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Executive Director

Public Utility Commission of Texas**RQ-0504-KP**

April 11, 2023

FILE# ML-49265-23**I.D.# 49265**

The Honorable Ken Paxton
Office of the Attorney General
Attention: Opinion Committee
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for an Attorney General Opinion

Dear General Paxton:

The Public Utility Commission of Texas, referenced in the Texas Water Code (TWC) and in this letter as the utility commission, respectfully requests your opinion under section 402.042 of the Texas Government Code on two related issues:

1. For the purpose of determining the utility commission's exclusive original jurisdiction under Texas Water Code (TWC) § 13.042(e), and assuming that a municipality has not surrendered jurisdiction to the utility commission, is an area that a municipality annexes for limited purposes within the municipality's corporate limits under TWC § 13.042(a) or not within the municipality's incorporated limits under TWC § 13.042(e)?
2. In a residential subdivision, if a residence is partially within the exclusive original jurisdiction of the utility commission and partially within the exclusive original jurisdiction of a municipality, which of the two regulatory authorities—the utility commission or the municipality—has exclusive original jurisdiction?

These issues have arisen in the context of an application filed by Undine Development, LLC for system-improvement-charge riders under TWC § 13.183(c) and 16 Texas Administrative Code § 24.76.¹ The utility commission referred the application to the State Office of Administrative Hearings (SOAH) for a contested-case hearing. Jurisdictional questions were raised in the context of a motion to dismiss, and the SOAH administrative law judge (ALJ) certified

¹ *Application of Undine Development, LLC for System Improvement Charges*, PUC Docket No. 53109, Application (Jan. 27, 2022).



five questions to the Commission. The Commission considered the certified questions at its March 23, 2023 open meeting, voted to seek this opinion on the two issues listed above, and delegated authority to the executive director to submit the request for an opinion.

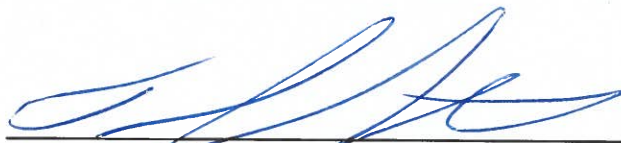
Under TWC § 13.042(a), “[s]ubject to the limitations imposed in [TWC chapter 13] and for the purpose of regulating rates and services so that those rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality has exclusive original jurisdiction over all water and sewer utility rates, operations, and services provided by a water and sewer utility within its corporate limits.” By contrast, under TWC § 13.042(e), “[t]he utility commission shall have exclusive original jurisdiction over water and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in [TWC chapter 13].”

The service area in question, which includes multiple residential subdivisions, is partially in areas fully annexed by the City of Austin, partially in areas annexed by the City of Austin for limited purposes, and partially in the City of Austin’s extraterritorial jurisdiction. There is no dispute that the fully annexed areas are within the City of Austin’s corporate limits and therefore that water and sewer utility rates, operations, and services in that area are subject to the City’s exclusive original jurisdiction. There is also no dispute that the City’s extraterritorial jurisdiction is not within the City’s incorporated limits and therefore that water and sewer utility rates, operations, and services in that area are subject to the utility commission’s exclusive original jurisdiction. Assuming that the municipality has not surrendered exclusive original jurisdiction to the utility commission under TWC § 13.042(b), the first question is whether areas annexed for limited purposes are within a municipality’s corporate limits under TWC § 13.042(a) or not within a municipality’s incorporated limits under TWC § 13.042(e).

The second submitted question is related. The Commission has concluded that in a residential subdivision, a water and sewer utility is providing service to the residence. Water and sewer service are each provided to a residence through a single connection in these subdivisions. Further, for water service, variable rates are based on a single meter, while monthly rates are based on the connection. Rates for sewer service are based on water usage measured through the single meter. Therefore, only one regulatory authority has the ability to set a rate for service. If the boundary between the utility commission’s exclusive original jurisdiction and a municipality’s exclusive original jurisdiction crosses through a residence so that the residence is located partially outside of the City’s incorporated limits, i.e., within the utility commission’s exclusive original jurisdiction, and partially within the City’s corporate limits, i.e., within the municipality’s exclusive original jurisdiction, which of the two regulatory authorities has exclusive original jurisdiction to set rates?

Because these two issues involve not only the utility commission’s exclusive original jurisdiction but also a municipality’s exclusive original jurisdiction, the utility commission believes it is appropriate to request your opinion on the two submitted issues. The utility commission is waiting to respond to the SOAH ALJ’s certified issues pending issuance of your opinion.

PUBLIC UTILITY COMMISSION OF TEXAS



Thomas Gleeson, Executive Director

CC: Anne Morgan, City Attorney for the City of Austin
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