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**SOAH DOCKET NO. 473-24-09299.WS
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AMENDED PETITION OF ARIZA	§	BEFORE THE STATE OFFICE
GOSLING OWNER LLC PURSUANT TO	§	
TEXAS WATER CODE § 13.043 FOR	§	OF
REVIEW OF DECISION BY	§	
NORTHAMPTON MUNICIPAL UTILITY	§	ADMINISTRATIVE HEARINGS
DISTRICT TO CHANGE RATES	§	

**ARIZA GOSLING OWNER LLC'S AND COMMISSION STAFF'S JOINT BRIEF ON
ORDER OF PRESENTATION AND JOINT PROPOSED PROCEDURAL SCHEDULE**

At the prehearing conference on February 8, 2024, Your Honor requested Ariza Gosling Owner LLC ("Ariza Gosling"), the Public Utility Commission of Texas ("Commission") Staff, and Northampton Municipal Utility District ("Northampton MUD") submit a proposed procedural schedule, along with arguments on the appropriateness of each proposal if it is not agreed to by all parties. Ariza Gosling and Commission Staff submit this Joint Brief on Order of Presentation and Joint Proposed Procedural Schedule. Since Your Honor requested submission by February 15, 2024, this filing is timely made. In support, Ariza Gosling and Commission Staff show as follows:

I. INTRODUCTION

The crux of the disagreement on a procedural schedule between Ariza Gosling, along with Commission Staff, and Northampton MUD stems from which party bears the burden of proof and should therefore present its testimony first. On August 18, 2023, Ariza Gosling filed its Second Amended Petition for Review Appealing Northampton MUD's June 19, 2023 Amended Rate Order pursuant to Texas Water Code ("TWC") § 13.043(b)(4) and 16 Texas Administrative Code ("TAC") § 24.101(c)(4) ("Second Amended Petition").¹ The District's June 19th Amended Rate Order reinstated the rates established by the District in its Tax Exempt Multi-family Residential rate class previously adopted in its February 6, 2023 Amended Rate Order. Ariza Gosling challenges the calculation of the Tax Exempt Multi-family Residential rate class's rate as being unjust and unreasonable, unreasonably preferential, prejudicial, and discriminatory in violation of TWC § 13.043(j) and 16 TAC § 24.101(i).

¹ Ariza Gosling Owner LLC's Second Amended Petition for Review Appealing Northampton MUD's Amended Rate Order (Aug. 18, 2023).

16 TAC § 24.12 requires that in a proceeding involving a proposed rate reduction, the burden of proof must be on the provider of water and sewer services to show that the existing rate is just and reasonable. Ariza Gosling's appeal in this proceeding of Northampton MUD's rates charged in its Tax-Exempt Multi-family Residential rate class is a proceeding involving a proposed reduction of the Tax-Exempt Multi-family housing water utility rate, and thus the burden of proof is on Northampton MUD that the existing rate charged in that rate class to the only customer in that rate class (Ariza Gosling) is just and reasonable. Furthermore, in every ratepayer appeal of water or sewer rates that has come before the Commission in which a procedural schedule was established, the utility has filed its testimonies first and has had the burden of proof to show that its existing rate is just and reasonable.²

Staff and Ariza Gosling agree that Northampton MUD has the burden of proof in this case, and respectfully request that the procedural schedule adopted in this proceeding should reflect that Northampton MUD present its testimony first. Ariza Gosling and Staff's joint proposed procedural schedule is attached as Exhibit A to this brief. Staff notes that, while it agrees with Section II(A) below and the attached procedural schedule, it takes no position on Section II(B).³

II. DISCUSSION

A. Northampton MUD should present its testimony first because it bears the burden of proof to demonstrate the existing rates at issue are just and reasonable.

