

Control Number: 46436



Item Number: 4

Addendum StartPage: 0

DOCKET NO. 46436

RECEIVED

PETITION OF MANAGEMENT &
TRAINING CORPORATION FOR
REVIEW OF THE DECISION BY
THE CITY OF OVERTON TO
CHANGE RETAIL WATER AND
SEWER RATES (BILLY MOORE
CORRECTIONAL CENTER)

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PUBLIC UTILITY COMMISSION

2016 OCT 27 PM 3:15

PU OF TEXAS
COMMISSION
FILING CLERK

**MANAGEMENT & TRAINING CORPORATION'S AMENDMENT TO
ITS ORIGINAL PETITION AND REPLY TO THE CITY OF OVERTON'S
RESPONSE TO PUBLIC UTILITY COMMISSION'S ORDER NO. 1**

COMES NOW, Management & Training Corporation ("MTC"), a corporation based in Centerville, Utah, and files this Reply to the City of Overton's Response to the Public Utility Commission of Texas's (the "**Commission**") Order No. 1, pursuant to 16 TEX. ADMIN. CODE § 22.78(a) ("**Reply**").

Background

MTC is a private company that has contracted with the Texas Department of Criminal Justice to operate the Billy Moore Correctional Center ("**Prison**"), located in Overton, Texas. The Prison receives commercial retail water and sewer service from the City of Overton (the "**City**") and is located approximately three miles outside of the City's corporate boundaries. The Prison is the only commercial customer, residing outside the City's corporate boundaries, that has a meter six inches or larger.

On June 10, 2016, the City Manager, Charles Cunningham, emailed the Warden of the Prison, David Hudson, to inform him that the City would be significantly increasing the Prison's water and sewer rates. A copy of the email is attached to the Petition as **Exhibit A**. On July 14, 2016, the Overton City Council adopted Ordinance No. 2016-05-19B (the "**Ordinance**"). A copy of the Ordinance is attached to the Petition as **Exhibit B**. Among other things, the Ordinance

amended the City's retail water and sewer rates for commercial customers with meters six inches or larger.

On October 12, 2016, MTC filed its original petition, wherein MTC requested the Commission review the decision of the City Council to determine if the newly adopted water and sewer rates were just, reasonable, and not discriminatory pursuant to TEX. WATER CODE § 13.043(b)(3) and 16 TEX. ADMIN. CODE §§ 24.41(b), (i) (the "**Petition**"). The Commission responded on October 14, 2016, by issuing Order No. 1. On October 20, 2016, the Prison's office email¹ sent an email to David Hudson, the Prison's Warden, and attached the City of Overton's Response to the Commission's Order No. 1 (the "**Response**"). A copy of the office e-mail, which evidences the date the Warden received the Response, is attached hereto as **Exhibit A**. Therefore, it is presumed MTC did not receive the Response until October 20, 2016; thus, in accordance with the Commission's Order No. 1 and 16 TEX. ADMIN. CODE § 22.78(a), this Reply is timely filed.

In support hereof, MTC respectfully shows as follows:

Reply to City of Overton's Response to Commission Order No. 1

In the City's Response, it alleges (i) that the City had "not been served in any manner, and is not in receipt of, any petition reportedly filed by" MTC, (ii) that the Prison was one of City's twenty-six (26) customers that reside outside of the City's corporate boundaries, and (iii) that MTC's original Petition was unwarranted. However, these assertions are inaccurate.

Regarding the assertion that the City was not provided a copy of the Petition, MTC has verification from the U.S. Post Office that the City received a notification on October 15, 2016, that informed the City it had a certified mail item from Morgan Johnson at McGinnis Lochridge, MCT's counsel, ready for pick-up. However, the City did not pick-up the Petition until October

¹ The office email of the Prison is: BMCC-Office-Ricoh@MTCTrains.com. At the bottom of Exhibit A is evidence of the Prison's office email forwarding an email to David Hudson (the Prison Warden), with the Response attached.

20, 2016. Attached as **Exhibit B** is the U.S. Post Office Verification of Delivery document that evidences the date the City received notice of the certified mail item and the date the City signed the green card for the Petition. Attached as **Exhibit C** is the McGinnis Lochridge Certified Mail Log Sheet that evidences a document was mailed by certified mail to Charles Cunningham on October 12, 2016. The Transmittal Letter that MTC used when it sent a copy of the Petition to the City Manager by Certified Mail, Return Receipt Requested is attached to the Petition as **Exhibit D**.

As demonstrated in the minutes of the City Council meeting held on July 14, 2016, wherein the City adopted the Ordinance, the Prison is the only customer subject to the newly adopted water and sewer rates. During the City Council meeting, the City Manager explained the method by which he calculated the “prisons” new water and sewer rates. The City Manager did not discuss any other customer class, residential or commercial, that would be subject to the new rates. Furthermore, the water and sewer rates discussed at the meeting were only applicable to commercial customers with meters six inches or greater. Attached as **Exhibit C** to the Petition are the minutes from the City of Overton City Council Special Called Meeting, dated July 14, 2016. Therefore, the Prison constitutes 100% “of the ratepayers whose rates have been changed and who are eligible to appeal” pursuant to Tex. Water Code 13.043(b).

