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PUC DOCKET NO. 47662
SOAH DOCKET NO. 473-18-0847.WS

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PUBLIC UTILITY COMMISSION
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PETITION OF TEXAS PARKS &	§	PUBLIC UTILITY COMMISSION
WILDLIFE DEPARTMENT TO	§	
APPEAL A DECISION BY THE CITY	§	OF TEXAS
OF GOLIAD TO CHANGE WATER	§	
AND SEWER RATES	§	

**CITY OF GOLIAD'S APPEAL OF
ORDER NO. 2**

TO THE HONORABLE COMMISSIONERS OF THE PUBLIC UTILITY COMMISSION:

COMES NOW the City of Goliad, Texas ("City"), and files this, the City's Appeal of Order No. 2 entered by the Administrative Law Judge ("ALJ") in this docket finding the petition to be administratively complete, and would show the following:

I. BACKGROUND

On June 20, 2017, the City Council adopted a new water and wastewater rate ordinance that changed the rates for all ratepayers both within and without the City's corporate limits. This ordinance increased by sixty eight percent (68%) all rates for water and wastewater services. *See* City of Goliad Ordinance No. 6-13-2017-001, attached hereto and incorporated herein for all purposes as Exhibit "A." This increase went into effect on August 15, 2017 billings. *See* Ex. A. On July 25, 2017, the Texas Parks and Wildlife Department ("TPWD") requested the City Council to provide adequate time to adjust to the rate change, and on August 9, 2017, the City Council approved TPWD's request until September 30, 2018.

On September 29, 2017, TPWD filed a petition for review, pursuant to Section 13.043(b)(3), Texas Water Code, as a ratepayer outside the corporate limits of City. On October

24, 2017, the City was contacted by Commission Staff and requested to give ratepayer information which it did on November 2, 2017 by and through this office via email. In that email counsel provided numbers showing that as of September, 2016, there were 105 accounts outside the City and stated that those numbers were still being verified. On November 1, 2017, TPWD filed a pleading with the Commission asserting that its petition represents at least ten percent (10%) of ratepayers outside the corporate limits of the City, and that the Commission has jurisdiction to hear its appeal. The City was not given an opportunity to respond to TPWD's pleading.

On November 2, 2017, Commission Staff, based on the assertions contained in TPWD's filing of the day before, recommended TPWD's petition be found administratively complete and recommended the petition be referred to the State Office of Administrative Hearings ("SOAH") for a hearing on the merits. The City was not given an opportunity to respond to Commission Staff's recommendations. On November 3, 2017, the ALJ entered Order No. 2, which deemed TPWD's petition administratively complete based on an implied finding that over 10% of the eligible ratepayers have signed the petition. This Appeal of ALJ's Order No. 2 is filed timely, within ten (10) days after the issuance of the written order. 16 Tex. Admin. Code § 22.123(a).

II. TOTAL NUMBER OF AFFECTED RATEPAYERS

The total number of all ratepayers whose rates were changed by Ordinance No. 6-13-2017-001, of all tiers and classifications, located outside the City's corporate limits is 100. *See* Kuenstler Aff. Ex. B, ¶ 6, attached hereto and incorporated herein for all purposes as Exhibit "B." This includes the five "Commercial-Outside" ratepayers, eight-nine "Residential-Outside" ratepayers, and six "Government" ratepayers located outside the City's corporate limits. *See Id.*

This fact could have been established had the City been given the opportunity to review and verify the petition and provide the Commission with all of the facts related to its rate action.¹

TPWD asserts that the number of ratepayers whose rates were changed is 7 based on the City's response to an open records request submitted by TPDWD to the City. In responding to this request, City staff contacted the requestor, Becky Justice, who narrowed the requested records to only the "commercial" classification of ratepayers outside the City's limits. *See* Kuenstler Aff. Ex. B, ¶ 4-5. In response, the City submitted documents showing the six commercial ratepayers outside City's corporate limits as documentation showed two ratepayers were the same at the time of the request. *See* Kuenstler Aff. Ex. B, ¶ 5.

III. ARGUMENTS AND AUTHORITY

The Commission should reverse the ALJ's determination that TPWD's petition is administratively complete, and either dismiss the petition for lack of jurisdiction or direct the Administrative Law Judge to allow the City to file a Statement of Review of the petition within 30 days of the Commission's order.

The ALJ's conclusion that the petition satisfies the requirements of 16 TAC §24.42(b) was based on an incomplete set of facts regarding the number of ratepayers whose rates were changed by Ordinance No. 6-13-2017-001. In order for the petition to be valid, the petition must be signed by the lesser of either 10,000 or 10% of those ratepayers.²

¹ For purposes of appeals under Texas Water Code §13.43(b)(3), the City recommends that the Commission use a procedure similar to the procedure set out in 16 TAC §22.244 for review of municipal electric rate actions. Such an approach would allow for the orderly and efficient resolution of disputes over whether sufficient valid petitions have been filed.

