



Filing Receipt

Filing Date - 2023-08-18 02:47:32 PM

Control Number - 54966

Item Number - 18

PUC DOCKET NO. 54966

AMENDED PETITION OF ARIZA	§	PUBLIC UTILITY COMMISSION
GOSLING OWNER LLC PURSUANT TO	§	
TEXAS WATER CODE § 13.043 FOR	§	OF
REVIEW OF DECISION BY	§	TEXAS
NORTHAMPTON MUNICIPAL UTILITY	§	
DISTRICT TO CHANGE RATES		

**ARIZA GOSLING OWNER LLC’S RESPONSE TO
NORTHAMPTON MUNICIPAL UTILITY DISTRICT’S MOTION TO DISMISS**

Pursuant to 16 Texas Administrative Code (“TAC”) § 22.181(e)(3) and Public Utility Commission of Texas (“Commission”) Order No. 5,¹ Ariza Gosling Owner LLC (“Petitioner” or “Ariza Gosling”) files this Response to Northampton Municipal Utility District’s (“Northampton MUD”) Motion to Dismiss, and shows as follows:

I. SUMMARY

On July 7, 2023, Northampton MUD filed its Motion to Dismiss under 16 TAC 22.181(d)(8), arguing that Ariza Gosling’s First Amended Petition failed to state a claim on which relief may be granted. The Motion to Dismiss, however, is without merit because (1) Ariza Gosling has alleged violations of Texas Water Code § 13.043(j) and 16 TAC § 24.101(i), for which the Commission may grant relief under Texas Water Code § 13.043(e); (2) the facts relied upon by Northampton MUD are clearly in dispute; (3) the Motion to Dismiss has been rendered moot by Ariza Gosling’s Second Amended Petition; and (4) contrary to Northampton MUD’s assertion, Ariza Gosling’s claims are not moot. As explained below, the Commission should deny Northampton MUD’s Motion to Dismiss.

II. BACKGROUND

Ariza Gosling is the leasehold owner of a multi-family housing complex known as the Ariza Gosling Apartments, which is located at 23223 Gosling Road, Spring, Texas 77389. Ariza Gosling is located within the water utility service area served by Northampton MUD and is a

¹ Order No. 5 Granting Unopposed Extension and Revising Deadline (July 25, 2023). Order No. 5 extended the deadline to file this Response to August 18, 2023.

ratepayer under Chapter 13 of the Texas Water Code. Northampton MUD provides water and sewer services to Ariza Gosling, which pays for such services of the residents who reside at the apartment complex. Since February 6, 2023, Northampton MUD has implemented three unjust and unreasonable, discriminatory, and prejudicial rate changes specifically targeting Ariza Gosling. These rate changes, along with background on Northampton MUD's actions, are explained in detail in Ariza Gosling's Second Amended Petition for Review Appealing Northampton MUD's Amended Rate Order ("Second Amended Petition").² Ariza Gosling incorporates by references its Second Amended Petition into this Response.

III. DISCUSSION

A. Gosling's Second Amended Petition States a Claim on Which Relief May Be Granted.

Contrary to Northampton MUD's Motion to Dismiss, and as asserted in the Second Amended Petition, the Commission may grant relief to Ariza Gosling under Texas Water Code § 13.043(e) for violations of Texas Water Code § 13.043(j) and 16 TAC § 24.101(i). Tex. Water Code § 13.043(a) permits a party to a rate proceeding to appeal a governing body's decision to the Commission. In an appeal under Section 13.043(a), the Commission

shall hear the appeal de novo and *shall fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken*. The utility commission may establish the effective date for the utility commission's rates at the original effective date as proposed by the service provider, may order refunds or allow a surcharge to recover lost revenues, and may allow recovery of reasonable expenses incurred by the retail public utility in the appeal proceedings. The [Commission] may consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings. The rates established by the [Commission] in an appeal under Subsection (b) remain in effect until the first anniversary of the effective date proposed by the retail public utility for the rates being appealed or until changed by the service provider, whichever date is later, unless the [Commission] determines that a financial hardship exists.³

² Ariza Gosling's Second Amended Petition for Review Appealing the Water Rates Established by Northampton MUD (August 18, 2023).

