



## **Filing Receipt**

**Filing Date - 2023-10-27 02:28:53 PM**

**Control Number - 54617**

**Item Number - 58**

**DOCKET NO. 54617**

<b>APPLICATION OF TEXAS WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>UTILITIES, L.P. AND SOUTHERN</b>	<b>§</b>	
<b>HORIZONS DEVELOPMENT, INC.</b>	<b>§</b>	<b>OF TEXAS</b>
<b>FOR SALE, TRANSFER, OR MERGER</b>	<b>§</b>	
<b>OF FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN LIBERTY AND</b>	<b>§</b>	
<b>MONTGOMERY COUNTIES</b>	<b>§</b>	

**TEXAS WATER UTILITIES, L.P.'S INITIAL BRIEF ON THRESHOLD ISSUES**

Texas Water Utilities, L.P. (TWU) files this Initial Brief on Threshold Issues. Pursuant to the Order Requesting Briefing on Threshold Issues filed by the Commission Counsel for the Public Utility Commission of Texas (Commission) on October 13, 2023, this brief is timely filed.<sup>1</sup>

**I. EXECUTIVE SUMMARY**

The Texas Legislature enacted Texas Water Code (TWC) § 13.3011 for a specific purpose, namely, to “authoriz[e] acquiring utilities to use previously approved rates immediately after acquiring another utility.”<sup>2</sup> This purpose aligns with the common law construct known as the filed rate doctrine, which has been recognized by Texas courts to apply to utilities.<sup>3</sup> Interpreting TWC § 13.3011 to require the Commission to grant an acquiring utility’s request for an initial rate upholds the legislative intent and observes the filed rate doctrine. As discussed in detail below, it also comports with the Texas Code Construction Act, other rules of statutory interpretation, and the ratemaking standards found in TWC Chapter 13, subchapter F. Answering this question in the affirmative renders the remaining threshold issues moot; nevertheless, TWU has briefed those issues as well.

---

<sup>1</sup> Order Requesting Briefing on Threshold Issues at 2 (Oct. 13, 2023) (establishing 3:00 p.m. on October 27, 2023 as the deadline for all parties to file their initial briefs).

<sup>2</sup> Bill Analysis, Tex. H.B. 1484, 88th Leg., R.S. (2023) (HB 1484 Bill Analysis) (emphasis added).

<sup>3</sup> *Entex, a Div. of Reliant Energy Res. Corp. v. R.R. Comm’n of Tex.*, 18 S.W.3d 858 (Tex. App.—Austin 2000, pct. denied).

## II. DISCUSSION

1. **Under Texas Water Code (TWC) § 13.3011, is the Commission required to grant an acquiring utility's request to charge its existing filed rates for another water or sewer system owned by the acquiring utility to customers in the acquired utility's service area?**

Yes, the Commission is required to grant an acquiring utility's request for initial rates if the rates requested meet the criteria in TWC § 13.3011(a). This interpretation is supported by clear and convincing legislative intent, the Texas Code Construction Act, additional rules of statutory construction, relevant case law, and other relevant ratemaking statutes.

### *Legislative Intent and the Code Construction Act*

The Code Construction Act permits a court to consider certain information, including the (1) object sought to be attained; (2) circumstances under which the statute was enacted; and (3) legislative history.<sup>4</sup> The language codified in TWC § 13.3011 was enacted by HB 1484. The introduced version, engrossed version, and enrolled version of HB 1484 are identical.<sup>5</sup> Therefore, the language of TWC § 13.3011 did not change as it made its way through the legislative process and throughout the legislative process stated:

(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.

---

<sup>4</sup> Tex. Gov't Code § 133.023(1)–(3).

<sup>5</sup> The introduced version is the bill as filed, the engrossed version is the bill as passed by the chamber in which it originated, and the enrolled version is the version that is finally passed after consideration in both the House and the Senate.

