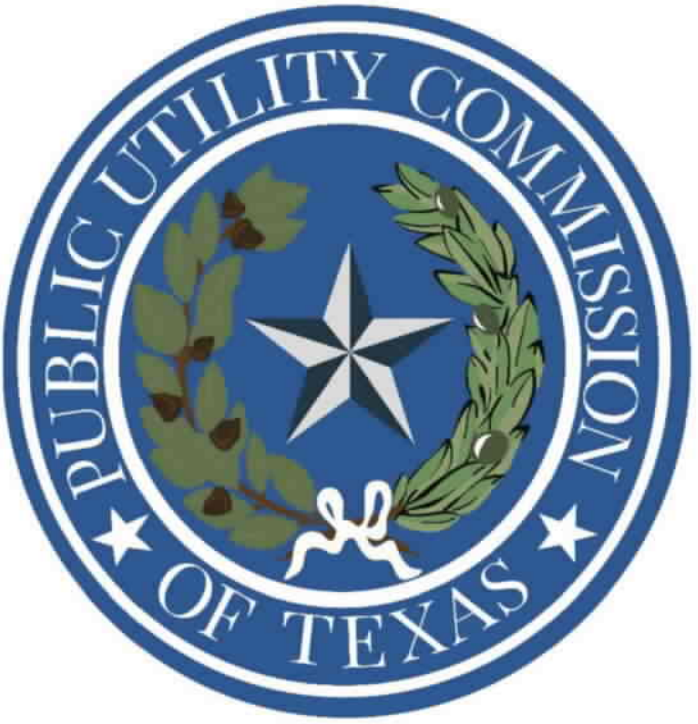

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SOAH DOCKET NO. 473-24-09299.WS
PUC DOCKET NO. 54966

PETITION OF ARIZA GOSLING OWNER LLC APPEALING THE WATER RATES ESTABLISHED BY NORTHAMPTON MUNICIPAL UTILITY DISTRICT	**§**	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

BRIEF OF NORTHAMPTON MUNICIPAL UTILITY DISTRICT ON BURDEN OF PROOF

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ATTORNEYS FOR NORTHAMPTON MUNICIPAL UTILITY DISTRICT

August 7, 2024

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PUC DOCKET NO. 54966

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Northampton Municipal Utility District (the "District") submits this Brief on Burden of Proof and respectfully shows as follows:

I. INTRODUCTION

A determinative issue in this proceeding will the applicability of Texas Water Code ("TWC") § 49.2122 to the Public Utility Commission Texas's ("Commission") review of the District's rates and whether Ariza Gosling Owner LLC ("Ariza Gosling" or the "Petitioner") has met its threshold burden to demonstrate, pursuant to TWC § 49.2122(b), that the District acted arbitrarily and capriciously in establishing the appealed rate. Ariza Gosling's direct testimony in this proceeding takes the position that TWC § 49.2122 does not apply and, thus, Ariza Gosling makes no effort to demonstrate the District acted arbitrarily and capriciously. Ariza Gosling's interpretation of the TWC is wrong. It ignores the plain language of TWC § 49.2122, the plain language of TWC § 13.043(j) and 16 Texas Administrative Code ("TAC") § 24.101(i), and the clear guidance in the Preliminary Order that directs the Administrative Law Judge ("ALJ") to determine whether both the District and Ariza Gosling satisfied their respective burdens under TWC § 49.2122.

A. Applicability of TWC § 49.2122 to This Proceeding

Ariza Gosling's pleadings throughout this proceeding elucidate a critical disagreement among the parties over how districts set rates and the scope of the Commission's review of those

rates: whether the District may consider ad valorem taxes revenue as a factor in establishing different rates among customer classes in accordance with TWC § 49.2122. This question is answered directly in the Preliminary Order, which states that TWC § 49.2122(a) "explicitly permits" a municipal utility district ("MUD") to consider ad valorem tax revenues received by a customer class relative to the cost of service in establishing different rates among customer classes.[1] As explained in its direct case, the District establishes customer classes and rates under TWC § 49.2122(a) based on its budgeted costs and revenues, taking into account tax revenues of its customer classes.[2] The Preliminary Order directs the ALJs to determine if the District complied with TWC § 49.2122(a).