² A "ratepayer" is each person receiving a separate bill from a utility provider, regardless of the number of bills they receive. 16 Tex. Admin. Code § 24.3(55). A "rate" includes "every compensation, tariff . . . and classification . . . demanded, observed, charged, or collected . . . by any retail public utility." *Id.* § 24.3(56). Texas courts routinely hold that words are given their plain meaning unless a statute clearly shows they are used in some other sense. *See, e.g., Rodriguez v. Service Lloyds Ins. Co.*, 997 S.W.2d 248, 254 (Tex. 1999). The plain language of these

As explained previously, the Ordinance changed the rates for 100 ratepayers residing outside the corporate limits of the City. TPWD's Petition does not limit the appeal to any particular rate (residential, commercial, or government), nor does it limit the request to any particular service provided by the City's water utility service whose rates have been changed by the Ordinance and are eligible for appeal. Tex. Water Code § 13.043(c)-(d). The true denominator in calculating the threshold for a proper petition is not "7," as alleged by TPWD but should be the total "100" outside ratepayers, including residential, commercial, and government classifications. As such, the Petition submitted by TPWD does not include the signature of 10% of the affected ratepayers and is not administratively complete.

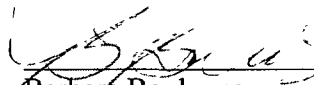
IV. CONCLUSION

The City respectfully requests that the Commission grant the appeal of Order No. 2 and determine that the Commission lacks the jurisdiction to hear TPWD's appeal because the uncontested facts show that petitions were filed by fewer than 10% of the ratepayers whose rates were changed by the Ordinance. Alternatively, the City requests that the Commission direct the ALJ to order the City to provide a Statement of Review of the validity of the petitions (similar to the requirement of 16 TAC §22.244(d)(2)) within 30 days of the Commission's order. The verification of the petition, and the determination of the Commission's jurisdiction is a matter that can be resolved by the Commission and does not need to be referred to SOAH at this time. If the review process identifies actual disputed facts regarding the jurisdictional issue, the Commission can refer those facts to SOAH for resolution.

definitional sections show the total number of ratepayers for a public utility includes all of those classifications within the definition of "rate."

Respectfully submitted,

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Barbara Boulware

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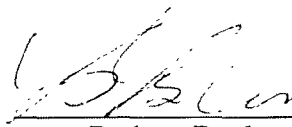
ATTORNEYS FOR CITY OF GOLIAD

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CERTIFICATE OF SERVICE

I certify that a copy of City of Goliad's Appeal of Order No. 2 was served on all parties of record in this proceeding on November 9th, 2017, in the following manner noted.

Texas Parks & Wildlife Department
Attn: James Murphy, Attorney
4200 Smith School Road
Austin, Texas 78744-3291
(512) 389-4482 Facsimile



Barbara Boulware

EXHIBIT A



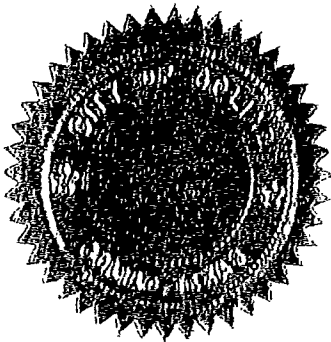
I certify that this is a true copy of Ordinance 6-13-2017-001 passed and approved on June 20th, 2017.

A handwritten signature in black ink that reads "Kandi Hubert". The signature is written in a cursive style with a large, sweeping "K" and a long, trailing "H".

Kandi Hubert

City of Goliad City Secretary

November 7, 2017



ORDINANCE NO. _6-13-2017-001

AN ORDINANCE OF THE CITY OF GOLIAD, TEXAS, MODIFYING UTILITY RATES ESTABLISHED UNDER 13.02.004, WATER AND SEWER RATES; DELINQUENCY; RETURNED CHECKS, GOLIAD CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY, AN OPEN MEETING CLAUSE, AN EFFECTIVE DATE; AND PROVIDING FOR RELATED MATTERS.

