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PUC DOCKET NO. 46701

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CITY OF HOWARDWICK RATEPAYERS' APPEAL OF THE DECISION OF THE RED RIVER AUTHORITY OF TEXAS' DECISION AFFECTING WATER AND SEWER RATES	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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PUBLIC UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF'S RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this recommendation on administrative completeness in response to Order No. 1, and would show the following:

I. BACKGROUND

On December 28, 2016, ratepayers of the City of Howardwick (City or Howardwick) that reside within the City, filed a petition appealing the decision of the Red River Authority of Texas (RRA), Howardwick's franchisee, to increase water and sewer rates effective October 1, 2016 (Petition). On January 6, 2017, Order No. 1 was issued, which set January 30, 2017 as Staff's deadline to file comments on the administrative completeness of the petition, on how it should be processed, and to propose a procedural schedule if necessary.

Then, on January 20, 2017, the City of Howardwick filed a letter requesting assistance from the Commission in this proceeding pursuant to Texas Water Code § 13.085 (TWC). Order No. 2 was issued on January 23, 2017, requiring Commission Staff to also include in its January 30, 2017 recommendation comments regarding the City's recent request. Therefore, this pleading is timely filed.

II. RECOMMENDATION

A. Sufficiency of the Petition

Under TWC § 13.043(b), ratepayers may appeal the decision of a district or water authority, created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, which provides water and sewer service to household users. According to TWC § 13.043(c), such an appeal must be initiated within 90 days after the effective day of the rate change and the petition

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must be signed by the lesser of 10,000 or 10 percent of *those ratepayers whose rates have been changed and who are eligible to appeal*.

In this case, the RRA is a district that provides water or sewer services to household users in the City and in other cities. The effective date for the new rates was October 1, 2016; therefore, the last day to file the appeal was December 30, 2016. The Petition includes signatures of approximately 136 persons. However, in the RRA's response to Staff's First Request for Information (RFIs), the RRA formally enter into the record that 393 signatures are required to perfect an appeal under TWC § 13.043(b). In support of this number, the RRA noted that the rate increase affected 3,922 ratepayers with active connections.¹ Therefore, the increase was not limited to the City of Howardwick, and even if the City obtained the signatures of 10 percent of City residents, this is still not sufficient to perfect an appeal under TWC § 13.043(b).

According to the attached memorandum of Fred Bednarski of the Commission Water Utility Regulation Division, 393 signatures is the correct number needed to perfect the appeal in this case. Therefore, because the City of Howardwick failed to meet the 10 percent requirement within the 90 day deadline, as required under TWC § 13.043(b), Staff recommends that the Petition be found administratively incomplete and be dismissed for lack of jurisdiction.

B. TWC § 13.085

Pursuant to the TWC § 13.085, "[o]n request, the utility commission may advise and assist municipalities and affected counties *in connection with questions and proceedings arising under this chapter . . .*"² In this case, because the 10 percent threshold requirement was not met, the Commission lacks jurisdiction over the City's appeal. Therefore, the City's request for Commission assistance under TWC § 13.085 is not applicable because the case does not amount to a "proceeding arising under [Chapter 13]."³

¹ RRA's Response to Staff RFI 1-1(a) (Jan. 25, 2017).

² TWC § 13.085 states the following: "[o]n request, the utility commission may advise and assist municipalities and affected counties in connection with questions and proceedings arising under this chapter. This assistance may include aid to municipalities or an affected county in connection with matters pending before the utility commission, the courts, the governing body of any municipality, or the commissioners court of an affected county, including making members of the staff available to them as witnesses and otherwise providing evidence."

³ *Id.*

III. CONCLUSION

Staff respectfully requests that the Administrative Law Judge find that the Petition is administratively incomplete and dismiss the City of Howardwick's Petition due to a lack of jurisdiction.

Dated: January 30, 2017

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney

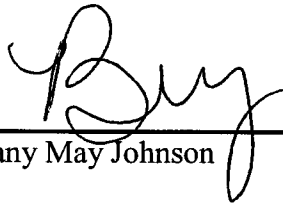


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 30, 2017 in accordance with 16 TAC § 22.74.



Brittany May Johnson

Public Utility Commission of Texas
Memorandum

To: Brittany Johnson, Attorney
Legal Division

Thru: Tammy Benter, Director
Debi Loockerman, Financial Manager
Heidi Graham, Engineer Director
Water Utility Regulation

From: Fred Bednarski III, Financial Examiner

Date: January 30, 2017

Subject: **Docket No. 46701;** *City of Howardwick Ratepayers' Appeal of the Decision of the Red River Authority of Texas' Decision Affecting Water and Sewer Rates*

On December 28, 2016, the City of Howardwick Ratepayers' (CHR) filed an appeal with the Public Utility Commission (PUC) pursuant to Tex. Water Code § 13.043(b) (TWC) 16 Tex. Admin. Code §§ 24.41 and 24.42 (TAC).

Staff reviewed the information and determined the rate increase was approved by the board of the Red River Authority (RRA) on September 21, 2016 with an effective date of October 1, 2016. The petition was signed by 136 ratepayers. Staff determined from RRA's response to requests for information that approximately 3,922 ratepayers were affected by water rate increase appealed in this docket. Although the petitions were filed within the 90 days after the effective date of the rate increase, less than 10 percent of the affected ratepayers signed the petition. Pursuant to TWC § 13.043 (c) an appeal under Subsection (b) must be initiated by filing a petition for review with the utility commission... The petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b). Therefore, Staff recommends that the Commission find that the appeal filed by CHR does not meet the 10% threshold and dismiss the rate appeal.