TWC § 49.2122(b) states that a district is presumed to have considered appropriate factors in setting classes and the charges, fees, rentals, and deposits absent a showing that the district acted arbitrarily and capriciously. The Preliminary Order contains multiple issues that direct the parties to determine whether the Petitioner complied with TWC § 49.2122(b) by showing the District acted arbitrarily and capriciously in establishing the tax-exempt class or rate. The District has argued throughout this proceeding that the presumption of reasonableness applies and that Ariza Gosling should be required to satisfy this burden as a threshold matter. Without waiving that presumption, the District agreed to file its direct testimony first in order to present evidence as to why and how the new Tax Exempt Multi-family Residential class and rate were established and why they are just and reasonable, but that does not excuse Ariza Gosling of meeting its own burden under TWC § 49.2122.

In its direct testimony, Ariza Gosling had the opportunity to rebut the District's position that its rates are just and reasonable by presenting evidence under TWC § 49.2122(b) that the

[1] Preliminary Order at 8 (Jan. 18, 2024).

[2] Under that provision is included a laundry list of factors the District may consider in establishing its customer classes and the rates applicable to each.

District acted arbitrarily and capriciously in setting the appealed rate. It did not. Instead, it argued that TWC § 49.2122 is not applicable to this proceeding and that the District's rates should be reviewed under Chapter 13.[3] However, the Preliminary Order is clear that the District can consider tax revenues in setting rates under TWC § 49.2122(a) and that the Petitioner has the burden to demonstrate the District acted arbitrarily and capriciously in setting rates, pursuant to TWC § 49.2122(b).

B. Applicability of Chapter 13 to This Proceeding

Ariza Gosling asks the Commission to ignore Chapter 49 and instead review rates under Chapter 13.[4] TWC § 13.181(a) states explicitly that the ratemaking principles included in TWC §§ 13.181 through 13.191 "*shall not be applied to municipalities, counties, districts, or water supply or sewer service corporations.*"[5] 16 TAC § 24.41, related to calculating the cost of service, is only applicable to a "utility," which the Commission rules define as excluding MUDs.[6] Therefore, pursuant to TWC § 13.181, the Commission *cannot* apply these provisions to the District in order to address the reasonableness of rates under TWC § 13.043(j) but rather must review the district's rates under the rate-setting provisions included in TWC § 49.2122, the statute under which the rates were adopted. Ariza Gosling ignores this provision entirely.

C. The Proper Methodology for Reviewing Rates Under TWC § 13.043

TWC § 13.043(j) does not provide any specific criteria for how to determine the reasonableness of rates for a MUD that sets rates under TWC Chapter 49. It only states that rates must be "just and reasonable," not "unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable," and "consistent in application to each class of customers," and that

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[3] Direct Testimony of Jay Joyce ("Joyce Direct") at 7:11-8:41 (Jun. 28, 2024).

[4] *Id.*

[5] Emphasis added.

[6] 16 TAC § 24.3(38) (defining "utility" as excluding political subdivisions of the state).

the Commission "shall use a methodology that preserves the financial integrity of the retail public utility." The associated regulation—16 TAC § 24.101(i)—however, *does* provide specific guidance. It states unequivocally that TWC § 49.2122 "prevails" over conflicting provisions related to ratemaking appeals. Therefore, the Commission must look to the rate-setting provisions in Chapter 49 and specifically TWC § 49.2122(a) when reviewing the District's rates under TWC § 13.043(j). The scope of this review is defined in other rate appeals involving non-investor-owned retail utilities.

The Commission has previously reviewed the appealed rates of a MUD based on the MUD's forward-looking budgeted data, demonstrating that the appellate review of a district's rates is not guided by the traditional historical cost of service ratemaking principles founded under TWC §§ 13.181 *et seq.* or 16 TAC § 24.41.[7] The Commission provided additional guidance in a rate appeal involving a municipally owned utility's rates in Docket No. 48836.[8] In that case, the Commission concluded that the municipality may use budgeted data to set and support the reasonableness of rates under TWC § 13.043, as long as the budget data is "reliable." The Commission explained the standard as follows:[9]

> To show that budget data is reliable evidence of an appealed rate's revenue requirement, *a municipality must prove the data is a reasonable approximation of its actual costs of providing service*. Likewise, to show that budget data is sufficient evidence of the reasonableness of an appealed rate, a municipality must prove the budgeted costs are reasonable and necessary to provide service to customers.