16 TAC § 24.12 states:

In any proceeding involving any proposed change of rates, the burden of proof shall be on the provider of water and sewer services to show that the proposed change, if proposed by the retail public

² See *Petition of Mansions at Turkey Creek, LP Pursuant to Texas Water Code § 13.043 for Review of the Decision by Northwood Municipal Utility District No. 1 to Change Rates*, Docket No. 43554, SOAH Order No. 3 Memorializing Prehearing Conference; Adopting Procedural Schedule; and Notice Hearings (Jan. 7, 2015); *Ratepayers' Appeal of the Decision by the City of Wilmer to Change Water Rates*, Docket No. 44485, SOAH Order No. 2 Adopting Proposed Procedural Schedule and Notice of Prehearing Conference of Hearing (June. 17, 2015); *Ratepayers' Appeal of the Decision by Laguna Madre Water District to Change Rates*, Docket No. 49154, SOAH Order No. 4 Cancelling Prehearing Conference; Adopting Agreed Procedural Schedule; Notice of Hearing (Sept. 9, 2019); *Ratepayers Appeal of the Decision by Windermere Oaks Water Supply Corporation to Change Water and Sewer Rates*, Docket No. 50788, SOAH Order No. 2 Adopting Agreed Procedural Schedule, Setting Hearing on Merits and Prehearing Conference, Discussing Mediation (Aug. 17, 2020).

³ Staff reserves the right to modify its position on Section II(B) at a future time.

utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.⁴

This is a proceeding involving a proposed reduction of the Tax-Exempt Multi-family Housing water utility rate charged to Ariza Gosling under TWC § 13.043(j)⁵ and 16 TAC § 24.101(j),⁶ and thus the burden of proof is on Northampton MUD to demonstrate that the existing rate charged to the only customer in that rate class (Ariza Gosling) is just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory. The purpose of chapter 24 within TAC title 16 is “to establish a comprehensive regulatory system under [TWC] chapter 13 to ensure that rates, operations, and services are just and reasonable to the consumer[.]”

In addition to the plain language of 16 TAC § 24.12, the Commission has consistently required the utility to present its testimony first in water rate appeals. In Docket Numbers 43554, 44485, 49154, and 50788, each of which involved a ratepayer appealing water rates, every procedural schedule required that the utility present its testimony first.⁷ To do otherwise would severely hamper a ratepayers’ ability to challenge unjust and unreasonable rates, and have a chilling effect on ratepayer appeals.

B. TWC § 49.2122 does not require Ariza Gosling to present its testimony first.

Despite 16 TAC § 24.12, and the Commission’s consistent treatment of burden of proof in other ratepayer appeals of water rates, Northampton MUD claims that TWC § 49.2122 places the

⁴ See 16 TAC § 24.012 (emphasis added); see also 16 TAC 24.3(31) (defining “retail public utility” as any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer water, or both, for compensation”); 16 TAC § 24.3(22) (defining “municipally owned utility” as “any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities”).

⁵ “In an appeal under this section, the [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.” TWC § 13.043(j).

⁶ “In an appeal under this section, the [C]ommission will ensure that every appealed rate is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers.” 16 TAC § 24.101(j).

⁷ See Docket No. 43554, SOAH Order No. 3; Docket No. 44485, SOAH Order No. 2; Docket No. 49154, SOAH Order No. 4; Docket No. 50788, SOAH Order No. 2.

burden of proof on Ariza Gosling, and that Ariza Gosling should present its testimony first. Northampton MUD relies upon the presumption in TWC § 49.2122(b) that “[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.” However, TWC § 49.2122⁸ concerns the establishment of customer classes, not the proposed reduction of water rates that are unjust and unreasonable, or prejudicial, preferential, or discriminatory in application to each class of customer.

There is not one reference to TWC § 49.2122 in Ariza Gosling’s Second Amended Petition. This is because Ariza Gosling does not challenge the mere establishment of the Tax-Exempt Multi-family Residential customer class. Rather, Ariza Gosling challenges the rates charged under that new rate class, and asks the Commission to set those rates accordingly. This is the exact situation to which 16 TAC § 24.12 is applicable. Nevertheless, Northampton MUD argues that the Commission should follow Order No. 6 in TCEQ Docket No. 2008-0091-UCR in requiring the ratepayer to file its testimony first.⁹ However, an order from a 2008 contested case under outdated TCEQ rules should not negate the plain language of the Commission’s rule set forth in 16 TAC § 24.12 or the Commission’s consistent treatment of order of presentation in water rate appeals.

