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

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PUBLIC UTILITY COMMISSION
FILED

**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 PETITIONERS' MOTION FOR PARTIAL
SUMMARY DECISION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to Petitioners' Motion for Partial Summary Decision and would show the following:

I. BACKGROUND

On April 14, 2015, Petitioners filed a Motion for Partial Summary Decision and Brief in Response to Order No. 4 (Motion) pursuant to Title 16, Tex. Admin. Code (16 TAC) § 22.182(a), alleging that there are no genuine issues as to any material fact relating to the City of Austin's water and wastewater rate change effective on October 1, 2014 and that proper notice of the October 1, 2014 rate change was not provided. Pursuant to the agreed procedural schedule memorialized in SOAH Order No. 7, the deadline to file responses to the pending motion for summary disposition is June 5, 2015.¹ This Response is timely filed.

II. STAFF'S RESPONSE TO PETITIONERS' MOTION FOR PARTIAL SUMMARY DECISION

Petitioners argue that partial summary decision of the matter is appropriate regarding the October 1, 2014 rate change because there are no genuine issues of material fact.² Because Staff does not agree that there are no genuine issues of material fact remaining in this proceeding, Staff recommends that the Petitioners' Motion be denied.

¹ Pursuant to 16 TAC § 22.2(c), responses to motions for summary decision shall be filed within the time set by the presiding officer.

² Petitioners' Motion for Partial Summary Decision and Brief in Response to Order No. 4 at 3 (April 14, 2015).

a. No Cost of Service Study

As proof of the argument that there are no genuine issues of material fact, Petitioners assert that, because the City of Austin stated that it did not complete a cost of service study and did not use a historical test year when developing its proposed rates, the City of Austin's October 1, 2014 rate change was "per se unjust and unreasonable."³

It is Staff's position that Petitioners' Motion is premature. While the City of Austin responded that it did not develop a cost of service study, it did identify the process by which it developed its proposed rates.⁴ While the Administrative Law Judges (ALJs) have accepted jurisdiction over the October 1, 2014 rate change, Staff has not finalized its substantive review of the rate change. Additionally, a determination of whether the process by which the City of Austin developed its rate was just and reasonable is a fact issue that has yet to be resolved. Therefore, at this time, Staff cannot agree with the Petitioners that no genuine issues of fact remain.

b. Deficient Notice of Rate

The Petitioners also assert that there are no genuine issues of material fact because the City of Austin imposed the October 1, 2014 rate change without providing proper notice as required by Tex. Water Code Ann. § 13.43(i).⁵ Specifically, the Petitioners argue that the City of Austin should have provided notice of the October 1, 2014 rate change within 60 days of the date the City of Austin made the decision for all of the other outside-City customers, which was September 9, 2013.⁶ The Petitioners state that, because the City assumed ownership of the River Place Water and Wastewater System *assets* on September 7, 2009, River Place customers were

³ Petitioners' Motion for Partial Summary Decision and Brief in Response to Order No. 4 at 4-5.

⁴ Austin's Comments, Concerns and Responses to Commission Staff's 1st RFI to the City of Austin at Response 1-20 and Response 1-21 at 3-4 (March 26, 2015).

⁵ Petitioners' Motion for Partial Summary Decision and Brief in Response to Order No. 4 at 6.

⁶ Petitioners' Motion for Partial Summary Decision and Brief in Response to Order No. 4 at 7.

actually customers of the City of Austin on September 9, 2013 even though they still received water and sewer service from River Place MUD.⁷

Staff does not agree with the Petitioners' characterization of the River Place MUD customers as customers of the City of Austin on September 9, 2013. While the assets transferred to the City of Austin on September 7, 2009, the *operation* of the system was still managed by River Place MUD. The Agreement governing the transaction between the City of Austin and River Place MUD specifically stated that operation and management of the system did not transfer to the City of Austin until October 1, 2014.⁸ As such, the Petitioners were not customers of the City of Austin on September 9, 2013 and were not eligible to appeal the rate change at that time. Therefore, the City of Austin was not required to provide notice of the September 9, 2013 rate decision to Petitioners within 60 days of that decision.

Additionally, the ALJs have determined that the notice provided to the River place MUD customers on September 26, 2014 was sufficient for the purposes of the October 1, 2014 rate change.⁹

As Staff's and the ALJs' interpretations of these points differ significantly from the Petitioners' interpretation, Staff believes that genuine issues of material fact exist. As such, Staff recommends that the Petitioners' motion for partial summary decision be denied.

III. CONCLUSION

Because Staff does not agree with the Petitioners' assertion that no genuine issues of material fact exist in this proceeding, Staff recommends that the Petitioners' motion for partial summary decision be denied.

DATE: June 5, 2015

⁷ Petitioners' Motion for Partial Summary Decision and Brief in Response to Order No. 4 at 7.

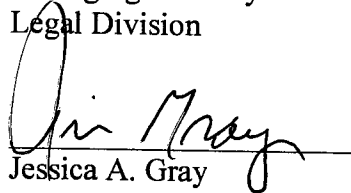
⁸ City of Austin's Motion to Dismiss Docket # 44010 at Exhibit A, Attachment 1 at 1.13 and 2.04 (February 23, 2015).

⁹ SOAH Order No. 6 at 7 (May 6, 2015).

Respectfully Submitted,

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A handwritten signature in black ink, appearing to read "Jessica Gray", is written over a horizontal line.

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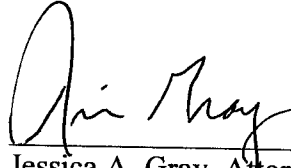
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the
June 5, 2015 in accordance with 16 TAC § 22.74.



Jessica A. Gray, Attorney