The bill analysis for TWC § 13.3011<sup>6</sup> included the following statements:

When specific water or wastewater utility companies are acquired, the acquiring utility is required to use the acquired utility's rates. If the acquiring utility wishes to use its current filed rate instead, the utility must file a rate increase case with the Public Utility Commission of Texas (PUC). . . **Therefore the bill seeks to address this issue by authorizing acquiring utilities to use previously approved rates immediately after acquiring another utility.**<sup>7</sup>

This bill analysis speaks directly to the items enumerated in the Code Construction Act. Specifically, it demonstrates the circumstances under which TWC §13.3011 was enacted—a regulatory environment in which an acquiring utility could only change the rates charged to customers acquired via a sale, transfer, or merger (STM) by filing a base rate proceeding. It also demonstrates the object to be obtained by the passage of TWC § 13.3011—to change the regulatory environment such that an acquiring utility is authorized to change the rates charged to customers acquired via an STM immediately after completing the proposed acquisition. When combined with the legislative history demonstrating that the language in TWC § 13.3011 chosen by the Legislature to achieve the object it sought to attain remained the same from start to finish, the only appropriate interpretation of TWC § 13.3011 is that it requires the Commission to approve an initial rate requested by an acquiring utility.

### ***Additional Rules of Statutory Construction***

An additional rule of statutory construction supporting that the Commission is required to approve a request for initial rates under TWC § 13.3011 is the convention that statutes are presumed to be enacted by the Legislature with full knowledge of the common law.<sup>8</sup> At the time TWC § 13.3011 was enacted, the Third Court of Appeals had long recognized the common law concept known as the “filed rate doctrine.”<sup>9</sup> As described by the Third Court, the filed rate

---

<sup>6</sup> This bill analysis accompanied the engrossed version of HB 1484 (i.e., the version approved by the House and sent to the Senate for consideration).

<sup>7</sup> HB 1484 Bill Analysis at 1 (emphasis added).

<sup>8</sup> *Phillips v. Beaher*, 995 S.W.2d 655, 658 (Tex. 1999).

<sup>9</sup> *Entex*, 18 S.W.3d 858.

doctrine “prohibits regulated utilities from ‘charging rates for their services other than those properly filed with the appropriate regulatory authority.’”<sup>10</sup>

In *Entex*, the Third Court directly addressed a situation where customers were transferred as the result of an acquisition.<sup>11</sup> The Third Court held that the acquiring utility must charge rates according to the schedule of rates approved and found reasonable for the acquiring utility and not the rates of the utility that was serving the customers prior to the acquisition.<sup>12</sup> The Third Court reasoned that the acquiring utility was not increasing its rates, it was extending the rates it was authorized to charge to new customers.<sup>13</sup>

The *Entex* decision interpreted Gas Utility Regulatory Act (GURA) § 104.005,<sup>14</sup> which is very similar to TWC § 13.190. GURA is part of the Texas Utilities Code, and both GURA § 104.005 and TWC § 13.190 are designed to ensure equality of rates and services and prohibit a utility from charging a rate for a service that is more or less than the rate for that service shown in the utility’s approved tariff.<sup>15</sup> The *Entex* decision noted that GURA’s purpose was “to assure rates, operations, and services that are just and reasonable to the *consumers* and to the *utilities*.”<sup>16</sup> It further noted that “[t]his policy does not dictate favoring the customer over the utility . . . .”<sup>17</sup> The stated purpose of the TWC is similar to GURA and references both consumers and retail public utilities.<sup>18</sup>

Prior to the passage of TWC § 13.3011, no law specifically prohibited a utility from requesting to charge its approved rates at the time it filed an application under TWC § 13.301. However, the Commission had made it clear that such a change could only be approved in a base rate proceeding.<sup>19</sup> As indicated in the Bill Analysis for HB 1484, the Legislature knew

---

<sup>10</sup> *Id.* at 862–63.

<sup>11</sup> *Id.* at 861.

<sup>12</sup> *Id.* at 862–66 (emphasis added).

<sup>13</sup> *Id.* at 866.

<sup>14</sup> *Id.* at 863–66.

<sup>15</sup> Compare, TWC § 13.190(a), with, GURA § 104.005(a).

<sup>16</sup> *Entex*, 18 S.W.3d at 863 (quoting Tex. Util. Code § 101.002(a)).

<sup>17</sup> *Id.*

<sup>18</sup> Compare, TWC § 13.001(c), with, GURA § 101.002(a).

<sup>19</sup> The STM application currently posted on the Commission’s website states the following “(NOTE: If the acquiring entity is an IOU, the IOU may not change the rates charged to the customers through this STM application. Rates can only be changed through the approval of a rate change application.)” Application for Sale,

this to be the Commission's practice, and pursuant to the rules of statutory construction, the Legislature was presumed to know that Texas common law recognized the filed rate doctrine codified in TWC § 13.190. Thus, it is reasonable to conclude that the Legislature enacted TWC § 13.3011 to shore up TWC § 13.190 and require the Commission to apply the filed rate doctrine in STM proceedings. Interpreting TWC § 13.3011 as permitting, rather than requiring, the Commission to approve initial rates requested by an acquiring utility would ignore the common law and would directly contravene the Legislature's intent.

