



Filing Receipt

Filing Date - 2023-11-03 02:47:36 PM

Control Number - 54617

Item Number - 61

PUC DOCKET NO. 54617

APPLICATION OF TEXAS WATER UTILITIES, LP AND SOUTHERN HORIZONS DEVELOPMENT, INC. FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN LIBERTY AND MONTGOMERY COUNTIES	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
---	--	--

**OFFICE OF PUBLIC UTILITY COUNSEL'S
REPLY BRIEF TO ORDER REQUESTING BRIEFING ON THRESHOLD ISSUES**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers in Texas, files this reply brief.¹ Pursuant to the Order Requesting Briefing on Threshold Issues, the deadline for reply briefs is November 3, 2023.² Therefore, this brief is timely filed.

I. INTRODUCTION

In their initial briefs, Staff (“Staff”) of the Public Utility Commission of Texas (“Commission”) and Texas Water Utilities, LP (“Texas Water”) incorrectly conclude that a request for a hearing to contest approval of rates under TWC § 13.3011(a) does not constitute proper grounds for a hearing under TWC § 13.301(e) and 16 TAC § 24.239(h).³ Additionally, Texas Water argues that the Commission is required to grant an acquiring utility’s request under Texas Water Code (“TWC”) § 13.3011 for an initial rate based on an extrapolation of an interpretation of legislative intent and erroneous application of the filed rate doctrine.⁴ OPUC disagrees.

¹ The fact that OPUC does not address an issue should not be interpreted as agreement with any particular position on the issue.

² Order Requesting Briefing on Threshold Issues (Oct. 13, 2023).

³ Texas Water Utilities, L.P.’s Initial Brief on Threshold Issues at 10-12 (Oct. 27, 2023); Commission Staff’s Brief on Threshold Issues at 2–3 (Oct. 27, 2023).

⁴ Texas Water Utilities, L.P.’s Initial Brief on Threshold Issues at 2–7 (Oct. 27, 2023).

II. ARGUMENT

Staff and Texas Water both argue that a request for a hearing to contest approval of rates under TWC § 13.3011(a) does not constitute proper grounds for a hearing under TWC § 13.301(e) and 16 TAC § 24.239(h) but give different reasoning.

Staff argues that TWC § 13.3011(b) prevents the Commission from requiring a rate case for initial rates because granting this request would be similar to a rate case where a utility is required to defend its rates.⁵ This argument equivocates review of an application under TWC §§ 13.301-13.3011, and 13.246(c) with review of an application under TWC §§ 13.187-13.1872. These sections are in entirely different subsections of the Water Code and establish completely distinct standards of review. An application under TWC §§ 13.187-13.1872 is a comprehensive evaluation of a utility's rates and requires extensive evidence such as testimony, rate schedules, and other records statutorily required by the Commission. The process also requires an in-depth analysis of the entirety of the utility's finances, current infrastructure, and business practices. Whereas an application under TWC §§ 13.301-13.3011, and 13.246(c) is a much more limited review of the transaction at issue and whether it serves the public interest. Generally, these applications do not require testimony or in-depth analysis of every financial decision made by the utility. Additionally, there is no need for a utility to defend the rates already approved in its tariff, only whether applying those rates to the acquired customers would be in the public interest. Characterizing Commission review of the application of rates requested under TWC § 13.3011 as similar to filing a rate case grossly overstates the review needed to determine if a transaction is in the public interest. Additionally, Staff seems to contradict its argument by agreeing that a determination of which rate to implement may result in public interest concerns under TWC § 13.301(e)(5) and 16 TAC § 24.239(h)(5) and will be relevant to the probable improvement of service and lowering cost to customers.⁶

Texas Water argues the Legislature enacted TWC § 13.3011 as a “standalone statutory provision” and did not seek to amend TWC § 13.301(e) to reference TWC § 13.3011.⁷ As argued

⁵ Commission Staff's Brief on Threshold Issues at 3 (Oct. 27, 2023).

⁶ *Id.* at 4-5.

⁷ Texas Water Utilities, L.P.'s Initial Brief on Threshold Issues at 11 (Oct. 27, 2023).

in OPUC’s initial brief, this interpretation would not be in the public interest and conflicts with the principles of statutory construction. Statutory interpretation principles established by the Supreme Court of Texas in *Youngkins v. Hines* require that statutes be considered as a whole rather than by its isolated provisions.⁸ Therefore, the Commission should consider the entirety of the Water Code with its interpretation, including TWC § 13.301. Furthermore, the interpretation urged by Texas Water conflicts with the enactment presumptions outlined in Tex. Gov’t Code § 311.021(5), which requires a presumption that public interest is favored over any private interest, such as a private utility’s possessing unfettered discretion to charge the highest rates it can find in its tariff regardless of the circumstances.⁹

Texas Water also argues that the Commission is required to grant an acquiring utility’s request under TWC § 13.3011 because the Legislature intended to implement the filed rate doctrine into the Water Code based on the Bill Analysis from HB 1484.¹⁰ Texas Water quotes:

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.*¹¹

Texas Water argues that this should be interpreted as requiring the Commission to approve *any* applied for rate instead of using the plain meaning of the word “authorizing” as a permissive action. A valid interpretation of the emphasized sentence is that the Legislature intended to offer an additional option of adopting an acquiring utility’s rates.

