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DOCKET NO. 47288

RATEPAYERS' APPEAL OF THE
DECISION BY WEST WISE SPECIAL
UTILITY DISTRICT TO CHANGE
RATES

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PUBLIC UTILITY COMMISSION

OF TEXAS

FILING CLERK

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**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 support thereof, Staff shows the following:

I. BACKGROUND

On June 14, 2017, ratepayers of West Wise Special Utility District (West Wise) filed a petition appealing the change in retail water rates enacted by West Wise effective for the May 1, 2017 billing. The appeal was filed pursuant to Tex. Water Code § 13.043(b) (TAC). On June 18, 2017, the Administrative Law Judge (ALJ) issued Order No. 3, which required Staff to file a recommendation addressing the administrative completeness of the petition, comment on the unopposed motion to set a procedure, and propose a procedural schedule by August 4, 2017. On August 4, 2017, Staff requested an extension of time to file a recommendation by August 8, 2017.

II. RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS

Pursuant to TWC § 13.043(b)(4), ratepayers may appeal the decision of the governing body of a "district or authority created under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution that provides water or sewer service to household users." Under TWC § 13.043(c), ratepayers must initiate their appeal "within 90 days after the effective day of the rate change." The rate change was effective March 16, 2017¹, and the petition was filed on June 14, 2017. Therefore, the ratepayers timely filed the appeal within the required 90-day period.

¹ West Wise's Statement of Review at 25 (Jul. 24, 2017).

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TWC § 13.043(c) additionally requires that 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).” In this case, there are 1,013 ratepayers who were subject to the adjusted rate.² Thus, the petition must have at least 101 signatures to warrant a referral for a hearing. West Wise filed a statement of review of the signatures, and claimed that of the 169 signatures, 72 are invalid, leaving only 97 valid signatures.³

Staff disagrees with West Wise’s position and recommends the ALJ find a total of 133 valid signatures, as supported by the attached memorandum of Jonathan Ramirez of the Commission’s Water Utility Regulation Division. West Wise claims that there are only 97 valid signatures, which would mean that the petition would need at least 4 more valid signatures to meet the jurisdictional threshold. West Wise claims that 72 signatures are invalid for a number of reasons, including: 5 signatures not including a printed name, 7 signatures are illegible, 4 signatures don’t have a complete address, 4 signatures have a missing or insufficient phone number, 7 signatures that only include a printed name and don’t include a signature, 2 signatures have a misspelled name, and 2 signatures only include one signature but two names. However, Staff recommends that 36 of these 72 signatures be counted as valid signatures, resulting in a total number of 133 valid signatures.⁴

Some of the signatures that West Wise claims are invalid for violating 16 TAC § 24.42, which lists the required contents of a petition seeking review of rates pursuant to TWC § 13.043(b), do actually contain all of the information required by that rule. 16 TAC § 24.42(a)(2) requires that each signature have the name, telephone number, and street or rural route address of the ratepayer. West Wise claims that 5 signatures are invalid because there is no printed name next to the signature, that 7 names do not have a signature, and that 2 signatures only contain the signature of one person, but none of these claimed invalidities are actual requirements of 16 TAC § 24.42(a)(2) or TWC § 13.043.

In addition, the ratepayers’ appeal should not be thrown out for mere technical violations of 16 TAC § 24.42 when the appeal substantially complies with the requirements. In *County of Reeves v. TCEQ*, ratepayers filed an appeal of water and wastewater rates passed by an ordinance

² *Id.* at 3.

³ *Id.* at 2.

⁴ *Id.* at 34-35.

of Pecos City pursuant to TWC § 13.043(b).⁵ TCEQ dismissed the appeal because each signature page didn't include a recitation of the old and new rates.⁶ The court held that TCEQ's decision to dismiss the appeal was not supported by substantial evidence.⁷ The court reasoned that dismissing the appeal on the "bare conclusion that the Ratepayers committed a technical violation of rule 291.42⁸, without regard to whether the Ratepayers actually satisfied the statutory conditions to appeal" is "squarely inconsistent with the TCEQ's rules and the underlying statutes that the rules are intended to implement."⁹ The court further reasoned that the legislature only mandated that if more than 10% of the ratepayers signed the petition, then they have the right to appeal, and that "TCEQ's interpretation and application of rule 291.42 has subverted the legislature's intent and deprived the Ratepayers of their statutory rights, and is invalid."¹⁰ In this case, deeming the appeal invalid because some signatures don't meet some of the technical requirements of 16 TAC § 24.42 would be inconsistent with the intent of TWC § 13.043(b).