WHEREAS, the public health, safety and welfare, require the adoption and enforcement of codes governing the provision of public utilities and services within the City of Goliad, Texas ("City");

WHEREAS, it is necessary to establish fees and charges for the purpose of recovering the costs and expenses of providing utility services to customers of the City;

WHEREAS, although the City has attempted to keep the water and sewer rates the same, costs to upgrade and improve the systems have been necessary and those costs of upgrade and maintenance must be factored into the current rates for both water and sewer;

WHEREAS, the City Council held a public hearing at which the public was given an opportunity to comment on this ordinance and the fees adopted herein; and

WHEREAS, the City Council finds that it is appropriate for the costs and expenses for providing utility services to be funded by user fees collected from persons and entities receiving the benefit of such services;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLIAD, TEXAS, THAT:

Section 1. Findings of Fact. The findings and recitations set out in the preamble of this Ordinance are found to be true and correct, and that they are hereby adopted by the City Council and made a part hereof for all purposes. It is further found that collection of the fees provided herein is necessary to fund water services and provide for the public health and safety.

Section 2. Modifying Utility Rates Established Under Section 13.02.004, Water and Sewer Rates, Goliad Code of Ordinances. Section 13.02.004, Water and Sewer Rates, Goliad Code of Ordinances provides that the City Council shall establish the rates for water and sewage services used by the customers of the water and sewer system of the City. Such Water and Sewer Rates are set forth in Exhibit A, attached hereto and incorporated herein for all purposes.

Section 3. Amendment of Conflicting Ordinances. The above-referenced sections of the Code are hereby amended as provided in this Ordinance. All parts of ordinances in conflict herewith are hereby amended to the extent of such conflict only. To the extent of a conflict between this Ordinance and another ordinance of the City, this Ordinance shall control.

Section 4. Savings Clause. All rights and remedies of the City are expressly saved as to any and all violations of the provisions of any ordinances affecting utilities and utility fees which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 5 Effective Dates. This Ordinance shall be in full force and effect for the new water and sewer rates with bills due August 15, 2017 after final passage and publication in the manner required by the Texas Local Government Code.

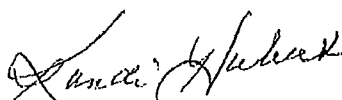
Section 6. Severability. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any section, paragraph, sentence, clause or phrase of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses and phrases of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such invalid section, paragraph, sentence, clause or phrase. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.


Section 7. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551.

PASSED AND APPROVED on this 20 day of June, 2017.

ATTEST:

CITY OF GOLIAD, TEXAS


Kandi Hubert, City Secretary


Trudia Preston, Mayor

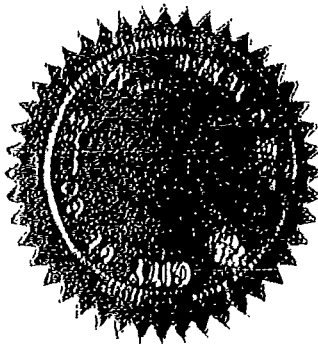


EXHIBIT A

2017-2018 Water and Wastewater Rates

Volume (gallons)	Option 1 with depreciation – 68% increase	Unit
Water – Inside City Limits		
0-1,500	\$17.07	Base Fee - Residential
1,501-3,500	\$5.05	per thousand gallons
3,501-5,500	\$5.47	per thousand gallons
5,501-12,000	\$6.31	per thousand gallons
12,001-15,000	\$7.15	per thousand gallons
15,000 +	\$8.41	per thousand gallons
	\$3.00	Water well assessment fee
Water – Inside City Limits		
0-1,500	25.11	Base Fee - Commercial
1,501-3,500	\$5.05	per thousand gallons
3,501-5,500	\$5.47	per thousand gallons
5,501-12,000	\$6.31	per thousand gallons
12,001-15,000	\$7.15	per thousand gallons
15,000 +	\$8.41	per thousand gallons
	\$3.00	Water well assessment fee
Wastewater – Inside City Limits		
0-1,000	\$16.21	Base Fee – Residential and Commercial
1,001-4,000	\$3.61	per thousand gallons
4,001+	\$3.78	per thousand gallons
Water – Outside City Limits		
0-1,500	\$25.59	Base Fee - Residential
1,501-3,500	\$5.05	per thousand gallons
3,501-5,500	\$5.47	per thousand gallons
5,501-12,000	\$6.31	per thousand gallons
12,001-15,000	\$7.15	per thousand gallons
15,000 +	\$8.41	per thousand gallons
	\$3.00	Water well assessment fee
Water – Outside City Limits		
0-1,500	33.65	Base Fee - Commercial
1,501-3,500	\$7.56	per thousand gallons
3,501-5,500	\$8.20	per thousand gallons
5,501-12,000	\$9.46	per thousand gallons
12,001-15,000	\$10.72	per thousand gallons
15,000 +	\$12.60	per thousand gallons
	\$3.00	Water well assessment fee
Wastewater – Outside City Limits		
0-1,000	\$24.33	Base Fee – Residential and Commercial
1,001-4,000	\$5.41	per thousand gallons
4,001+	\$5.68	per thousand gallons