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PUC DOCKET NO. 56665

APPLICATION OF TEXAS WATER UTILITIES, L.P. FOR AUTHORITY TO CHANGE RATES	§	PUBLIC UTILITY COMMISSION
	§	
	§	OF TEXAS

**OFFICE OF PUBLIC UTILITY COUNSEL’S RESPONSE TO
TEXAS WATER UTILITIES, L.P.’S REQUEST FOR
RETROACTIVE INTERVENTION DEADLINE**

The Office of Public Utility Counsel (“OPUC”) submits this response to Texas Water Utilities, L.P.’s (“TWU”) August 9, 2024 request that the Administrative Law Judge (“ALJ”) establish a retroactive intervention deadline in this proceeding of August 8, 2024.¹ Pursuant to 16 Texas Administrative Code (“TAC”) § 22.78, a responsive pleading shall be filed by a party within five working days after receipt of the pleading to which the response is made. TWU’s pleading was filed on August 9, 2024. Therefore, this response is timely filed.

ARGUMENT

Under 16 TAC § 22.104(b), motions to intervene “shall be filed within 45 days from the date an application is filed with the commission, *unless otherwise provided by . . . commission rule, or order of the presiding officer.*”² While TWU is correct that “[n]either Texas Water Code (TWC) § 13.187 nor 16 TAC § 24.27(c) prescribe an intervention period for a general rate case filed by a Class A utility,”³ 16 TAC § 22.104(b) authorizes the presiding officer to establish an intervention deadline. TWU is a Class A water utility with approximately 38,781 water connections and 10,531 wastewater connections.⁴ With such a large pool of affected persons, using the minimum 45-day intervention period will negatively impact thousands of TWU’s customers who are unrepresented by counsel and not familiar with the Public Utility Commission of Texas (“Commission”) and State Office of Administrative Hearings (“SOAH”) procedures. Consequently, TWU’s classification coupled with the magnitude of protests and interventions to

¹ Texas Water Utilities, L.P.’s Request for Intervention Deadline (Aug. 9, 2024). (TWU’s Request).

² 16 TAC § 22.104(b). [Emphasis added.]

³ TWU’s Request at 1.

⁴ Application of Texas Water Utilities, L.P. for Authority to Change Rates’ Statement of Intent for Authority to Change Rates at 1 (Jun. 24, 2024). (Statement of Intent).

date suggests imposing the minimal intervention deadline is *inappropriate* and deference to the presiding officer's determination of a proper deadline *beyond the minimal 45 days* is warranted.⁵

Of note, while TWU's pleading identifies June 24, 2024 as "the date on which TWU mailed notice of its proposed rate change to customers,"⁶ TWU subsequently filed an Errata to its Application acknowledging, "The . . . Class A Rate Filing Package requires that Schedule II-G-6 provide 'a copy of the proposed tariff or tariff supplement on a redline basis, to easily identify any changes [and on] Schedule II-G-6 in the Application, TWU inadvertently did not include the proposed redlined and clean water and sewer tariffs."⁷

In addition, TWU filed a July 11, 2024 Supplemental Affidavit of Notice acknowledging that, "On page 4 of the notice mailed on June 24, 2024, TWU's water certificate of convenience and necessity (CCN) was incorrectly identified as CCN number 10983. . . . After consultation with Public Utility Commission Staff, on June 28, 2024, TWU sent a postcard via U.S. mail stating that TWU's correct water CCN number is CCN number 12983."⁸ The date of the mailing of this postcard notice is ambiguous, insofar as it is unclear if it was mailed June 28, 2024, or if June 28, 2024 is the date on which TWU consulted with Staff of the Public Utility Commission of Texas ("Staff"). At best, notice is questionable in this case as postcards are generally tossed in the garbage can as junk mail. OPUC contends the use of postcard to correct a major deficiency in notice should be discouraged especially for an application where the applicant is requesting a revenue requirement of \$55,730,016.⁹ Public participation by affected persons is a hallmark in proceedings before the Commission, and the blatant attempt by TWU to stifle participation by trying to convince the ALJ to hamper participation through a retroactive intervention deadline must be discouraged. The public interest will not be served when affected persons are deprived of

⁵ A perusal of the interchange site shows that to date there are hundreds of ratepayers that have filed either a protest or request to intervene in this docket.

⁶ TWU's Request at 1.

⁷ First Errata to the Application at 1 (Jun. 25, 2024).

⁸ Supplemental Proof of Notice (Supplemental Affidavit of Notice of Jeffrey L. McIntyre) (Jul. 11, 2024) (affixing as Exhibit JM-1 a copy of the postcard that is undated).

⁹ See Direct Testimony of Brian D. Bahar at 22:22-23 (Jun. 24, 2024).

the right to participate in a proceeding intended to increase their water and wastewater rates by 15.2% and 25.4% respectively.¹⁰

Further, since the filing of TWU's pleading requesting a retroactive intervention deadline a series of additional ratepayer protests were filed in the docket, signaling that additional interventions may very well be filed in the coming days or weeks.¹¹ As such, OPUC contends a future deadline for intervention is proper, as this will allow affected customers and other interested parties that have not yet done so the ability to file an intervention. Of course, an intervention deadline need not be set at this time, especially given the impending ALJ Order addressing Staff's requested referral of this matter to SOAH.¹² Further, should the imposition of an intervention deadline be determined as proper by the ALJ, a future date would give potential intervenors notice that there is a deadline to act, while still granting TWU relief in the form of a date certain.

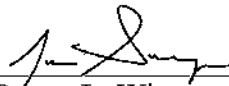
CONCLUSION

OPUC requests that the ALJ deny TWU's request to establish August 8, 2024, as the intervention deadline in this proceeding and grant OPUC any other and additional relief to which OPUC may be entitled.

Date: August 13, 2024

Respectfully submitted,

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¹⁰ Statement of Intent at 2.

¹¹ See Interchange Items 860 – 886.

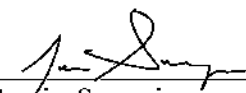
¹² See Order No. 4 – Finding Application Administratively Complete and Notice Sufficient, Suspending Effective Date, and Addressing Referral to SOAH (Jul. 29, 2024).

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**ATTORNEYS FOR THE
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CERTIFICATE OF SERVICE
PUC DOCKET NO. 56665

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 13th day of August 2024 by facsimile, electronic mail, and/or first class, U.S. mail.


Justin Swearingen