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PUBLIC UTILITY COMMISSION
BEFORE THE

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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PUBLIC UTILITY

COMMISSION OF TEXAS

**PETITIONERS' RESPONSE TO THE CITY OF AUSTIN'S MOTION FOR
RECONSIDERATION OF THE COMMISSION'S DENIAL OF THE CITY OF
AUSTIN'S APPEAL OF SOAH ORDER NO. 6**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

COME NOW, the Ratepayers of the River Place Water and Wastewater Systems ("Ratepayers" or "Petitioners") and file this their Response to the City of Austin's ("City") Motion for Reconsideration of the Commission's Denial of the City of Austin's Appeal of SOAH Order No. 6 ("Motion for Reconsideration"), and in support thereof, would respectfully show the following:

I. INTRODUCTION AND BACKGROUND

1. The City filed the City's Motion for Reconsideration on June 4, 2015. Petitioners' response is due June 9, 2015, within three (3) working days of the City's filing of its Motion.¹ Petitioners have filed this response timely.

II. RELEVANT FACTS AND LAW

2. On September 7, 2009, the City became co-owner of the River Place Water and Wastewater Systems in accordance with the terms of the Strategic Partnership Agreement Between the City of Austin and River Place Municipal Utility District ("MUD").²

¹ P.U.C PROC. R. 22.123(b)(4).

² See Strategic Partnership Agreement Between the City of Austin and River Place MUD (the "SPA Agreement").

3. On October 1, 2014, the City took over operations and maintenance of the River Place Water and Wastewater Systems (“River Place Systems”) from Severn Trent, a third party, private operating company. With the River Place Systems, the City serves 1,047 water utility customers and 1,035 sewer utility customers.³
4. The same day that the City assumed responsibility for providing direct operations and maintenance of the River Place Systems that serve Petitioners, the City increased the retail water and wastewater rates charged to Petitioners to a rate unrelated to the cost of service for operating and maintaining the River Place Systems.
5. The City again raised Petitioners’ retail rates a month later on November 1, 2014.
6. The water and wastewater rates that the City charges affect the Ratepayers of the River Place Systems and Petitioners reside outside of the City’s corporate limits.⁴
7. The City provides water and wastewater services to the Petitioners through the River Place Systems, which the City co-owns, operates, and controls.⁵
8. On December 22, 2014, Petitioners filed their Petition challenging both the City’s October 1, 2014 and November 1, 2014 rate increases of its water and wastewater services pursuant to TEX. WATER CODE § 13.043(b):

Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the utility commission:

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality.⁶

³ See Original Petition Appealing Retail Water and Wastewater Rates of the City of Austin and Motion for Interim Rates, December 22, 2014, at 2.

⁴ See City’s Motion to Dismiss at 1 and Attachment 1 to Exhibit A to the Agreement for Water and Wastewater Service and Operations Management of Facilities between the City of Austin and the River Place Municipal Utility District at 12 (“2009 Water and Wastewater Agreement”).

⁵ *Id.*; TEX. WATER CODE ANN. § 13.002(13).

⁶ TEX. WATER CODE ANN. § 13.043(b)(3).

9. The Petition included the signatures of 360 customers of the River Place Water Systems, which is more than the required 10% of 1,047 water customers and 1,035 wastewater customers.

10. TEX. WATER CODE ANN. § 13.043(c) requires that a Petition be signed by the lesser of 10,000 or 10% of the customers whose rates have changed.⁷

11. Petitioners included in their Petition a request for interim rates as allowed by TEX. WATER CODE ANN. § 13.043(h):

The utility commission may, on a motion by the utility commission or by the appellant under Subsection (a), (b), or (f), establish interim rates to be in effect until a final decision is made.⁸

12. In their Petition, the Petitioners also challenged the adequacy and timing of the notice of rate increase that the City claims it provided to Petitioner, pursuant to TEX. WATER CODE ANN. § 13.043(i), which states:

The ***governing body*** of a municipally owned utility or a political subdivision, ***within 60 days after the date of a final decision on a rate change***, shall provide individual written notice to each ratepayer eligible to appeal who resides outside the boundaries of the municipality or the political subdivision. The notice must include, at a minimum, the effective date of the new rates, the new rates, and the location where additional information on rates can be obtained. The governing body of a municipally owned utility or a political subdivision may provide the notice electronically if the utility or political subdivision has access to a ratepayer's e-mail address.⁹

13. The Austin City Council, the governing body of the City, adopted Petitioners' October 2014 rates on September 9, 2013.¹⁰ The City did not mail notice to Petitioners until September 8, 2014, almost one full year after the City's governing body made its final decision on the rate change. The Austin City Council took no subsequent action on the October 2014 rates.

⁷ TEX. WATER CODE ANN. § 13.043(c).

⁸ TEX. WATER CODE ANN. § 13.043(h).

⁹ TEX. WATER CODE ANN. § 13.043(i) (emphasis added).

¹⁰ See Affidavit of Robert Rowan, City of Austin's Additional Jurisdictional Argument and Evidence, April 14, 2015, Exhibit B.

14. The City mailed notice of the City Council's September 8, 2014 decision to increase Petitioners' November 2014 rates on September 8, 2014.¹¹
15. The City mailed a different notice of the City Council's decision to increase all other out-of-City customers rates on September 26, 2014.¹² This notice included different rates than the notice sent to Petitioners.
16. On January 27, 2015, the PUC Staff referred the above-docketed case to the State Office of Administrative Hearings ("SOAH") to hear the appeal.
17. On February 23, 2015, the City filed a Motion to Dismiss the Petitioners' appeal asserting the Commission and SOAH lacked jurisdiction.
18. On March 2, 2015, pursuant to P.U.C PROC. R. 22.181(a)(2), Petitioners timely filed their response to the City's Motion to Dismiss. PUC Staff also filed a response on March 13, 2015
19. On May 4, 2015, after a prehearing conference, the Administrative Law Judge's ("ALJs") denied the City's Motion to Dismiss, finding the Petitioners' petition appealing the October 1, 2014 and November 1, 2014 rate increases was valid and jurisdiction was proper. The ALJs issued Order No. 6 on May 6, 2015, finding the petition valid and jurisdiction proper.
20. The City filed its Appeal of SOAH Order No. 6 on May 18, 2015 within ten (10) days of the issuance of the written order pursuant to P.U.C PROC. R. 22.123(a)(2).
21. On May 18, 2015, the City also filed a Motion for Reconsideration.
22. On May 26, 2015, Petitioners filed their Response to the City's Appeal of Order No. 6 and Motion for Reconsideration.
23. On May 28, 2015, Commission Advising notified the parties that no Commissioner had voted to consider the City's Appeal and deemed the appeal denied.

¹¹ *Id.*

¹² Order No. 6 at 8.

24. Thereafter, the City filed its Motion for Reconsideration of the Commission's Denial of the City of Austin's Appeal of SOAH Order No. 6 on June 4, 2015.

25. Petitioners file this Response to the City's Motion for Reconsideration on June 9, 2015, within three (3) working days of the City's filing.

III. ARGUMENT

Petitioners incorporate their Response to the City of Austin's Appeal of SOAH Order No. 6 and Motion for Reconsideration, herein, as if set out in full.¹³ In fact, in order to avoid wasting the Commission's time with repetitive pleadings, Petitioners will keep this Response very brief. The City raises no new information or grounds to reverse the Commission's earlier decision to not consider the City's Appeal. By simply repackaging old arguments, the City hoped to either make something stick or perfect its appeal before it sues the Commission. In either case, the Commission's decision to not consider the City's Appeal of SOAH Order No. 6 and Motion for Reconsideration should stand.

