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Texas Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

Members of the Commission:

I am writing on behalf of the HMW Special Utility District ("HMW") to provide its comments in the sunset review process for the Texas Public Utility Commission ("PUC"). HMW is a non-taxing special utility district that serves more than 4,000 retail water connections, amounting to more than 10,000 retail customers in southwest Montgomery and northwest Harris Counties. HMW holds water service Certificate of Convenience and Necessity ("CCN") No. 10342. CCNs are discussed in more detail below, along with the process administered by the PUC that authorizes decertification, i.e., the divestment of property from a CCN, which is akin to a taking of property without due process.

While the commission and the legislature are rightly concerned with the PUC's jurisdiction to regulate electric power generation, the PUC also has jurisdiction of certain water related issues. This letter concerns the PUC's handling of certain water-related issues within the PUC's jurisdiction.

For background, a CCN is a reserved area granted by the state for a public utility to operate, in the case of HMW to provide water service, on a current basis and for future planning purposes in areas in which (based on growth) service will occur later. It is important to note that for districts in high growth areas a CCN is an asset that assures optimum and reliable planning for future water service.

At the outset, this advises that HMW is engaged in litigation regarding applications to decertify two areas that are a part of its CCN. Additional information on those matters is available publicly and upon request to HMW.

One of HMW's issues with the PUC is its administration of Texas Water Code Section 13.2541, which provides a summary process for divesting property from the area covered by a utility provider's CCN.

HMW offers the following comments on the necessity for both PUC administrative and statutory changes:

- 1. The PUC treats what amounts to a taking of property as a summary proceeding in which the CCN holder has little or no ability to resist.** This issue calls for both legislative and administrative solutions within the PUC. HMW strongly disagrees with the summary process established by Water Code 13.2541 and urges its modification, as well as its handling within the PUC, which provides anything but due process.

For example, the PUC's administrative law judges ("ALJ") all but presume the approval of decertification, treating the process instead as a docket to be moved through the PUC for approval rather than a contested process. Further, while the commissioners are the nominal final authority, their review of ALJ decisions is minimal, functioning only as a paper exercise in which the ALJ's conclusions receive little or no meaningful review. This means that a single individual not responsible to the commissioners, Governor, Legislature or the public is making final decisions about the taking of property from their longstanding owners.

In addition, the PUC's administration of the compensation process in Water Code Section 13.2541 should **require** consideration of unenumerated factors that demonstrate the value of a decertified area to the current holder of the CCN. Instead, the PUC process is narrow in scope and fails to follow the intent of applicable law. For example, despite their authorization to do so, one ALJ and his appointed appraiser simply ignored the revenue-producing potential to the holder of the decertified portion of its CCN, even though obtaining it for that purpose was the applicant's objective. The result is a process that summarily transfers clearly valuable assets by government action, without compensation for that value from the applicant to the holder of the decertified territory.

To summarize, the actual result of decertification is a battle to control the opportunity to serve areas not receiving service, with state government weighing in on the side of the party seeking decertification. In effect, the PUC becomes the instrument of state government that facilitates the taking of an asset with minimal due process.

2. **The PUC commissioners are not responsive to significant portions of the public that they serve.** While the commissioners are appointed by the Governor and confirmed by the Texas Senate, their activities receive little or no oversight of their daily activities except in the event of a crisis. Little or no effort is made by the commissioners or their staffs to communicate with water districts or retail customers.

The commissioners and their administrative staffs should:

- (a) conduct public meetings to explain their administrative and quasi-judicial roles without compromising their consideration of specific cases,
- (b) develop written materials for distribution that accomplish the same purpose,
- (c) adopt procedures that assure that the commissioners themselves review the quasi-judicial decisions for which they are the final authority, and
- (d) take similar steps to advise the public of pending policy decisions that affect water supply and infrastructure.

HMW recognizes that the appropriate changes will require both legislative action and changes in the ways that the PUC conducts its business. To further discussion and corrective action, HMW will submit additional comments and proposals for action as the legislative process takes up the question of the PUC's activities and authority.

HMW thanks you for your attention to and consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick F. Timmons, Jr.", with a stylized, cursive script.

Patrick F. Timmons, Jr.

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