³ Tex. Water Code § 13.043(e) (emphasis added)

When fixing an appealed rate, the Commission must ensure that the rate is just and reasonable, and not “unreasonably preferential, prejudicial, or discriminatory” but instead “sufficient, equitable, and consistent in application to each class of customer.”⁴ In its Second Amended Petition, Ariza Gosling asserted, and attached exhibits evidencing, that Northampton MUD’s June 19th Amended Rate Order, and by effect the Feb. 6th Amended Rate Order, violated Texas Water Code §13.043(j) and 16 TAC § 24.101(i).

Northampton MUD spends the bulk of its Motion to Dismiss arguing that Ariza Gosling has not met its burden to demonstrate that the rates established in the June 19th Amended Rate Order were unjust, unreasonable, unreasonably preferential, prejudicial, discriminatory, insufficient, inequitable, or inconsistent in application. This argument, however, goes to the weight of the evidence attached to the Second Amended Petition, not whether a claim has been asserted for which relief may be granted. Thus, Northampton MUD has misconstrued the standard for dismissal of a petition under 16 TAC § 22.181(d)(8). As evidenced by caselaw from the Third Court of Appeals, Ariza Gosling clearly asserted a claim for which relief may be granted.

In *Jasinski v. Public Utility Commission*, the Third Court of Appeals addressed the standard for determining whether a party stated a claim for which relief could be granted under the predecessor to 16 TAC § 22.181(d)(8).⁵ The controversy in *Jasinski* arose from Oncor Electric Delivery Company LLC’s trimming of a live oak tree on the appellant’s property to provide clearance for a distribution line.⁶ The appellant argued that the Commission erred in dismissing his claim for failure to state a claim on which relief could be granted.⁷ In its analysis, the appellate court emphasized that “there must be some prohibition, statutory or otherwise, against Oncor’s vegetation management practice of trimming trees to create a ten-foot clearance between the trees and Oncor’s distribution lines.”⁸ The Third Court of Appeals found that there was no prohibition preventing a utility from implementing vegetation management practices at issue.⁹ Consequently, the court upheld the dismissal of appellant’s claims.¹⁰

⁴ Tex. Water Code § 13.043(j).

⁵ *Jasinski v. Pub. Util. Comm’n*, No. 03-16-00725-CV, 2017 WL 2628071, *4 (Tex. App.—Austin June 14, 2017, pet. denied (mem. op.)).

⁶ *Id.* at *1.

⁷ *Id.* at *4–5.

⁸ *Id.* at *5.

⁹ *Id.* at *5–6.

¹⁰ *Id.* at *6.

Ariza Gosling's claim that Northampton MUD's June 19th Amended Rate Order, and by effect the Feb. 6th Amended Rate Order, imposed a rate that is unjust and unreasonable, and unreasonably preferential, prejudicial or discriminatory, satisfies the standard set forth in *Jasinski*. Unlike the appellant in *Jasinski*, the Second Amended Petition clearly alleged violations committed by Northampton MUD, in this case Texas Water Code § 13.043(j) and 16 TAC 24.101(i). Moreover, Ariza Gosling requested relief by asking that the Commission review and fix Northampton MUD's rates under Tex. Water Code § 13.043(e). Thus, Ariza Gosling has made claims for which relief may be granted. Accordingly, the Commission should deny Northampton MUD's Motion to Dismiss on this basis.

