



Control Number: 47058



Item Number: 21

Addendum StartPage: 0

RATEPAYERS' APPEAL OF THE  
DECISION BY THE SAN PATRICIO  
COUNTY MUNICIPAL UTILITY  
DISTRICT NO. 1 TO CHANGE  
RATES

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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

### COMMISSION STAFF'S MOTION FOR SUMMARY DECISION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this motion for summary decision requesting denial of San Patricio Municipal District No. 1's rate and tariff change as unjust and unreasonable and setting the rates and tariff provisions at the level prior to the change. In support thereof, Staff would show the following:

#### I. BACKGROUND

On April 12, 2017, ratepayers of San Patricio County Municipal Utility District No. 1 ("San Patricio" or "the MUD") filed a petition to appeal San Patricio's decision to change its rates. The rate change became effective on February 16, 2017, and San Patricio began charging each individual RV pad in RV parks as separate commercial connections when previously the entire RV park was charged as a single commercial connection.

On May 26, 2017, the Commission administrative law judge (ALJ) issued Order No. 2, finding the petition administratively complete and sufficient for filing. On May 31, 2017, the appeal was referred to the State Office of Administrative Hearings (SOAH).

Commission Staff made several attempts to contact the MUD by phone, but MUD has responded only once. On May 12, 2017, Staff filed its First Requests for Information (RFI) to San Patricio. On June 8, 2017, more than twenty days after Staff served its First RFI on the MUD, Staff filed a Motion to Compel San Patricio to respond to its First RFI. On July 11, 2017, the SOAH ALJ convened a prehearing conference which representatives for the ratepayers and Staff appeared, but no representative for San Patricio appeared. On July 12, 2017, the SOAH

ALJ issued SOAH Order No. 2, memorializing the prehearing conference, granting Staff's motion to compel, and requiring San Patricio to respond to Staff's First RFI no later than July 18, 2017.

Staff filed its Second RFI to San Patricio on July 5, 2017. San Patricio has not filed a response to either of Staff's RFIs or the order granting the motion to compel.

## **II. MOTION FOR SUMMARY DECISION**

On the motion of any party, the presiding officer may grant summary disposition on any or all issues if there is no genuine issue as to any material fact on that issue and the moving party is entitled to a decision in its favor as a matter of law.<sup>1</sup> Staff now moves for summary disposition on the following issues:

- 1. Are the rates being charged by San Patricio County MUD No. 1 to Camp Stryker RV Park just and reasonable? Are the rates unreasonably preferential, prejudicial, or discriminatory? Are the rates sufficient, equitable, and consistent in application to each class of customers?**

The record indicates that there is no genuine issue of material fact regarding whether San Patricio's rates are unreasonably preferential, prejudicial, discriminatory, and inconsistent in application to its classes of customers. In a letter sent to RV Park facilities, San Patricio stated that "RV Parks will be charged a commercial minimum rate as noted on San Patricio County Municipal Utility District No. 1 Invoice Form for *each trailer pad water/sewer connection*."<sup>2</sup> The same letter defines a "pad" as a "spot to park a Travel Trailer."<sup>3</sup> In the invoice due April 20, 2017, the water charge includes a notation that reads "24 sites/connections" and an explanation stating "Revised Bill to reflect charges voted on at last special meeting."<sup>4</sup> The invoice for the previous billing cycle contained no such notations.<sup>5</sup> Furthermore, San Patricio's president conceded in a handwritten letter "Mr. Robert Hunter (owner of) LLC had been billed 1-commercial rate from the date originated until March 2017 which we started billing them for 10-

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<sup>1</sup> 16 Tex. Admin Code § 22.182(a). (TAC)

<sup>2</sup> Petition, Exhibit C (Apr. 12, 2017).

<sup>3</sup> *Id.*

<sup>4</sup> Petition, Exhibit B.

<sup>5</sup> Petition, Exhibit C.

slabs and then increased 24 units.”<sup>6</sup> The undisputed evidence shows that RV parks receive a different charge than other customers in the commercial class.

