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Docket #52797 - Outstanding issues and objections to proposed sale of Conroe Resort Utilities to Undine

Dear Commissioners,

12/5/2023

This is my fourth letter disputing for the anticipated rate increase resulting from the sale of Conroe Resort Utilities to Undine Texas, LLC and Undine Texas Environmental, LLC. I have yet to see evidence that the below outstanding issues, which were submitted on June 8, 2023, have been addressed. I object to the finalization of the sale of this utility, the dismissal of my objections to the rate increases, as well as the objections of the many, many, residents who e-filed their objections on the PUC website.

As our community continues to await a ruling concerning the outrageous tariffs proposed by Undine on Docket 52797, I wish to make note of several items I ran across on the Texas Water Commission's website. I admit ignorance where I may have misinterpreted specific statements, but ask that these references be fully explored. The uploaded attachments are directly from TWC 13.183 and beyond. I have numbered each to correspond with the documents I have uploaded.

Item 1 - Section 13.185b references construction and investment. Over the past year a large retail project has begun within the utility's service map. It is reported to include a strip center and over 150 RV sites. Is this development contributing to the exorbitant rate increases. Has this project been appropriately planned and managed? It seems as though our small community is shouldering a financial burden to supply water and sewer services for this business.

Item 2 - Section 13.1832b references an accurate collection and use of funds be provided to the regulatory authority. Undine had stated in their letter informing the residents of the rate increases, that they would hold "Town Hall Meetings" to discuss improvements and other issues. The residents have yet to have received any information on why such rates are being implemented as indicated, which calls into question as to whether Undine has provided the regulatory commission with a full and appropriate accounting which proves they are not to the detriment of the public. Raising water and sewer rates to this extent harms our residents both in trying to pay for this service as well as its impact on our resale values.

Item 3 - Section 13.182b-1 references an opportunity for the regulatory authority to allow for reduced rates for 65 and over residents. Our community has a disproportionate number of retirees, many of which are on fixed incomes. The excessive rates Undine is proposing is a tremendous hardship for many of our residents and will also make it difficult for them to get fair market value for their homes, given buyers routinely compare utility costs before buying. By the end of our phase in period, some of our residents will be paying 3x the cost of a comparative property in our neighboring communities. For many in our community, the value of their home is of substantial importance when then planned for the later years.

Item 4 - Section 13.186 establishes that the regulatory authority has the ability to establish and implement just and reasonable rates. As noted by the many, many residents who filed complaints with the PUC, the proposed rates are unreasonable and present a real hardship to the community.

Item 5 - Indicates that there is a timetable in-which the regulatory authority needs to implement changes to avoid the proposed rates going into effect by default. Please make the appropriate changes within the appropriate timeframe.

Item 6 - Section 13.189 states that the utility may not grant any unreasonable preference or advantage to a corporation. Margaritaville as well as the newly developing property previously mentioned are adjoined to our 300 residences within this small service area. It is important that these corporation shoulder their fair share of the costs for this utility. We are too small to absorb and shoulder a disproportionate cost for this infrastructure.

Item 7 - Section 13.301 Although this section allows for Undine to implement rates they are used in other localities, these tariffs are not historically appropriate for Montgomery County and create a tremendous hardship on our community. By approving their tariffs simply by virtue of this section, the regulatory authority has not served the public interest. Without consideration to what rates are reasonable and appropriate, this statute makes it possible for all water/utilities advance their rate to that of the highest bidder.

I have only read through a small portion of what is listed on your website and imagine there are other items which raise questions. Once again, I own up to the possibility that I may have misunderstood some of the areas I outlined above, but continue to thank you for taking the time to intervene on behalf of the residents of Del Lago, in Montgomery County. I am registered as an intervenor. If there are other actions that I can take to further this appeal, please let me know what they are.

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Sec. 13.185. COMPONENTS OF INVESTED CAPITAL AND NET INCOME. (a) Unless alternate methodologies are adopted as provided in Sections 13.183(c) and 13.184(a), the components of invested capital and net income shall be determined according to the rules stated in this section.

