



Control Number: 44010



Item Number: 30

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SOAH DOCKET NO. 473-15-2123.WS
PUC DOCKET NO. 44010

PETITION OF THE RATEPAYERS OF
THE RIVER PLACE WATER AND
WASTEWATER SYSTEMS APPEALING
THE RETAIL WATER AND
WASTEWATER RATES OF THE
CITY OF AUSTIN

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BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK
OF
ADMINISTRATIVE HEARINGS

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

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES:

NOW COMES Gwendolyn Hill Webb, Counsel for the City of Austin ("the City," or "Austin") in the above styled and docketed cause and files this, the City of Austin's Reply to Commission Staff's Response to City of Austin's Motion to Dismiss. In support thereof the City of Austin would respectfully show as follows:

INTRODUCTION AND BACKGROUND

On Friday, March 13, 2015, Commission staff filed "Commission Staff's Response to the City of Austin's Motion to Dismiss," ("Commission Staff's Response").

In Commission Staff's Response, counsel asserted:

1. October 1, 2014 was the date of the rate change by the City of Austin for the so-called "Ratepayers of the River Place Water and Wastewater Systems." Therefore, a Petition filed under Texas Water Code, Sec. 13.043(b) dated December 22, 2014 was timely filed.
2. Commission Staff is unclear "whether the November 1, 2014 rate change affected all customers residing outside the corporate limits or only customers of River Place MUD. Therefore, due to lack of information, Staff at this time does not agree that the Petitioners failed to meet the 10% threshold . . ." required under Tex. Water Code, §13.043
3. The November 1, 2014 Rate Change by the City of Austin "did not provide sufficient notice to retail customers of Austin Water Utility residing outside the corporate limits."

4. If additional signatures are needed to meet the jurisdictional requirements of Tex. Water Code, §13.043, then Petitioners should be allowed additional time to obtain the required 10% of outside city retail customers.

The City continues to assert that the statutory requirements for jurisdiction under Tex. Water Code, §13.043 are not met by the Petition in this case as set out below.

RESPONSIVE ARGUMENTS OF THE CITY OF AUSTIN

The fundamental of premise of both Petitioners and PUC Staff in this case is simply incorrect. There is no class of customers of the City of Austin which can be defined as Ratepayers of the River Place Water and Wastewater Systems. As of October 1, 2014, the former Ratepayers of the River Place Water and Wastewater Systems became simply retail customers of the City of Austin. Pursuant to the conveyance of ownership and operations and maintenance of the River Place water and wastewater systems to the City, by virtue of the *Agreement for Water and Wastewater Service and Operations Management between the City of Austin and the River Place Municipal Utility District; and Amendment to Agreement for Emergency Water Service* (the “Strategic Partnership Agreement,” or “SPA”), dated September 7, 2009, the River Place water and wastewater systems became part of the City of Austin water and wastewater systems for all purposes.

City of Austin Rates Effective as of October 1, 2014

The change in rate for this subset of outside city retail customers residing in River Place Municipal Utility District which occurred on October 1, 2014 did not give rise to a right of appeal. October 1, 2014 was merely the effective date for the transfer of ownership and control pursuant to the Strategic Partnership Agreement. Only certain classes of persons can file an appeal. River Place residents were not parties to the rate proceeding before the Austin City Council which resulted in final action enacting an ordinance adopting the water and wastewater rates effective for River Place residents as of October 1, 2014. The final action of the Austin City Council which changed Austin’s retail rates from what they had been when served by the MUD to what they were on October 1, 2014 actually occurred on ***September 9, 2013***.

In fact, there was no further action of the City of Austin governing body, the Austin City Council, related to its retail water and wastewater utility service rates after that September 2013. The residents of River Place MUD were, presumably, parties to the decisions of the River Place MUD Board of Directors which negotiated the September 7, 2009 Strategic Partnership Agreement Between the City of Austin and the River Place Municipal Utility District¹, attached to the Petition, which included the Agreement for Water and Wastewater Service and Operations Management between the City of Austin and the River Place Municipal Utility District; and Amendment to Agreement for Emergency Water Service. As to the residents of River Place MUD, the governing body whose actions resulted in the change in rates on October 1, 2014 was the River Place MUD, which transferred ownership of the River Place water and wastewater systems to the City of Austin and agreed that its former customers would be charged City of Austin retail water rates². Even if the City of Austin were the appropriate governing body, the time for appeals of the Fiscal Year 2014 water and wastewater rates in effect on October 1, 2014 had long since passed, due to City Council action adopting the rates in September 2013.

