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DOCKET NO. 54713

PETITION BY RATEPAYERS	§	PUBLIC UTILITY COMMISSION
APPEALING THE WATER RATES	§	
ESTABLISHED BY WESTWOOD	§	OF TEXAS
SHORES MUNICIPAL UTILITY	§	
DISTRICT		

COMMISSION STAFF'S PROPOSED LIST OF ISSUES

On March 3, 2023, certain ratepayers of Westwood Shores Municipal Utility District (Petitioners) filed, under Texas Water Code (TWC) § 13.043(b)(4) and 16 Texas Administrative Code (TAC) § 24.101(c)(1), an appeal of Westwood Shores MUD's water rates.

On May 23, 2023 the Commission Counsel filed an Order requesting lists of issues. The Order required Ratepayers and Westwood Shores MUD, and allowing Staff and any other interested party, to file a list of issues to be addressed in this proceeding, along with identifying any issues that should not be addressed in the docket, and any threshold legal and policy issues which should be briefed for purposes of a preliminary order by June 14, 2023. Therefore, this pleading is timely filed.

I. COMMISSION STAFF'S PROPOSED LIST OF ISSUES

Staff proposes the following list of issues:

1. Did the petition appealing the rate change by Westwood Shores MUD follow the requirements of TWC §§ 13.043(b), (c), and (d); 16 TAC §§ 24.41(b), (c), and (d); and 16 TAC §§ 24.103(a) and (b)?
 - a. Was the petition filed within 90 days after the effective date of the rate change? TWC § 13.043(c) and 16 TAC § 24.101(b).
 - b. How many ratepayers were affected by the rate change? TWC §§ 13.043(c) and (d) and 16 TAC § 24.101((d).
 - c. Did the lesser of 10,000 or 10% of those ratepayers file valid protests to the rate change? TWC § 13.043(c) and 16 TAC § 24.101(b) and 24.103(a) and (b).
2. Did Westwood Shores MUD provide written notice of the hearing to all affected customers as required by 16 TAC § 24.101(c)(6)?

3. Should the Commission establish or approve interim rates to be in effect until a final decision is made? TWC § 13.043(h) and 16 TAC §§ 24.101(e)(6) and (h).
4. Do the retail water rates being charged by Westwood Shores MUD fulfill the requirements of TWC § 13.043(j)¹ and 16 TAC § 24.101(i)? In addressing this question, evaluate the following:
 - a. Are the rates just and reasonable?
 - b. Are the rates not unreasonably preferential, prejudicial, or discriminatory?
 - c. Are the rates sufficient, equitable, and consistent in application to each class of customers?
5. If the rates being charged by Westwood Shores MUD meet the requirements of TWC § 13.043(j), must this appeal be dismissed?²

If the rates being charged by Westwood Shores MUD do not meet the requirements of TWC § 13.043(j), address the following issues:

6. What information was available to Westwood Shores MUD at the time it made its decision to increase the water and sewer utility service rates under TWC § 13.043(e)?
7. Considering only the information available to Westwood Shores MUD's board at the time of its decision, what are the just and reasonable rates for the district that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory? TWC § 13.043(e) and (j) and 16 TAC §§ 24.101(e) and (i).
 - a. What is the appropriate methodology to determine just and reasonable rates for Westwood Shores MUD?
 - b. What is the revenue requirement that would give Westwood Shores MUD sufficient funds to provide adequate retail water service?
 - c. What is the appropriate allocation of the revenue to customer classes?
 - d. What is the appropriate design of rates for each class to recover the Westwood Shores MUD's revenue requirement?

¹ See TWC § 13.043(j) (West 2016); see also *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 335–36 (Tex. App.—Austin 1994) (applying TWC § 13.043(j) in an appeal under § 13.043(f)).

² See *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994). In the *Fort Worth* case, the Austin Court of Appeals found that “the Commission made no finding as to the reasonableness of rates . . . , which is the initial inquiry under § 13.043(j) defining the scope of agency review.” *Id.* at 335. The Court ruled that the scope of appellate review under § 13.043(f) requires an initial determination under § 13.043(j). *Id.* at 336. However, the TWC does not limit the application of subsection (j) to appeals under § 13.043(f). Therefore, the same initial inquiry under subsection (j) must be made in this appeal under § 13.043(b) before the Commission can reset rates.

8. What are the reasonable expenses incurred by Westwood Shores MUD in this proceeding?
TWC § 13.043(e) and 16 TAC § 24.101(e)(2) and (5).
 - a. Should the Commission allow recovery of these reasonable expenses?
 - b. If so, what is the appropriate recovery mechanism?
9. What is the appropriate effective date of the rates fixed by the Commission in this proceeding?
TWC § 13.043(e) and 16 TAC § 24.101(e)(3).
10. If the Commission establishes rates different than the rates set by the Westwood Shores MUD's board, should the Commission order refunds or allow surcharges to recover lost revenues? If so, what is the appropriate amount and over what time period should the refund or surcharge be in place? TWC § 13.043(e) and 16 TAC § 24.101(e)(4).

II. ISSUES NOT TO BE ADDRESSED

Staff has not identified any issues that should not be addressed in this docket.

III. THRESHOLD LEGAL/POLICY ISSUES

Staff has not identified any legal or policy issues that should be briefed for the purposes of a preliminary order.

Dated: June 14, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 June 14, 2023, in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Kevin Pierce
Kevin Pierce