III. REFERRAL RECOMMENDATION AND PROCEDURAL SCHEDULE

Because the ratepayers' petition meets the threshold established in TWC § 13.043(c) of 10% of ratepayers eligible to appeal, Staff recommends that this proceeding be referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits. Accordingly, Staff does not propose a procedural schedule at this time.

IV. CONCLUSION

For the reasons stated above, Staff respectfully recommends that the petition be found administratively complete and that the petition be referred to SOAH for a hearing on the merits.

⁵ *County of Reeves v. Texas Com'n on Env'tl. Quality*, 266 S.W.3d 516, 520 (Tex. App. —Austin 2008, no pet.)

⁶ *Id.*

⁷ *Id.* at 531.

⁸ Rule 291.42 was TCEQ's rule that specified various required contents of a petition seeking review of rates under TWC § 13.043(b), and is identical in wording to 16 TAC § 24.42, the Commission's rule for contents of petitions seeking review.

⁹ *Id.* at 529.

¹⁰ *Id.*

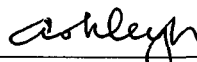
DATED: August 7, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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Managing Attorney

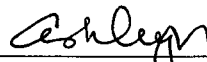


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 7th of August, 2017, in accordance with. 16 TAC § 22.74.



Ashley Nwonuma

Public Utility Commission of Texas

Memorandum

To: Ashley Nwonuma, Attorney
Legal Division

Through: Debi Loockerman, Manager
Water Utility Regulation Division

From: Jonathan Ramirez, Financial Analyst
Water Utility Regulation Division

Date: August 7, 2017

Subject: *47288; Ratepayers' Appeal of the Decision by West Wise Special Utility District to Change Rates*

On June 14, 2017, the ratepayers (Petitioners) of West Wise Special Utility District (WWSUD) filed a petition with the Commission appealing the decision of WWSUD's elected board of directors to change the retail water rates effective for the May 1, 2017 billing.

In response to Commission Staff's requests for information (RFI), WWSUD specified that the total number of affected ratepayers is 1,013. WWSUD also stated that of the 169 signatures on the petition, 72 are invalid signatures, leaving 97 signatures that they feel are valid. WWSUD alleges the signatures are invalid due to the following four primary reasons: 1) the entry is missing required information; 2) the ratepayer or service address is duplicated elsewhere on the petition; 3) the signer was not eligible to appeal; and 4) the signature itself is invalid. If 72 signatures are invalid, the petition does not meet the requirement of Tex. Water Code Ann. § 13.043(c) (TWC); which states, "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). If these signatures are invalid, the petition would only require four (4) more signatures to meet the ten percent requirement.

Staff has reviewed the petition and disagrees with WWSUD's position that 72 signatures of the 169 signatures are invalid. The 72 signatures alleged to be invalid include the following: five signatures do not include a printed name, seven are "illegible" signatures, 20 signatures do not match the signature on file with WWSUD, seven signatures only include a printed name and not a signature, two signatures only include one signature for two names listed, and two signatures included misspellings of the ratepayers' names. Staff does not agree that all these signatures should be considered invalid based on these reasons. Furthermore, Staff believes that 36 of these 72 signatures should be counted as valid signatures, resulting in a total number of valid signatures at 133, thereby meeting the ten percent criteria.

In addition to the required number of signatures, the petition appears to have been filed within 90 days after the effective date of the rate case, which is the second requirement for the petition in TWC § 13.043 (c). Therefore, Staff believes this is a valid petition and recommends that the Commission accept the petition as administratively complete and sufficient for filing.