Texas Water further argues that the Legislature intended to implement the filed rate doctrine in TWC § 13.3011 because the principles of statutory construction require an assumption

⁸ *Youngkins v. Hines*, 546 S.W.3d 675, 680 (Tex. 2018). (See also, *Tex. Indus. Energy Consumers v. Pub. Util. Comm’n of Texas*, No. 03-17-00490-CV, 2021 WL 3518884, at *3 (Tex. App. – Austin Aug. 11, 2021, pct. denied) (mem. op.) (citing, *Youngkins*, 546 S.W.3d at 680); *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) (citing *Morrison v. Chan*, 699 S.W.2d 205, 208 (Tex. 1985)).

⁹ Tex. Govt. Code § 311.021(5).

¹⁰ Texas Water Utilities, L.P.’s Initial Brief on Threshold Issues at 3 (Oct. 27, 2023).

¹¹ HB 1484 Bill Analysis at 1 (emphasis added).

that statutes are presumed to be enacted by the Legislature with full knowledge of the common law.¹² By that same logic, if the Legislature intended to implement the filed rate doctrine in TWC § 13.3011, they would have worded TWC § 13.3011 to clearly implement the filed rate doctrine and strictly bind the Commission.

Lastly, implementing the filed rate doctrine under TWC § 13.3011 would not resolve the absurd results outlined in OPUC’s initial brief that would result from simply approving a utility’s request to implement a rate without further review from the Commission. This interpretation would still result in violating the principles of statutory construction, requiring that an interpretation of legislative intent *cannot produce an absurd result*. As outlined in OPUC’s initial brief, here are a few examples of the absurd results that would occur if the Commission accepts Texas Water’s interpretation:

- (1) An acquiring utility could impose massive rate increases, resulting in rate shock that the Commission would have no ability to address.
- (2) Rates that were specifically tailored by the Commission to apply to unique circumstances (such as pass-through rates, rate case surcharges, and system improvement charges) would be applied to customers who do not derive the benefit from such correlating charges; and
- (3) If the Commission does not review whether the rates applied for by a utility should be applied to customers of the acquired system, a utility may be able to manipulate rates so as to avoid Commission review by buying a system with higher rates under an affiliate company and then transferring all of the systems with lower rates to the affiliate.

As emphasized in OPUC’s initial brief, the overall statutory scheme of the Texas Water Code is to protect the public interest.¹³ TWC § 13.001(a) clearly states that the legislative policy and purpose of water rates and services is “to protect the public interest inherent in the rates and services of retail utilities.”¹⁴ The purpose of Chapter 13 of the Water Code “is to establish a comprehensive regulatory system that is adequate to the task of regulating retail public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the retail

¹² Texas Water Utilities, L.P.’s Initial Brief on Threshold Issues at 3 (Oct. 27, 2023).

¹³ TWC § 13.001(a).

¹⁴ *Id.*

public utilities.”¹⁵ Interpreting TWC § 13.3011 to implement the filed rate doctrine would not be in the public interest.

III. CONCLUSION

For the reasons stated herein and set out in OPUC’s initial brief, OPUC believes the Commission should interpret TWC § 13.3011 in accordance with the recommendations outlined herein. OPUC appreciates the Commission’s consideration of its recommendations.

Date: November 3, 2023

Respectfully submitted,

Courtney Hjaltman
Chief Executive and Public Counsel
State Bar No. 24070294



Kourtnee Jinks
Assistant Public Counsel
State Bar No. 24097146
Justin Swearingen
Senior Assistant Public Counsel
State Bar No. 24096794

Chris Ekoh
Deputy Public Counsel
State Bar No. 06507015
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397


Austin, Texas 78711-2397
512-936-7500 (Telephone)
512-936-7525 (Facsimile)
kourtnee.jinks@opuc.texas.gov (Service)
justin.swearingen@opuc.texas.gov (Service)
chris.ekoh@opuc.texas.gov (Service)
opuc_eservice@opuc.texas.gov (Service)

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

¹⁵ TWC § 13.001(c).

CERTIFICATE OF SERVICE
PUC DOCKET NO. 54617

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 3rd day of November 2023 by facsimile, electronic mail, and/or first class, U.S. mail.



Kourtnee Jinks