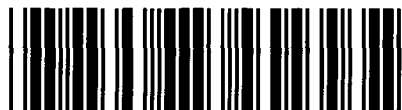




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Addendum StartPage: 0

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

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PUBLIC UTILITY COMMISSION
OF TEXAS

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COMMISSION STAFF'S MOTION TO DISMISS

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Motion to Dismiss. In support thereof, Staff shows the following:

I. BACKGROUND

On March 27, 2017, ratepayers (Ratepayers) of the Bear Creek Special Utility District f/k/a Lavon Special Utility District (Bear Creek) filed a petition (Petition) appealing the decisions of the board of directors of the Bear Creek SUD to increase water rates.

On March 28, 2017, the Administrative Law Judge (ALJ) issued Order No. 1 requiring Bear Creek SUD and Staff to file comments on how this Petition should be processed and to propose a procedural schedule by April 24, 2017. On April 24, 2017, Staff timely filed its Recommendation on Sufficiency. Staff recommended that the Petition is insufficient and cannot be cured, and declined to file a proposed procedural schedule at that time stating that Staff would file a Motion to Dismiss.

II. MOTION TO DISMISS

Staff moves for dismissal with prejudice pursuant to 16 TAC § 22.181(d)(8) for a lack of jurisdiction because the Ratepayers have not timely filed their appeal. In the Petition, the Ratepayers oppose two recent water increases that were imposed in 2016 by Bear Creek's board of directors.¹ Pursuant to Tex. Water Code § 13.043(b)(4) (TWC), ratepayers may appeal the decision of the governing body of a district or water authority. Under TWC § 13.043(c), ratepayers must initiate their appeal "within 90 days after the effective day of the rate change." In this case, the Ratepayers filed their appeal with the Commission on March 27, 2017, which was after the 90-day deadline.

¹ Petition at 1 (March 27, 2017).

There have been two rate increases within the past year. The effective date of the first rate increase was May 19, 2016, which was the first day of the usage period. The Ratepayers are statutorily required to have initiated their appeal by August 17, 2016, which is 90 days after the May 19th effective date. The effective date of the second rate increase was December 19, 2016, which was the first day of the usage period.² The Ratepayers are statutorily required to have initiated their appeal by March 19, 2017, which is 90 days after the December 19th effective date.

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, 2017.³ 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.”⁴ Therefore, the rate increase occurred on December 19, 2016, which increase was reflected on the January billing. The Ratepayers also assert that they were misled by information on the Texas Commission on Environmental Quality (TCEQ) website to file their appeal with the TCEQ.⁵ The Ratepayers filed their appeal with the TCEQ on March 21, 2017, and then caused the appeal to be filed with the Commission on March 27, 2017.⁶ TWC § 13.043(c) states that an appeal “must be initiated by filing a petition for review with the utility commission and the entity providing service within 90 days after the effective day of the rate change.” The statute refers to the “utility commission” and defines that term to mean the Public Utility Commission of Texas.⁷ The statute does not mention that filing a petition with the TCEQ would be proper. Even taking the TCEQ filing as sufficient, the Petition was not timely filed. The March 21st TCEQ filing came after March 19th thus failing to meet the statutory deadline. Further, as dismissal is established as a matter of law, no hearing is necessary.

Therefore, because the Ratepayers failed to file their appeal within the 90 day deadline as required under TWC § 13.043(c), Staff respectfully recommends that the ALJ dismiss this appeal pursuant to 16 TAC § 22.181(d)(1) for a lack of jurisdiction.

² *Id.* at 5.

³ Ratepayers’ Objection to Staff’s Recommendation at 2 (May 3, 2017).

⁴ *Id.* at 8.

⁵ *Id.* at 2.

⁶ *Id.* at 1-2.

⁷ TWC § 13.002(22-a).

III. CONCLUSION

For the reasons stated above, Staff respectfully requests that the ALJ dismiss this appeal with prejudice for lack of jurisdiction.

DATED: May 5, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney

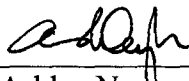


Ashley Nwonuma
State Bar No. 24096650
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7163
(512) 936-7268 (facsimile)
ashley.nwonuma@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 5th of May, 2017 in accordance with 16 TAC § 22.74.



Ashley Nwonuma