

Control Number: 45231



Item Number: 9

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RATEPAYERS' APPEAL OF THE §
DECISION BY TROPHY CLUB §
MUNICIPAL UTILITY DISTRICT §
NO. 1 TO CHANGE RATES §

BEFORE THE PUBLIC UTILITY §
COMMISSION OF TEXAS §
PUBLIC UTILITY COMMISSION
FILING CLERK

**OFFICE OF PUBLIC UTILITY COUNSEL'S
AMICUS BRIEF
REGARDING THE SUFFICIENCY OF PETITION**

COMES NOW, the Office of Public Utility Counsel (OPUC) and files this Amicus Brief in the above-referenced proceeding. On November 9, 2015, Trophy Club Municipal Utility District No. 1 (the District) filed its Comments and Proposed Procedural Schedule. In its comments, the District states that the petition filed on October 8, 2015 by retail customers of the District should be dismissed for an alleged deficiency. Order No. 2 in this docket requires Commission Staff to respond to several issues related to the Petition by December 11, 2015, including the District's request for dismissal. OPUC is not intervening in this proceeding at this time, but instead files this Amicus Brief only to address the issue of whether the petition should be dismissed under 16 Tex. Admin. Code § 24.42(a)(1) for failure to specify the date of the action being appealed. OPUC will show that the petition should not be dismissed.

The Petition Substantially Complies with 16 Tex. Admin. Code § 24.42

The District's retail customers filed a petition on October 8, 2015 requesting Commission review of a District rate action pursuant to Texas Water Code Section 13.043(b). As noted in the District's comments, 16 Tex. Admin. Code § 24.42 prescribes the requirements for such a petition. Pursuant to section 24.42, a petition must state the date of the rate action being appealed (among many other requirements). However, the sample petition provided by the Commission in its guidance document (and relied upon by the ratepayers)¹ omits the date of the rate action. Instead, the Commission's sample petition includes the date the ratepayers were notified of the rate action. See Attachment 1, *Utili-Facts, Appealing a Rate Change Decision Made by a Board of Directors, a City Council, or County Commissioners*. The petition conforms

¹ The ratepayers, who are not represented by counsel, informed OPUC that they utilized the guidance document provided by the Commission to prepare their petition.

to the sample petition provided by the Commission. The ratepayers' reliance upon Commission guidance is good cause, pursuant to 16 Tex. Admin. Code § 22.5(b), for the Commission to either accept the petition as it is, or to allow the ratepayers to file an amended petition. Allowing the petition to move forward as it is (or allowing the ratepayers to amend the petition) will not harm the District, but it will deprive the ratepayers an opportunity for a hearing on their appeal.

The District does not allege that it cannot discern which rate action is being appealed. The District is aware precisely what is being appealed. Instead, the District argues that the petition should be dismissed solely due to the ratepayers' failure to meet a technical requirement - to state the date of the District's rate action. Dismissal of the petition at this juncture would result in the ratepayers having no opportunity to have their complaint heard because the deadline to file a petition passed ninety days after the effective date of the rate action (September 1, 2015). The Commission should not interpret its rules in such a narrow view.

Instead, the Commission's rules specify that all pleadings and documents shall be construed as to do substantial justice. 16 Tex. Admin. Code § 22.75(a). Substantial justice means that a pleading must be liberally construed in favor of the pleader.² The purpose of the petition requirements in section 24.42 is to put the utility on notice as to the nature of the complaint and to allow the utility an opportunity to put forth a defense. The District does not allege that it does not understand which rate action is being appealed, only that the Commission should impose the severest restriction to due process -- complete dismissal of the claim without a hearing -- based on a technicality. There is good cause to allow the petition to move forward because the ratepayers followed Commission guidance when they filed the petition and because the District had constructive notice of the purpose of the petition. Therefore, the District's interpretation of 24.42 does not comport with the Commission's adherence to substantial justice and the District's request to dismiss the petition should be denied.

Conclusion

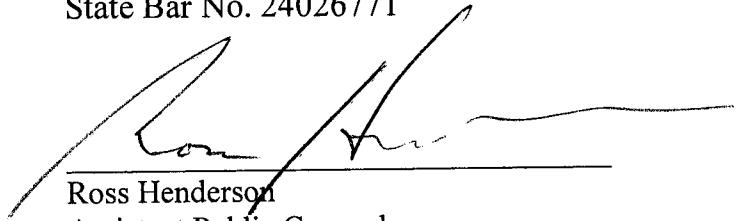
WHEREFORE, premises considered, OPUC respectfully requests that the District's request to dismiss the October 8, 2015 ratepayers' petition be denied.