Petitioners are entitled to a decision in their favor as a matter of law because San Patricio has the burden of proving that its rate change is just and reasonable.<sup>7</sup> Staff has served San Patricio with two sets of RFIs, and neither have been answered. San Patricio failed to appear to the duly noticed prehearing conference. San Patricio has presented no evidence justifying its rate change or relating it to the cost of service. San Patricio’s failure to introduce any evidence into the record leaves its burden unfilled and therefore entitles the Ratepayers to a finding, as a matter of law, that San Patricio’s rates are unreasonably preferential, prejudicial, discriminatory and insufficient, inequitable, and inconsistent in application to each class of customers.

**2. If the rates are just and reasonable, are not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of customers, must this appeal be dismissed?**

As stated above, the record indicates that the rates are not just and reasonable.

Consequently, dismissal is inappropriate.

**3. Does the petition appealing the rate change by San Patricio County Mud satisfy the requirements of TWC § 13.043(b), (c), and (d); 16 Texas Administrative Code (TAC) § 24.41(b), (c), and (d); and 16 TAC 24.42(a) and (b)?**

**a. Was the petition filed within 90 days after the effective date of the rate change?**

The record shows that the petition was filed within 90 days of the effective date of the rate change. In a letter to the RV parks dated January 17, 2017, San Patricio notifies the parks that a \$43 charge per pad would go into effect 30 days from the date of the letter.<sup>8</sup> 30 days from January 17, 2017 was February 16, 2017. The “17-Feb” bill, which covered the preceding billing cycle, did not reflect the change while the “17-Mar” bill did.<sup>9</sup> Therefore, the apparent effective date of the rate change was February 16, 2017. May 17, 2017 was the 90th day from the apparent effective

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<sup>6</sup> Response to Ratepayer’s First RFI to San Patricio County Municipal Utility District No. 1 (July 19, 2017).

<sup>7</sup> Tex. Water Code § 13.184(c) (TWC).

<sup>8</sup> See Petition, Exhibit C (“Cost per each pad monthly is \$43.00 . . . RV parks should be in compliance within 30 days from date of this letter).

<sup>9</sup> Petition, Exhibits A & B.

date, and the Petitioners filed their appeal on April 12, 2017, more than 30 days prior to the deadline. The Petitioners are therefore entitled to a ruling in their favor on this issue as a matter of law.

**b. What number of ratepayers had their rates changed?**

The record shows that the rate change affected only two ratepayers.<sup>10</sup>

**c. Did the lesser of 10,000 or 10% of those ratepayers whose rates had been changed and who are eligible to appeal the rate change file valid protests to San Patricio County MUD's rate change?**

As stated above, only two ratepayers were affected by the rate change. The record shows that one ratepayer signed the appeal, meaning 50% of the affected ratepayers filed protest, exceeding the 10% threshold. There is no genuine issue of material fact regarding these jurisdictional issues, and because the petition has met the threshold requirements, Ratepayers are entitled to a ruling that the Commission has jurisdiction as a matter of law.

**4. Considering only the information available to the governing body, what are the just and reasonable rates for San Patricio County MUD that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory?**

**a. What is the appropriate methodology to determine just and reasonable rates for San Patricio County MUD?**

**b. What is the revenue requirement that would give San Patricio County MUD sufficient funds to provide adequate retail water service?**

**c. What is the appropriate allocation of the revenue to customer classes?**

**d. What is the appropriate design of rates for each class to recover San Patricio County MUD's revenue requirement?**

As stated above, San Patricio has the burden of establishing the basis for its rates. San Patricio, to date, has provided no evidence regarding its cost of service or revenue requirement, has not attempted to justify its rate design, has not answered discovery when compelled to do so, and has failed to attend the duly noticed prehearing conference. The record contains no evidence

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<sup>10</sup> Commission Staff's Recommendation on Administrative Completeness, Memorandum of Emily Sears (May 24, 2017).

by which the Commission could establish a revenue requirement for San Patricio, and as such the only course of action would be for the Commission to deny the rate change and set rates at their prior levels.