B. The Facts Relied Upon by Northampton MUD in its Motion to Dismiss are Contested.

Northampton MUD asserts that the

[t]he facts demonstrate that (1) [Northampton MUD] calculated the tax-exempt multi-family customer class rate consistent with [Texas Water Code] § 49.2122 and, based on that calculation, those rates are just and reasonable, and (2) [Northampton MUD] did not act arbitrarily or capriciously toward Petitioner in setting those rates, which apply to all tax-exempt multi-family residential customers and not just the Petitioner.¹¹

Contrary to these representations, the facts do not demonstrate that the rates implemented in the June 19th Amended Rate Order are just and reasonable, but instead are nothing more than *ipse dixit*. Further, Northampton MUD's own statement in its Response to Order No. 1 and Motion to Dismiss contradicts its assertion that the tax-exempt multi-family residential customer rate does not specifically target Ariza Gosling:

contrary to Petitioner's claims, [the Tax Exempt Multi-family Residential] rate is applicable to all tax-exempt multi-family customers, not just the Petitioner, *although Petitioner is the only customer currently taking service under the tax-exempt rate.*¹²

Moreover, Northampton MUD's failure to perform a proper cost of service and rate allocation study provided further support for Ariza Gosling's claim that the June 19 Rate Order was arbitrary

¹¹ Response to Order No. 1 and Motion to Dismiss at 15 (July 7, 2023) (emphasis added).

¹² Response to Order No. 1 and Motion to Dismiss at 3 (July 7, 2023) (emphasis added).

and capricious.¹³ Since there is clearly a dispute as to the central facts of this appeal, the Commission should deny Northampton MUD's Motion to Dismiss.

C. Northampton MUD's Motion to Dismiss is Moot.

Northampton MUD filed its Motion to Dismiss on July 7, 2023, in response to Ariza Gosling's First Amended Petition. The First Amended Petition challenged the May 1st Rate Order. As explained above, however, through the June 19th Amended Rate Order, Northampton MUD rescinded the May 1st Rate Order. Thus, Ariza Gosling filed its Second Amended Petition appealing the June 19th Amended Rate Order. The Second Amended Petition rendered Northampton MUD's Motion to Dismiss the First Amended Petition moot, and it should be denied for that purpose alone.

D. The June 19th Rate Order Did Not Moot Ariza Gosling's Appeal.

Northampton MUD asserts that due to the June 19th Amended Rate Order, Ariza Gosling's appeal of the May 1st Rate Order is now moot and should be dismissed. Ariza Gosling, however, timely filed its Second Amended Petition on August 18, 2023, challenging the June 19th Amended Rate Order. Thus, this argument is without merit.

IV. CONCLUSION

The Commission may grant relief to Ariza Gosling's claims under Texas Water Code § 13.043(e) for Northampton MUD's violations of Texas Water Code § 13.043(j) and 16 TAC § 24.101(i). Thus, contrary to the arguments of Northampton MUD, Ariza Gosling has stated a claim for which relief may be granted. Further, Ariza Gosling's Second Amended Petition rendered the Motion to Dismiss Moot. For these reasons, the Commission should deny Northampton MUD's Motion to Dismiss.

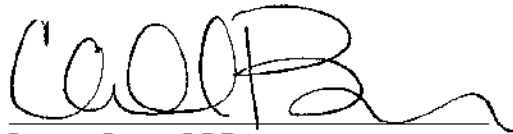
¹³ Ariza Gosling dispute's Northampton MUD assertion that it conducted proper a rate study. Although Northampton MUD claims it conducted a rate study in January 2023, the alleged rate study is nothing more than a short spreadsheet.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Ariza Gosling respectfully requests that the Commission (1) deny Northampton MUD's Motion to Dismiss; (2) enter an order reflecting the same; and (3) grant any such other relief to which it may show itself to be entitled.

Dated: August 18, 2023

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Collier-Brown', written over a horizontal line.

LOCKE LORD LLP

Carrie Collier-Brown

State Bar No. 24065064

Cole Hutchison

State Bar No. 24092554

300 Colorado Street, Suite 2100

Austin, Texas 78701

(512) 305-4732 (telephone)

(512) 391-4883 (fax)

carrie.collierbrown@lockelord.com

cole.hutchison@lockelord.com

ATTORNEYS FOR ARIZA GOSLING OWNER LLC

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties in this proceeding on August 18, 2023 via email in accordance with the Commission's Second Order Suspending Rules issued in Project No. 50664 on July 16, 2020.

A handwritten signature in cursive script that reads "Cole Hutchison". The signature is written in black ink and is positioned above a horizontal line.

Cole Hutchison