### ***Supporting Case Law***

More recently, the Texas Supreme Court applied the filed rate doctrine to a case involving an electric utility's tariff.<sup>20</sup> In *Ramirez*, the Court held that the tariff for a gas utility can limit the utility's liability for personal injury damages.<sup>21</sup> In doing so, the Court stated that "[a]n approved tariff carries the binding force and effect of law until suspended or set aside and, while in effect, defines the terms under which the utility's services are provided."<sup>22</sup> Furthermore, "[o]nce approved, 'regulated utilities cannot vary a tariff's terms with individual customers, discriminate in providing services, or charge rates other than those properly filed with the appropriate regulatory authority.'"<sup>23</sup> The Court then stated that the filed rate doctrine also applied equally in the electric utility context; the Court described how it previously held that a provision in a tariff limiting an electric utility's liability for personal-injury damages was reasonable as a matter of law and enforceable against customer's ordinary negligence claim because a provision in the tariff expressly provided a remedy for damages.<sup>24</sup> As described

---

Transfer, or Merger of a Retail Public Utility at Part D, Question No. 15A, available at [https://www.puc.texas.gov/industry/water/forms/stm\\_form.pdf](https://www.puc.texas.gov/industry/water/forms/stm_form.pdf) (last visited Oct. 26, 2023). Before the Commission adopted its own STM application form on or around March 2018, it used TCEQ Form 10516, which provided options for explaining whether rates would change. With respect to investor-owned utilities, the application made it clear that an application for a rate change was required, stating: "Applicant is an IOU and intends to file with the commission or municipal regulatory authority an application to change rates of some/all of its customers as a result of this transaction. If so, please explain." See, e.g., *Application of Fall Creek Utility Company, Inc. and LGIRVR Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hood County*, Docket No. 48103, Application Question No. 14 at 7–8 (Feb. 26, 2018).

<sup>20</sup> *CenterPoint Energy Resources Corp. v. Ramirez*, 640 S.W.3d 205 (Tex. 2022).

<sup>21</sup> *Id.* at 212–14.

<sup>22</sup> *Id.* at 212.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 213–14.

above, *Ramirez* demonstrates that the filed rate doctrine supports an interpretation that the Commission is required to approve a request for initial rates under TWC § 13.3011. Overall, the Texas Supreme Court has made it clear that “[a] tariff filed with the PUC governs a utility’s relationship with its customers and it is given the force and effect of law until suspended or set aside.”<sup>25</sup>

### ***Consistency with Other Ratemaking Statutes***

One of the most fundamental tenets of statutory construction is that a court must ascertain the intent of the statute using its plain language and considering the larger statutory scheme.<sup>26</sup> Construing TWC § 13.3011 to require the Commission to grant an acquiring utility’s request for initial rates is consistent with other ratemaking provisions contained in the TWC, including TWC §§ 13.182, 13.183, and 13.190. Under TWC § 13.182(a) and (b), a utility’s rates must be just and reasonable,<sup>27</sup> cannot be unreasonably preferential, prejudicial, or discriminatory, and must be sufficient, equitable, and consistent in application to each class of consumers. Overall, rates must recover a level of revenue that not only permits 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” but also preserves the utility’s financial integrity.<sup>28</sup> Further, under TWC § 13.190, a utility is expressly prohibited from directly or indirectly charging, demanding, collecting, or receiving compensation for a service that is more or less than the rate for that service as shown in a tariff filed with the regulatory authority.<sup>29</sup>

A rate that satisfies the criteria in TWC § 13.3011(a) automatically meets all four statutory requirements.

---

<sup>25</sup> *City of Richardson v. Oncor Elec. Delivery Co. LLC*, 539 S.W.3d 252, 257 (Tex. 2018).

<sup>26</sup> *State v. Terrell*, 588 S.W.2d 784, 786 (Tex. 1979).

<sup>27</sup> The rule that has been proposed to implement TWC § 13.3011 references only the just and reasonable standard. *Water and Sewer Utility Rates After Acquisition*, Project No. 53924, Proposal for Publication of New 16 TAC § 24.20 as Approved at the September 14, 2023, Open Meeting at 8 (Sept. 14, 2023).

