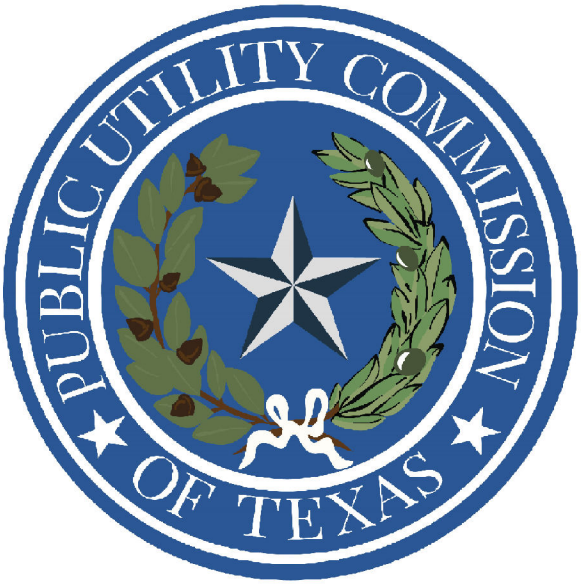

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August 23, 2022

Public Utility Commission of Texas
Attn: Commission Advising & Docket Management
P.O. Box 13326
Austin, TX 78711-3326

Re: Commission Docket No. 52758 – Petition of McAllen Public Utility Appealing Wholesale Water Rates Charged by Hidalgo County Water Improvement District No. 3

Dear Commissioners:

We are writing to encourage the Commission consider the transfer Docket No. 52758 to the Texas Commission on Environmental Quality (TCEQ) in accordance with the Texas Water Code. Further, Public Utility Commission rules should not be altered on an ad hoc basis during these ongoing proceedings. As mentioned in our letter from November 12, 2021, this proceeding is of the utmost importance to our constituents in McAllen. As such, it deserves the most expeditious process allowed by law. On June 27, 2022, the McAllen Monitor published an article reporting on this matter and stated that "the dispute has since become entangled in a morass of red tape" at both the Commission and Hidalgo County District Court. Having reviewed the record in this matter, we unfortunately must agree.

First, we wish to express concern about the Commission's discussion during its June 30, 2022 open meeting concerning Commission Rule 24.307(d), which is the rule that the Administrative Law Judge relied on in abating this matter. Rather than provide clarity or closure for the parties, we understand all commissioners agreed to "extend time" to deliberate whether the rule is invalid or unnecessary. We are unaware of any law, either that we enacted in statute or decided by a court, which invalidates Rule 24.307(d). An action by the Commission to retroactively declare invalid a rule that not only was duly adopted by the Commission under the Administrative Procedure Act, but that has *actually been applied* in an ongoing contested case hearing, would unquestionably constitute impermissible ad-hoc rulemaking to the detriment of all parties involved.

There is a simple way to resolve the Commission's continued consideration of the petition in this matter. Chapter 51 of the Texas Water Code governs Water Control and Improvement Districts (WCIDs) like the one involved in this matter. In 2013, through Senate Bill 611, we added Section 51.305(d) to that Chapter. That statute states that "a user of water delivered by the district for any purpose other than irrigation who disputes all or part of a board order that determines the amount of an assessment, charge, fee, rental, or deposit may file a petition under Section 11.041" of the Water Code. Section 11.041 in turn confers jurisdiction on TCEQ to determine "that the price or rental demanded for the available water is not reasonable and just or is discriminatory." Section 51.305(d) goes on to say that such a "petition filed with the [TCEQ] is *the sole remedy* available to a... user of water described by this subsection."

We both voted in favor of SB 611, and our intent is that this statute confers upon TCEQ the exclusive authority to determine whether the delivery charge or price for water levied by Hidalgo County Water Improvement District No. 3 against McAllen is "reasonable and just or is discriminatory." By requiring that a petition under Section 11.041 is the "sole remedy" available to McAllen, we also intended for Section 51.305(d) to render all of Water Code Section 12.013, inapplicable in this matter. In other words, the Water Code confers no jurisdiction on the Commission to determine whether the price charged by this WCID to McAllen for available water harms the public interest. And the TCEQ's determination under Section 11.041 that a delivery charge or demanded price is not just and reasonable or is discriminatory constitutes a determination that such charge or price, whether charged pursuant to a contract or not, does in fact harm the public interest.

Lastly, Section 11.041(f) authorizes the Commission to participate in the TCEQ hearing if necessary to present evidence on the price or rental demanded for the available water. Our understanding and intent is that the two agencies may cooperate to determine what just and reasonable price or rental should be set within the confines of the TCEQ's hearing under Section 11.041. However, we believe Section 11.041(f), when read together with Section 51.305(d), rests exclusive jurisdiction to determine a just and reasonable rate with the TCEQ with advice from your agency. We encourage both agencies to continue their excellent history of cooperation in this matter.

We encourage you to consider this jurisdictional issue at your open meeting on August 25, 2022, and transfer this proceeding to TCEQ in accordance with Section 51.305(d). Please do not hesitate to contact either of our offices if you have any questions or need any additional information.

Sincerely,

Juan "Chuy" Hinojosa
State Senator, District 20

Terry Canales
State Representative, District 40