Under the Commission's procedural rules, a Motion for Reconsideration may be the wrong vehicle to have the Commission reconsider, reevaluate, or reverse its earlier decision. The City invokes P.U.C PROC. R. 22.123(b)(1) as the basis to appeal the Commission's decision to not consider the City's Appeal. However, by its plain meaning, P.U.C PROC. R. 22.123(b)(1), applies to interim orders issued by the Commission. The Commission did not issue an interim order in this case or any order at all. The Commission merely notified the parties that no commissioner voted to consider the City's appeal. Such notice does not trigger the reconsideration process addressed in P.U.C PROC. R. 22.123(b)(1).

Even if PROC. R. 22.123(b)(1) is the proper means to exhaust the City's remedies or otherwise seek reevaluation, the City has not explained how the Commission's decision has immediately prejudiced a substantial or material right or materially affected the course of the hearing. Nor has the City explained why the Commission's decision was unjustified or improper

¹³ Petitioners' Response to the City of Austin's Appeal of SOAH Order No. 6 and Motion for Reconsideration, May 26, 2015.

– the City simply dislikes the result.¹⁴ Indeed, the City’s latest Motion for Reconsideration - another in a long line of serial and repetitive pleadings on jurisdiction - sheds no new light on the jurisdictional issue. As the Commission is aware, the City has a history of appealing unfavorable rulings by the ALJs during ongoing hearings and suing the agency.¹⁵ This case is no different.

Petitioners already addressed the City’s alleged “fatal flaw” and “inadvertent mistake” that it raised in its Appeal in Petitioners’ aforementioned Response to the City of Austin’s Appeal of SOAH Order No. 6 and Motion for Reconsideration. As previously shown, the City’s alleged mistake would not have changed the ALJs analysis in any event. In short, the City’s newly corrected rate schedule assumes that all River Place Ratepayers have 5/8” meters, which is incorrect. As the Severn Trent Meter Report for the River Place System shows, many River Place Ratepayers have meters other than 5/8” meters, including 3/4” meters and meters of even greater sizes. These customers pay different rates than other out-of-city customers and indeed all other City of Austin customers.¹⁶ These Ratepayers’ rates are unjust and unreasonable, and jurisdiction is proper for SOAH and the Commission to probe the actual breath of discrimination inherent in the City’s rates paid by River Place Ratepayers.

IV. SUMMARY

As previously urged by the Petitioners, the Ratepayers of the River Place Systems are the only customers of these jointly owned and controlled water and wastewater systems and the only customers who are eligible to appeal the City’s rates for these systems. More than the 10% of the required customers properly petitioned the Commission for review of both the October and November 2014 rates. Within the ratepayers of the River Place Systems are customers that have meters of various sizes, which the City again failed to take in account in its most recent pleading,

¹⁴ PROC. R. 22.123(b)(1) and (3).

¹⁵ See e.g., Petition of North Austin Municipal Utility District No. 1, Northtown Municipal Utility District, Travis County Water Control and Improvement District No. 10 and Wells Branch Municipal Utility District from the Ratemaking Actions of the City of Austin and Request for Interim Rates in Williamson and Travis Counties, SOAH Docket No. 473-14-5138.WS and PUC Docket No. 42857.

¹⁶ See Petitioners’ Response to the City of Austin’s Appeal of SOAH Order No. 6 and Motion for Reconsideration, May 26, 2015 at 6 and Exhibit A.

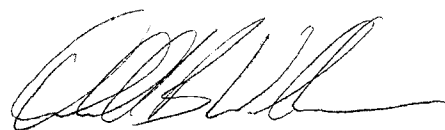
and these customers continue to pay discriminatory rates not based on the cost of the service provided through the River Place Systems.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioners pray that the Commissioners deny the City's Motion for Reconsideration of the Commission's Denial of the City of Austin's Appeal of SOAH Order No. 6.

Respectfully submitted,

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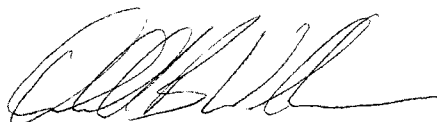
By: _____

Randall B. Wilburn

ATTORNEYS FOR PETITIONERS

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, U.S. mail and/or Certified Mail Return Receipt Requested on all parties on the 9th of June 2015.



Randall B. Wilburn