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[7] *See Ratepayers Appeal of the Decision by Bear Creek Special Utility District to Change Rates*, Docket No. 49351, Order on Rehearing (Nov. 19, 2021) (setting rates based on the district's budgeted data reviewed by district at the time appealed rates were established).

[8] *Petition of Paloma Lake Municipal Utility District No. 1, Paloma Lake Municipal Utility District No. 2, Vista Oaks Municipal Utility District, Williamson County Municipal Utility District No. 10, and Williamson County Municipal Utility District No. 11 Appealing the Wholesale Water and Wastewater Rates Imposed by the City of Round Rock*, Docket No. 48836, Order on Appeal of SOAH Order No. 17 at 3 (Apr. 29, 2022).

[9] *Id.* at 4-5 (emphasis added); *Petition of North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10, and Wells Branch Municipal Utility District from the Rulemaking Actions of the City of Austin and Request for Interim Rates in Williamson and Travis Counties*, Docket No. 42857, Order on Rehearing at 11 (Jan. 14, 2016).

This order demonstrates again that a service provider is not required to comply with the historical test-year ratemaking provisions identified in TWC Chapter 13 and 16 TAC § 24.41.

For these reasons, as explained in more detail below, the District respectfully requests that the ALJ confirm that (1) in order for it to be granted its requested relief, Ariza Gosling is required to make a threshold showing that the District acted arbitrarily and capriciously in establishing the appealed rate and (2) that the rate-setting provisions included in TWC Chapter 49 serve as the basis on which to review the justness and reasonableness of the appealed rate.

II. ARIZA GOSLING'S THRESHOLD BURDEN OF PROOF UNDER TWC § 49.2122

A. The burden of proof in this case is defined under TWC § 49.2122, which requires Ariza Gosling to overcome the presumption that the District's rates are just and reasonable absent a showing that the District acted arbitrarily and capriciously in setting rates.

The primary rate-setting provision applicable to the District is TWC Chapter 49 and, specifically, TWC § 49.2122, which provides that when establishing customer classes, a district may consider types of services provided to the class, the cost to provide those services, and "the total revenues, *including ad valorem tax revenues* and connection fees, received by the district from a class of customers relative to the cost of service to the class of customers."[10] TWC § 49.2122(b) also creates a presumption that a district appropriately weighed factors and properly established charges "absent a showing that the district acted arbitrarily and capriciously." This provision is specifically applicable to districts in rate review proceedings under TWC § 13.043(j) and prevails over other Chapter 13 rate-setting provisions.[11]

Therefore, regardless of who has the "initial burden" of proof in this proceeding, TWC § 49.2122(b) imposes on Ariza Gosling the burden to prove that the District, in taking into account

[10] TWC § 49.2122(a) (emphasis added).

[11] 16 TAC § 24.101(i).

the tax revenue contributions of its customers to establish the appealed rate, acted arbitrarily and capriciously. It has not met that burden in this proceeding. Therefore, the District's rates should be affirmed and this appeal should be dismissed.

1. Ariza Gosling's burden is confirmed by the Preliminary Order issued in this proceeding.

The Preliminary Order describes the factors that must be addressed to confirm whether Ariza Gosling has met its burden in this proceeding. "Review under Texas Water Code § 49.2122" is set forth in Issues numbers 1 through 4. Issue number 2 directs the ALJ to determine: "*did the petitioner demonstrate* the District acted arbitrarily and capriciously" (emphasis added) in weighing and considering the factors used to establish the customer class and rate applicable to Ariza Gosling. Issue number 4 asks whether this case should be dismissed based solely on whether Ariza Gosling met its burden under TWC § 49.2122 to prove that the District acted arbitrarily and capriciously.

