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PETITION OF ARIZA GOSLING	§	PUBLIC UTILITY COMMISSION OF
OWNER LLC APPEALING THE	§	TEXAS
WATER RATES ESTABLISHED BY	§	
NORTHAMPTON MUNICIPAL	§	
UTILITY DISTRICT	§	

**NORTHAMPTON MUNICIPAL UTILITY DISTRICT’S
LIST OF ISSUES**

Northampton Municipal Utility District (the “District”) files this List of Issues in accordance with the Public Utility Commission of Texas’ (“Commission”) Order Requesting Lists of Issues (“Order”) issued October 5, 2023. Pursuant to the Order, this issues list is timely filed.

I. THRESHOLD LEGAL ISSUE REGARDING STANDARD OF REVIEW

As a threshold matter, the District requests that the Commission confirm that Ariza Gosling Owner LLC (“Ariza Gosling”) has the initial burden under Texas Water Code (“TWC”) § 49.2122(b) to establish that the District acted arbitrarily and capriciously when it adopted a new customer class and rates applicable to tax-exempt multi-family residential customers.

A. TWC § 49.2122 controls over this proceeding.

In an appeal under TWC § 13.043(j), the Commission “shall ensure that every appealed rate is just and reasonable.”¹ However, 16 Texas Administrative Code (“TAC”) § 24.101(i)—the rule that gives regulatory effect to § 13.043(j)—expressly states that “[t]o the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.” Section 49.2122 provides that the District “may establish different charges, fees, rentals, or deposits among classes of customers that are based on *any factor* the district considers appropriate” and provides a laundry list of factors the District may consider when creating a new customers class.² That list includes

¹ TWC § 13.043(j) (“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.”).

² TWC § 49.2122(a) (emphasis added).

“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.*”³ It also states that, when establishing a customer class, “[a] district is presumed to have weighed and considered appropriate factors and to have properly established charges, fees, rentals, and deposits *absent a showing that the district acted arbitrarily and capriciously.*”⁴ Therefore, since the Commission has previously acknowledged in 16 TAC § 24.101(i) that a conflict between TWC § 13.043(j) and TWC § 49.2122 exists and has established by rule that TWC § 49.2122 prevails, the appropriate and only standard of review in the proceeding is TWC § 49.2122. This standard of review applies to both the establishment of the new customer class and the establishing of charges within that class.

B. The District’s decision to establish a new rate class for tax-exempt customers was not arbitrary or capricious.

Ad valorem taxes are charged and used by the District to pay debt service on its bonds issued to construct its systems and to pay for a portion of the maintenance and operating costs of the systems. These ad valorem taxes constitute a significant portion of the revenues the District relies on to recover its cost of service and allocates costs among customer classes. It was appropriate that the District consider the ad valorem tax revenues that would be lost if a multi-family customer became tax-exempt because that customer would no longer contribute the tax revenues the District uses to calculate rates.⁵ The District established the new customer class and rates for tax-exempt multi-family residential customers in order to capture the necessary revenues from these customers once they no longer contribute tax revenues.

³ TWC § 49.2122(a)(4) (emphasis added).

⁴ TWC § 49.2122(b) (emphasis added).

⁵ See, e.g., Northampton Municipal Utility District’s Response to Order No. 1 and Motion to Dismiss at 2-9 (Jul. 7, 2023); Northampton Municipal Utility District’s Response to Ariza Gosling Owner, LLC’s Second Amended Petition at 2-14 (“Answer to Ariza Gosling Second Amended Petition”) (Sept. 13, 2023).

Creating a separate customer class and separate rates for tax exempt customers was in fact necessary not only to ensure tax-exempt customers' rates adequately capture the revenues necessary to recover their cost of service but also to ensure *other* classes and customers are not required to subsidize these tax-exempt customers' rates after they stop paying taxes to the District. Therefore, the District did not act arbitrarily or capriciously, and its methodology for establishing and reclassing Ariza Gosling to the Tax Exempt Multi-family Residential rate class complied with TWC § 49.2122.

C. Ariza Gosling disregards the standard of review applicable to the establishment of rate classes under TWC § 49.2122.

Section 49.2122 specifically addresses the *establishment of rate classes* by the District, and it controls over 16 TAC § 24.101(i). Where Ariza Gosling requests that the Commission fix rates to ensure rates are “just and reasonable, sufficient, equitable, nondiscriminatory, and consistent in application to each class of customers,”⁶ it disregards that TWC § 49.2122 unequivocally prevails over Section 24.101(i) and requires Ariza Gosling to overcome the presumption that the District did not act arbitrarily and capriciously in establishing the new rate class. In order to clarify the standard of review applicable to this proceeding, the District requests that the Commission confirm the following as applicable to this appeal:⁷

1. to the extent there is a conflict between the provisions of 16 TAC § 24.101(i) and TWC § 49.2122, section 49.2122 prevails and is controlling law for purposes of adjudicating this appeal;⁸
2. Ariza Gosling bears the initial burden to show that the District acted arbitrarily and capriciously and did not consider appropriate statutory factors when it created the Tax Exempt Multi-family Residential rate class and reclassified Ariza Gosling to that class, pursuant to TWC § 49.2122(b); and

⁶ Ariza Gosling Owner LLC's Second Amended Petition for Review Appealing Northampton Municipal Utility District's Amended Rate Order at 5-6 (“Ariza Gosling Second Amended Petition”) (Aug. 18, 2023).

