



Control Number: 45248



Item Number: 11

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RATEPAYERS' APPEAL OF THE DECISION BY THE CITY OF FRITCH TO CHANGE RATES	§ § §	PUBLIC UTILITY COMMISSION 2015 DECISION NO. 12 PUBLIC UTILITY COMMISSION OF TEXAS CLERK
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COMMISSION STAFF'S RESPONSE TO ORDER NO. 2 AND THE CITY OF FRITCH'S MOTION TO DISMISS

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to the City of Fritch's Motion to Dismiss, as requested in Order No. 2. In support thereof, Staff would show the following:

I. BACKGROUND

On October 13, 2015, D.S. Tindall, a City of Fritch (City) ratepayer, filed a petition, in the form of a handwritten protest letter, appealing the decision of the City to increase water rates. Order No. 1 was issued on October 16, 2015, requiring Public Utility Commission of Texas (Commission) Staff to comment on the administrative completeness of the petition. A petition for review of a rate change by a municipality requires at least 10% of the affected ratepayers living outside the corporate limits to sign a petition for review within 90 days of the effective date of the rate change.¹ The 90-day deadline in this case is December 30, 2015.² Because of this, Staff requested on November 13, 2015 that its deadline for recommendation on administrative completeness be extend to January 13, 2016. This extension would give affected ratepayers until the 90-day deadline to add their name to the petition, and allow Staff time to review them. Also on November 13, 2015, the City requested dismissal of this proceeding, asserting that the letter of Mr. Tindall, as well as other protest letters that were subsequently filed in this docket, do not meet the criteria for a valid petition under Tex. Water Code § 13.043 and 16 Tex. Admin. Code §§ 24.41 and 24.42 (TAC), and therefore should not count as a petition for review.³ The City concludes that because no petition has been filed, the Commission should

¹ Tex. Water Code § 13.043; 16 Tex. Admin. Code §§ 24.41- 42.

² See Protest of Lavetta Willingham, AIS Item 4, Docket 45248 (Oct. 20, 2015), stating that the effective date of the rate change was October 1, 2015. Ninety days after October 1, 2015 is December 30, 2015.

³ City of Fritch's Response to Order No. 1 and Motion to Dismiss at 1-2 (Nov. 13, 2015).

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dismiss this docket. On November 19, 2015, Order No. 2 was issued, requiring Commission Staff to respond to the City's Motion to Dismiss by December 10, 2015. Therefore this pleading is timely filed.

II. STAFF'S RESPONSE TO FRITCH'S MOTION TO DISMISS

The City's Motion to Dismiss relies on TWC § 13.043 and 16 TAC § 24.42. For a petition to be valid, the City argues that a petition must have *all* the required signatures (signatures of at least 10% of all affected rate payers living outside the city limits) along with all the information listed in 16 TAC § 24.42, and must be submitted at one time, before the 90-day deadline. This interpretation is unjustified for the following reasons:

A. The correct interpretation allows affected ratepayers to organize until the statutory deadline of 90 days has passed

Under TWC § 13.043 and 16 TAC §§ 24.41 and 24.42, December 30, 2015 marks the statutory deadline by which the petition for appeal must be filed. Nowhere in the relevant statute or rules does it specifically state that all signatures must be submitted in one filing. Instead, the statute is silent as to when and how the signatures are to be added to the petition. However, the statute and the Commission's rules are clear as to the deadline, which allows eligible ratepayers 90 days to perfect an appeal. In this case, 90 days from the effective date of the rate change is December 30, 2015.

The City argues that the petition for appeal is currently administratively incomplete. In fact, this is true. The petition, as it currently stands, is administratively insufficient. However, shortly after receiving Mr. Tindall's protest letter, additional ratepayers filed their letters of protest in this proceeding.⁴ Staff is currently in contact with several of the affected ratepayers spearheading the organizational effort to reach the 10% requirement before December 30, 2015, and a formal petition is expected to be filed in the coming days. While the petition is not currently administratively complete, this may change before the 90-day deadline. Thus, the City's argument that the proceeding should be dismissed based on administrative incompleteness is premature.

⁴ See Protest of Lavetta Willingham, AIS Item 4, Docket 45248 (Oct. 19, 2015); Protest of Cyndi Brooks, AIS Item 5, Docket 45248 (Oct. 20, 2015); Protest of Billy & Patricia Braswell, AIS Item 6, Docket 45248 (Nov. 10, 2015); Protest of Mary Hugles, AIS Item 7, Docket 45248 (Nov. 10, 2015).

B. The City's interpretation would hinder administrative efficiency

In cases such as this, signatures of hundreds of affected ratepayers are needed to bring an appeal. However, grassroots organization can be difficult at the community level, where everyday citizens with no legal background are organizing to bring a complex legal action. Accordingly, confusion at the community level has a spillover effect on the Commission, which receives the ratepayer's first protest letters. Though the letters may be "administratively incomplete" at the individual level, this does not mean the proceeding should be dismissed until all of the affected ratepayers have organized and obtained the legal knowledge to effectively perfect an appeal. As noted below in subsection C., the Commission has provided guidance that in some cases, protest letters may be counted with petition signatures towards the 10% requirement.⁵ With this, as the 90-day clock runs, it makes sense to file additional protest letters and petitions mailed to the Commission under the same docket number for administrative efficiency purposes.