Ariza Gosling tries to ignore the Preliminary Order and the applicability of TWC § 49.2122 by repeatedly claiming that TWC § 49.2122 conflicts with TWC § 13.043 and does not apply. However, TWC § 13.043(j)[12] and the associated rule 16 TAC § 24.101(i) confirm that TWC § 49.2122 "prevails" over any other rate-setting provisions used to determine the reasonableness of rates in this proceeding, to the extent there is conflict.[13] Thus, assuming for the sake of argument that there is a conflict, TWC § 49.2122 prevails.

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[12] TWC § 13.043(j) states that:

> In an appeal under this section, the utility commission shall ensure that every appealed rate is just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The utility commission shall use a methodology that preserves the financial integrity of the retail public utility.

[13] 16 TAC § 24.101(i) ("To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.").

Ariza Gosling relies on a recent Commission proceeding, *Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No. 50788 ("*Windermere*"), to argue that a water provider has the *sole* burden of proof in a rate appeal. That case is not relevant, though, because the water provider in *Windermere* was a water supply and sewer corporation, not a district, and TWC § 49.2122 applies only to districts. Therefore, *Windermere* merely confirms that a different standard applies to the District than what was applied to the utility in *Windermere*. Ariza Gosling's reliance on *Windermere* is, thus, misplaced.

2. Ariza Gosling's interpretation of the applicability of TWC § 49.2122 ignores the plain language of the statute.

In its direct testimony filed on June 28, 2024 Ariza Gosling argued that TWC § 49.2122 is not applicable to this proceeding. Its witness Jay Joyce argues that in his experience TWC § 49.2122 has never been applied to a rate appeal before this Commission, despite the plain language in the statute. Mr. Joyce, however, is not qualified as an attorney to interpret a statute he confesses to have no prior experience with. His legal interpretation lacks any other substantive support and should be disregarded. He also ignores that there have only been a handful of rate appeals involving MUDs since the Commission took over jurisdiction from the Texas Commission on Environmental Quality ("TCEQ") in 2015, and even fewer of those have been fully adjudicated; thus, his "experience" is not compelling to determine the applicability of TWC Chapter 49 to this proceeding.

Mr. Joyce also argues that, because TWC § 49.2122 uses the words "charges, fees, rentals, and deposits" instead of the word "rate," it does not apply to "rates" in this proceeding as defined by the Commission. Instead, he opines that TWC § 49.2122's sole purpose is to allow customers to challenge whether a district moved a customer to a "punitive class simply because they do not

like them."[14] Mr. Joyce's interpretation ignores that the TWC specifically defines "rates" as "every compensation, **tariff, charge, fare, toll, rental, and classification** ... charged[] or collected whether directly or indirectly **by any retail public utility**,"[15] which includes the District. Accordingly, the TWC confirms that § 49.2122 applies to "rates."

3. Ariza Gosling's interpretation of the applicability of TWC § 49.2122 renders the statute ineffectual.

Standard rules of statutory construction dictate that an interpretation of two statutes should avoid conflicts and allow both statutes to be read in harmony.[16] The District's construction of TWC §§ 49.2122 and 13.043 allows both provisions to be read in harmony: when appealing a district's rates, the petitioner must overcome the explicit presumption in TWC § 49.2122(b) that rates are just and reasonable absent a showing of arbitrariness and capriciousness. If the petitioner meets that burden, the district must prove its rates are just and reasonable. If the Commission determines rates are not just and reasonable, it may set new rates under TWC § 13.043(j) based on (1) the information available to the District at the time the appealed rate was set and (2) the rate-setting provisions applicable to districts under Chapter 49. Both provisions are given effect under this interpretation, consistent with the Preliminary Order.

Ariza Gosling's interpretation strips TWC § 49.2122 of its meaning and effect: If a district's rates can be reviewed for just and reasonableness under TWC § 13.043(j) without any consideration of the TWC § 49.2122(b) presumption of reasonableness, that presumption and the statute itself serve no purpose. A district's rates are not typically subject to review by the Commission or any other regulatory authority outside of a Chapter 13 ratepayer appeal. If TWC § 49.2122 does not apply to a TWC § 13.043(j) rate review, there is no apparent circumstance in

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[14] Joyce Direct at 6:19-20.

[15] TWC § 13.002(17) (emphasis added).