⁷ To the extent the Commission requires briefing on these issues, the District requests the opportunity to fully support its position on what are the applicable legal standards and which party bears the initial burden of proof in this proceeding.

⁸ 16 TAC § 24.101(i).

3. to the extent the Administrative Law Judge finds that Ariza Gosling failed to meet its initial burden under TWC § 49.2122, this appeal should be dismissed, with prejudice.

II. ISSUES TO BE ADDRESSED

The District requests the Commission address the following list of issues in order to properly adjudicate this proceeding.

1. May the Commission hear this appeal under TWC § 13.043(b)?
 - a. Is the petitioner a customer of the District? TWC § 13.043(b).
 - b. Did the appealed decision of the governing body of the District affect the petitioner's water, drainage, or sewer rates? TWC § 13.043(b).
2. Is the District a district or authority created under Article III, § 52 or Article XVI, § 59 of the Texas Constitution that provides water or sewer service to household users? TWC § 13.043(b)(4).
3. Did the petition appealing the rate change by the District follow the requirements of TWC § 13.043(b), (c), and (d); 16 TAC § 24.101(b), (c), and (d); and 16 TAC § 24.103(a) and (b)?
 - a. What is the rate that is the subject of this appeal?
 - b. What was the effective date of the rate change?
 - c. Was the petition filed within 90 days after the effective date of the rate change?
 - d. What number of customers had their rates changed and were eligible to appeal the rate change in accordance with TWC § 13.043(b)(3) and (d) and 16 TAC § 24.101(c) and (d)?
 - e. Did the lesser of 10,000 or 10% of those customers file valid protests to the rate change in accordance with TWC § 13.043(c) and 16 TAC §§ 24.101(b)?
 - f. Did each signature page of the petition contain all the required information in legible form for each signatory ratepayer? 16 TAC 24.103(a).
 - g. Did each signature page contain a clear and concise statement that the petition is an appeal of a specific rate action by the District as well as a concise description and date of the rate action? 16 TAC § 24.103(a)(1).
4. Did the District provide written notice of the hearing to all affected customers? 16 TAC § 24.101(c)(6).

5. Do the retail water and sewer rates being charged by the District conform to the statutory standards identified in TWC § 13.043(j) when taking into account the ad valorem tax revenues received by the District from the Tax Exempt Multi-family Residential class of customers relative to the class' cost of service, pursuant to TWC § 49.2122?⁹
 - a. Did Ariza Gosling meet its burden to show that the District acted arbitrarily and capriciously in weighing and considering appropriate factors and properly establishing charges for the Tax Exempt Multi-family Residential rate class, pursuant to TWC § 49.2122?
 - i. What factors did the District consider in establishing the new Tax Exempt Multi-family Residential rate class and setting the Tax Exempt Multi-family Residential rate class rate under TWC § 49.2122?
 - ii. What factors did the District consider in determining Ariza Gosling should be moved to the Tax Exempt Multi-family Residential rate class under TWC § 49.2122?
 - iii. How does Ariza Gosling differ from other multi-family residential customers?
 - iv. How does the type of water and sewer utility services provided to Ariza Gosling differ from the type of water and sewer services provided to other multi-family residential customers?
 - v. How do the costs of infrastructure, facilities, operations, capital improvements, and administrative services to provide service to Ariza Gosling differ from those costs to provide service to other multi-family residential customers?
 - b. Are the rates just and reasonable when taking into account the ad valorem tax revenues received by the District from the Tax Exempt Multi-family Residential class of customers relative to the class' cost of service?
 - c. Are the rates unreasonably preferential, prejudicial, or discriminatory when taking into account the ad valorem tax revenues received by the District from the Tax Exempt Multi-family Residential class of customers relative to the class' cost of service?
 - d. Are the rates sufficient, equitable, and consistent in application to each class of customers when taking into account the ad valorem tax revenues received by the District from the Tax Exempt Multi-family Residential class of customers relative to the class' cost of service?

⁹ See *Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No 50788, Order Remanding Proceeding at 3 (Jun. 30, 2022) (holding that, in an appeal under TWC § 13.043, the initial inquiry of the Commission is whether the appealed rates conform to the public interest standard identified in TWC § 13.043).

