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APPLICATION OF CONROE RESORT UTILITIES, LLC, UNDINE TEXAS, LLC, AND UNDINE TEXAS ENVIRONMENTAL, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN MONTGOMERY COUNTY	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**UNDINE’S BRIEF REGARDING TEXAS WATER CODE § 13.3011
PURSUANT TO ORDER NO. 11**

On September 27, 2022, the ALJ issued Order No. 11, which directs the parties to submit “briefing...addressing whether they agree with Commission Staff’s interpretation of TWC § 13.3011 and recommendation, and if not, provide their interpretation and recommendation. Applicants Undine Texas, LLC (“Undine Texas”) and Undine Texas Environmental, LLC (“Undine Environmental”) (together with Undine Texas, “Undine”) agree with Commission Staff’s interpretation of TWC § 13.3011 and recommendation and submit this brief setting forth their reasoning.

I. FACTUAL BACKGROUND

TWC § 13.3011 was enacted to provide existing utilities the incentive and flexibility to acquire failing utility systems, for the ultimate purpose of protecting utility customers. Undine seeks in this application to do what the legislature intended—apply the flexibility of Undine’s existing rates to acquire the failing Conroe Resort Utilities system. The phased-in rates set out in the amended applicant that Commission Staff presented to the ALJ are the result of substantial discussions and cooperation between Commission Staff, Undine, and OPUC. Undine’s initial application provided for the use of a different tariff pursuant to TWC § 13.3011. Both Commission Staff and OPUC raised concerns about the amount of rate increase the system customers would experience under that tariff. The parties thus began a detailed evaluation of the scenarios otherwise available to Undine within the confines of TWC § 13.3011 that would result in less impact to the system customers. The scenario that Commission Staff has presented to the ALJ represents the least impact to the system customers under any scenario available to Undine under TWC § 13.3011. The parties negotiated this revision to the application, and Undine agreed to present the amended application, based on two primary considerations: (1) that the proposed rates represent

the least impact to the customers among all scenarios available to Undine; and (2) that the parties agreed the revised approach was available under and consistent with TWC § 13.3011.

II. ARGUMENT AND AUTHORITIES

Undine agrees with Staff's interpretation of TWC § 13.3011 for three reasons. First, Undine agrees with Staff's analysis of the language of § 13.3011. Importantly, as Staff's Recommendation lays out, the legislature's use of the phrase "in force"—as opposed to "in effect"—to describe the rates that may be used evidences the legislature's intent that the rates must be legally valid for another system at the time of the application and not necessarily "in effect" at that time. That is a critical distinction when a rate scheme with phased-in rates is at issue.

Second, § 13.3011 imposes two requirements for rates that may be used by an acquiring entity. The rates must be both "shown in the tariff filed with a regulatory authority by the person for another water or sewer system" and "in force for the other water or sewer system." In other words, the statute explicitly contemplates that all rates shown in a valid tariff for the acquiring entity may be used as the "initial rates for the service" after the acquisition. Logically, in an instance like this (where the valid tariff for the acquiring entity shows not one rate, but a larger phase-in rate scheme), § 13.3011 requires that the overall rate scheme be applied to the customers of the acquired system rather than an individual component of that rate scheme (e.g., whichever rate phase customers of the existing systems are in at the time the application was filed). The latter result would be arbitrary and unfair to the customers of the acquired system. The more reasonable approach, and thus more appropriate interpretation of the statute, is to apply the rate scheme so that rates are phased-in for customers of the acquired system in the same manner they were phased-in for customers of the existing systems.

Finally, Staff's interpretation of TWC § 13.3011 is both supported by the legislative history and, in Undine's view, provides for the most logically consistent outcome. If TWC § 13.3011 is to be read to allow for the continuation of a phase-in (i.e., the applicability of "future" phase-in years), it should also be read to provide for the applicability for "past" phase-in years. Both the future years and the past years are equally outside of a specific "current" tariff phase (the rate in effect at the time of the application). An interpretation of TWC § 13.3011 that prohibits past phase-in years based on a strict requirement that rates be in effect at the time of an application, but that abandons that strict requirement when it comes to future rate phases (allowing for those phases to take effect even though they were not in effect at the time of the application) creates an

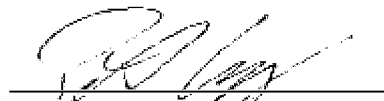
inconsistency should be avoided in statutory interpretation. *See, e.g., Tex. Dep't of Transp. v. Needham*, 82 S.W.3d 314, 318 (Tex. 2002) (“Statutory terms should be interpreted consistently in every part of an act”). Staff’s interpretation provides for a consistent approach applying phased rate schemes to acquired systems under § 13.3011, and Undine therefore believes it should be the preferred interpretation.

Finally, one of the primary rationales for § 13.3011, as set out in the bill analysis for the engrossed version of the bill, is to provide “more consistent and equitable rates across the utility’s service area.”¹ If §13.3011 is interpreted to require use of the current and future phases of a phased rate scheme to the exclusion of past rates, it would frustrate the rationale of providing more consistent and equitable rates. Customers of the acquired system should have the same phase-in opportunity as customers of the existing systems. That approach is what provides the most “consistent and equitable rates” across the systems.

For these reasons, Undine agrees with Staff’s Recommendation and respectfully requests that the ALJ adopt the Recommendation.

Respectfully submitted,

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¹ House Comm. on Natural Res., Bill Analysis, Tex. H.B. 1484, 87th Leg., R.S. (2021).

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CERTIFICATE OF SERVICE

I certify by my signature above that unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on October 7, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.