**5. Should the Commission establish or approve interim rates to be in effect until a final decision is made?**

The record shows that the Commission should set an interim rate. Interim rates may be established when the rate change could (a) result in an unreasonable economic hardship on the utility's customers or (b) is unjust or unreasonable.<sup>11</sup> The record contains evidence supporting the establishment of interim rates under both grounds. Petitioner's charges sextupled between the February 17, 2017 bill and the March 17, 2017 bill.<sup>12</sup> No evidence contradicts the charges reflected in the bills, leaving no genuine issue of material fact. An increase of such size will result in rate shock and impose severe economic hardship on Petitioners. Furthermore, as stated above, the record shows that the rates are unjust and unreasonable. Therefore, Petitioners are entitled to the setting of interim rates as a matter of law.<sup>13</sup>

**6. What are the reasonable expenses incurred by San Patricio County MUD in this proceeding under TWC § 13.043(e)?**

**a. Should the Commission allow recovery of these reasonable expenses?**

**b. If so, what is the appropriate recovery mechanism?**

As stated above, San Patricio bears the burden of proving its expenses. The record contains no evidence of rate case expenses incurred by San Patricio, and therefore, as a matter of law, rate case expenses should be set at zero.

**7. What is the appropriate effective date of the rates fixed by the Commission in this proceeding?**

As stated above, the record shows that the rate change apparently became effective on February 16, 2017. The record contains no other evidence regarding whether a different date would be appropriate. Therefore, the effective date should be set at February 16, 2017.

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<sup>11</sup> 16 TAC § 24.29(d).

<sup>12</sup> Compare Petition, Exhibit A (Total Due \$210.00 for "17-Feb") with Petition, Exhibit B (Total Due \$1,309.00 for "17-Mar").

<sup>13</sup> Staff notes that Petitioner filed a Motion to Set Interim Rates on July 19, 2017 asking that interim rates be set at their pre-change level. Staff supports Petitioner's motion, but does not request a hearing on the motion.

**8. If the Commission establishes rates different from the rates set by San Patricio County MUD, should the Commission order refunds or allow surcharges to recover lost revenues? If so, what is the appropriate amount of the refund or surcharge, and over what time period should the refund or surcharge be in place?**

The Commission should order a refund. As stated above, the record shows the San Patricio's rates are unjust and unreasonable. San Patricio began charging the new rate on Petitioner's March 2017 bill, and has therefore been overcollecting. Upon a final order by the Commission, San Patricio should be ordered to refund the amount collected in minimum per pad connection fees charged between February 16, 2017, and the date of the order setting interim rates. The refund should be distributed over the course of one year.

**9. May San Patricio County MUD restrict the number of connections at Camp Stryker to 10 connections?**

No, San Patricio may not restrict the number of connections at Camp Stryker as a matter of law. Retail public utilities that operate without a Certificate of Convenience and Necessity, like San Patricio, may not discontinue, reduce, or impair retail water service to any ratepayer without Commission approval except in instances of (1) nonpayment of charges, (2) nonuse, or (3) other similar reasons in the usual course of business.<sup>14</sup> San Patricio has neither alleged nonpayment nor nonuse in its decision to limit the number of Petitioner's pad connections. In fact, the record is devoid of any rationale for the decision. Without Commission approval, San Patricio may not impair service to Petitioner by limiting the number of connections, and summary disposition is warranted on this issue.

### **III. CONCLUSION**

For the foregoing reasons, Staff respectfully requests the issuance of an order granting summary disposition on the issues addressed above, denying the rate change, and establishing rates at the prior level.

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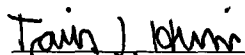
<sup>14</sup> TWC § 13.250(d).

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
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**SOAH DOCKET NO. 473-17-4369.WS  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on August 8, 2017 in accordance with 16 TAC § 22.74.

  
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TJ Harris