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

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PETITION OF TEXAS PARKS AND WILDLIFE DEPARTMENT APPEALING A DECISION BY THE CITY OF GOLIAD TO CHANGE WATER AND SEWER RATES	§ § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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STAFF'S RESPONSE TO CITY OF GOLIAD'S APPEAL OF ORDER NO. 2

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) representing the public interest, and files this Response to the City of Goliad's (Goliad) Appeal of Order No. 2, and would show the following:

I. BACKGROUND

This docket arises from a petition by customers residing outside the corporate limits of the municipality of Goliad, in order to review Goliad's decision to increase rates for water and wastewater utility services by 68 percent. The city council of Goliad voted to approve the rate increase at its June 20, 2017 meeting, and that rate increase was effective August 15, 2017.¹ On or about June 29, 2017, Goliad sent the notice of the rate increase. This petition to review the decision by Goliad to change water rates, which was filed with the Commission on October 2, 2017, included one ratepayer signature, Rodney Franklin, on behalf of the Texas Parks and Wildlife Department (TPWD).²

On October 2, 2017, the Commission issued Order No. 1, which directed Staff to file a recommendation on the administrative completeness of the application, and for both TPWD and Staff to submit a proposed procedural schedule. On October 24, 2017, Staff contacted Goliad to obtain more information regarding the appeal, and Goliad responded that it would send the requested ratepayer information. On November 2, 2017, TPWD filed its response to Order No. 1, stating that it was only one out of seven ratepayers that are eligible to appeal under Texas Water Code § 13.043 (TWC), and it had thus satisfied the requirement to obtain the signatures of

¹ *City of Goliad's Appeal of Order No. 2* at 1 (November 9, 2017)(Appeal).

² *Texas Parks and Wildlife Department's Petition to Appeal a Decision by the City of Goliad to Change Water and Sewer Rates* at 2 (October 2, 2017)(Petition).

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at least 10 percent of eligible ratepayers.³ TPWD stated that it had obtained the number of ratepayers through an open records request to Goliad.

On November 2, 2017, Staff filed its recommendation to the Administrative Law Judge (ALJ) that the petition be found administratively complete, based on information filed and received by the Commission. Subsequently, Staff received an email from Goliad stating that the number of ratepayers located outside of Goliad totaled 105 for 2016, and that it was verifying the current number of ratepayers. On November 3, 2017, the Commission issued Order No. 2, finding that the petition was administratively complete.

On November 9, 2017, Goliad filed its appeal to Order No. 2. This response is timely filed, pursuant to 16 Tex. Admin. Code § 22.123(a)(4) (TAC). Goliad's appeal is discussed below, with Staff's response.

II. GOLIAD'S APPEAL

In its appeal, Goliad first requests that the Commission dismiss Docket No. 47662 for lack of jurisdiction, arguing that the petition lacks the requisite number of signatures and that, therefore, the Commission's appellate jurisdiction has not attached to the petition.⁴

TWC § 13.043(c) states:

“An appeal under Subsection (b) 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 or, if appealing under Subdivision (b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. 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).”

Goliad provides in its appeal that there are currently 100 ratepayers residing outside of the corporate limits of the municipality.⁵ Because only one ratepayer, TPWD, signed the petition, out of a total of 100 ratepayers who were eligible to appeal, TPWD failed to satisfy the requirements imposed by statute. Thus, Goliad argues that the Commission does not have jurisdiction over this petition.

³ *Texas Parks and Wildlife Response to Order No. 1* at 2 (November 2, 2017)(TPWD Response).

⁴ *Goliad's Appeal* at 3-4.

⁵ *Id.* at 2-3.

Alternatively, Goliad requested the Commission to issue an order directing Goliad to provide a statement of review similar to the procedure described in TAC § 22.244(d)(2), which allows for a verification of signatures for a petition for municipal electric rate actions.

III. STAFF'S RESPONSE

On its face and based upon the documentation filed by TPWD on November 2, 2017, TPWD's petition is administratively complete. Goliad never responded to Order No. 1 and raises factual disputes regarding the Commission's jurisdiction now for the first time on appeal. Staff recommends that Goliad's appeal is improper, and raises factual and legal disputes that are properly addressed as ultimate issues, rather than under an administrative completeness standard.⁶

Staff agrees with Goliad's rendition of the law, however, there is a factual and legal dispute regarding the number of customers outside the City whose rates have been changed. A review for administrative completeness only requires that the appeal contain sufficient information for the processing of the case; it does not make any assertion regarding the validity or accuracy of any allegation made in a petition. Because this case has already been referred to SOAH, Staff recommends that the contested issue of whether TPWD has satisfied the jurisdictional requirements of appeal should be addressed by the SOAH ALJ, either through a summary disposition process or through the final hearing process.

IV. CONCLUSION

For the reasons described above, Staff respectfully requests that the Commission deny Goliad's appeal of the ALJ's Order No. 2, *Deeming Application Administratively Complete*; inform Goliad that the proper procedure for litigating ultimate issues to be addressed is through either a summary decision process or through a final hearing process; and instruct parties to refer to the Commission's rules for further guidance in the hearing process.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
Legal Division

A handwritten signature in black ink, reading "Rachelle N. Robles". The signature is written in a cursive style and is positioned above a horizontal line.

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⁶ 16 TAC 24.8 (limiting an administrative completeness finding to whether there are “deficiencies in the application”).

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CERTIFICATE OF SERVICE

I, Rachelle N. Robles, staff attorney for the Public Utility Commission of Texas, certify that a copy of this document was served on all parties of record on November 16, 2017, in accordance with the requirements of 16 Tex. Admin. Code § 22.74.



Rachelle N. Robles