Even if, at the time a protest letter is first filed, it is in some way administratively incomplete, it is in the agency's interest to open the docket, and start tracking the filings. As of now, there are five protest letters under the proceeding, with at least one petition expected to come, as the affected ratepayers familiarize themselves with the legal procedure for appealing the rate case. If the case is dismissed as administratively incomplete before the 90-day deadline, then the protest letters received will effectively be lost. Not only would this hurt the community's efforts, but it would also adversely impact the Commission's ability to track the total number of protestors in a comprehensive and effective manner. Moreover, under the City's interpretation of the relevant statutes, each individual protest letter would have been assigned to a separate docket, and then dismissed for being administrative insufficiency after failing to meet the 10% requirement before the 90-day deadline had come to pass.

In short, it is simply a matter of administrative efficiency to file each letter of protest or petition received by the Commission in the same docket number during the 90-day period. This streamlines the administrative process, allowing other affected ratepayers to add their names to

⁵ *Ratepayers' Appeal of the Decision by the City of Fritch to Change Water Rates (37908-A)*, Docket. No. 43086, Order (Oct. 3, 2015).

the proceeding as knowledge of the appeal spreads through the community. Only after the 90-day deadline has passed should Staff review the record for administrative sufficiency.

C. The City's interpretation ignores Commission guidance

The City argues that none of the protest letters satisfy the requirements specified under the Commission's substantive rules, and thus the Commission should dismiss the docket. Specifically, the City states that in addition to meeting the requirement of having 10% of the affected ratepayers signatures within 90 days, the petition must also conform to 16 TAC § 24.42(a). This rule states that a petition for review must contain the original petition for review with the required signatures, and that "[e]ach signature page of a petition should contain in legible form the following information for each signatory ratepayer":

- 1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action;
- 2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer.
- 3) the effective date of the decision being appealed;
- 4) the basis of the request for review of rates; and
- 5) any other information the commission may require.

The City's motion goes through each of the five protest letters, noting that no letter on file meets these requirements, and thus the case should be dismissed. However, this argument ignores recent Commission guidance set out in Docket No. 43086, a case in which the City itself was a party.⁶

In the prior City of Fritch case, the Commission made the decision to count protest letters as "signatures" on a petition for review, even where all the requirements of 16 TAC § 24.42(a) had not been met in each letter.⁷ The City here attempts to narrow the Commission's prior decision by stating the prior case involved a special exception due to extenuating circumstances.

⁶ *Id.*

⁷ *Id.* at 5.

However the Commissioners' discussion at the Open Meeting in that docket indicated that in future proceedings, the Commission would decide whether to count protest letters towards the 10% on a case-by-case basis.⁸ Furthermore, counting protest letters as "signatures" is consistent with the Third Court of Appeals' decision in *County of Reeves*. In *County of Reeves*, the Court concluded that a petition under TWC § 13.043(c) is only required to contain the requisite number of signatories who, in fact, possess the two qualifications of living outside the city and having had their rates changed.⁹

Thus, the Commission guidance indicates that the Commission will consider on a case-by-case basis whether to count protest letters towards the 10% requirement, keeping in mind the requirements of *County of Reeves*. In accordance with this, Staff should make a recommendation regarding which protest letters, if any, meet the requirements of *County of Reeves*, and thus be counted towards the 10%, only after the 90-day deadline has passed. Because the 90-day deadline has not yet passed, the City's Motion to Dismiss is premature.

III. CONCLUSION

Under the Water Code and the Commission's rules, eligible ratepayers have until December 30, 2015 to perfect their appeal. For the reasons discussed above, the City's Motion to Dismiss should be denied.

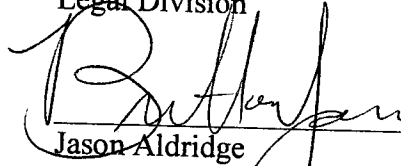
⁸ Open Meeting Tr. at 13:6-14:13 (Sept. 24, 2015) (*see* Staff's Attachment A).

⁹ *County of Reeves v. Texas Commission on Environmental Quality*, 266 S.W.3d 516, 528-29 (Tex. App. 2008).

Respectfully Submitted,

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Division Director
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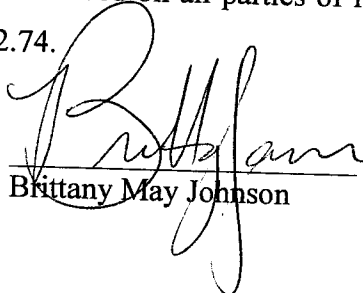
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DOCKET NO. 45248

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the December 10, 2015 in accordance with 16 TAC § 22.74.



