

T.A.M.E.R. Texans Against Monopolies' Excessive Rates

December 2012

The upcoming Texas Legislative session is an important one for T.A.M.E.R. members. With a strong, active membership base, a lot can potentially be gained. In the next few months, decisions will be made that affect all utility ratepayers, for better or worse. Of the groups that might influence legislation in a way that helps ratepayers, T.A.M.E.R. presently has the greatest standing at the legislature.

What does T.A.M.E.R. stand to gain this legislative session?

T.A.M.E.R. has been competing against lobbyists for Monarch, SWWC, and Aqua Utility Companies to advocate for the interests of rate payers. We have been operating from a strong political platform that calls for simple but very important legislative reforms of the water and sewer ratemaking process.

T.A.M.E.R.'s 5-point policy initiative:

1. *Rate increases should take place by Commission order only.*

Historically, utility rate increases are allowed only following an order by the appropriate regulatory agency. This is not true of water and sewer rates in Texas, however. Those

rates go into effect automatically after a certain number of days (60, at present). Cities have the ability to prevent that, but rural ratepayers have no practical way to do that. This needs to change. Future rate increases should take place by Commission-issued order only. This will give utilities an incentive to treat rural ratepayers fairly and will provide much-needed oversight in the ratemaking process.

2. *Water and sewer ratemaking authority should be transferred from the Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission of Texas (PUC).*

In structure and experience, the PUC is better equipped to regulate utilities and set water and sewer rates than is the TCEQ. In the absence of leadership by the TCEQ in rate setting, Investor-Owned Utility Companies (IOUs) have trampled ratepayers—roughly trebling water rates over the last decade. The TCEQ is an environmental agency, and utility regulation is a tiny sliver of its mission. The PUC, on the other hand, was created in 1975 only to regulate utilities. The PUC has shown itself to be familiar with sophisticated rate issues, which the TCEQ has not. And, unlike the

TCEQ, the PUC has a decent-sized staff that is equipped to handle technical reviews of complex rate-change applications. Monarch, for example, had 17 sister companies and a parent company in 2010, many of which are not subject to regulation and from several of which it purchased services. Whether and how much Monarch overpaid its siblings and parent is a costly and difficult thing to discover; this is an inquiry with which the PUC staff could be a real help. IOU ratepayers have suffered at the hands of the TCEQ's inability to adequately regulate staggering utility rates; it is time to transfer this authority to the PUC.

3. Counties should be given the right to intervene in the ratemaking process on behalf of rural citizens.

Under the current regulatory structure, cities have the right to intervene on behalf of and advocate for their citizens in water and sewer cases. Counties are not afforded this same privilege. Time and again, cities have secured for their citizens lower rates than those imposed in rural areas. Counties should be given the same advocacy privileges as cities to help ensure equal protection against excessive utility rates. Counties could also buffer rural ratepayers from the impacts of cuts to budgets of regulators at the state level.

4. A definitive timeline for ratemaking decisions should be set.

Under current regulations, there is no limit on the numbers of days that elapse between the date of a rate-increase filing and a final decision on that filing. The passage of time costs both ratepayers and utilities money;

lawyer and consultant costs just accumulate. New legislation should require the regulatory agency to make a final decision within a defined period of time, say 185 to 250 days from the date the rate-increase application is filed.

5. Ratepayers should not pay for utilities' federal income taxes, unless those taxes are actually likely to be paid

As water and sewer utility ratepayers, you pay 100% of a utility's estimated expenses (based on actual expenses the year before). Construction projects, new materials, employee wages—all costs are recovered by the utility's ratepayers through newer and higher rates. This includes taxes. Currently, the TCEQ assumes a 35% federal income tax rate on all utility profits, even for those of utilities that are limited partnerships, which, in reality, pay no federal income tax. Utilities whose tax liabilities are consolidated in a single parent-company tax return with losses and credits of sister businesses are treated by the TCEQ as though those benefits were never realized. This is an outdated policy that needs to be modernized. It should be required that the federal income tax expense included in water and sewer utilities' allowable expenses—which are recovered 100% from ratepayers—be a reflection of what the utility will *actually likely pay*.

These are T.A.M.E.R.'s goals for the upcoming legislative session. These are the points we've discussed with representatives, senators, and legislative aides. This is the reform platform we've been sponsoring ; the changes to current policy that would most benefit and empower ratepayers. And, so far,

we've been able to rally a small but strong base of support for our ideas.