(b) Utility rates shall be based on the original cost of property used by and useful to the utility in providing service, including, if necessary to the financial integrity of the utility, construction work in progress at cost as shown on the books of the utility. The inclusion of construction work in progress is an exceptional form of rate relief to be granted only on the demonstration by the utility by clear and convincing evidence that the inclusion is in the ratepayers' best interest and is necessary to the financial integrity of the utility. Construction work in progress may not be included in the rate base for major projects under construction to the extent that those projects have been inefficiently or improvidently planned or managed. Original cost is the actual money cost or the actual money value of any consideration paid, other than money, of the property at the time it shall have been dedicated to public use, whether by the utility that is the present owner or by a predecessor, ~~or~~ association. Utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in invested capital.

(c) Cost of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(d) Net income is the total revenues of the utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall:

- (1) base a utility's expenses on historic test year information adjusted for known and measurable changes, as determined by utility commission rules; and
- (2) determine expenses and revenues in a manner consistent with Subsections (e) through (h) of this section.

(e) Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense may not be allowed either as capital cost or as expense except to the extent that the regulatory authority finds that payment to be reasonable and necessary. A finding of reasonableness and necessity must include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations.

(f) If the utility is a member of an affiliated group that is eligible to file a consolidated income tax return and if it is advantageous to the utility to do so, income taxes shall be computed as though a consolidated return had been filed and the utility had realized its fair share of the savings resulting from the consolidated

Sec. 13.183. FIXING OVERALL REVENUES. (a) In fixing the rates for water and sewer services, the regulatory authority shall fix its overall revenues at a level that will:

- (1) permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses; and
- (2) preserve the financial integrity of the utility.

(b) In a rate proceeding, the regulatory authority may authorize collection of additional revenues from the customers to provide funds for capital improvements necessary to provide facilities capable of providing adequate and continuous utility service if an accurate accounting of the collection and use of those funds is provided to the regulatory authority. A facility constructed with surcharge funds is considered customer contributed capital or contributions in aid of construction and may not be included in invested capital, and depreciation expense is not allowed.

(c) To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the regulatory authority, by rule or ordinance, as appropriate, may adopt specific alternative ratemaking methodologies for water or sewer rates to allow for more timely and efficient cost recovery. Appropriate alternative ratemaking methodologies are the introduction of new customer classes, the cash needs method, and phased and multi-step rate changes. The regulatory authority may also adopt system improvement charges that may be periodically adjusted to ensure timely recovery of infrastructure investment. The utility commission by rule shall establish a schedule that requires all utilities that have implemented a system improvement charge approved by the utility commission to make periodic filings with the utility commission to modify or review base rates charged by the utility. Overall revenues determined according to an alternative ratemaking methodology adopted under this section must provide revenues to the utility that satisfy the requirements of subsection (a). The regulatory authority may not approve rates under an alternative ratemaking methodology unless the regulatory authority adopts the methodology before the date the rate application was administratively complete.

(d) A regulatory authority other than the utility commission may not approve an acquisition adjustment for a system purchased before the effective date of an ordinance authorizing acquisition adjustments.

(e) In determining to use an alternative ratemaking methodology, the regulatory authority shall assure that rates, operations, and services are just and reasonable to the consumers and to the utilities.

Sec. 13.182. JUST AND REASONABLE RATES. (a) The regulatory authority shall ensure that every rate made, demanded, or received by any utility or by any two or more utilities jointly shall be just and reasonable.

(b) Except as provided by Subsection (b-1), rates may not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of consumers.

(b-1) In establishing a utility's rates, the regulatory authority may authorize the utility to establish reduced rates for a minimal level of service to be provided solely to a class of elderly customers 65 years of age or older to ensure that those customers receive that level of service at more affordable rates. The regulatory authority shall allow a utility to establish a fund to receive donations to recover the costs of providing the reduced rates. A utility may not recover those costs through charges to the utility's other customer classes.

(c) For ratemaking purposes, the utility commission may treat two or more municipalities served by a utility as a single class wherever the utility commission considers that treatment to be appropriate.

(d) The utility commission by rule shall establish a preference that rates under a consolidated tariff be consolidated by region. The regions under consolidated tariffs must be determined on a case-by-case basis.

Added by Acts 1985, 69th Leg., ch. 795, Sec. 3.005, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 966, Sec. 10.04, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), Sec. 2.35, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 171 (S.B. 567), Sec. 35, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 129 (H.B. 1083), Sec. 1, eff. September 1, 2017.

