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DOCKET NO. 52797

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
RESPONSE TO ORDER NO. 28 AND PROPOSED LIST OF ISSUES**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, files this response to Order Requesting Lists of Issues and Order No. 28. In Order Requesting Lists of Issues filed on May 23, 2023, the Office of Policy and Docket Management requested that Conroe Resort Utilities, LLC (“Conroe”), Undine Texas, LLC (“Undine Texas”), and Undine Texas Environmental, LLC’s (“Undine Texas Environmental”) (collectively, the “Applicants”) file a list of issues to be addressed in this docket and allowed all other parties to submit lists of issues by June 7, 2023.¹ In Order No. 28 filed on May 25, 2023, the administrative law judge (“ALJ”) directed OPUC to file a response to Staff of the Public Utility Commission’s (“Commission Staff”) May 19, 2023 Reply to OPUC’s Response to Commission Staff’s Final Recommendation and Request for Extension in order to clarify whether it only seeks a hearing on the phased-in rate issue discussed in Order No. 14, whether it seeks to have this issue certified before the Commission, and whether it withdraws its hearing request by June 8, 2023.² OPUC submits this response to Order No. 28 requiring clarification by June 8, 2023. Therefore, this response is timely filed.

¹ Order Requesting List of Issues (May 23, 2023).

² Order No. 28 Requiring Clarification (May 25, 2023).

I. INTRODUCTION

This application was filed on November 8, 2021,³ and a lot has transpired in this docket since the application was filed. For purposes of brevity, the Applicants, Commission Staff and OPUC engaged in settlement negotiations subsequent to the filing of the application. As a result of the negotiations, the Applicants agreed to use the phased-in rates in its existing tariff for water and sewer beginning with the year one rate.⁴ On September 20, 2022, Commission Staff filed its “Recommendation on Administrative Completeness and Notice and Motion for Determination of Applicable Rates.”⁵ Finding the application complete and notice sufficient, Commission Staff respectfully requested a determination “that phased-in rates approved by the Commission in Undine’s last comprehensive rate case can be used.”⁶ Commission Staff’s request for a determination that the phased-in rates be used was consistent with the Applicants, Commission Staff and OPUC’s understanding at the time Commission Staff filed the recommendation.

In Order No. 11, The Commission’s ALJ, opining that the “phase one and two rates may be considered historical and are not in force as is required by TWC § 13.3011,” declined to honor Commission Staff’s request to use the phased-in rates in Undine’s existing tariff attached to the application and requested briefing on the interpretation of TWC § 13.3011.⁷ Undine Texas filed its response to Order No. 11 on October 7, 2022,⁸ and OPUC filed a response to Order No. 11 on October 14, 2022.⁹ Both Undine and OPUC reached the same conclusion in their respective briefs that Commission 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 § 13.3011.¹⁰

³ *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*, Docket No. 52797 (Nov. 8, 2021) (“Application”).

⁴ Applicants’ Application Amendment at 34, Water Tariff Page No. 9 (Aug. 25, 2022).

⁵ Commission Staff’s Recommendation on Administrative Completeness and Notice and Motion for Determination of Applicable Rates (Sep. 20, 2022).

⁶ *Id.* at 5.

⁷ Order No. 11 Finding Application Administratively Complete, Notice Sufficient, and Requiring Briefing (Sep. 27, 2022).

⁸ Undine’s Brief Regarding TWC 13.3011 (Oct. 7, 2022).

⁹ Office of Public Utility Counsel’s Brief in Response to Order No. 11 (Oct. 14, 2022).

¹⁰ *Id.* at 2.

