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SOAH DOCKET NO. 473-15-2123.WS

PUC DOCKET NO. 44010

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PETITION OF THE RATEPAYERS §
OF THE RIVER PLACE WATER AND §
WASTEWATER SYSTEMS FOR §
REVIEW OF A DECISION BY THE §
CITY OF AUSTIN TO CHANGE §
RETAIL RATES § BEFORE THE STATE OFFICES
OF
ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S RESPONSE TO THE CITY OF AUSTIN'S MOTION TO
DISMISS**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to the City of Austin's Motion to Dismiss and would show the following:

I. BACKGROUND

On December 22, 2014, customers of the River Place Water and Wastewater Systems (Petitioners) filed a Petition with the Commission pursuant to TEX. WATER CODE ANN. §§ 13.043(b)(3), 13.043(h), and 13.043(i) and Chapter 24, Subtitle C of Title 16 of the Texas Administrative Code (P.U.C. SUBST. R.) for review of a decision by the City of Austin to change retail rates. The Petition challenges the City's changes in retail rates effective October 1, 2014 and November 1, 2014 and requests that interim rates be established until a final decision is made. On January 21, 2015, Staff filed its Response to Order No. 1 and Request for Referral to the State Office of Administrative Hearings (SOAH), in which Staff recommended that the Petition met the requirements of TEX. WATER CODE ANN. § 13.043 and Title 16, TEX. ADMIN. CODE (16 TAC) §§ 24.41(b) and 24.42(b). On January 27, 2015, the Commission Advising and Docket Management Division (CADM) issued an Order of Referral referring the matter to SOAH for a hearing.

On February 23, 2015, the City of Austin filed a Motion to Dismiss the Petition with prejudice pursuant to 16 TAC § 22.181, alleging that the Petition does not meet the requirements of TEX. WATER CODE § 13.043 and that, consequently, the Commission lacks jurisdiction to hear the Petition. Pursuant to 16 TAC § 22.181(a)(2), the Petitioner shall file a response to a motion for dismissal of a proceeding within twenty days from the date of receipt. Pursuant to 16 TAC

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22.103(a) Staff is a party to this proceeding and interprets the 20-day deadline in 16 TAC § 22.181(a)(2) as applying to Staff as well; therefore, this Response is timely filed.¹

II. STAFF'S RESPONSE TO THE CITY OF AUSTIN'S MOTION TO DISMISS THE PROCEEDING PURSUANT TO 16 TAC § 22.181

a. October 1, 2014 Rate Change

The City of Austin contends that the rates that went into effect for the Petitioners on October 1, 2014 was not a rate change but instead the implementation of a rate established in the service contract between the River Place Municipal Utility District (River Place MUD) and the City of Austin.² TEX. WATER CODE ANN. § 13.043(c) states that an appeal of the decision of a municipally owned utility by ratepayers residing outside the corporate limits of a municipality must be filed within 90 days of the *effective date* of a rate change.³ The City of Austin made a decision affecting the rates of the River Place customers when it executed the service contract with River Place MUD, largely effective on September 7, 2009; however, the portion of the service contract allowing the City of Austin to take over operation and management of and granting the rate change for River Place MUD customers would not go into effect until October 1, 2014.⁴ On October 1, 2014, the City of Austin changed River Place MUD customers' rates to the rates the City of Austin charged its in-City customers on that date. Therefore, October 1, 2014 was the effective date of the rate change for the Petitioners which triggered the 90-day appeal period.⁵ The Petitioners filed the Petition on December 22, 2014, which was well within

¹ Twenty days from the date the Motion to Dismiss was received by the Commission is Sunday, March 15, 2015.

² City of Austin's Motion to Dismiss (City's Motion), P.U.C. Docket No. 44010, at 3 (Feb. 23, 2015)

³ See TEX. WATER CODE ANN. § 13.043(b) and (c).

⁴ *Agreement for Water and Wastewater Service and Operations Management of Facilities Between the City of Austin and the River Place Municipal Utility District; and Amendment to Agreement for Emergency Water Service* at 7, City's Motion at Attachment 1 to Exhibit A (Feb. 23, 2015).

⁵ See TEX. WATER CODE ANN. § 13.043(c).

this 90-day appeal period.⁶ Accordingly, the Petition was timely filed. Because the Petitioners timely filed a written Petition appealing the decision by the City of Austin to change the River Place MUD customers' rates to the existing City of Austin rates, the Petition is proper pursuant to Tex. Water Code Ann. § 13.043. As such, the Commission has jurisdiction to hear the Petitioners' appeal of the October 1, 2014 rate change.

