



Control Number: 52912



Item Number: 23

**PUC DOCKET NO. 52912
SOAH DOCKET NO. 473-22-2774.WS**

**COMPLAINT OF LILI AND THOMAS
MCDEVITT AGAINST LEVI WATER
SUPPLY CORPORATION**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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OF TEXAS

PRELIMINARY ORDER

Lili and Thomas McDevitt filed a formal complaint against Levi Water Supply Corporation (WSC) related to Levi WSC's refusal to provide water service. This preliminary order identifies the issues that must be addressed.

I. Complaint

The McDevitts receive water service for their residence from Levi WSC and assert that Levi WSC has refused a water service request for the McDevitts' renovated barn. The McDevitts state that as they began renovations on their barn in April 2021, Levi WSC informed them they would need to obtain a second water meter for their barn.¹ The McDevitts assert that they filled out the required application and paid the required engineering fee in April 2021. However, the McDevitts assert that in early May 2021 as renovation of the barn neared completion, Levi WSC informed the McDevitts that despite being qualified service applicants and complying with Levi WSC's requirements for a second water meter, their request for service would be denied.²

The McDevitts state that Levi WSC later informed the McDevitts that the WSC placed a temporary moratorium on the issuance of water meters due to its concern that additional meters would exceed the permitted usage allocation granted by the Southern Trinity Groundwater Conservation District (Southern Trinity GCD). The McDevitts state that it was Levi WSC's position that the potential to exceed the permitted usage allocation granted by the Southern Trinity GCD amounts to good cause for the denial of their requested water meter. The McDevitts assert that Levi WSC's argument is flawed because the engineering report relied on by Levi WSC is based on estimations, projections, and takes into consideration water consumption by water meters that are not installed or currently nonfunctioning. The McDevitts state that they renewed their request for a water meter for their barn, which was denied at Levi WSC's monthly meeting on

¹ Complaint at 1 (Dec. 2, 2021).

² *Id.* at 1.

November 12, 2021. Additionally, the McDevitts also assert that they believe two Levi WSC water meters were recently abandoned.³

Levi WSC filed a response to the complaint and states that their tariff provides that “no more than one (1) residential, commercial, or industrial service connection is allowed per meter.”⁴ Levi WSC states that its tariff provides an exemption for water lines to outbuildings, barns, or other accessory structures if, among other reasons, the structures are not used as a residence. Levi WSC also states that it never assured the McDevitts that their application for a new water meter would be approved. Levi WSC asserts that the McDevitts were preparing to connect their “barndominium” as a second residence in violation of section E.24 of Levi WSC’s tariff.⁵

Levi WSC explains that it sent a letter to the McDevitts informing them of the engineering and capacity constraints prohibiting immediate service and informing them of the construction to the water system needed prior to serving the McDevitts. Levi WSC asserts that good cause exists for the sudden lack of capacity to serve new applicants due to unprecedented growth. Levi WSC states that in response to this growth, it is seeking to pursue alternate water sources, but several factors have slowed the process to acquire additional water supply, including winter storm Uri and the associated repairs and improvements to existing infrastructure, compliance with the Commission’s requirements for improvements and generator acquisitions relating to Senate Bill 3, the local groundwater district barring all new permit applications due to the aquifer being at capacity, and contractual and cost barriers to short-term or long-term purchases of groundwater or surface water to supplement Levi’s water system.

Also, Levi WSC asserts that good cause exists for not providing the McDevitts service because the Southern Trinity GCD, the district that supplies Levi WSC water, requires a permit issued by the Southern Trinity GCD to drill or operate a well within the boundaries of Southern Trinity GCD. Levi WSC inquired about getting new permits from Southern Trinity GCD to increase capacity, but Southern Trinity GCD stated that the aquifer is at capacity and no new, additional permits are currently being issued. Further, Levi WSC states that Southern Trinity GCD has enforcement authority that permits it to curtail or cancel a permit or fine the permit-holder,

³ *Id.* at 1-5.

⁴ Levi WSC’s Response to the Complaint at 2.

⁵ *Id.* at 2-3, 39.

here Levi WSC, for pumping in excess of the permitted water volume if the permit-holder fails to follow Southern Trinity GCD pumping restrictions.⁶

II. Procedural History

The McDevitts filed their complaint on December 2, 2021 and an amendment to their complaint on April 5, 2022. Commission Staff filed a statement of position recommending that the facts of the case are in dispute, most notably over the forecasted water capacity that Levi WSC relied on to limit its new water meter allocation, and that it needs more time to review Levi WSC's tariff. In Order No. 3, the Commission administrative law judge (ALJ) found that the McDevitts complied with the informal resolution requirements pursuant to 16 Texas Administrative Code (TAC) § 22.242(c). Commission Staff filed its supplemental statement of position, and reiterated that the facts are in dispute and recommended this proceeding be referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.