In support of its position, Northampton MUD also points to the later date of enactment of TWC § 49.2122 as compared to TWC § 13.043(j).¹⁰ However, 16 TAC § 24.12 was adopted in 2014,¹¹ well after TWC § 49.2122¹² and the 2008 TCEQ order. Thus, the adoption of 16 TAC

⁸ “Notwithstanding any other law, a district may establish different charges, fees, rentals, or deposits among classes of customers that are based on any factor the district considers appropriate, including . . . 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.” TWC § 49.2122(a)(4).

⁹ *Petition of Ratepayers Appealing Rates Established by Clear Fork City Municipal Utility District*, TCEQ Docket No. 2008-0091-UCR, Commission Docket No. 44241, Order No. 6 Overruling Special Exceptions, Denying in Part and Granting in Part Motion to Limit and for Protection from Discovery, Granting Motion to Revise Schedule, and Requiring Parties to Submit Revised Case Schedule (Oct. 22, 2008).

¹⁰ *But see Acker v. Tex. Water Comm’n*, 790 S.W.2d 299, 301 (Tex. 1990) (“A legislative enactment covering a subject dealt with by an older law, but not repealing that law, should be harmonized whenever possible with its predecessor in such a manner to give effect to both.”).

¹¹ *See Rulemaking to Implement New Chapter 24 Related to Substantive Rules Applicable to Water and Sewer Service Providers, Migration of the Substantive Rules from the TCEQ (30 TAC 291) to the PUC (16 TAC 24)*, Project No. 42190, Order Adopting New Chapter 24 Related to Substantive Rules Applicable to Water and Sewer Service Providers (Migration of the Substantive Rules from the TCEQ (30 TAC CH 291) to the PUC (16 TAC CH 24)) As Approved at the July 10, 2024 Open Meeting (July 29, 2014).

¹² Act of May 29, 2007, 80th Leg., R.S., ch. 1430, § 7.01 (codified at TWC § 49.2122).

§ 24.12 reflects the Commission's view that a customer class established under TWC § 49.2122 may still apply its rate in a way that is unreasonably prejudicial, preferential, or discriminatory.¹³ To hold otherwise would render 16 TAC §§ 24.12, .101(j), and TWC § 13.043(j) meaningless. "The Court must not interpret the statute in a manner that renders any part of the statute meaningless or superfluous."¹⁴

Taking the above into consideration, it is clear that under 16 TAC § 24.12, Northampton MUD bears the burden of proof to demonstrate that the challenged rates are just and reasonable, and not prejudicial, preferential, or discriminatory under TWC § 13.043(j) and 16 TAC § 24.101(i). Ariza Gosling and Commission Staff have prepared the attached procedural schedule, which reflects that burden and requires Northampton MUD to present its testimony first.

III. CONCLUSION

The plain language of 16 TAC § 24.12 places the burden of proof on Northampton MUD to show the rates at issue are just and reasonable. Further, the Commission has consistently required utilities to present testimony first in water rate appeals. Therefore, Ariza Gosling and Commission Staff request that the ALJ adopt the attached procedural schedule, which complies with 16 TAC § 24.12 and Commission precedent.

IV. PRAYER

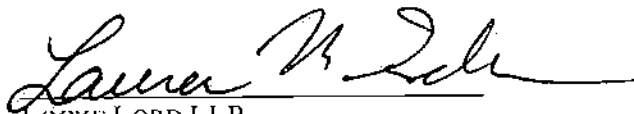
WHEREFORE, PREMISES CONSIDERED, Ariza Gosling and Commission Staff respectfully request that the Commission (1) adopt the attached procedural schedule, and (2) enter an order reflecting the same.

¹³ Northampton MUD's reliance on the final sentence in 16 TAC § 24.101(i) concerning a conflict between that rule and TWC § 49.2122 is misplaced. This interpretation clearly gives effect to both TWC § 49.2122 and 16 TAC § 24.101(i). *See Acker*, 790 S.W.2d at 301.

