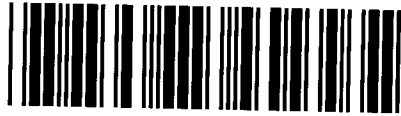


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Addendum StartPage: 0

P.U.C. DOCKET NO. 42911

RATEPAYERS APPEAL OF RATE
DECISION OF PORT O'CONNOR
IMPROVEMENT DISTRICT NUMBER
37880-A

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BEFORE THE
PUBLIC UTILITY COMMISSION

OF TEXAS

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FILING CLERK

**PORT O'CONNOR IMPROVEMENT DISTRICT RESPONSE TO MOTION TO
CONSOLIDATE AND MOTION TO DISMISS**

COMES NOW, Port O'Connor Improvement District and files this Motion to Dismiss. For clarification, as stated in the Motion to Consolidate filed by Staff of the Public Utility Commission, Port O'Connor Improvement District supports consolidation of this matter with PUC Docket No. 42910. Because these matters are currently under separate dockets, the same motion is filed in both proceedings.

I. Introduction

Port O'Connor Improvement District ("Port O'Connor") is a non-profit provider of water and sewage services to a customer base of approximately 1,600 members in Calhoun County, Texas on the Gulf Coast between Galveston and Corpus Christi. Port O'Connor Improvement District was established by statute in 1977 and declared to be essential to the accomplishment of the purposes of Article XVI, Section 59, of the Texas Constitution.¹ Port O'Connor Improvement District appreciates the Commission's efforts to manage the transition of authority over water rate cases from the Texas Commission on Environmental Quality (TCEQ) with efficiency and diligence to the interests of all involved parties and is fully dedicated to operating in an open and transparent manner to its ratepayers. Because Port O'Connor owes a duty to efficiently manage its resources for the benefit of all of its member-ratepayers, however, it must avoid engaging in administrative proceedings where the prerequisites of review by the Commission have not been properly established. Port O'Connor files this Motion to Dismiss

¹ Section 1, Chapter 693, Acts of the 65th Legislature, Regular Session, 1977, as amended by S.B. No. 1822, 83rd Legislature, Regular Session, 2013.

prior to the issuance of notice to all of its member-ratepayers in the interest of judicial and administrative efficiency and to avoid confusion amongst those members should this case be resolved in a dispositive manner.

II. Motion to Dismiss Appeal of Rate Decision

Pursuant to P.U.C. PROC. R. 22.181(1)(A), Port O'Connor Improvement District respectfully moves to dismiss the appeal of rate decision number 37879-A. The Commission's rules related to water and sewer service providers became effective September 1, 2014.² The rules referenced in this motion are substantively identical to the rules in effect prior to September 1, 2014 when authority over water and sewer service providers resided with the TCEQ and each prior effective rule is referenced by footnote.

A. The Signature Pages Submitted by Appellants Do Not Comply with Applicable Rules

Port O'Connor Improvement District is a retail public utility as defined by Texas Water Code (TWC) § 13.002 (19) and P.U.C. SUBST. R. 24.3(41).³ TWC § 13.043(b)(4) establishes the right of ratepayers to appeal decisions affecting rates to the Commission. Pursuant to TWC § 13.043 and P.U.C. SUBST. R. 24.41,⁴ appeals of the rate-making decisions of retail public utilities pursuant to TWC § 13.043(b) must be initiated within 90 days of the effective date of the rate change by the filing of a petition signed by 10,000 or 10% of the affected ratepayers. The rate-making decision in this case (No. 37880-A) had an effective date of January 1, 2014. Appeal of this decision therefore had to be initiated no later than April 1, 2014.

The appeal filed by the Port O'Connor Watchdog Group, LLC, including the required signature pages, was received by the TCEQ on March 25, 2014. "Corrected" signature pages were subsequently received on April 11, 2014, with correspondence from the Port O'Connor

² *Rulemaking to Implement new Chapter 24 Related to Substantive Rules Applicable to Water and Sewer Service Providers, Migration of Substantive Rules from the TCEQ (30 TAC Chapter 291) to the PUC (16 TAC 24)*, Project No. 42190, Order Adopting New Chapter 24 Related to Substantive Rules Applicable to Water and Sewer Service Providers (Migration of Substantive Rules from the TCEQ (30 TAC Ch 291) to the PUC (16 TAC Ch 24)) as Approved at the July 10, 2014 Open Meeting (July 29, 2014).

³ Prior to September 1, 2014: Texas Administrative Code Title 30, Part 1, Chapter 291, Subchapter A, Rule 291.3(41).

⁴ Prior to September 1, 2014: Texas Administrative Code Title 30, Part 1, Chapter 291, Subchapter C, Rule 291.41(b).

Watchdog Group, LLC dated April 9, 2014. The “Corrected” signature pages were identical to those filed with the appeal received by the TCEQ on March 25, 2014, except that they had been shrunk in size and copied onto new pages that contained additional language in a “header” and “footer” on the page. An example signature page – both as originally filed and as “corrected” is attached to this pleading as Attachment A.