But, though we have made strides, there are large hurdles to overcome during the next session. The IOUs—with their lobbying and spending power—have also been right there before and after T.A.M.E.R., fighting to keep their power.

Who are the IOUs?

Monarch Utilities I, LLP; Southwest Water Company, Inc. (SWWC); and Aqua Texas, Inc.; are the principal investor-owned utilities that are squaring off with T.A.M.E.R. this upcoming session. Needless to say, they have different motivations than T.A.M.E.R. Recently, SWWC and Aqua Texas, Inc., outlined *their* platform for the session:

1. Utility ratemaking regulation should be transferred to the PUC *provided that a rate order is required to be issued within 185 days from filing a rate change application.* (This is not far from T.A.M.E.R.'s position.)
2. The Office of Public Utility Counsel should be able to intervene on behalf of ratepayers, *but no new interveners, such as counties, should be allowed.*
3. The state should adopt streamlined ratemaking procedures, *such as eliminating the need for utilities to file rate applications, eliminating the need for contested case hearings on the applications, eliminating the requirement for public notice, and implementing periodic automatic rate adjustments.* (This “streamlining” will basically eliminate the public’s voice in rate making.)

4. The state should allow for a forward-looking ratemaking process. (Forward-looking rate setting allows utilities to hypothesize future cost escalations, increased staffing needs, future interest rates, and a host of other imponderables. By the time regulators “true up” the projections to the realities that occurred, years have passed, ratepayers have moved, and the utilities have held on to your money all the while.)

These legislative goals, if realized, would unsurprisingly give yet more power to IOUs and take power away from the ratepayers, who already have so little power. Utilities are waging a very costly war at the Texas Legislature to do just that.

Lobbyist Activity Reports

Thanks to the Texas Ethics Commission (TEC), we are able to track roughly how much IOUs like Monarch, SWWC, and Aqua spend on lobbying at the Texas Legislature. According to annual lobbyist activity reports that all lobbyists are required to submit to the TEC, Monarch, SWWC, and Aqua TX continuously outspend T.A.M.E.R. and other ratepayer advocates in lobbying activities. In 2011, the three utilities spent between \$200,000 and \$400,000 lobbying the Texas Legislature¹. In 2012, when the legislature is not even in session, they are reporting expecting expected expenditures of another \$145,000 to \$270,000. **In total, from 2011 to 2012, Monarch, SWWC, and Aqua TX will have spent between \$345,000 and \$670,000 on lobbying in the Texas Legislature.** We believe this is roughly 20

¹ Texas Ethics Commission, 2011 Lobbyist Activity Reports for Monarch/SWWC, SWWC, Inc., and Aqua America, Inc.

times what ratepayer advocates have been able to spend.

How can I get involved?

Actions need to be taken to ensure that T.A.M.E.R. succeeds in achieving its policy goals this session. Clearly, outspending Monarch, SWWC, and Aqua TX is not an option, but there are things that T.A.M.E.R. members can do to level the playing field.

1. Take on leadership role.

Currently, there are around 22,000 members of the T.A.M.E.R. organization and only about 10 board members leading them. T.A.M.E.R. needs strong, creative individuals to take the lead and rally support in their own communities.

2. Get connected.

Talk to other T.A.M.E.R. members and learn about the issues ratepayers face in Texas. Connect with leadership to talk about how you can help T.A.M.E.R. over the next year.

3. Make a donation – consider an assessment

Taking a stand against the IOUs in the coming legislative session is impossible without the support of a strong membership. Rallying legislative support for our ideas is costly, but the price of not doing so is, collectively, even greater. Please consider making a donation to T.A.M.E.R. today in support of our cause.

Better yet, talk with your HOA or POA board about imposing a small assessment on members to help fund this cause and the next

upcoming battle with Monarch over rates.² Assessments are an anathema to all of us, but it is very hard to see how purely voluntary contributions will allow T.A.M.E.R. to have the resources necessary to do a good job with the tasks ahead.

² In its most recent rate case, Monarch sought to raise rates on a 5,000 gallon/month customer 35.5%. We beat that back to a raise of “only” 26%. Monarch will be seeking to make that up, plus some more, in its rate-increase filing at the end of 2013.