City of Austin Rates Effective as of November 1, 2014

The residents of River Place MUD were notified on September 26, 2014 of the coming change in their water and wastewater rates, effective November 1, 2014, as were all persons outside the City of Austin full purpose annexation areas. (See, attached *Affidavit of Ron Bedinghaus*) The residents of River Place MUD were informed of the water and wastewater service rates for retail service which became “effective for Austin Water Utility bills generated on November 1, 2014.” There is no inadequacy in the legal notice provided by the City of Austin and received by all customers living outside the City of Austin, including River Place MUD residents. Moreover, Commission Staff’s position that “did not provide sufficient notice to retail customers of Austin Water Utility residing outside the corporate limits” is simply wrong.

¹ The SPA states: “The District conducted two public hearings regarding this SPA in accordance with procedural requirements of Section 43.0751 of the Local Government Code on August 19, 2009, at seven o’clock p.m., at the River Place Country Club and on August 25, 2009 at seven o’clock p.m. at the River Place Country Club.” Likewise, the City of Austin conducted two public hearings on August 20, 2009 at six o’clock p.m. and August 27, 2009 at six o’clock p.m.

² Section 4.01 of the September 7, 2009 Agreement for Water and Wastewater Service and Operations Management between the City of Austin and the River Place Municipal Utility District; and Amendment to Agreement for Emergency Water Service, dated September 7, 2009 states: “Commencing on the O&M Transfer Date, the City shall charge the customers in the District in-city rates for water and wastewater service, . . .”

And, given the fact that the time limit for filing an appeal under Tex. Water Code, §13.043 has run. The time to appeal the Council's action on September 9, 2014, for which Petitioners' appeal of City of Austin Rates Effective as of November 1, 2014 should be dismissed.

SUMMARY AND CONCLUSIONS

WHEREFORE CONSIDERING THE FOREGOING, THE CITY OF AUSTIN respectfully requests that the Appeal of the Ratepayers of the River Place Water and Wastewater Systems be denied as outside the jurisdiction of the Public Utility Commission and the State Office of Administrative Hearings.

Respectfully submitted,

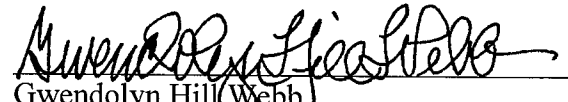
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By:



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ATTORNEYS FOR CITY OF AUSTIN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via hand delivery, facsimile, electronic mail, overnight mail, US mail and/or Certified Mail Return Receipt Requested on all parties whose names appear on the mailing list below on this 23rd day of March, 2015.

FOR THE PUBLIC UTILITY COMMISSION:

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Honorable William B. Newchurch
Administrative Law Judges
State Office of Administrative Hearings
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FOR THE SOAH DOCKET CLERK:

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GWENDOLYN HILL WEBB

AFFIDAVIT OF RON BEDINGHAUS

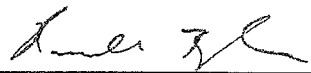
THE STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned affiant, who, being by me duly sworn, upon his oath stated:

“My name is Ron Bedinghaus. I am employed as a Utility Financial Analyst Senior in the Water Utility Department. I am over eighteen (18) years of age and I reside in Travis County. I am of sound mind, capable of making this affidavit, fully competent to testify to the matters stated herein. I have personal knowledge of each of the matters stated herein. These matters stated herein are true and correct.


On September 26, 2014 the Austin Water Utility Department sent out a letter to each customer living outside the City of Austin’s corporate limits advising them of new rates that would go into effect on November 1, 2014. A true and correct copy of that letter is attached hereto as Attachment 1. The letter was drafted on September 10, 2014 and the rate schedule was enclosed with each letter.