P.U.C. SUBST. R. 24.42(a)(1)⁵ requires that “each signature page” of a petition for review of rate actions filed pursuant to TWC § 13.043(b) must contain a “clear and concise statement that the petition is an appeal of a specific rate action” and include “a concise description and date of that rate action.” The signature pages for the “Petition to Appeal Rates by the Board of Directors Port O’Connor Improvement District” filed on March 25, 2014, do not comply with the requirements of Rule 24.42(a)(1) as they do not identify a specific rate action and do not include the date of that action. The “corrected” signature pages filed in each docket on April 11, 2014 have the language required by Rule 24.42(a)(1) on the copied page, but as demonstrated by Attachment A the original signatures were simply “shrunk down” and re-copied on paper containing that language. The signature pages plainly did not comply with the Commission’s rules when signed. The requirements of P.U.C. SUBST. R. 24.42(a)(1)(and its predecessor rule) are substantively important as they ensure that signees to rate appeal petitions are fully informed of the specific decision that they are seeking to change. These requirements are not “technicalities” but are fundamental to a deliberative appeal process in which the member-ratepayers of a water improvement district may participate.

Port O’Connor Improvement District respectfully moves to dismiss this case pursuant to P.U.C. PROC. R. 22.181(1)(A) on the basis that the Commission lacks jurisdiction to hear the appeal on two grounds. First, the “re-copied” form of signature page does not qualify pursuant to P.U.C. SUBST. R. 24.42(a)(1) as a valid signature page to support an appeal of a rate decision. Second, even if the “re-copied” pages did comply with Rule 24.42(a)(1), the filing of these pages on April 11, 2014 does not comply with P.U.C. SUBST. R. 24.41 because that filing date is outside the 90-day period to appeal a rate decision by Port O’Connor Improvement District, the deadline for which was April 1, 2014.

⁵ Prior to September 1, 2014: Texas Administrative Code Title 30, Part 1, Chapter 291, Subchapter C, Rule 291.42(a)(1).

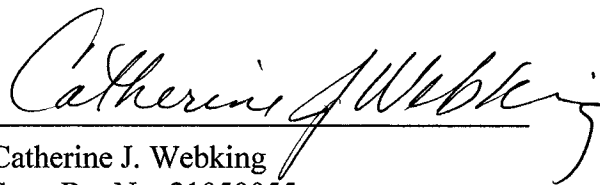
B. Alternate Request to Include Petition Signature Sufficiency in List of Issues

If this Motion to Dismiss is not granted, Port O'Connor Improvement District requests that the determination of sufficiency of the signature pages for the appeal petition be included in the Commission's Preliminary Order in the list of issues to be considered in this case. Inclusion of such an issue in the Preliminary Order would be consistent with the Commission's approach to this type of issue in PUC Docket No. 42855.⁶ Port O'Connor does not object to this issue being deferred for consideration by the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ). Port O'Connor raises the issue at this stage of this proceeding in an effort to bring about administrative efficiency for the overall benefit of all of the member-ratepayers on the system.

III. Conclusion

Wherefore, premises considered, Port O'Connor Improvement District respectfully requests that this Motion to Dismiss be granted or in the alternative, that the issue be preserved for inclusion in the Preliminary Order for this proceeding, and for all other relief to which it is entitled.

Respectfully submitted,



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⁶ PUC Docket No. 42855, *Petition by the Ratepayers Appealing Water Rates Established by Marsha Water Supply Corporation, Pubustant to V.T.C.A. 13.043, CCN No. 12166 In Travis County*, Preliminary Order (October 23, 2014), Issue No. 1 at p. 2.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument will be served via facsimile or first-class mail to all parties of record in this proceeding on this 13th day of November, 2014.


Barbara Dye

Attachment A

Affidavit of Teddy Hawes

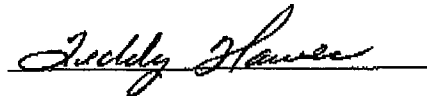
STATE OF TEXAS §
§
COUNTY OF CALHOUN §

Before me the undersigned authority on this date personally appeared Teddy Hawes who being by me first duly sworn states as follows:

"My name is Teddy Hawes. I am more than 21 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.

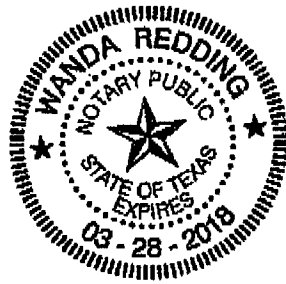
1. I am the elected President of Port O'Connor Improvement District.
2. My responsibilities of office for Port O'Connor Improvement District include overseeing its general operations and ensuring that it remains financially viable and in compliance with applicable regulations.
3. I have reviewed the Ratepayers' Appeal of Rate Decision of Port O'Connor Improvement District No. 37880-A (the Appeal), which is the subject of the proceeding styled P.U.C. Docket No. 42911.
4. I have personally reviewed the signatures on the Appeal and to determine whether the signatures contain the information required by P.U.C. SUBST. R. 24.42(a)(1), previously 30 TAC § 291.42(a)(1).
5. The results of my inspection are that the signatures do not comply for the reasons set forth in Port O'Connor Improvement District's Motion to Dismiss.
6. The information in the Motion to Dismiss and its attachments are true and correct to the best of my knowledge.

Signed this, the 12 of November, 2014.



BEFORE ME, a notary public, on this day personally appeared Teddy Hawes, known to me to be the person whose name is subscribed above and who signed the same in my presence. I hereby certify that the signature of said person is genuine.

Given under my hand and seal of office this 12 of November, 2014.



Wanda Redding

Notary Public, State of Texas

Printed Name: Wanda Redding

My Commission Expires: 03-28-2018