² *Complaint of Kenneth D. Williams Against Houston Lighting and Power Company*, Docket No. 12065, Order Denying Appeal of Examiner's Order No. 2 (October 1, 1993).

Dated: December 11, 2015

Respectfully submitted,

Tonya Baer
Public Counsel
State Bar No. 24026771

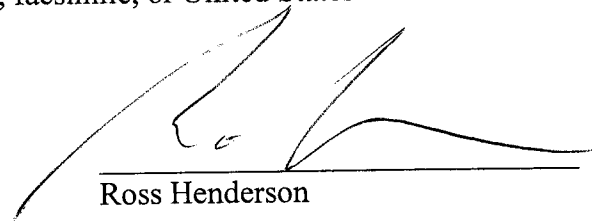


Ross Henderson
Assistant Public Counsel
State Bar No. 24046055
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512/936-7500 (Telephone)
512/936-7525 (Facsimile)
ross.henderson@opuc.texas.gov

ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL

CERTIFICATE OF SERVICE
PUC DOCKET NO. 45231

I hereby certify that today, December 11, 2015, a true copy of the foregoing document was served on all parties of record via hand delivery, facsimile, or United States First-Class Mail.



Ross Henderson

Utili-Facts

Appealing a Rate Change Decision

Made by a Board of Directors, A City Council, or County Commissioners

If your water or sewer utility¹ changes its rates and you wish to contest the decision, the Public Utility of Texas (PUCT) cannot review the retail rates charged by some types of utilities unless

you file an appeal in the form of a petition. [Texas Water Code (TWC), Section 13.043(b)] Parties to a rate proceeding before the governing body of a municipality may have different appeal rights under TWC, Section 13.043(a).



The petition must be signed by 10 percent of the affected ratepayers (customers) eligible to appeal. (If there are more than 100,000 eligible ratepayers, the petition is valid if at least 10,000 affected ratepayers sign it.)

You must send the petition to the PUCT within a specific period of time, as discussed later in this publication.

Who Can Appeal a Rate Change Decision?

You and your fellow ratepayers may file an appeal if you are served by one of the types of utilities listed below. Also shown is who has original authority to approve or "set" the rates.

Type of Utility	Who sets the rates?
Water Supply Corporations (WSC)	Board of Directors of the WSC
Water District or River Authority	Board of Directors of the District or Authority
Private- or Investor-Owned Utility Operating Inside a City	City Council
City-Owned Utility Serving Customers Outside the City ²	City Council
County within 50 Miles of the U.S.-Mexico Border Who Sets the Rates?	County Commissioners

Who Can Sign the Petition?

Each person receiving a separate bill is considered a "ratepayer." However, you can only be considered a single ratepayer regardless of the number of bills you receive. A petition can be signed by

¹ The term "utility," as used in this publication, corresponds with "retail public utility" as defined by the Texas Water Code, §13.002(19).

² Only ratepayers living outside the city are eligible to appeal. The PUCT does not have jurisdiction to review the rates charged by a city to in-city, retail customers.

either you as the ratepayer, or by your spouse.

What Should the Petition Say?

Each signature page of the petition should include the following:

1. A statement that the petition is an appeal of the decision that set the new rates. In the case of an investor-owned utility (IOU) operating within a city, the petition should state that it appeals the decision that the city made on a rate change requested by the utility.
2. A short description of the rate change, noting both the old and the new rates.
3. The effective date of the rate change and the date the ratepayers were notified of the rate change.
4. A statement about why you and your fellow ratepayers are requesting that the PUCT review the decision setting the rates.
5. The name and address of an individual or organization that is willing to act as the ratepayers' representative.
6. The mailing address and phone number of the utility. In the case of an IOU operating within a city, the petition should also include the name, mailing address, and phone number of the city.

Each ratepayer signing the petition should write legibly and provide the following information:

- Name,
- Telephone number,
- Street or rural address where the utility service is received (a post office box is not sufficient), and
- Mailing address (if it differs from the address where service is received).