On October 21, 2022, Commission Staff filed a final recommendation on approval of the transaction in which it reiterated the phased-in rate approach and stated that: “Staff’s recommendation is contingent on the ALJ finding that phased-in rates are permissible under TWC § 13.3011 and can thus be used in this transaction.”¹¹

OPUC believes Undine Texas is still prepared and willing to use the 3-year phased-in rates in its application starting with the year one rates. While it is not clear if Commission Staff is still supportive of OPUC and Undine’s effort to use phased-in rates, it should be noted that Staff was fully in support of this approach and advocated for the position. *OPUC will agree to withdraw its hearing request in this proceeding, if the ALJ would consider an order using the phased-in rates as initially agreed to and briefed by Commission Staff, OPUC, and Undine Texas.*

II. RESPONSE TO ORDER NO. 28

OPUC notes that the Commission has opened a rule project to implement Texas Water Code (“TWC”) § 13.3011.¹² Commission Staff filed a *Discussion Draft* in the project on May 17, 2023.¹³ Of Note, Commission Staff is soliciting comments on the following issues relevant to this proceeding:

- If the Commission approves a request for authorized acquisition rates, should the acquired customers be served under the existing, in-force tariff . . . In addressing this question, please consider whether it is appropriate for the service policies and other components of the in-force tariff beyond the tariffed rates to also apply to the acquired system.¹⁴
- How should the rule address situations in which the acquiring utility has multiple in-force tariffs? Under this discussion draft, the acquiring utility may request authorized acquisition rates based on any of its in-force tariffs. Should the acquiring utility be allowed to select which in-force tariff to use for the authorized acquisition rate? Should the Commission consider the acquiring utility’s other in-force tariffs when evaluating a request for authorized acquisition rates?¹⁵

¹¹ Commission Staff’s Final Recommendation, at 1 and 2 (Oct. 21, 2022).

¹² Project No. 53924: Water and Sewer Utility Rates After Acquisition (Aug. 1, 2022).

¹³ Project No. 53924: Water and Sewer Utility Rates After Acquisition, Discussion Draft (May 17, 2023).

¹⁴ *Id.* at Question 2.

¹⁵ *Id.* at Question 3.

- What is the proper outcome if the in-force tariff has phased-in rates? Can the authorized acquisition rates be based on any of the phases? How does the answer to Question 2 above factor into how phase-in rates would be implemented (e.g., if the systems are consolidated under a single tariff, does that lock the acquired system into the same phase and phase-in schedule as listed in the in-force tariff?¹⁶
- What measures, if any, are available to prevent rate shock if authorized acquisition rates are approved? Should the rule allow for phase-in rates even if the in-force tariff does not contain phase-in rates?¹⁷

OPUC believes each of the questions listed above are timely and merits a hearing in this proceeding. Additionally, OPUC is seeking a hearing in this proceeding on several issues related to TWC § 13.3011, including the Applicants' request to implement the 3-year phased-in rates in its existing tariff beginning with the year-one rates. OPUC is unopposed to having its list of issues regarding phased-in rates certified to the Commission if the ALJ declines to approve Commission Staff's request supported by both OPUC and the Applicants to use the phased-in rates in Undine's existing tariff.

III. OPUC's PROPOSED LIST OF ISSUES

OPUC respectfully proposes the following issues be addressed in this proceeding.

Phased-in Rates

1. Does TWC § 13.3011 allow for the use of phased-in rates?
2. How much does TWC § 13.3011 limit the Commission's jurisdiction under TWC § 13.182?
3. How much does TWC § 13.3011 limit the Commission's jurisdiction under TWC § 13.183?
4. Can the Commission authorize a utility to use a phased-in rate structure where the effective date has passed, but the phased-in rate structure still exists in the tariff in force under TWC § 13.3011?

¹⁶ *Id.* at Question 6.

¹⁷ *Id.* at Question 7.

The Applicants' request under TWC § 13.3011

5. Are the rates requested by the Applicants just and reasonable rates for water service and for sewer service that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory under TWC §§ 13.182?

Pass-Through Rates

6. Should the acquired customers be subject to any of the pass-through rates listed in the proposed tariff?

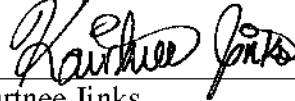
Rate Case Expenses

7. Should the acquired customers be subject to the Rate Case Expense Surcharge listed in the proposed tariff?

Date: June 7, 2023

Respectfully submitted,

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**ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL**

CERTIFICATE OF SERVICE

DOCKET NO. 52797

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on the 7th day of June 2023 by facsimile, electronic mail, and/or first-class U.S. Mail.

A handwritten signature in black ink, appearing to read "Kourtnee Jinks", written in a cursive style.

Kourtnee Jinks