[16] *Bush v. Lone Oak Club, LLC*, 601 S.W.3d 639, 649 (Tex. 2020); *McBride v. Clayton*, 140 Tex. 71, 166 S.W.2d 125, 128 (Comm'n App. 1942).

which the statute or presumption would apply. TWC § 13.181 expressly precludes the Commission from applying to districts the rate-setting provisions included in TWC §§ 13.181–.192. Therefore, if TWC § 49.2122 does not apply to reviewing rates here, there *is* no other statutory rate-setting provision that applies to districts in a rate appeal.

This interpretation would also render as meaningless the language in 16 TAC § 24.101(i) related to rate reviews under TWC § 13.043, which states specifically that TWC § 49.2122 "prevails" over other ratemaking provisions in a TWC § 13.043(j) rate review appeal. This language cannot be ignored.

To that end, Ariza Gosling's interpretation would also create a significant due process concern for districts in rate appeals in the future. On its face, TWC § 49.2122 specifically directs how districts establish classes and calculate rates. The District followed subsection (a) of the statute by setting a separate tax-exempt rate for customers that contribute no taxes. Ariza Gosling argues the Districts should be required to prove the reasonableness of their rates under an entirely different (but still unclear) standard under Chapter 13.[17] Texas law cannot be construed to require a district to calculate reasonable rates one way and then review the reasonableness of those rates under an entirely different standard. Such a paradigm would compel districts to set rates based on Chapter 13 ratemaking principles, as argued by Ariza Gosling,[18] instead of Chapter 49, thus undermining legislation specifically applicable to districts that preserves their rate-setting and taxing authority.

4. 16 TAC § 24.12 is not applicable to this proceeding because a Commission rule cannot negate a statute.

Ariza Gosling has argued through this proceeding that 16 TAC § 24.12, the Commission's default rule regarding the burden of proof in a rate proceeding, mandates that the District has the

[17] Joyce Direct at 9:2-16.

[18] *Id.* at 7:12-8:9.

sole burden to support its rates. That interpretation contradicts the express language of TWC § 49.2122 and the Preliminary Order and effectively obviates a district's statutory presumption of reasonableness in a rate review proceeding. In other words, 16 TAC § 24.12 is not applicable if the petition must be dismissed on statutory grounds—a Commission rule cannot negate a statute.[19]

B. Ariza Gosling's direct testimony failed to demonstrate the District acted arbitrarily and capriciously in adopting the appealed rate under TWC §§ 49.2122(a) or 49.2122(b); thus, this proceeding should be dismissed.

Ariza Gosling's testimony presents no evidence that the District acted arbitrarily or capriciously in setting rates under TWC § 49.2122. Indeed, contrary to the Preliminary Order, Ariza Gosling refused to analyze any of the factors the District used to set the Tax-Exempt Multi-Family customer class under TWC § 49.2122(a) or the statutory presumption of reasonableness under TWC § 49.2122(b). Instead, even though 16 TAC § 24.101 explicitly states that TWC § 49.2122 applies to rates appeals filed under TWC § 13.043(j) and the Preliminary Order specifically states that it applies to this proceeding, Ariza Gosling argues in its direct case that it need not address TWC § 49.2122 because it does *not* apply to this proceeding. Ariza Gosling presents some evidence of why it believes rates are not just and reasonable, but that evidence appears to be relying on TWC Chapter 13, Subchapter F, rate-setting provisions[20]—which Ariza Gosling claims must apply to the District, contrary to the express language in TWC § 13.181 that it shall not. Regardless, that evidence is insufficient to demonstrate the District acted arbitrarily and capriciously in establishing rates or to rebut evidence already presented by the District that it did *not* act arbitrarily or capriciously in setting rates because Ariza Gosling never informed the District it had become tax-exempt until after the new class and rate were created.

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[19] *R.R. Comm'n of Tex. v. Lone Star Gas Co., a Div. of Enserch Corp.*, 844 S.W.2d 679, 685 (Tex. 1992); *Tex. State Bd. of Examiners of Marriage & Family Therapists v. Tex. Med. Ass'n*, 511 S.W.3d 28, 33 (Tex. 2017).

