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RATEPAYERS' APPEAL OF THE §  
DECISION BY BEAR CREEK §  
SPECIAL UTILITY DISTRICT TO §  
CHANGE RATES §

PUBLIC UTILITY COMMISSION  
OF TEXAS

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**ORDER**

This Order addresses the petition by ratepayers of Bear Creek Special Utility District appealing the decision of the Bear Creek board of directors to increase water rates. Commission Staff moved to dismiss for lack of jurisdiction, because the ratepayers did not timely file the petition. On March 8, 2018 the Commission ALJ issued a proposal for decision, titled as a proposed order, recommending dismissal of the petition. The Commission adopts the proposal for decision in part, including findings of fact and conclusions of law, except as discussed in this Order. For the reasons discussed in this Order, the petition is dismissed.

**I. Background**

On March 27, 2017, ratepayers filed a petition appealing the decision of Bear Creek to increase water rates and requested a determination of whether two rate increases imposed in 2016 were just and reasonable.

On April 24, 2017, Commission Staff filed comments recommending that the petition be found insufficient.<sup>1</sup> Under Texas Water Code (TWC) § 13.043(c)<sup>2</sup>, ratepayers must initiate their appeal “within 90 days after the effective day of the rate change.” On April 25, 2017, Bear Creek responded to the petition requesting the petition be dismissed as not timely filed.<sup>3</sup>

The effective date of the first rate increase was May 19, 2016, which was the first day of the usage period.<sup>4</sup> The notice to ratepayers for this change explains that higher rates are necessary to address growing needs of customers, improve services, and infrastructure maintenance and investment. Ratepayers are statutorily required to have initiated their appeal 90 days after the May 19, 2016 effective date, which was August 17, 2016. The effective date of the second increase

<sup>1</sup> Commission Staff’s Recommendation on Sufficiency (Apr. 24, 2017).

<sup>2</sup> Tex. Water Code Ann. § 13.043 (West 2008 & Supp. 2017).

<sup>3</sup> Bear Creek Special Utility District Corrected Comments and Proposed Procedural Schedule (Apr. 25, 2017)

<sup>4</sup> Commission Staff’s Motion to Dismiss at 2 (May 5, 2017).

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was December 19, 2016, which was the first day of the usage period.<sup>5</sup> The notice to customers for this change explains that the increase is needed to address the increased cost of water purchased from the North Texas Municipal Water District.<sup>6</sup> The ratepayers were statutorily required to have initiated their appeal 90 days after the December 19, 2016 effective date, which was March 19, 2017. The ratepayers filed their appeal with the Commission on March 27, 2017. Commission Staff and Bear Creek argue that the appeal is not considered timely filed because the petition was not filed within the 90-day deadline. Commission Staff recommended dismissal of ratepayers' appeal under TWC § 13.043(c).<sup>7</sup>

On May 3, 2017, ratepayers responded to Commission Staff's recommendation on sufficiency of the petition. The ratepayers disagree with the effective date of the second rate increase being December 19, 2016, and state that the effective date is January 1, 2017.<sup>8</sup> The rate increase notification for the second rate increase states, "The effective date of the rate increase will be on your January 2017 bill. The usage period is December 19, 2016 to January 19, 2017."<sup>9</sup> Therefore, the rate increase went into effect on December 19, 2016 and was reflected on the January bill. The ratepayers also assert they were misled by information on the Texas Commission on Environmental Quality (TCEQ) website to file their appeal with TCEQ.<sup>10</sup> The ratepayers filed their appeal with the TCEQ on March 21, 2017, and then with the Commission on March 27, 2017.<sup>11</sup> Commission Staff argues that even if the TCEQ petition was taken as sufficient, the petition was not timely filed, because the March 21, 2017 filing came after the 90-day deadline of March 19, 2017.

Conclusion of law 1 is modified to more clearly state the Commission's position on the issue. Conclusion of law 2 is modified to correctly identify the grounds for dismissal as lack of jurisdiction. Conclusion of law 3 is added to state that this matter cannot be considered by the Commission.

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<sup>5</sup> *Id.*

<sup>6</sup> Petition at Exhibit 1 (Mar 27, 2017).

<sup>7</sup> Commission Staff's Motion to Dismiss (May 5, 2017)

<sup>8</sup> Ratepayer's Objection to Staff's Recommendation at 2 (May 3, 2017)

<sup>9</sup> *Id.* at 8 (emphasis removed).

<sup>10</sup> *Id.* at 2

<sup>11</sup> *Id.* at 1-2

The Commission adopts the following findings of fact and conclusions of law:

## **II. Findings of Fact**

1. On March 27, 2017, ratepayers of Bear Creek filed a petition under TWC § 13.043(b) appealing the decision of the board of directors to increase water rates.
2. On March 28, 2017, Order No. 1 was issued requiring comments on administrative completeness of the petition, how the petition should be processed, and a proposed procedural schedule.
3. On April 24, 2017, Commission Staff recommended that the petition be declared insufficient and that it should be dismissed under TWC § 13.043(c).
4. On April 25, 2017, Bear Creek responded to Order No. 1 disputing the validity of the ratepayers' appeal and requesting dismissal.
5. On May 3, 2017, ratepayers filed an objection to Commission Staff's recommendation on sufficiency and dismissal.
6. On May 5, 2017, Commission Staff filed a motion to dismiss the petition.

## **III. Conclusions of Law**

1. The petition was not timely filed.
2. The Commission does not have jurisdiction to hear this appeal.
3. The ratepayers' appeal of the water rate increase must be dismissed.

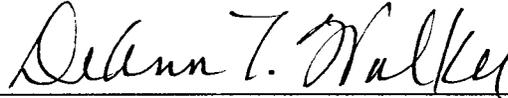
## **IV. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. The ratepayers' petition is dismissed with prejudice.
2. All other motions and any other request for general or specific relief, if not expressly granted, are denied.

Signed at Austin, Texas the 27<sup>th</sup> day of April 2018.

**PUBLIC UTILITY COMMISSION OF TEXAS**



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER

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