b. November 1, 2014 Rate Change

While the Petitioners assert that the rate change effective November 1, 2014 only applied to the customers of River Place MUD, the City of Austin seems to imply that the rate change affected all customers residing outside the corporate limits.⁷ As such, the City of Austin asserts that the Petitioners failed to meet the requirements of a valid appeal by not gathering 10% of signatures of all of the customers residing outside of the corporate limits. At this time, it is not clear to Staff whether the November 1, 2014 rate change affected all customers residing outside of the corporate limits or only customers of River Place MUD. If the November 1, 2014 rate change affected only the customers of River Place MUD or affected them differently than other customers residing outside of the corporate limits, Staff would recommend a finding that the Petitioners gathered the requisite number of signatures. However, due to the lack of information supporting the City of Austin's implications, Staff at this time does not agree that the Petitioners failed to meet the 10% threshold and that the Commission lacks jurisdiction over the appeal of the November 1, 2014 rate change due to the lack of the requisite number of signatures.

c. Notice

The parties seem to be in agreement that the City of Austin enacted a rate change with an effective date of November 1, 2014. The Petitioners argue that the City of Austin did not provide

⁶ Ninety days from the October 1, 2014 effective date was December 30, 2014.

⁷ While asserting that the Petitioners must calculate the 10% threshold based on the total number of customers residing outside of the corporate limits, the City never explicitly stated that the November 1, 2014 rate change equally affected all customers residing outside of the corporate limits.

proper notice of the November 1, 2014 rate change pursuant to TEX. WATER CODE ANN. § 13.043(i). The City of Austin attached a letter and table of rates to its Motion to Dismiss,⁸ asserting that this notice of the October 1, 2014 and November 1, 2014 rate changes, dated September 5, 2014, was mailed to River Place MUD customers on September 8, 2014.⁹

Staff recommends a finding that the September 5, 2014 notice letter and table of rates were insufficient to provide notice of the October 1, 2014 and November 1, 2014 rate changes. The cover letter does not state that this is a notice of rate changes. Additionally, the table of rates does not clearly identify the effective date of the rate changes as required by TEX. WATER CODE ANN. § 13.043(i).

Alternatively, it is Staff's belief that the notice letter and table of rates provided by the City of Austin was sufficient only for the purposes of notifying River Place MUD customers about the rate changes, and not sufficient for notifying all customers residing outside the corporate limits of the November 1, 2014 rate change. The notice letter and table of rates are addressed specifically to River Place MUD, and the letter refers only to the acquisition of River Place customers by the City of Austin. Because the City of Austin provided only this example of notice in its Motion to Dismiss, Staff can only assume that this is the only notice of the rate change sent to River Place MUD customers. This notice, if sent to other customers residing outside of the corporate limits, would be insufficient to put them on notice that the November 1, 2014 rate change would affect their rates. If the City of Austin provided a different form of notice of the November 1, 2014 rate change to those other customers, then that same notice should have been provided to River Place MUD customers once they were acquired by the City of Austin on October 1, 2014. After reviewing the only notice of the rate change available at this time, it is Staff's opinion that the Petitioners would not reasonably be able to know that the November 1, 2014 rate change affected all customers residing outside of the corporate limits, if that is in fact the case. Therefore, if the City can prove that the November 1, 2014 rate change

⁸ City's Motion at Exhibit B.

⁹ Affidavit of Geneva Guerrero, City's Motion at Attachment 1 to Exhibit A at 28.

affected all customers residing outside of the corporate limits, Staff respectfully recommends that the Petitioners be given additional time to gather the requisite number of signatures to meet the 10% threshold for a valid appeal.

III. CONCLUSION

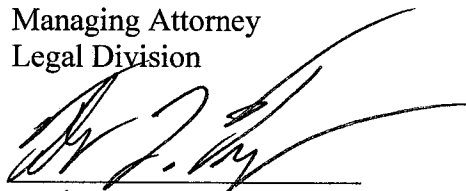
For the reasons stated above, Staff recommends that the Commission has jurisdiction to hear the Petitioners' appeal of both the October 1, 2014 and November 1, 2014 rate changes. Therefore, Staff respectfully requests that the City of Austin's Motion to Dismiss the matter be denied. Staff requests the entry of an order consistent with the above recommendation.

DATE: March 13, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division



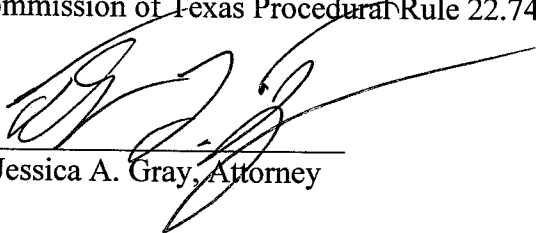
Jessica A. Gray
Attorney-Legal Division
State Bar No. 24079236
(512) 936-7228
Thomas L. Tynes
Attorney-Legal Division
State Bar No. 24085629
(512) 936-7297

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7268 (facsimile)

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the March 13, 2015 in accordance with Public Utility Commission of Texas Procedural Rule 22.74.



Jessica A. Gray, Attorney