[20] Joyce Direct at 7:15-16 ("… Chapter 13, and specifically TWC § 13.043(j), controls this proceeding.").

Because Ariza Gosling has offered no evidence that the District acted arbitrarily or capriciously in setting the appealed rate, this appeal ultimately must be dismissed.

C. Ariza Gosling's interpretation of TWC Chapter 49 undermines the District's tax-setting and rate-setting authority.

The Legislature has established a separate system for districts to calculate rates that allows districts to recover its costs from customers through both tax rates and utility rates. A portion of Ariza Gosling's costs are currently being recovered through tax rates. When Ariza Gosling became tax-exempt, it effectively avoided paying the portion of its utility costs that are being captured through tax rates. The District established tax-exempt rates reflecting Ariza Gosling's lack of any tax contributions to ensure that Ariza Gosling pays for the costs previously recovered through tax rates. Ariza Gosling then challenged those rates under the premise that the District *cannot* charge Ariza Gosling for utility service through tax rates. If the Commission approves Ariza Gosling's requested relief, it would allow customers of districts to avoid paying their utility costs by becoming tax-exempt and then challenging tax-exempt rates at the Commission as being discriminatory against tax-exempt customers. That outcome would directly challenge a district's ability to charge customers different rates depending on the tax revenue contributions of the customer, pursuant to TWC § 49.2122(a), undermining not only the District's rate-setting authority but its taxing authority as well.

III. THE BURDEN OF PROOF REGARDING WHETHER THE APPEALED RATE IS JUST AND REASONABLE

Even if Ariza Gosling had satisfied its burden of proof under TWC § 49.2122(b), it did not present evidence to rebut the District's testimony that its actual costs reasonably approximated its budgeted data or that setting separate tax-exempt rates for tax-exempt customers was necessary to account for differences in those customers' tax contributions to the District.

A. TWC § 49.2122(a) requires that in evaluating the appealed rate under TWC § 13.043(j), the Commission must take into account the ad valorem tax contributions of customers.

TWC § 49.2122(a) permits a district in setting customer classes and rates to consider the types of services provided to the class, the cost to provide those services, and "the total revenues, *including ad valorem tax revenues* and connection fees, received by the district from a class of customers relative to the cost of service to the class of customers."[21] Because 16 TAC § 24.101(i) provides that TWC § 49.2122 prevails over Chapter 13 rate-setting provisions in case of a conflict, the Commission must look to the provisions of TWC § 49.2122(a) when evaluating the amount of costs and revenues to be collected from Ariza Gosling.

In his direct testimony, Mr. Joyce ignored the tax contributions provided by Ariza Gosling compared to other members of the class and, thus, ignored the critical rate-setting provisions applicable to districts under TWC Chapter 49. He also ignored specific provisions within TWC Chapter 49 that address how to set tax rates and what utility-related costs can be included in ad valorem tax rates.[22] Instead, he simply applied the same utility rates to all residential customers, regardless of their tax contributions to the District. If the Commission were to approve rates that ignore the different tax revenue contributions of members of the multi-family residential class, it would dramatically affect how districts recover their costs through both tax rates and utility charges under TWC Chapter 49.

B. The appealed rate is just and reasonable because the budgeted data relied on by the District to set the rate is a *reasonable approximation* of its actual costs of providing service.[23]

TWC § 13.043(j) does not provide specific criteria for how to determine the reasonableness of rates for a MUD that sets rates under TWC Chapter 49. It only states that rates must be "just

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[21] TWC § 49.2122(a) (emphasis added).

[22] *Id.*

[23] Docket No. 48836, Order on Appeal of SOAH Order No. 17 at 4 (emphasis added).

and reasonable," not "unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable," and "consistent in application to each class of customers," and that the Commission "shall use a methodology that preserves the financial integrity of the retail public utility." However, under TWC § 13.181, the Commission *cannot* apply Chapter 13 Subchapter F rate-setting provisions to a district. Instead, the ALJs should look to Commission precedent in rate appeals involving non-investor-owned utilities, which defines the standard of review in a TWC § 13.043(j) proceeding.