<sup>28</sup> TWC § 13.183(a).

<sup>29</sup> TWC § 13.190(a).

- TWC § 13.182(a) is satisfied because the rates in a tariff filed with a regulatory authority and in effect for another system have already been reviewed and found just and reasonable by the regulatory authority.
- TWC §§ 13.182(b) and 13.190(a) are satisfied because the TWC § 13.3011 rate ensures that the customers who will be transferred via the STM will receive service under a rate schedule that is applicable to some or all of the other systems owned by the transferor and does not require the transferor to charge a rate that is greater or lesser than the rates in its tariff.
- TWC § 13.183(a) is satisfied because it is the TWC § 13.3011 rate that was part of a holistic rate design approved by a regulatory authority to recover a revenue requirement that permits the transferor to earn a reasonable return on its investment and preserves its financial integrity.

Therefore, a reading of TWC § 13.3011 that requires the Commission to approve a request for initial rates is consistent with the larger regulatory scheme used to evaluate rates.

In conclusion, the Commission is required to grant an acquiring utility's request to charge its existing filed rates for another water or sewer system owned by the acquiring utility to customers in the acquired utility's service area under TWC § 13.3011. Interpreting TWC § 13.3011 as merely allowing an acquiring utility to request to charge its existing filed rates would frustrate the Legislature's intent, the rules of statutory construction, and the Texas Courts' recognition of the filed rate doctrine.

***TWC § 13.3011's Permissive Language Does Not Apply to the Commission***

It is worth noting that TWC § 13.3011(a) utilizes the word "may." However, per the plain language of the statute, the permissive nature is limited to the actions of "a person who files an application described by Section 13.301(a)."<sup>30</sup> In other words, it permits, but does not require, an acquiring utility to request an initial rate under TWC § 13.3011. "Courts are not bound by the literal meaning of the words in the construction of statutes, but when the intent and purpose of the Legislature is manifest from a consideration of a statute as a whole, words will be restricted or enlarged in order to give the statute the meaning which was intended by the

---

<sup>30</sup> TWC § 13.3011(a).

lawmakers.”<sup>31</sup> Therefore, relying too literally on the use of the word “may” in TWC § 13.3011 could unreasonably prevent a utility that requests an initial rate that satisfies the criteria in TWC § 13.3011(a) from receiving approval of the requested rate. As stated in the bill analysis for HB 1484, the purpose of the statute was to authorize acquiring utilities to *use* (not simply to request) previously approved rates immediately after acquisition. Overall, the purpose of the statute will be frustrated if it is read to permit, rather than require, the Commission to approve a request for an initial rate under TWC § 13.3011.

**2. If the Commission is not required to grant a request under TWC § 13.3011(a), what criteria, if any, should the Commission use to determine whether to grant such a request?**<sup>32</sup>

In the event the Commission determines that the answer to Question No. 1 is “no,” the Commission should adhere to the two criteria plainly enumerated in the statute when evaluating a request for an initial rate: (1) the requested initial rate is shown in an in-force tariff filed with a regulatory authority; and (2) the requested initial rate is in effect on the date the STM application is filed.<sup>33</sup> No additional criteria are warranted because a rate in a tariff approved by a regulatory authority has already been reviewed and approved by a regulatory authority. As such, the expenses underlying the requested initial rates have been found reasonable and necessary, while the rate itself has been found to meet the criteria in TWC §§ 13.182(a)-(b), 13.183(a), and 13.190(a). Establishing a process that goes beyond the criteria in TWC § 13.3011(a) and necessitates a more comprehensive review runs afoul of subsection (b), which prohibits the Commission from requiring an acquiring utility to file a full rate case to establish the initial rates for any customers acquired.

Limiting the review of a requested rate to the criteria in TWC § 13.3011(a) encourages consolidation of substandard water and wastewater utilities and preserves the customer benefits the Legislature sought to achieve, including “more reliable water and wastewater service and fewer service disruptions over time” and more consistent and equitable rates across the utility’s

---

<sup>31</sup> *McMillan v. Parker*, 910 S.W.2d 616 (Tex. App. 1995), writ denied (Mar. 7, 1996).

