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FILE# ML-49172-22
I.D.# 49172

Greg Abbott
Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

September 6, 2022

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

Re: Request for Attorney General Opinion

Dear General Paxton:

The Public Utility Commission of Texas respectfully requests your opinion under section 402.042 of the Texas Government Code on the following issue:

Whether the Public Utility Commission of Texas has authority under Texas Water Code (TWC) § 12.013 to hear an appeal by a municipal utility of the rates set by a water control and improvement district, or whether the Texas Commission on Environmental Quality (TCEQ) has exclusive authority over such an appeal under TWC § 51.305(d).

In 2013, the economic regulation of water and sewer service was transferred to the utility commission¹ from the TCEQ under two near-identical acts of the Legislature.² In these acts, TWC § 12.013(a) was amended to authorize the utility commission to “fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12” of the Water Code.³

On October 27, 2021, the City of McAllen filed a petition under TWC § 12.013 appealing water delivery rates set by Hidalgo County Water Improvement District No. 3, a water control and

¹ Within the Texas Water Code, the Public Utility Commission is defined as the utility commission and will be reference as such here. Tex. Water Code § 11.002(21).

² Act of May 13, 2013, 83rd Leg., R.S., ch. 170 (HB 1600), §§ 2.01–2.98, 2013 Tex. Gen. Laws 725; Act of May 13, 2013, 83rd Leg., R.S., ch. 171 (SB 567), §§ 1–97, 2013 Tex. Gen. Laws 772.

³ Tex. Water Code § 12.013(a).



If the three acts are considered to be *in pari materia*, then if the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.¹¹ If this doctrine applies, the earlier amendment would prevail unless the manifest legislative intent is that the latter amendments prevail.

Because TWC § 12.013 provides the utility commission with authority to fix reasonable rates for any purpose mentioned in chapter 11 or 12 of the Texas Water Code, the utility commission has acted as if it has authority over rate appeals challenging the rates set by a water control and improvement district,¹² and expects that additional appeals of rates set by water control and improvement districts will be filed with the utility commission in the future. Thus, it is necessary to obtain the requested opinion on whether the utility commission has authority to address these types of appeals or must dismiss them.

The language of TWC § 51.305(d) raises the question of whether the utility commission has jurisdiction to review McAllen's appeal and others of its kind. Consequently, utility commission has not acted on Hidalgo County Water Improvement District No. 3's appeal. Further, because the resolution of this issue concerns the jurisdiction of the TCEQ, the utility commission does not believe that it has the authority, or that it is appropriate for it, to determine, the extent of the TCEQ's authority over the appeals of the rates of water control and improvement districts. Consequently, the utility commission respectfully requests your opinion on the submitted issue.

In its open meeting of August 25, 2022, the Commission voted to seek this opinion and delegated authority to the executive director to submit this request for an opinion.

PUBLIC UTILITY COMMISSION OF TEXAS



Thomas Gleeson, Executive Director

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¹¹ *Tex. Stated Bd. Of Chiropractic Examiners v. Abbott*, 391 S.W.3d 343, 348 (Tex. App.—Austin no pet.).

¹² *See, e.g., Ratepayers' Appeal of the Decision by South Central Calhoun County Water Control and Improvement District No. 1 to Change Rates*, PUC Docket No. 47912, Order (Jan. 14, 2021).