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APPLICATION OF CONROE RESORT UTILITIES, LLC AND UNDINE TEXAS, LLC AND UNDINE TEXAS ENVIRONMENTAL, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN MONTGOMERY COUNTY §
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PUBLIC UTILITY COMMISSION OF TEXAS

**OFFICE OF PUBLIC UTILITY COUNSEL'S
BRIEF IN RESPONSE TO ORDER NO. 11**

Pursuant to Order No. 11, filed on September 27, 2022, Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, files this brief in response to the Administrative Law Judge’s (“ALJ”) request that the parties address whether they agree with Staff of the Public Utility Commission’s (“Staff”) interpretation of Texas Water Code (“TWC”) § 13.3011 and recommendation. Pursuant to the Order, the deadline for the parties to file briefs is October 18, 2022.¹ Therefore, this brief is timely filed.

I. BACKGROUND

On September 20, 2022, Staff filed a recommendation that Conroe Resort Utilities, LLC (“Conroe”), Undine Texas, LLC (“Undine Texas”), and Undine Texas Environmental, LLC’s (“Undine Texas Environmental”) (collectively, the “Applicants”) application, as amended on August 25, 2022, be found administratively complete. In addition, Staff recommended that Applicant’s requested three-year phased-in rates are allowable under TWC § 13.3011.

The ALJ expressed a concern in Order No. 11 with Staff’s recommendation to use the phase one rates, saying that they may be considered historical and not in force as required by TWC § 13.3011.² OPUC contends the three-year phased in rate outlined in the tariff submitted by the Applicants was in force on August 25, 2022, in accordance with TWC § 13.3011. As such, OPUC supports the positions taken by Staff and the Applicants.

¹ Order No. 11, Finding Application Administratively Complete, Notice Sufficient, and Requiring Briefing (Sept. 27, 2022).

² *Id.*

II. RESPONSE

OPUC agrees with Staff's interpretation of TWC § 13.3011. Specifically, Staff asserts that TWC § 13.3011 uses the phrase "in force" when describing usable rates and the phrase "in force" is not synonymous with the phrase "in effect." OPUC agrees with this interpretation for reasons outlined by Staff and the Applicants, and based on a common tenant in statutory construction that gives consistent meaning to identical words and phrases in the same statute.³ Chapter 13 of the TWC has multiple references to the phrase "in effect" outlining situations where specific rates are going into effect based on Commission action or to describe rates that are already in effect based on an existing tariff.⁴ Conversely, Chapter 13 generally uses the phrase "in force" when referring to the collection of rates and standards established in a tariff or group of tariffs.⁵ Therefore, it would follow that "in force" in TWC § 13.3011 is referring to any rates that appear in a tariff filed with a regulatory authority, including year one of a three-year phased in rate.

OPUC also agrees with the Applicant's arguments supporting Staff's statutory interpretation and the Applicant's assertion that customers of the acquired system should have the same phase-in opportunities as customers of the existing systems.

III. CONCLUSION

For the reasons stated herein, OPUC recommends a finding by the ALJ that Staff's interpretation of TWC § 13.3011 is correct and the Applicant's use of year one in the three-year phased-in rates shown in the tariff is allowable under TWC § 13.3011.

³ See *Beeman v. Livingston*, 468 S.W.3d 534, 539 (Tex. 2015). See also *Hegar v. Health Care Serv. Corp.*, No. 21-0080, 2022 Tex. LEXIS 546, 65 Tex. Sup. J. 1519, 2022 WL 2183134 (Tex. June 17, 2022).

⁴ TWC §§ 13.043(e), (h), 13.187(l), 13.1871(s), and 13.305(j).

⁵ TWC §§ 13.136(a), (c), 13.139(c), and 13.138 (a).

Date: October 14, 2022

Respectfully submitted,

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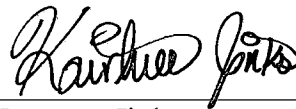
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CERTIFICATE OF SERVICE

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I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on the 14th day of October 2022 by facsimile, electronic mail, and/or first-class U.S. Mail.



Kourtnee Jinks