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

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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

**BEAR CREEK SPECIAL UTILITY DISTRICT'S CORRECTED
COMMENTS AND PROPOSED PROCEDURAL SCHEDULE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

In accordance with Order No. 1, Bear Creek Special Utility District files these comments and proposed procedural schedule and would respectfully show the following:

SUFFICIENCY OF PETITION

On March 27, 2017, retail customers of Bear Creek Special Utility District (the "District") filed a petition pursuant to Section 13.043(b) of the Texas Water Code¹ entitled "Petition to Oppose Water Rate Increase by Ratepayers of the Bear Creek Special Utility District (fka Lavon Special Utility District)" (the "Petition"). Public Utility Commission ("PUC") Rule 24.41 governs the Petition, and PUC Rule 24.42 sets forth the required contents for petitions for review of rate actions filed pursuant to Texas Water Code §13.043(b).² The District does not contest the number of signatures or whether those signatures meet the 10% threshold as required in Texas Water Code §13.043(c) and PUC Rule.³

However, PUC Rule §24.42(a)(1) specifically requires that a rate appeal petition brought under Texas Water Code §13.043(b) include the date of the action being appealed.⁴ The Petition claims to appeal two rate increases by the District, neither of which is timely.

The first appealed increase was effective May 19, 2016. The Petition was filed 312 days after this date and is not timely with regard to this rate increase. Any appeal of the District's May 19, 2016, increase must be summarily dismissed by the Commission as untimely.

¹ Texas Water Code §13.043(b).

² Texas Water Code §13.043(c) and PUC Subst. Rule 24.41 and 24.42.

³ Id..

⁴ PUC Subst. Rule 24.42.

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Contrary to the petitioners' claims, the second appealed increase became effective December 19, 2016, and related solely to a pass-through increase of the wholesale water rates to be charged to the District by the North Texas Municipal Water District ("North Texas"). The Petition was filed 98 days after this date and is not timely with regard to this increase.

ALTERNATIVE PLEADING

If the Commission concludes that the petition is sufficient for appealing the December 19, 2017, then Texas Water Code §13.043(e) requires the Commission to hear an appeal under §13.043(b) "de novo" and "fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken."⁵ In this type of an appeal, the Commission is limited to considering "only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred by the retail public utility in the appeal proceedings."⁶ However, the North Texas wholesale rate increase was the only information available to and considered by the District for the December 19, 2016, increase. See the attached September 23, 2016, cover letter from North Texas to the District (Exhibit "A"). Therefore, the appeal should proceed on the sole issue of whether the rate increase properly adjusted the District's rates to account for the wholesale rate increase by North Texas.

PROCESSING THE PETITION

If the Commission concludes that the Petition is valid and satisfies the requirements found in Texas Water Code, Section 13.043, Subsections (b), (c) and (d), the Petition must be processed as provided in Subsection (e) of that Section,⁷ which provides for a de novo proceeding in which the Commission fixes rates at the level that those rates should have been set at. However, the Commission is limited to considering only the information that was available to the District at the time it made its decision and evidence of reasonable expenses incurred in

⁵ Texas Water Code §13.043(e).

⁶ Id.

⁷ Texas Water Code §13.043(e)

the appeal proceedings.⁸ In addition, the Commission must ensure that the rates are just and reasonable, and not unreasonably preferential, prejudicial, or discriminatory.⁹ The Commission must also “use a methodology that preserves the financial integrity of the retail public utility” and recognizes the District’s determination of customer classes.¹⁰ Finally, the Commission must consider allowing the recovery of the District’s reasonable expenses incurred in the appeal proceedings.¹¹

PROCEDURAL SCHEDULE

If the Commission determines that the Petition is valid and takes jurisdiction, then the District recommends that the following schedule be established for consideration of the Petition:

ACTION	TIME PERIOD
Preliminary Hearing to Establish Parties	May 2017
District to file direct testimony	July 1, 2017
Deadline to file written objections to District direct testimony	July 9, 2017
Petitioners to file direct testimony	August 4, 2017
Deadline to file written objections to Petitioners’ direct testimony	August 11, 2017
PUC staff to file direct testimony	September 1, 2017
Deadline to file written objections to PUC staff direct testimony	September 9, 2017
Deadline to propound discovery on direct cases	September 16, 2017
Deadline to file written response to objections on all direct testimony	September 23, 2017
Deadline to conduct depositions	October 6, 2017
Deadline for District to file rebuttal testimony	November 1, 2017

⁸ Id. and PUC Subst. Rule 24.41(e)(5).

⁹ Texas Water Code §13.043(j) and PUC Subst. Rule 24.41(i).

¹⁰ Id.

¹¹ Texas Water Code §13.043(e) and PUC Subst. Rule 24.41(e)(2).

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Deadline to file written objections to rebuttal testimony	November 8, 2017
Responses to Objections on rebuttal testimony are due	November 13, 2017
Prehearing Conference	November 14, 2017
Hearing on the merits	November 15-17, 2017

PRAYER

Based upon the foregoing, the District requests that the Commission: (1) dismiss the Petition as not timely filed. In the alternative and if the Commission finds the appeal of the December 19, 2016, rate increase to be timely, the District requests that the Commission: (a) refer the appeal of the December 19, 2016, rate increase to the State Office of Administrative Hearings on a schedule that generally follows the schedule listed above; and, (b) limit the issues to whether the December 19, 2016, rate increase appropriately adjusts the District's rates to account for the increase in wholesale water rates imposed by the North Texas Municipal Water District.

Respectfully submitted,

By: _____

John J. Carlton

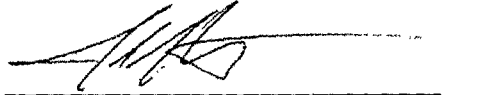
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ATTORNEY FOR BEAR CREEK
SPECIAL UTILITY DISTRICT

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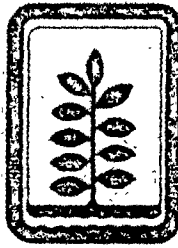
CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this the 24th day of April, 2017.

A handwritten signature in black ink, appearing to read 'J. Carlton', is written over a horizontal line.

John Carlton

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NORTH TEXAS MUNICIPAL WATER DISTRICT

Regional Service Through Unity

September 23, 2016

Mr. Herman Stork
President
Bear Creek Special Utility District
P. O. Box 188
Lavon, TX 75166

RE: 2016-17 ANNUAL BUDGET CHARGES

Dear Mr. Stork:

The 2016-17 Annual Budget was approved by the NTMWD Board of Directors at the September 2016 Board Meeting. The water rate is being adjusted from \$2.34 to \$2.58 per 1,000 gallons, the excess water rate remains at 46.0¢ per 1,000 gallons and the City's Minimum Annual Demand is 235,321,000 gallons for 2016-17. Enclosed are the 2016-17 Budget Summary and Billing Schedule for the following charge:

- Regional Water System \$ 607,128.18

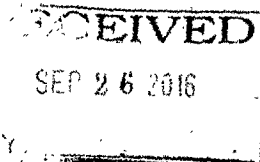
The NTMWD Board of Director's goal is to continue to provide an effective, responsible level of service while maintaining a minimum cost and stable rate to the cities. Your continued cooperation and support will allow the District to maintain an excellent level of service.

Should you have any questions or need additional information, please contact Erik Felthous, Finance Manager, by email at efelthous@ntmwd.com.

Sincerely,

THOMAS W. KULA
Executive Director / General Manager

TWK/EAF/df
Enclosures



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