The McDevitts and Levi WSC were directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by May 12, 2022. The McDevitts, Levi WSC, and Commission Staff each filed a list of issues.

III. Issues to be Addressed

The Commission must provide to the ALJ a list of issues or areas to be addressed in any proceeding referred to SOAH.⁷ After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Did the McDevitts comply with all the requirements for informal resolution pursuant to 16 TAC § 22.242(c)?
2. Did the McDevitts meet all the requirements to bring the formal complaint under 16 TAC § 22.242(e)?
3. Is Levi WSC a “water and sewer utility, utility, or public utility” as defined in 16 TAC § 24.3(39)?

⁶ *Id.* at 1-5.

⁷ Tex. Gov't Code § 2003.049(e).

4. Is Levi WSC a “water supply or sewer service corporation” as defined in 16 TAC § 24.3(40)?
5. Are the McDevitts a “customer” of Levi WSC as defined in 16 TAC § 24.3(11)? If so, on what date did the McDevitts become a customer?
6. What is the date of the McDevitts’ application for service for the barn on their property?
 - a. On what dates, if any, did the McDevitts amend their application? For any amendment date, please summarize the requested service changes including the number of proposed connections and other relevant information.
 - b. What are the dates and requested service connections for any subsequent applications for service by the McDevitts?
7. What fees and amounts, if any, have the McDevitts paid to Levi WSC in relation to their requests for service?
8. What is the effective date of Levi WSC’s tariff applicable to the McDevitts’ complaint?
9. What provisions of Levi WSC’s tariff apply to this proceeding?
 - a. Does the McDevitts’ application for service comply with the terms of Levi WSC’s tariff?
 - b. Has Levi WSC complied with all applicable tariff provisions in addressing the McDevitts’ request for water service?
 - c. Is the barn the McDevitts request service for located on the same tract as the primary delivery point, as addressed in Levi WSC’s tariff under tariff section E.24(b)(1).
 - d. Is the barn the McDevitts are requesting service for to be used as a residence, commercial facility, or an industrial facility as addressed in Levi WSC’s tariff under tariff section E.24(b)(1)?
10. Has Levi WSC complied with all requirements of 16 TAC § 24.161 in addressing the McDevitts’ request for water service?
 - a. Is Levi WSC a retail public utility with respect to 16 TAC § 24.161(a)?
 - b. Are the McDevitts a “qualified service applicant” as addressed in 16 TAC § 24.161(a)? If not, what specific tariff provisions, service policies, or regulations have not been met and what rates or fees (if any) have not been paid for the complainants to become a qualified service applicant?

- c. Has Levi WSC made an application for water service available to the McDevitts?
- d. Has Levi WSC ever accepted a completed application for water service from the McDevitts? If Levi WSC contends it has never received, or has received but never accepted, a completed application from the McDevitts, in what manner have the McDevitts failed to provide a completed application?
- e. Has Levi WSC refused service to the McDevitts by failing to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from the McDevitts?
- f. Has Levi WSC shown good cause for not providing service within 180 days of the date a completed application was accepted pursuant to 16 TAC § 24.161(b)?
- g. Did Levi WSC require easements as allowed by law under 16 TAC § 24.161(d)(3) as a condition for service to the McDevitts that the McDevitts have not provided to Levi WSC?
- h. Do the requirements of 16 TAC § 24.161(e) apply to this proceeding? If so,
 - i. Has Levi WSC complied with the requirements of 16 TAC § 24.161(e)(1)?
 - ii. Have the McDevitts failed to comply with the subdivision extension policy set forth in Levi WSC's tariff?
 - iii. Does Texas Water Code (TWC) § 13.2502 and 16 TAC § 24.161(e) allow Levi WSC to deny extending retail water service to the McDevitts? If so, did Levi WSC document that the McDevitts failed to comply with its subdivision service extension policy?
- 11. Has Levi WSC complied with TWC § 13.250(a) 16 TAC § 24.247(a) by providing continuous and adequate service to every customer and every qualified applicant?
- 12. Has Levi WSC complied with all Commission rules and Levi WSC's tariff provisions in addressing the McDevitts' request for water service?
- 13. What tariff provisions or Commission rules, if any, has Levi WSC violated? If the Commission determines Levi WSC has committed any tariff or rule violations, what relief should be granted to the McDevitts?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations


imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

IV. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the 20th day of May 2022.

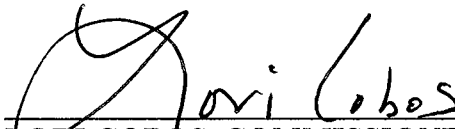
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