MTC’s Petition, wherein MTC protested and appealed the decision of the City to increase the water and sewer rates for the Prison and respectfully requested the Commission to review the decision of the City and determine if the newly adopted rates were just, reasonable and not discriminatory, is warranted and valid pursuant to TEX. WATER CODE § 13.043(b)(3) and 16 TEX. ADMIN. CODE §§ 24.41(b), (i). As evidenced in the minutes of the City Council meeting, the water base rate was increased by 27%, the water volume rate was increased by 10%; the sewer base rate was increased by 52% and the sewer volume rate was increased by 52%. See **Exhibit C**

of the Petition. The City Manager explained in an email to the Prison's Warden that the Prison's new rates were determined from rate study that combined all expensed incurred by the City to provide water and sewer service, and subsequently allocated those expenses to customers based on the amount of water consumed by each customer class. See **Exhibit A** of the Petition.

Conclusion

WHEREFORE, PREMISES CONSIDERED, MTC respectfully requests that the Commission deny the relief requested in the City of Overton's Response, review the City of Overton's newly adopted sewer and water rates for the Prison to determine if the rates are just, reasonable and not discriminatory, and grant MTC any other and further relief to which it may show itself to be entitled.

Respectfully submitted,

MCGINNIS LOCHRIDGE

By: 

Morgan Johnson
State Bar No. 24083264
600 Congress Avenue, Suite 2100
Austin, Texas 78701
(512) 495-6000
(512) 495-6093 (facsimile)

ATTORNEY FOR MANAGEMENT &
TRAINING CORPORATION

Exhibits:

Exhibit A Email chain evidencing the date that the Prison's office e-mail forwarded the City's Response to the Prison's Warden, David Hudson

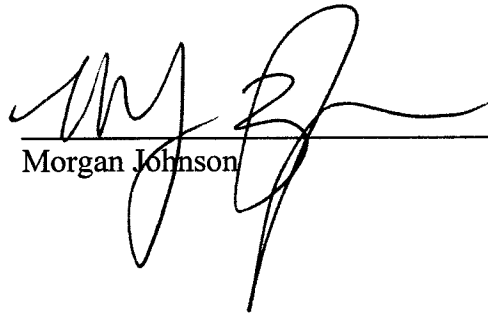
Exhibit B U.S. Post Office Verification of Delivery

Exhibit C McGinnis Lochridge Certified Mail Log Sheet.

CERTIFICATE OF SERVICE

I hereby certify that on this 27 day of October, 2016, a true and correct copy of the foregoing Management & Training Corporation's Reply to the City of Overton's Response to the Public Utility Commission's Order No. 1 was sent by certified mail, return receipt requested to counsel of record at the following address:

G. Blake Thompson
MANN, TINDEL, THOMPSON
300 West Main Street
Henderson, Texas 75652
(903) 657-8540
(903) 657-6003 (fax)



Morgan Johnson

EXHIBIT A

Johnson, Morgan J.

From: Dawn Call <Dawn.Call@mtctrains.com>
Sent: Friday, October 21, 2016 9:16 PM
To: Johnson, Morgan J.
Cc: Michael Bell; Haag, Philip S.; Johnson, Russell S.
Subject: Fwd: Message from "RNP0026739B2471"
Attachments: 201610201511.pdf; ATT00001.htm

FYI. Please let us know the next steps you recommend.

Attorney Client Privilege
MTC Confidential and Proprietary

Begin forwarded message:

-----Original Message-----

From: David Hudson
Sent: Thursday, October 20, 2016 3:04 PM
To: Michael Bell <Michael.Bell@mtctrains.com>
Cc: Lopher Jenkins <Lopher.Jenkins@mtctrains.com>
Subject: FW: Message from "RNP0026739B2471"

FYI, please see attached.

-----Original Message-----

From: BMCC-Office-Ricoh@MTCTrains.com [<mailto:BMCC-Office-Ricoh@MTCTrains.com>]
Sent: Thursday, October 20, 2016 2:12 PM
To: David Hudson <David.Hudson@mtctrains.com>
Subject: Message from "RNP0026739B2471"

This E-mail was sent from "RNP0026739B2471" (Aficio MP 7502).

Scan Date: 10.20.2016 15:11:37 (-0400)
Queries to: BMCC-Office-Ricoh@MTCTrains.com

EXHIBIT B

Johnson, Morgan J.

From:
Sent: Thursday, October 27, 2016 1:39 PM
To: Johnson, Morgan J.

Product & Tracking Information

Postal Product:

First-Class Mail®

Features:

Certified Mail™

Return Receipt

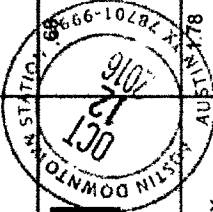
DATE & TIME	STATUS OF ITEM	LOCATION
October 20, 2016 , 10:33 am	Delivered	OVERTON, TX 75684
October 15, 2016 , 9:49 am	Available for Pickup	OVERTON, TX 75684
October 15, 2016 , 9:45 am	Arrived at Unit	OVERTON, TX 75684
October 14, 2016 , 11:06 pm	Departed USPS Facility	SHREVEPORT, LA 71102
October 14, 2016 , 2:31 pm	Arrived at USPS Facility	SHREVEPORT, LA 71102

DATE & TIME	STATUS OF ITEM	LOCATION
October 13, 2016 , 8:48 am	Departed USPS Facility	AUSTIN, TX 78710
October 12, 2016 , 10:54 pm	Arrived at USPS Facility	AUSTIN, TX 78710

EXHIBIT C

CERTIFIED MAIL LOG SHEET

Commented [e1]:

Date	3 INITIALS - CERT# - OFFICE SERVICES INITIALS	ADDRESSEE	Postage	Cert. cost	RR cost
10/12/16	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	MJJ 9214 7904 3910 0104 6630 70-mm	Charles Cunningham City Manager of Overton, TX 1200 S. Commerce City of Overton, TX 75684		\$3.45	\$2.80
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]