<sup>32</sup> This question was also posed by Commission Staff in Project No. 53924. For more information, please see the responses filed by the Texas Association of Water Companies and Aqua Texas, Inc. Project No. 53924, Texas Association of Water Companies, Inc.’s Initial Comments on Discussion Draft at 4–5 (Jun. 14, 2023) and Aqua Texas, Inc.’s Initial Comments on Discussion Draft at 3–5 (Jun. 14, 2023).

<sup>33</sup> TWC § 13.3011(a).

service area.”<sup>34</sup> The filing of an STM application and request for an initial rate occurs after the acquiring and selling utility have negotiated and agreed upon the purchase price and other details of the proposed transaction. The decision regarding which rate to request is not made in a vacuum, and the request for a specific rate may be the product of the confidential negotiations leading to the acquisition. Moreover, the ability to request rate X that is currently in force for system Y may be one of the deciding factors in the decision to pursue the acquisition at all. Creating a predictable procedure for reviewing and approving a requested initial rate will avoid the unintentional consequence of undermining the viability of the acquisition and facilitate, rather than discourage, the acquisition of the utilities that are most in need of new management.

**3. If the Commission is not required to grant a request under TWC § 13.3011(a) and does not do so, what rates may the Commission authorize the acquiring utility to charge the customers of the acquired system in light of the prohibition in TWC § 13.3011(b)?**

The answer to this question confirms that the correct interpretation of TWC § 13.3011 is that the Commission is required to approve a request for an initial rate. A utility is required to file a tariff “showing all rates that are subject to the original or appellate jurisdiction of the regulatory authority and that are in force at the time for any utility service, product, or commodity offered” and all rules and regulations related to or affecting utility service.<sup>35</sup> A utility is prohibited from charging any rate or imposing any regulation other than as provided for in TWC Chapter 13.<sup>36</sup> A utility is also prohibited from charging a rate for a service that is more or less than the rate for that service that is shown in a tariff on file with the regulatory authority.<sup>37</sup>

Based on these parameters, two sets of rates are eligible for Commission approval: (1) the rates of the acquiring utility that are shown in a tariff on file with a regulatory authority and requested as initial rates;<sup>38</sup> and (2) the rates of the selling utility that are shown in a tariff

---

<sup>34</sup> HB 1484 Bill Analysis at 1.

<sup>35</sup> TWC § 13.136(a).

<sup>36</sup> TWC § 13.135.

<sup>37</sup> TWC § 13.190(a).

<sup>38</sup> Under TWC § 13.3011(a), it is the acquiring utility that has the discretion to choose what, if any, rate it wishes to charge as an initial rate.

on file with a regulatory authority and charged to existing customers. Changing either of these rates, or setting an entirely new rate for the acquired customers, would necessitate a base rate case, which is strictly prohibited by TWC § 13.3011(b).<sup>39</sup> Using the rates from the selling utility's tariff maintains the status quo and thwarts the purpose of TWC § 13.3011, which "seeks to address" the status quo by authorizing acquiring utilities to begin charging their approved rates immediately after completing a transaction proposed under TWC § 13.301.<sup>40</sup> Accordingly, the only option that complies with the applicable provisions of the TWC and upholds the legislative intent of HB 1484, is to approve the initial rate requested by the acquiring utility under TWC § 13.3011(a).

**4. Does a request for a hearing to contest approval of rates under TWC § 13.3011(a) constitute proper grounds for a hearing under 13.301(e) and 16 Texas Administrative Code (TAC) § 24.239(h)?**

- a. In addressing this question, please address whether the determination of which rate to implement might result in public-interest concerns under TWC § 13.301(e)(5) and 16 TAC § 24.239(h)(5).**
- b. In addressing subpart 4a, please specifically address whether the rate determination may be relevant to the probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction under TWC § 13.246(c)(8) and 16 TAC § 24.239(h)(5)(H).**

No. As stated in response to Question No. 1, the Commission is required to approve an initial rate requested under TWC § 13.3011; therefore, a hearing request made for the purpose of contesting the approval of rates under TWC § 13.3011(a) does not constitute proper grounds for a hearing under TWC § 13.301(e) and the corresponding Commission rule. Once again, the legislative history of HB 1484 is decisive. During the consideration of HB 1484 on the floor of the House, the author of the bill and another legislator had an exchange that was recorded in the House Journal under the heading "Statement of Legislative Intent."<sup>41</sup> The author was asked whether customers would be informed of any potential rate change "so that they're not

---

<sup>39</sup> Although TWC § 13.3011(b) uses the phrase "may not," the Texas Code Construction Act clearly states that "may not" is synonymous with "shall not." Tex. Gov't Code § 311.016(5).