Sec. 13.183. FIXING OVERALL REVENUES. (a) In fixing the rates for water and sewer services, the regulatory

Sec. 13.186. UNREASONABLE OR VIOLATIVE EXISTING RATES; INVESTIGATING COSTS OF OBTAINING SERVICE FROM ANOTHER SOURCE. (a) If the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any utility for any service are unreasonable or in any way in violation of any law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be observed and in force, and shall fix the same by order to be served on the utility. Those rates constitute the legal rates of the utility until changed as provided in this chapter.

(b) If a utility does not itself produce that which it distributes, transmits, or furnishes to the public for compensation, but obtains it from another source, the regulatory authority may investigate the cost of that production in any investigation of the reasonableness of the rates of the utility.

(g-1) If the regulatory authority is the utility commission, the utility commission shall give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The utility commission may delegate to an administrative law judge of the State Office of Administrative Hearings the responsibility and authority to give reasonable notice of the hearing, including notice to the governing body of each affected municipality and county. The utility is not required to provide a formal answer or file any other formal pleading in response to the notice, and the absence of an answer does not affect an order for a hearing.

(h) If, after hearing, the regulatory authority finds the rates currently being charged or those proposed to be charged are unreasonable or in violation of law, the regulatory authority shall determine the rates to be charged by the utility and shall fix the rates by order served on the utility.

(i) A utility may put a changed rate into effect throughout the area in which the utility sought to change its rates, including an area over which the utility commission is exercising appellate or original jurisdiction, by filing a bond with the utility commission if the suspension period has been extended under Subsection (e-1) and the utility commission fails to make a final determination before the 151st day after the date the rate change would otherwise be effective.

(j) The bonded rate may not exceed the proposed rate. The bond must be payable to the utility commission in

Sec. 13.189. UNREASONABLE PREFERENCE OR PREJUDICE AS TO RATES OR SERVICES. (a) A water and sewer utility as to rates or services may not make or grant any unreasonable preference or advantage to any corporation or person within any classification or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage.

(b) A utility may not establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

(c) For purposes of this section, a reduced rate authorized under Section 13.182(b-1) does not:

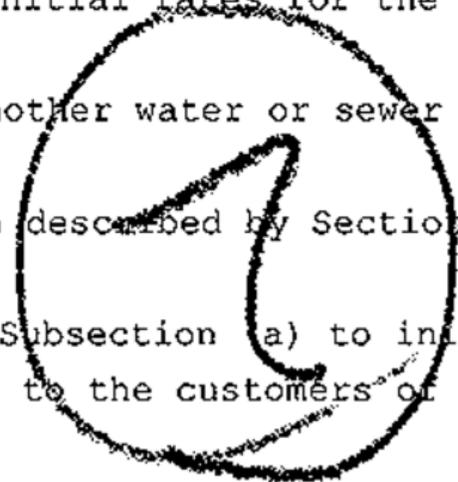
- (1) make or grant an unreasonable preference or advantage to any corporation or person;
- (2) subject a corporation or person to an unreasonable prejudice or disadvantage; or
- (3) constitute an unreasonable difference as to rates of service between classes of service.

Acts 2015, 84th Leg., R.S., Ch. 853 (S.B. 1148), Sec. 7, eff. September 1, 2015.

Sec. 13.3011. INITIAL RATES FOR CERTAIN WATER OR SEWER SYSTEMS AFTER PURCHASE OR ACQUISITION. (a) A person who files an application described by Section 13.301(a) for the purchase or acquisition of a water or sewer system may request that the regulatory authority with original jurisdiction over the rates for water or sewer service provided by the person to the customers of the system authorize the person to charge initial rates for the service that are:

- (1) shown in a tariff filed with a regulatory authority by the person for another water or sewer system; and
- (2) in force for the other water or sewer system on the date the application described by Section 13.301(a) is filed.

(b) The regulatory authority may not require a person who makes a request under Subsection (a) to initiate a new rate proceeding to establish the initial rates for service the person will provide to the customers of the purchased or acquired system.



Added by Acts 2021, 87th Leg., R.S., Ch. 252 (H.B. 1484), Sec. 1, eff. September 1, 2021.