



Control Number: 34800



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SOAH DOCKET NO. 473-08-0334  
P.U.C. DOCKET NO. 34800

2008 DEC 15 PM 2:44  
FILED

APPLICATION OF ENTERGY GULF  
STATES, INC. FOR AUTHORITY TO  
CHANGE RATES AND TO RECONCILE  
FUEL COSTS

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BEFORE THE  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS

**Motion to Dismiss Petition**

The Cities of Huntsville and Orange ("Cities") file this Motion to Dismiss the State of Texas' ("State") Petition for Review of Cities' Ordinances and Motion to Consolidate filed in the above referenced cause on December 10, 2008, and would respectfully show as follows:

**I. Jurisdiction**

The State's standing, if any, to appeal a municipal rate ordinance is limited to the right of any customer to appeal a municipal rate ordinance, which is governed by Public Utilities Regulatory Act ("PURA"), TEX. UTIL. CODE § 33.052. In order for a customer to appeal a municipal rate ordinance, the customer must file its petition for review with the signature of a number of qualified voters within the municipality equal to the lesser of 20,000 or 10 percent of the qualified voters. The State's motion is only signed by one individual, who does not claim to be a qualified voter in either the City of Huntsville or Orange. Because the State did not obtain the required number of signatures, it did not validly invoke the Commission's jurisdiction under PURA § 33.052.<sup>1</sup>

The State alleges that the Commission has jurisdiction over the appeal of municipal rate ordinances pursuant to PURA § 33.051. However, the State does not have standing to appeal the municipal rate ordinances under PURA § 33.051 because the State was not a party to the rate proceeding before the municipalities' governing bodies. The State cannot, on its own accord, appeal a decision in a proceeding to which it did not intervene, was not granted party status, and did not participate. The law is well established that an appeal can only be brought by a party to a proceeding.<sup>2</sup>

The Cities attach the affidavits of the City Secretaries of each City verifying that the State is not a party to the rate proceeding before the governing bodies of the Cities. Therefore, the

<sup>1</sup> *Appeal of Fidencio Lopez*, PUC Docket No. 8958, Order Dismissing Appeal at CoL 3-5, 15 PUC Bull. 1529 (Jan. 24, 1990).

<sup>2</sup> *City of San Benito v. Rio Grande Valley Gas Co.*, 109 S.W.3d 750, 754 (Tex.2003).

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State does not have standing to appeal the municipal rate decisions under PURA § 33.051. PURA only permits customers to appeal municipal rate decisions in certain limited situations. The customers' right to appeal is limited by PURA 33.052 and PUC. Proc. R. 22.244.

PUC Proc. R. 22.244 requires that a customer appealing a municipal rate ordinance shall file, in addition to the required number of signatures of qualified voters above, the following statements:

**PUC Proc. R. 22.244(a)(1)**

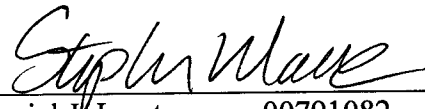
- (C) A statement designating a specific individual, group of individuals, or organization as the signatories' authorized representative; and
- (D) A statement that the designated representative is *authorized to represent the signatories in all proceedings before the commission and appropriate courts of law and to do all things necessary to represent the signatories in those proceedings.* (emphasis added).

The State has made no such statements and is unauthorized to represent the interests of the qualified voters within the municipal limits of Cities. The State is only one customer, regardless of the number of meters or light fixtures it has within the municipality.<sup>3</sup> As such the State, acting in its capacity as a single customer, does not meet the standing requirements of PURA § 33.052.

**II. Prayer**

For the foregoing reasons, Cities respectfully request that the State's Petition for Review of Cities' Ordinances and Motion to Consolidate be dismissed.

Respectfully submitted,  
LAWTON LAW FIRM, P.C.



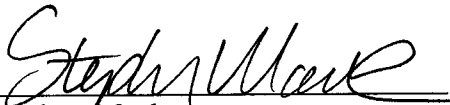
Daniel J. Lawton      00791082  
Stephen Mack      24041374  
701 Brazos, Suite 500  
Austin, Texas 78701  
(512) 322-0019  
(512) 334-6619 Fax  
**ATTORNEY FOR CITIES**

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<sup>3</sup> PUC Proc. R. 22.244(b).

## CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served on all parties of record in this proceeding on this 15th day of December 2008 by First Class, U.S. Mail, hand delivery or facsimile.

  
Stephen Mack

STATE OF TEXAS

COUNTY OF ORANGE

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AFFIDAVIT OF CITY SECRETARY

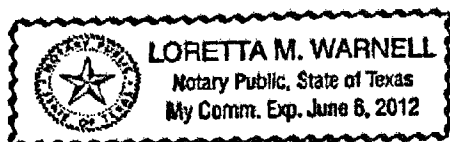
Before me, the undersigned authority, personally appeared Kerry Kittrell, City Secretary of the City of Orange ("City"), who being by me duly sworn, stated as follows:

1. My name is Kerry Kittrell. I am over eighteen years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein.
2. I am the City Secretary of the City of Orange, Texas. In the regular course of my duty as City Secretary I am the custodian of records for the City of Orange. The City Secretary also attends all meetings of the governing body of the City of Orange and keeps the minutes of those meetings.
3. Any document filed with the City would be kept by the City Secretary's office in the regular course of business. Any appearances made or testimony provided in any proceeding to consider the Statement of Intent to Change Rates filed by Entergy Gulf States, Inc. on September 26, 2007 ("Entergy Rate Request") would have been noted in the minutes of the City Council Meeting in the regular course of business.
4. After a review of the City Records and the minutes of the City Council Meetings, I affirm that the State of Texas has not filed an Intervention in Entergy's Rate Request before the City. The State of Texas, or any representative of the State of Texas, has not made an appearance or provided testimony in any City Council Meeting convened to consider Entergy's Rate Request before the City.
5. The State did not request party status and the City did not confer party status upon the State in Entergy's Rate Request.

Affiant says nothing further.

Kerry Kittrell  
Kerry Kittrell, City Secretary  
City of Orange, Texas

SUBSCRIBED AND SWORN to before me, the undersigned authority, on the 12<sup>th</sup> day of December 2008 by Kerry Kittrell, City Secretary of the City of Orange, Texas.



Loretta M. Warnell  
Notary Public, State of Texas  
My Commission Expires: June 6, 2012

STATE OF TEXAS

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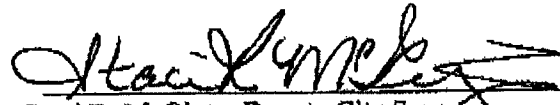
COUNTY OF WALKER

**AFFIDAVIT OF DEPUTY CITY SECRETARY**

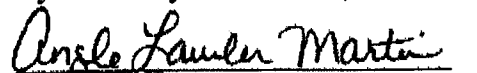
Before me, the undersigned authority, personally appeared Staci R. McGinty, Deputy City Secretary of the City of Huntsville ("City"), who being by me duly sworn, stated as follows:

1. My name is Staci R. McGinty. I am over eighteen years of age, of sound mind, capable of making this affidavit, and personally acquainted with the facts herein.
2. I am the Deputy City Secretary of the City of Huntsville, Texas. In the regular course of my duty as Deputy City Secretary I am a custodian of records for the City of Huntsville. The City Secretary and/or Deputy City Secretary also attends all meetings of the governing body of the City of Huntsville and keeps the minutes of those meetings.
3. Any document filed with the City would be kept by the City Secretary's office in the regular course of business. Any appearances made or testimony provided in any proceeding to consider the Statement of Intent to Change Rates filed by Entergy Gulf States, Inc. on September 26, 2007 ("Entergy Rate Request") would have been noted in the minutes of the City Council Meeting in the regular course of business.
4. After a review of the City Records and the minutes of the City Council Meetings, I affirm that the State of Texas has not filed an Intervention in Entergy's Rate Request before the City. The State of Texas, or any representative of the State of Texas, has not made an appearance or provided testimony in any City Council Meeting convened to consider Entergy's Rate Request before the City.
5. The State did not request party status and the City did not confer party status upon the State in Entergy's Rate Request.

Affiant says nothing further.

  
Staci R. McGinty, Deputy City Secretary  
City of Huntsville, Texas

SUBSCRIBED AND SWORN to before me, the undersigned authority, on the 15th day of December 2008 by Staci R. McGinty, Deputy City Secretary of the City of Huntsville, Texas.

  
Notary Public, State of Texas  
My Commission Expires: 02/23/2012