<sup>40</sup> HB 1484 Bill Analysis at 1.

<sup>41</sup> H.J. of Tex., 87th Leg., R.S. 1200 (2023), available at: <https://journals.house.texas.gov/hjrn/87r/pdf/87RDAY26CFINAL.PDF#page=12> (last visited Oct. 26, 2023).

surprised.”<sup>42</sup> The author responded as follows: “I can assume the PUC also lets customers know of *any new rates they will be paying*.”<sup>43</sup> Nothing about this exchange indicates that a customer would have the opportunity to contest the requested initial rates. It merely indicates that there will be some notice regarding what the new rates will be.

In the event the Commission determines that it is not required to approve an initial rate, a hearing request made for the purpose of contesting the approval of rates under TWC § 13.3011(a) still does not constitute proper grounds for a hearing under TWC § 13.301(e). An STM application and a request for an initial rate are separate requests for relief governed by separate statutes. The reasons the Commission may hold a hearing to determine if a transaction will serve the public interest are enumerated in TWC § 13.301(e). Included in this list is a specific reference to TWC § 13.246(c).<sup>44</sup> The Legislature enacted TWC § 13.3011 as a standalone statutory provision and with full knowledge of the existing law.<sup>45</sup> In doing so, it did not also seek to amend TWC § 13.301(e) to reference TWC § 13.3011. This decision must be given weight. Consequently, the Commission is not authorized to hold a hearing for the purpose of contesting a requested initial rate under TWC § 13.301(e).

Finally, the criteria in TWC § 13.246(c) apply to the evaluation of a request to obtain or amend a certificate of convenience and necessity (CCN). As explained earlier, it is the criteria in TWC Chapter 13, subchapter F (which includes TWC §§ 13.182, 13.183, and 13.190) that addresses rates, and a rate that satisfies the requirements in TWC § 13.3011(a) also meets these ratemaking standards. A finding that TWC § 13.246(c)(8) applies to a request under TWC § 13.3011—i.e., to the evaluation of a rate—is wholly inconsistent with the Commission’s current approach that prevents an investor-owned utility from changing the rates of customers acquired via an STM in an STM proceeding. Under this approach, there can never be a probable lowering of costs or improvement of service resulting from a rate change because the Commission will not approve a change in the rates charged to the customers who will be transferred via the STM.

---

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* (emphasis added).

<sup>44</sup> TWC § 13.305(c)(5).

<sup>45</sup> *In re Pirelli Tire, L.L.C.*, 247 S.W.3d 670, 677 (Tex. 2007); *see also*, Tex. Gov’t Code § 311.023(4).

Regardless of the Commission's decision regarding whether it is required to approve a request for initial rates under TWC § 13.3011, a hearing request made for the purpose of contesting the approval of rates under TWC § 13.3011(a) does not constitute proper grounds for a hearing under TWC § 13.301(e).


### III. CONCLUSION

TWU respectfully requests that the Commission adopt an order construing TWC § 13.3011 to require the approval of an acquiring utility's request for an initial rate. In the alternative, TWU requests the adoption of an order finding that a hearing request made for the purpose of contesting the approval of rates under TWC § 13.3011(a) still does not constitute proper grounds for a hearing under TWC § 13.301(e), declining to adopt a preliminary order in this proceeding, and directing the administrative law judge to proceed with the continued processing of this docket.

Respectfully submitted,

SPENCER FANE, LLP  
816 Congress Avenue  
Suite 1200  
Austin, TX 78701  
Telephone: (512) 840-4550  
Facsimile: (512) 840-4551


William A. Faulk, III  
State Bar No. 24075674  
[cfaulk@spencerfane.com](mailto:cfaulk@spencerfane.com)  
Taylor P. Denison  
State Bar No. 24116344  
[tdenison@spencerfane.com](mailto:tdenison@spencerfane.com)

  
Eleanor D' Ambrosio  
State Bar No. 24097559  
[edambrosio@spencerfane.com](mailto:edambrosio@spencerfane.com)

**ATTORNEYS FOR TEXAS WATER  
UTILITIES, L.P.**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on October 27, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
Eleanor D'Ambrosio