discrimination among those categories.<sup>2</sup> Ratepayers make this argument in response to the PFD’s apparent conclusion that Ratepayers had no ability to prove that the appealed rates are unreasonably preferential, prejudicial, or discriminatory. Staff, however, posits that a multiple-class threshold requirement is inapposite based on the language of the statute. Assuming without agreeing that there is any kind of threshold requirement, the language does not require a comparison of classes of customers. Rather, the statute should be interpreted to require a finding that the rates are “unreasonably preferential, prejudicial” between multiple classes or within a given class. For example, the threshold test could be satisfied through a comparison between high- and low-volume customers within the same class, as was demonstrated in Staff exceptions. To read the statute as requiring an inter-class comparison would be to preempt all appeals by customers of a single class system.

Breaking the sentence at issue in TWC § 13.043(j) into its two discrete parts, the reader can see that: (1) “Rates shall not be unreasonably preferential, prejudicial, or discriminatory”; and (2) the rates “shall be sufficient, equitable, and consistent in application to each class of customers.” Those two requirements are separated by the conjunction “but,” and the prepositional phrase “in application to each customer class” should be read to apply only to the adjectives “sufficient, equitable, and consistent” to help avoid the apparent and unreasonable conclusion of the PFD that Ratepayers had no ability to prove that the appealed rates are unreasonably preferential, prejudicial, or discriminatory.

The language of TWC § 13.043(j) is ambiguous; it is unclear whether the prepositional phrase identified above applies to both clauses or only the second. As noted in TWC § 1.002, the Code Construction Act (CCA) applies to the interpretation of provisions of the Texas Water Code.

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<sup>2</sup> Ratepayers’ Exceptions to the PFD at 18.

Section 311.021 of the Code Construction Act states that the presumed intent of a statute is that “a just and reasonable result is intended” and that “public interest is favored over private.” Further, under CCA § 311.023, where a statute is ambiguous, “a court may consider . . . [the] object sought to be obtained [and] consequences of a particular construction”. Here, the statute was intended to grant all ratepayers the opportunity to appeal. The consequence of the PFD would be to deny ratepayers of a single-class system meaningful opportunity to appeal.

A closer analysis of the specific words used in the statute also supports the conclusion that the threshold requirement, if any such thing is appropriate, need not be comparative in all respects. The statute uses the words “preferential, prejudicial, or discriminatory”. “Preferential” perhaps implies a comparison between two things; one thing is “preferred” over another. “Discriminatory” might also imply a comparison between two things; for discrimination to exist, there must be bias against one group as compared to another. However, the word “prejudicial” requires no such comparison; “prejudicial” simply means detrimental or tending to injure or impair.<sup>3</sup> If the rates are detrimental or tend to injure or impair, as is the case with the appealed rates in this docket, the Commission must proceed to its analysis of whether the rates are just and reasonable. For this reason, Ratepayers’ effort to show different “classes” of customers where there are distinct “categories” of customers is unnecessary.

Staff reaffirms its position that no threshold requirement applies in this docket. However, if the Commission does find that a threshold requirement applies, that threshold requirement allows for intraclass comparison, such as a comparison between high- and low-volume customers within the same class, as Staff noted in its exceptions. There is no requirement for a comparison between two classes of customer.

**C. Rate Case Expenses**

No reply.

**VI. CONCLUSION**

No reply.

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<sup>3</sup> <https://www.merriam-webster.com/dictionary/prejudicial>.

Dated: May 25, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
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**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on May 25, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Merritt Lander  
Merritt Lander