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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 & §
WILDLIFE DEPARTMENT TO §
APPEAL A DECISION BY THE CITY §
OF GOLIAD TO CHANGE WATER §
AND SEWER RATES §

PUBLIC UTILITY COMMISSION
OF TEXAS

**CITY OF GOLIAD'S REPLY TO
COMMISSION STAFF'S RESPONSE TO
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 Reply to Commission Staff's Response to the City's Appeal of Order No. 2, and would show the following:

I. BACKGROUND

On October 2, 2017, the Commission issued order No. 1, which directed Texas Parks and Wildlife Department ("TPWD") and Commission Staff to submit a proposed procedural schedule, and file comments on how this petition should be processed. In this order, the Commission also directed all parties to submit contact information. In Order No. 1 there was no requirement for the City to file any pleadings on how this docket should proceed, including whether jurisdiction was proper. The City fully responded to Order No. 1 on October 17, 2017, when it provided its current address, telephone and facsimile numbers to the Commission and TPWD.

On November 1, 2017, TPWD filed a pleading with the Commission asserting its petition represents at least ten percent (10%) of ratepayers outside the corporate limits of the City. On

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November 2, 2017, Commission Staff, based solely on the allegations in TPWD's pleading, recommended TPWD's petition be found administratively complete. On November 3, 2017, the ALJ entered Order No. 2. In Order No. 2, the ALJ deemed TPWD's petition administratively complete based on the implied finding that over 10% of the eligible ratepayers have signed TPWD's petition.

On November 9, 2017, the City timely filed its appeal of Order No. 2. In that appeal, the City showed the Commission does not have jurisdiction to hear this petition. TPWD did not obtain the signatures of 10% of the affected ratepayers eligible to appeal the City's rate change pursuant to Tex. Water Code § 13.043(c) and (d). This was the first opportunity for the City to address any of the factual assertions contained in TPWD's petition, TPWD's response to Order No. 1, and Commission Staff's recommendation of administrative completeness. On November 16, 2017, Commission Staff filed a response to the City's appeal of Order No. 2. This reply is timely filed, pursuant to 16 TAC § 22.78. Commission Staff's response is discussed below, with the City's reply.

II. COMMISSION STAFF'S RESPONSE

In its response, Commission Staff alleges that, on its face, TPWD's petition is administratively complete. Staff asserts, since the City never responded to Order No. 1, that the factual and legal disputes are improperly raised for the first time on appeal. Staff claims these factual and legal disputes should be addressed as ultimate issues and are not proper under an administrative completeness standard. Staff further states that the review for administrative completeness does not make any assertion regarding the validity or accuracy of any allegation made in the petition. The Staff recommends the issue of whether TPWD has satisfied the jurisdictional requirements be addressed by the SOAH ALJ.

III. CITY OF GOLIAD'S REPLY

First, the City fully responded to Order No. 1 on October 17, 2017, when the City provided its current address, and telephone and facsimile numbers to the Commission and TPWD. The City was not directed to file any statement of how the case should proceed.

Second, the City's Appeal of Order No. 2 was the first opportunity for the City to respond to the alleged factual assertions in the previous pleadings. In its response to Order No. 1, TPWD made factual assertions regarding the validity of its petition based upon a highly subjective open records request. Rather than encourage a formal jurisdictional response on the part of the City, Commission Staff agreed with TPWD on its jurisdictional claim, and Order No. 2 deemed TPWD petition administratively complete pursuant to the Commission Staff's recommendation. The City was not given any formal opportunity to respond to or rebut any jurisdictional assertions in TPWD's pleading before Commission Staff recommended TPWD's petition be found administratively complete on November 2, 2017. The City was yet again not given any formal opportunity to respond to or rebut any jurisdictional assertion in the Commission Staff's recommendation before the ALJ entered Order No. 2 on November 3, 2017. The City was not offered an opportunity to respond to any of TPWD's alleged factual assertions, particularly in regards to jurisdiction, before the Commission filed Order No. 2.

Last, while the City agrees with Commission Staff that a review for administrative completeness only requires the petition contain sufficient information, the Commission Staff did make an assertion regarding the accuracy of TPWD's allegations. Commission Staff's recommendation of administrative completeness stated TPWD's petition met the requirements of Tex. Water Code § 13.043(c) and (d). Commission Staff asserted they "confirmed that the

petition includes the information required,”¹ including that the petition was filed by 10% of the affected ratepayers. The Commission relied on this confirmation in filing Order No. 2. Further, the Commission’s Order of Referral of this docket to SOAH contains a finding that “over 10% of the eligible ratepayers have signed the petition . . . in this proceeding.”² The “determination of administrative completeness” in Order No. 2, and the “finding” in the Referral that “over 10% of eligible ratepayers have signed [TPWD’s] petition,” are both based upon an incomplete set of facts and erroneous assertions which can be corrected by the Commission prior to being referred to SOAH. As noted in the City’s Appeal, had a process similar to the procedure set out in 16 TAC §22.244(d) (used for review of municipal electric rate cases) been followed, the City would have been afforded the formal opportunity to respond to the threshold jurisdictional step by filing a Statement of Review. Such orderly process would likely have prevented the needless time and effort of this appeal, together with the referral to SOAH with a requirement for them to take the matter up and determine whether jurisdiction is proper.

III. CONCLUSION

For the reasons described above, the City respectfully requests the Commission grant the City’s appeal of Order No. 2. The City requests the Commission determine it lacks jurisdiction to hear TPWD’s appeal because the petition was filed by fewer than 10% of the affected and eligible ratepayers. The City continues to assert that the determination of the Commission’s

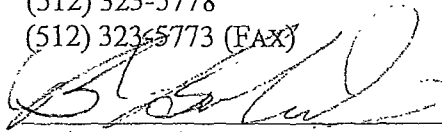
¹ *Commission Staff’s Administrative Completeness Recommendation* at 1-2 (November 2, 2017) (Recommendation).

² *Public Utility Commission’s Amended Order of Referral* at 1 (November 8, 2017) (Referral).

jurisdiction is a matter that can be resolved by the Commission and does not need to be referred to SOAH.

Respectfully submitted,

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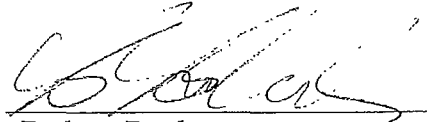
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CERTIFICATE OF SERVICE

I certify that a copy of City of Goliad's Reply to Commission Staff's Response to City of Goliad's Appeal of Order No. 2 was served on all parties of record in this proceeding on November 21, 2017, in the following manner noted.

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Barbara Boulware