A sample petition appears on the back of this information sheet. This sample should only be used as a guideline. The wording underlined on the sample should be revised as needed for your petition. All the information noted above should be included in your petition.

How is the Petition Filed?

Send a copy of the petition to the utility, and file seven copies of the petition, including the original with the PUCT at:



QUESTIONS:

Call: 512-936-7405

Write:

Public Utility Commission
Water Utility Division
1701 N. Congress Ave.
P.O. Box 13326,
Austin, TX 78711-3326

(continued on back)

(continued from front)

Public Utility Commission of Texas
 Central Records
 Attn: Filing Clerk
 1701 N. Congress Avenue
 P.O. Box 13326
 Austin, TX 78711-3326

No filing fee is required. For most utilities, you must submit the petition within 90 days after the effective date of the rate change.

However, if the petition is appealing the rates approved by a city or county for a utility under its jurisdiction (inside the corporate limits of the municipality or a utility owned by an affected county), the petition should be submitted within 90 days of the date on which the city or county made its final decision regarding those rates. A copy of the petition should be sent to the city or county and to the utility at the same time it is filed with the PUCT. As noted above, seven copies of the petition, including the original should be filed with the PUCT.

What Happens Next?

The PUCT must review the petition to see if it is complete. If additional information is required, the ratepayers' representative will be contacted. The petition is then either accepted for filing or, if it is incomplete, returned. The ratepayers' representative will be notified if the petition was accepted.

If the petition is accepted for filing, a PUCT engineer, accountant, and attorney are assigned and the petition is forwarded to the State Office of Administrative Hearings (SOAH) so that a contested case hearing can be scheduled. SOAH will assign an administrative law judge (ALJ) to hear the case.

As a first step in the contested case hearing process, known as the prehearing conference, an ALJ will name parties to the case and give the parties an opportunity to reach a settlement on the appeal.

If the parties cannot agree to a settlement, the

administrative law judge will set a procedural schedule. At the very least, this schedule will include an opportunity for parties to obtain information from each other through a procedure called discovery, and the date(s) for the next phase, called the evidentiary hearing. The evidentiary hearing is a legal proceeding subject to the Texas Rules of Civil Procedure, the Texas Rules of Evidence, and the PUCT Procedural Rules.

If you are a party to the contested case hearing, you are required to respond to requests for information during the discovery period. During the evidentiary hearing, you may call your own witnesses and cross-examine other parties' witnesses, but you do not have to do so.

When the hearing process is completed, the ALJ prepares a "Proposal for Decision" to submit to the three PUCT Commissioners. The Commissioners make the final decision on the ratepayers' appeal.

Note that the rates you are appealing can be put into effect by your utility even though you have filed an appeal or the appeal is pending. If the Commissioners set lower rates, refunds may be ordered.

Who Can Answer Any Other Questions I Have?

For additional information, please contact:

Public Utility Commission of Texas Water Utility Division,
 1701 N Congress Avenue, P.O. Box 13326, Austin, Texas
 78711-3326 Phone: (512) 936-7405.

Sample Petition

(The wording underlined should be revised as needed for your petition.)

Petition to Appeal Rates Established by the Board of Directors
XYZ Water Supply Corporation
134 Main Street
Any town, Texas 99999

The undersigned ratepayers of XYZ Water Supply Corporation hereby appeal the decision of the board of directors of the Corporation affecting the rates charged to them by XYZ Water Supply Corporation. The rate change was effective on September 1, 2000, and affected the rates charged for water utility service, tap fees, late charges, and reconnect fees. On September 5, 2000, the ratepayers were notified by the service provider of this rate increase. The undersigned request that the Public Utility Commission of Texas review the decision to determine if the rates established are just and reasonable. The old rates charged by the service provider are \$20.00 minimum bill plus \$1.25 for each additional 1,000 gallons and the new rate are \$25.00 minimum bill plus \$2.00 for each additional 1,000 gallons. The undersigned designate the XYZ Property Owners Association as their representative on this matter. Correspondence to the ratepayers' representative may be directed to Ms. Jane Doe, President, XYZ Property Owners Association, 1235 Main Street, Any town, Texas 9999; 512-555-4321.

Name (Please Print and Signature)	Service Address (and Mailing Address if Different from Service Address)	Phone Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
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