Brittany May Johnson

Attachment A

AGENDA ITEM NO. 1

18 DOCKET NO. 43086; SOAH DOCKET NO. 473-15-0680.WS -
19 RATEPAYERS' APPEAL OF THE DECISION BY THE
20 CITY OF FRITCH TO CHANGE WATER
21 RATES (3790-A)

22 CHAIRMAN NELSON: Yeah. Okay. So let's
23 do Item No. 1, which is 43086, and it's an appeal by --
24 of a decision by the City of Fritch to change water
25 rates. And what's y'all's pleasure on this one?

0012 I think I would adopt the PFD's finding

1 that there was one rate change with an effective date of
2 January 1st, 2014, but reverse the conclusion that
3 petitions for both should be counted together, because I
4 think under the Water Code the deadline for filing is 90
5 days and only petitions filed within 90 days of
6 January 1st, 2014 should be counted, and I don't think
7 we have much latitude.

8 COMM. MARQUEZ: Yeah, I'm good with that.

9 CHAIRMAN NELSON: And I would also adopt
10 the holding in the PFD that all protest letters also
11 count toward the 10 percent, but I think in the future,
12 the way the language is written, I think it should be
13 considered a single petition with appropriate
14 signatures.

15 What do you think?

16 COMM. MARQUEZ: Is there -- I think that
17 the spirit of the law -- what concerns me about not
18 considering individual letters going forward is that I
19 do think that sometimes with a 90-day timeline it's kind
20 of the community organized or not?

21 CHAIRMAN NELSON: Right.

22 COMM. MARQUEZ: And I think that
23 individual letters raise a flag.

24 CHAIRMAN NELSON: Okay.

25 COMM. MARQUEZ: When somebody figures out
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1 that are -- you know, where you are --

2 CHAIRMAN NELSON: Yeah.

3 COMM. MARQUEZ: -- the problem is so big
4 that they actually figure out that the PUC exists and
5 that we are --

6 CHAIRMAN NELSON: Well, it's so -- what
7 you're saying really is kind of we have people who
8 appear on their own, we give them the benefit of the
9 doubt when it comes to whatever they're filing because
10 they're not represented by attorneys. And this is the
11 same sort of thing, it's ratepayers, and they may not
12 necessarily know everything.

13 COMM. MARQUEZ: They may not know that
14 there's the petition circulating, but if we -- if we get
15 a petition that's short, you know, five signatures --

16 CHAIRMAN NELSON: Yeah.

17 COMM. MARQUEZ: -- but we've got 25
18 individual letters who have not signed onto the
19 petition, I would hate to see us turn that down. Is
20 there a rule that --

21 COMM. ANDERSON: 25 -- you know, it would
22 be 25 letters that clearly are protesting.

23 COMM. MARQUEZ: Right. Right. Yes.

24 CHAIRMAN NELSON: So what if we do this --

25 COMM. ANDERSON: And that -- that seems to
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1 be -- that seems to be consistent with Third Court of
2 Appeals' decision.

3 CHAIRMAN NELSON: So what if we just leave
4 that issue and decide those on a fact-by-fact basis --

5 COMM. MARQUEZ: I'm comfortable with
6 that --

7 CHAIRMAN NELSON: -- as we move forward
8 and not say anything about in the future we want to make
9 sure, but in this case we'll count them.

10 COMM. MARQUEZ: Okay.

11 COMM. ANDERSON: I agree with that
12 approach.

13 COMM. MARQUEZ: Uh-huh.

14 CHAIRMAN NELSON: And I would adopt the
15 finding in the PFD that there were not a sufficient
16 number of signatures to establish the Commission's
17 jurisdiction, even when you count those --

18 COMM. MARQUEZ: Right.

19 CHAIRMAN NELSON: -- protests. And that's
20 just under the terms of the statute.

21 COMM. MARQUEZ: Uh-huh.

22 CHAIRMAN NELSON: So....

23 COMM. MARQUEZ: I agree with that finding.

24 CHAIRMAN NELSON: Commissioner Anderson?

25 COMM. ANDERSON: I would also delete
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1 Conclusion of Law No. 3 and find -- and make a
2 correction in finding of fact with respect to the
3 deletion because it's just not necessary to the outcome
4 of the case. And then a correction needs to be made to
5 Finding of Fact 21. On October the 1st of 2014 the City
6 had 1143 -- 1143 outside ratepayers -- or ratepayers
7 outside the city limits.

8 CHAIRMAN NELSON: Right. So instead
9 of 12 --

10 COMM. ANDERSON: Instead of --

11 CHAIRMAN NELSON: -- 278.

12 COMM. ANDERSON: Instead of 1,276.

13 CHAIRMAN NELSON: Okay. So have we
14 discussed everything?

15 MR. JOURNEAY: I think so.

16 CHAIRMAN NELSON: Okay. So the Chair will
17 entertain a motion to approve the PFD consistent with
18 our discussion.

19
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21

COMM. ANDERSON: You have the motion.
COMM. MARQUEZ: And I second.
CHAIRMAN NELSON: Okay. Thank you.