¹⁴ *Columbia Med. Ctr. Of Las Colinas, Inc. v. Hogue*, 271 S.W.3d 238, 256 (Tex. 2008).

Dated: February 15, 2024

Respectfully submitted,



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*/s/ Kevin Pierce *signed with permission*

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**ATTORNEYS FOR PUBLIC UTILITY COMMISSION OF
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties in this proceeding on February 15, 2024, 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 black ink, reading "Cole Hutchison", written over a horizontal line.

Cole Hutchison

EXHIBIT A

Ariza Gosling Owner LLC (“Ariza Gosling”) and the Public Utility Commission of Texas (“Commission”) Staff (“Staff”) jointly propose the following procedural schedule for consideration of the appeal of the water rates established by the District:

ACTION	TIME PERIOD
Deadline to file exhibits for hearing on Ariza Gosling’s Motion for Interim Rates	Monday, March 4, 2024
Hearing on Ariza Gosling’s Motion for Interim Rates	Wednesday, March 6, 2024, 10:00 A.M.
Deadline for District to file direct testimony	Wednesday, March 20, 2024
Deadline to file written objections to District testimony	Wednesday, March 27, 2024
Deadline to file written response to objections on all direct testimony	Wednesday, April 3, 2024
Deadline for Ariza Gosling to file direct testimony	Wednesday, April 10, 2024
Deadline to file written objections to Ariza Gosling’s direct testimony	Wednesday, April 17, 2024
Deadline to file written response to objections to Ariza Gosling direct testimony	Wednesday, April 24, 2024
Deadline for Staff to file direct testimony	Wednesday, May 15, 2024
Deadline to file written objections to Staff direct testimony	Wednesday, May 22, 2024
Deadline to identify individual(s) whom the party intends to depose	Wednesday, May 22, 2024

Deadline to propound discovery on direct cases	Wednesday, May 29, 2024
Deadline to conduct depositions	Wednesday, May 29, 2024
Settlement Conference	Wednesday, May 29, 2024
Deadline to file written response to objections to Staff direct testimony	Wednesday, May 29, 2024
Deadline for District to file rebuttal testimony	Wednesday, June 5, 2024
Deadline for Staff and Ariza Gosling to file cross-rebuttal testimony	Wednesday, June 5, 2024
Deadline to file written response to objections on all direct testimony	Wednesday, June 12, 2024
Deadline to file written objections to rebuttal or cross-rebuttal testimony	Wednesday, June 12, 2024
Deadline to file written response to objections on rebuttal or cross-rebuttal testimony	Wednesday, June 19, 2024
Deadline to file Pre-Hearing Submissions (Exhibit List, Cross Examination List, etc. filed on PUC Interchange. Exhibits and Exhibit Lists uploaded to Interchange by 5pm)	Thursday, June 20, 2024
Prehearing conference	Monday June 24, 2024
Hearing on the merits	Thursday–Friday, June 27–28, 2024
Initial Briefs	Wednesday, July 31, 2024
Reply Briefs (with proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs)	Friday, August 30, 2024

Other Miscellaneous Procedure(s)

- Upon filing of a motion for summary decision pursuant to 16 Texas Administrative Code (“TAC”) 22.182, the deadline for response under 16 TAC 22.182(c) shall not apply. Instead, within two working days after filing of the motion for summary decision, the Parties shall request the Administrative Law Judge establish a response deadline.

Modified Discovery Procedures

- All discovery requests received after 3:00 PM will be treated as received the following business day.
- The parties may not request production of testimony drafts.
- Service may be made on all parties via the PUC Interchange. If a filing requires action from another party, direct service must be made on the party from whom action is required.
- The following discovery deadlines will apply:
 - Responses are due within 10 calendar days of the discovery request;
 - Objections are due within five working days of the discovery requests;
 - Motions to compel are due within three working days of objections; and
 - Responses to motions to compel are due within three working days of the motion to compel.