6. If the rates appealed conform to the statutory standards identified in TWC § 13.043(i) when taking into account the ad valorem tax revenues received by the District from the Tax Exempt Multi-family Residential class of customers relative to the class' cost of service pursuant to TWC § 49.2122, must this appeal be dismissed?¹⁰
7. If the rates appealed do not conform to the statutory standards identified in TWC § 13.043(i) when taking into account the ad valorem tax revenues received by the District from the Tax Exempt Multi-family Residential class of customers relative to the class' cost of service pursuant to TWC § 49.2122:
 - a. What was the information that was available to the District's governing body, including any information that shows, or tends to show, the information that was available to the District's governing body, at the time the District set the appealed rates? TWC § 13.043(e).
 - b. Considering only the information available and any information that shows, or tends to show, the information that was available to the District's governing body 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 when taking into account the ad valorem tax revenues received by the District from customers pursuant to TWC § 49.2122? TWC § 13.043(e) and (j), TWC 49.2122, and 16 TAC § 24.101(e) and (i).
 - c. What is the appropriate methodology for setting rates that preserves the financial integrity of the District and its other customers when taking into account the impact of Ariza Gosling's tax exempt status? TWC § 13.043(e) & (j).
 - d. What is the revenue requirement applicable to the Tax Exempt Multi-family Residential rate class, or alternatively, the Multi-family Residential rate class, that will provide the District with sufficient funds to provide continuous and adequate retail water and sewer utility service when taking into account the ad valorem tax revenues received by the District from customers relative to the customers' cost of service?
 - e. What is the appropriate allocation of revenues to each customer within the Tax Exempt Multi-family Residential rate class when taking into account the ad valorem tax revenues received by the District from customers relative to the customers' cost of service?
 - f. What is the appropriate rate design for the Tax Exempt Multi-family Residential rate class customers that will recover the District's revenue requirement?
 - g. If it is determined that Ariza Gosling should be moved back to the Multi-family Residential rate class applicable to non-tax exempt customers, or to a different rate class, what is the revenue requirement applicable to that rate class that will provide

¹⁰ *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 335 (noting that for appeals brought under TWC § 13.043, the initial inquiry under section 13.043(j) defines the scope of agency review).

the District with sufficient funds to provide continuous and adequate retail water and sewer utility service, when taking into account the ad valorem tax revenues received by the District from customers relative to the customers' cost of service?

- h. If it is determined that Ariza Gosling should be reclassified to the Multi-family Residential rate class applicable to non-tax-exempt customers, or a different rate class, what is the appropriate allocation of revenues to the affected class?
 - i. If it is determined that Ariza Gosling should be moved back to the Multi-family Residential rate class applicable to non-tax exempt customers, or a different rate class, what is the appropriate rate design for customers of affected class?
- 8. Should the Commission establish or approve interim rates to be in effect until a final decision is made in this proceeding? TWC § 13.043(h) and 16 TAC § 24.101(e)(6) and (h).
- 9. What are the reasonable expenses incurred by the District in this proceeding? TWC § 13.043(e) and 16 TAC § 24.101(e)(2).
 - a. Should the Commission allow recovery of these reasonable expenses?
 - b. If so, what is the appropriate recovery mechanism?
 - c. Should the Commission require Ariza Gosling to reimburse the District's reasonable expenses or should it require that costs be recovered from other customers?

III. ISSUES NOT TO BE ADDRESSED

The following issues should not be addressed because they are not relevant to any contested issue to be determined in this proceeding.

Ariza Gosling has noted through multiple amended petitions that after the District issued its February 6, 2023 rate order ("Rate Order") establishing the new rate class, the District issued a second order on May 1, 2023 amending its tax exempt multi-family rates ("Amended Rate Order").¹¹ However, those rates were never billed to customers and were rescinded by the District by an order dated June 19, 2023 ("Second Amended Rate Order").¹² Therefore, issues related to any other rate or rate order are not before the Commission and should not be addressed. This proceeding should focus solely on the order approving the creation of the Tax Exempt Multi-

¹¹ See, e.g., Answer to Ariza Gosling Second Amended Petition at 10.

¹² *Id.*

family Residential rate class before the District was made aware of Ariza Gosling changed tax status.¹³

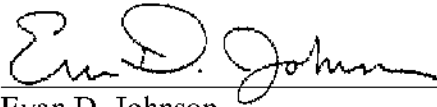
In addition, the appeal does not contest the reasonableness of any specific cost or the overall cost of service of the District. Rather, the issues raised by Ariza Gosling relate to whether it was reasonable for the District to create the Tax Exempt Multi-family Residential rate class for tax-exempt customers and then reclass Ariza Gosling to that class after the District became aware of the change in Ariza Gosling's tax-exempt status. Accordingly, the reasonableness of the District's cost of service or any specific costs included in the cost of service are not at issue in this proceeding and should not be addressed. The only issue before this Commission is whether a new customer class and rate applied to Ariza Gosling through the Rate Order comply with TWC §§ 13.043 and 49.2122.

IV. CONCLUSION

The District respectfully requests that the Commission issue a preliminary order consistent with the issues listed above.

¹³ *Id.* at 9-11. Other District rates should only be addressed if the Commission determines it is appropriate to reallocate costs from the Tax Exempt Multi-family Residential class to other customer classes or other customers.

Respectfully submitted,

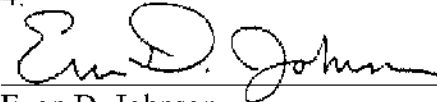


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**ATTORNEYS FOR NORTHAMPTON
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of October 2023, 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 issued in Project No. 50664.



Evan D. Johnson