Further affiant sayeth not.”



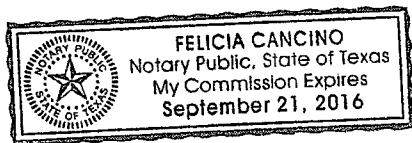
Ron Bedinghaus

SWORN TO AND SUBSCRIBED before me on the 16 day of March 2015.



Notary Public, State of Texas

My Commission Expires: 9/21/2016





«Entity_Name»
 «Mail_Address1»
 «Mail_Address2»
 «Mail_City», «Mail_State» «Mail_Postal»

Subject: New Austin Water Utility Rates
 Service Address: «SVC_Address»
 «SVC_City», «SVC_State» «SVC_Postal»

On September 9, 2014 the Austin City Council approved the City of Austin's budget for fiscal year 2014-15. This budget included a water and/or wastewater rate change affecting the service address listed above.

The purpose of this letter is to provide a written notice of these changes for Austin Water Utility customers with service addresses that are outside the corporate city limits of the City of Austin in accordance with the requirements of the Texas Water Code Sec. 13.043 and the Texas Commission on Environmental Quality (TCEQ) rule §291.22.

The water and wastewater rates shown below will become effective for Austin Water Utility bills generated on November 1, 2014.

Water Service Rates for Retail Customers: Effective November 1, 2014

Monthly Customer Charges				
Single-Family Residential Customers:				
Meter Size:	Minimum Charge	Plus (+)	Monthly Tiered Minimum Charge (Based on Total Billed Volume)	
5/8"	\$ 7.55		0 – 2,000 Gallons	\$ 2.20
3/4"	13.00		2,001 – 6,000 Gallons	4.70
1"	14.00		6,001 – 11,000 Gallons	7.65
1 1/4"	16.00		11,001 – 20,000 Gallons	12.70
1 1/2"	23.00		20,001 – Over Gallons	12.70
2"	36.00			
3"	59.00			
4"	118.00			
6"	238.00			
8"	876.00			
10"	1,036.00			
12"	1,226.00			
Non-Residential Customers:				
Meter Size:	Minimum Charge	Plus (+)	Additional Fixed Minimum Charge	
			Multifamily	Commercial
5/8"	\$ 7.55		\$ 10.57	\$ 7.67
3/4"	13.00		16.00	12.00
1"	14.00		26.00	19.00
1 1/4"	16.00		35.00	29.00
1 1/2"	23.00		53.00	38.00
2"	36.00		85.00	61.00
3"	59.00		169.00	123.00
4"	118.00		264.00	192.00
6"	238.00		529.00	383.00
8"	876.00		846.00	613.00
10"	1,036.00		1,216.00	882.00
12"	1,226.00		1,797.00	1,303.00

Volume Unit Charges		
Single-Family Residential Customers:		
Unit Rate Per 1,000 Gallons		
0 – 2,000 Gallons		\$ 2.93
2,001 – 6,000 Gallons		4.49
6,001 – 11,000 Gallons		7.29
11,001 – 20,000 Gallons		11.03
20,001 – Over Gallons		13.93
Non-Residential Customers:		
All Volumes: Unit Rate Per 1,000 Gallons		
	Multifamily	Commercial
Off Peak	\$ 4.95	\$ 5.98
Peak	\$ 5.45	\$ 6.58
Off Peak (Nov-June) Peak Summer (Jul – Oct)		

Water Revenue Stability Reserve Fund Surcharge	
All Customers:	
Unit Rate Per 1,000 Gallons	\$ 0.19

Wastewater Service Rates for Retail Customers: Effective November 1, 2014

Monthly Customer Charges	
All Customers	\$ 10.30

Volume Charges (Rate Per 1,000 Gallons)	
Single-Family Residential	
0 – 2,000 Gallons	\$ 4.51
2,001 – 6,000 Gallons	9.13
Multifamily	8.79
Commercial	8.82

For additional information, please visit the Austin Water Utility website at: <http://www.austintexas.gov/department/water/services>