



Control Number: 44010



Item Number: 68

Addendum StartPage: 0

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

2015 JUN 12 AM 9: 05

<b>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</b>	§ § § § § §	<b>PUBLIC UTILITY COMMISSION OF TEXAS</b>
---	----------------------------	---

**COMMISSION STAFF'S RESPONSE TO THE CITY OF AUSTIN'S APPEAL OF SOAH  
ORDER NO. 7**

**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 Appeal of SOAH Order No. 7 and would show the following:

**I. BACKGROUND**

On March 23, 2015 and May 4, 2015, prehearing conferences were held at the State Office of Administrative Hearings (SOAH) to determine jurisdiction over the City of Austin's rate changes effective October 1, 2014 and November 1, 2014 pursuant to Tex. Water Code Ann. § 13.043(b) and the Petitioners' request for interim rates. On May 6, 2015, the SOAH Administrative Law Judges (ALJ) issued Order No. 6 finding that the Commission has jurisdiction over both the October 1, 2014 rate change and the November 1, 2014 rate change because the River Place customers were uniquely affected by each of the rate changes.

On May 18, 2015, the City of Austin filed an Appeal of SOAH Order No. 6 and Motion for Reconsideration pursuant to Title 16, Tex. Admin. Code (16 TAC) § 22.123. The City of Austin generally concurred with the SOAH ALJs' decisions regarding the determination of jurisdiction, but alleged that the ruling as to the November 1, 2014 rate change was based upon a factual error.<sup>1</sup> On May 26, 2015, the SOAH ALJs issued Order No. 7 denying the City of Austin's Motion for Reconsideration and adopting the procedural schedule as agreed upon by the parties.

On June 5, 2015, the City of Austin filed an Appeal of SOAH Order No. 7 (Appeal) reiterating its prior arguments that the Commission does not have jurisdiction over the November

---

<sup>1</sup> City of Austin's Appeal of SOAH Order No. 6 and Motion for Reconsideration at 3 (May 18, 2015).

68

1, 2014 rate change.<sup>2</sup> Pursuant to 16 TAC § 22.123(a)(1), “any order of the presiding officer that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings” may be appealed. This Response is timely filed.<sup>3</sup>

## **II. STAFF’S RESPONSE TO THE CITY OF AUSTIN’S APPEAL OF SOAH ORDER NO. 7**

In SOAH Order No. 6, the ALJs determined that, because the rates listed in the September 8, 2014 notice provided to River Place customers included rates different from those charged to other outside-City customers, the River Place customers constituted a distinct customers class. Based on this reasoning, the ALJs determined that the Petitioners needed signatures from 10% of River Place customers, not all outside-City customers, in order to meet the 10% requirement in Tex. Water Code Ann. § 13.043(c). Because Petitioners had gathered signatures from at least 10% of River Place customers, the ALJs found that Petitioners had met the 10% requirement and that the Commission had jurisdiction over the November 1, 2014 rate change.

In SOAH Order No. 7, the ALJs denied the City of Austin’s request for reconsideration of SOAH Order No. 6, stating that the City of Austin had “ample opportunity” to provide evidence regarding jurisdiction over the November 1, 2014 rate change.<sup>4</sup> In its Appeal of Order No. 7, the City of Austin reiterates its prior position that the Commission does not have jurisdiction over the November 1, 2014 rate change because the River Place customers do not constitute a distinct customer class; therefore, the City of Austin argues that the Petitioners have not met the 10% threshold.<sup>5</sup> The City of Austin reasserts its argument that the rates listed in the

---

<sup>2</sup> Pursuant to 16 TAC § 22.123(a)(2), an appeal of an interim order shall be filed within ten days of issuance of the order. SOAH Order No. 7 was signed on May 26, 2015 and filed with the Commission on May 27, 2015. Ten days from May 26, 2015 is June 5, 2015.

<sup>3</sup> Pursuant to 16 TAC § 22.123(a)(4), responses to an appeal of an interim order shall be filed within five working days of the filing of the appeal. Five working days from June 5, 2015 is June 12, 2015.

<sup>4</sup> SOAH Order No. 7 at 1 (May 26, 2015).

<sup>5</sup> City of Austin’s Appeal of SOAH Order No. 7 at 2 (June 5, 2015). (Appeal).

September 8, 2014 notice to customers were factually erroneous<sup>6</sup> and that the River Place customers are actually being charged the same rates as all other City of Austin customers.<sup>7</sup>

Staff maintains its position that, when ruling on jurisdiction over the November 1, 2014 rate change, the ALJs relied on the documents available to them at the time, specifically the notice provided to River Place customers and the notice provided to other outside-City customers.<sup>8</sup> The customer bills showing rates different than those listed in the September 8, 2014 notice to River Place customers were not provided by the City of Austin prior to its Appeal. Whether the rates were listed correctly or not, the notice provided to the River Place customers on September 8, 2014 notified the River Place customers of rates that would be effective for River Place customers on November 1, 2014. The November 1, 2014 rates listed in the September 8, 2014 notice were different from those to be charged to other outside-City customers. The City of Austin did not provide a supplemental notice or take any action to correct this error. Therefore, because the rates listed in the September 8, 2014 notice were different than those charged to other outside-City customers effective November 1, 2014, the ALJ's finding that the River Place customers were uniquely affected by the November 1, 2014 rate change was not improper and the City of Austin's Appeal should be denied.

### **III. CONCLUSION**

For the reasons stated above, Staff recommends that the City of Austin's Appeal of SOAH Order No. 7 be denied.

**DATE: June 12, 2015**

---

<sup>6</sup> Appeal at 4.

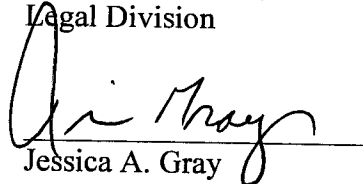
<sup>7</sup> Appeal at 5.

<sup>8</sup> SOAH Order No. 6 at 10 (May 6, 2015).

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Shelah J. Cisneros  
Managing Attorney  
Legal Division

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

Jessica A. Gray  
Attorney-Legal Division  
State Bar No. 24079236  
(512) 936-7228

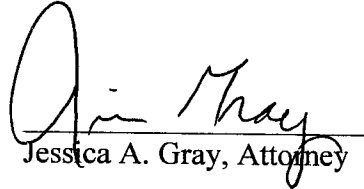
Thomas L. Tynes  
Attorney-Legal Division  
State Bar No. 24085629  
(512) 936-7297

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

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

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on June 12, 2015 in accordance with 16 TAC § 22.74.

  
Jessica A. Gray, Attorney