As noted before, in Docket No. 49351, the Commission approved rates for a MUD based on budgeted data.[24] In Docket No. 48836, the Commission explained that to show the "budget data is reliable evidence of an appealed rate's revenue requirement, a municipality must prove the data is a *reasonable approximation* of its actual costs of providing service."[25] These cases demonstrate that a district is not required to prove that its actual costs equal its budgeted costs but rather that the budget reasonably approximated those costs, which the District already established it did through its direct testimony. As noted in District witness John Wallace's direct testimony:

- Prior to learning Ariza Gosling had elected to become tax-exempt, the District determined it was necessary to set different tax-exempt rates for tax-exempt customers because much of the costs incurred to serve those customers were recovered through tax rates those customers no longer pay;[26]
- Establishing new tax-exempt rates were necessary to preserve the District's financial integrity, support its bonding authority, maintain its creditworthiness, and protect its tax-contributing customers from having to subsidize tax-exempt customers;[27]

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[24] Docket No. 49351, Order on Rehearing at 10.

[25] *Id.* at 4 (emphasis added); Docket No. 42857, Order on Rehearing at 11.

[26] Direct Testimony of John R. Wallace ("Wallace Direct") at 31:8-32:2 (Jun. 7, 2024).

[27] *Id.* at 44:6-18. In fact, in 2023, Moody's identified several "credit challenges" facing the District, including below average reserves in comparison to municipal utility district peers, elevated debt burden, and a limited ability to increase tax rate for operations. It has also identified several "factors that could lead to a downgrade," including further declines in the District's liquidity or reserve position, a decline in taxable values, or further erosion of reserves. *Id.* A copy of these reports is included in Mr. Wallace's workpapers.

- the District used the same forward-looking budgeting process it has used for the last twenty years to set the appealed rates;[28]

- the District's budgeting policies and procedures were performed in conformance with generally accepted auditing and accounting standards promulgated by the Governmental Accounting Standards Board, together with supplementary information required by the TCEQ, published in the Water District Financial and Management Guide and the Water District Accounting Manual;[29]

- the basis for the appealed rate calculation was the water and sewer revenues, debt service tax revenues, and maintenance tax revenues for each of the four apartment complexes in the District based on the 2023 Operating Budget (Exhibit JRW-3) for the fiscal year ending December 31, 2023;[30]

- absent establishment of a new rates class for tax-exempt customers, the District would have experienced a significant reduction in revenue in 2023 on account of tax-exempt customers refusing to pay for their utility costs, which would have directly challenged the District's financial position and credit profile;[31]

- the appealed rates were calculated to collect the same amount of revenues from tax-exempt customers paying tax-exempt rates as it does from taxable multi-family customers paying ad valorem taxes and Multi-family Residential rates;[32] and

- the appealed tax-exempt rate reasonably approximates the cost to serve the tax-exempt customer class.[33]

Absent any rebuttal of these facts, the appealed rate is just and reasonable under Chapters 49 and 13.

Ariza Gosling failed to provide any evidence that the District acted arbitrarily or capriciously in setting rates. It presented no evidence that the appealed rate does not reasonably approximate the District's budgeted data used to set the rates. It presented no evidence that Ariza Gosling is entitled to pay the exact same utility rates as tax-contributing multi-family residential

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[28] Wallace Direct at 16:11-19:2.

[29] *Id.* at 16:17-17:7.

[30] *Id.* at 39:16-19.

[31] *Id.* at 33:17-20.

[32] *Id.* at 40:11-14.

[33] Wallace Direct at 40:14-16.

customers even though it contributes no ad valorem taxes to the District. Because Ariza Gosling has not met its burden, the appealed rate should be affirmed as just and reasonable, and this appeal should be dismissed.[34]

IV. CONCLUSION

For these reasons, the District requests that the ALJs find that under TWC § 49.2122, Ariza Gosling has the burden to show that the District acted arbitrarily and capriciously.

Respectfully submitted,

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ATTORNEYS FOR NORTHAMPTON MUNICIPAL UTILITY DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August 2024, notice of the filing of this document was provided to all parties of record via electronic mail in accordance with the Second Order Suspending Rules filed in Project No. 50664.

Evan D. Johnson

[34] *Id.* at 42:14-18.