



Control Number: 49154



Item Number: 10

Addendum StartPage: 0

**FIRST AMENDED PETITION FOR RATE REVIEW OF 89% INCREASE IN RATE FOR  
IRRIGATION RAW WATER (UNTREATED WATER) ESTABLISHED BY BOARD OF  
DIRECTORS OF LAGUNA MADRE WATER DISTRICT (105 PORT ROAD, PORT  
ISABEL, TX 78578)**

2019 MAR -8 AM 9:28  
PUBLIC UTILITY COMMISSION  
CLERK

Pursuant to Texas Water Code §12.013, Chapters 11 and 12 of the Texas Water Code, and Public Utility Commission's Substantive Rules, South Padre Island Golf Course via the undersigned SPI Golf Homeowners JV, Inc., ratepayers ("Petitioner" or "Ratepayer") of Laguna Madre Water District ("LMWD"), hereby files this petition for a review of the decisions of the Board of Directors of LMWD affecting the irrigation raw water (untreated water) rates (hereinafter "rate") charged to them by LMWD.

**I. Background**

1.1. Upon information and belief, Petitioner is one (1) of only two (2) ratepayers who purchase raw water from LMWD.

1.2. In November 2017, the LMWD established a rate of \$0.55 per 1000 gallons for Petitioner as a result of LMWD Director Houston advocating for the rate. See *Exhibit A, Video excerpt of 10/25/17 LMWD Board Meeting*.

1.3. In February 2018, at a meeting attended by Petitioner and the Board of Trustees of five homeowners' associations, LMWD Director Houston said that he would increase Petitioner's rate if the South Padre Island Golf Course was conveyed to a homeowners' association in a manner that he did not approve. Subsequently, the South Padre Island Golf Course was not transferred. However, upon being informed that there was no conveyance, LMWD Director Houston told the President of SPI Golf Homeowners JV, Inc. that the reason the rate was increased to \$0.80 effective April 1, 2018 was because the President of SPI Golf Homeowners JV, Inc. had, "been an ass."

1.4. In November 2018, the LMWD increased the rate yet again to \$1.04 per 1000 gallons.

1.5. A calculation of the raw water bills from 4/10/17 through 1/10/18 is attached hereto as Exhibit B with copies of all raw water invoices to Petitioner for services from 4/10/17 through 1/10/19. Petitioner never received notice of any rate changes from LMWD.

## **II. Petition for Review**

2.1. It has become apparent to Petitioner that the LMWD and/or its Directors have engaged in fraudulent, unfair, oppressive, self-dealing, and unjust practices when dealing with Petitioner. Pursuant to §12.013 of the Texas Water Code, Petitioner hereby seeks a review by the Public Utility Commission of the April 2018 rate increase to \$0.80 per 1000 gallons as it is unreasonable and not based on any reasonable basis for fixing rates. Further, the rates charged to Petitioner by LMWD have historically been unreasonable, unfair, unjust, oppressive, and have been set as such in a targeted effort to harm or punish Petitioner.

2.2. Petitioner requests that the Public Utility Commission establish interim rates and compel continuing service during the pendency of this rate proceeding pursuant to §12.013(e).

## **III. Threat of Denial of Water**

3.1. In an about October 2018, the LMWD Board Meeting convened to discuss an irrigation water contract negotiation with Petitioner. LMWD Director Houston emerged from an Executive Session of the Board of LMWD with its attorney Eddie Lucio

III. Director Houston threatened the existence of the South Padre Island Golf Course by questioning whether the LMWD had to sell irrigation water to it at all.

3.2. Texas Water Code §11.036 provides that an irrigation district having in possession and control any conserved or stored water may contract to supply the water to any person, association, or corporation. It further provides that the price and terms of the contract shall be just and reasonable and without discrimination, and the contract is subject to the same revision and control as provided in the Texas Water Code for other water rates and charges.

3.3. Texas Water Code §11.041 provides for a complaint in the event of a denial of water or the demand of a price or rental for the available water that is not reasonable and just, or is discriminatory.

3.4. LMWD and/or its Directors have repeatedly established unreasonable and excessive rates for Petitioner, therefore providing inadequate service to Petitioner, and now they threaten to refuse to provide water to Petitioner.

#### **IV. LMWD Violation of Texas Open Meetings Law**

4.1. On January 10, 2019, LMWD Director Houston asked LMWD Board attorney, Eddie Lucio III, for his resignation, citing the fact that a majority of the LMWD Board allegedly sought his removal because he had “not been tough enough” on Petitioner. At the time of the conversation, the LMWD had never convened an official meeting to discuss an agenda item related to Mr. Lucio’s services. If LMWD Director Houston’s own words are to be believed, he – and the “majority” of the LMWD Board he spoke for – acted unlawfully in violation of the Texas Open Meetings Act. See Texas Government Code §551.143.

4.2. The above described behavior is further evidence that LMWD and/or its Directors have engaged in fraudulent, unfair, oppressive, and unjust practices when dealing with Petitioner.

## **V. Conflict of Interest**

5.1. LMWD Director Houston is a land developer. His wife is the mayor of Laguna Vista, Texas, where South Padre Island Gold Course is located. LMWD Director Houston has obvious potential conflicts of interest when it comes to dealing fairly with Petitioner. Petitioner cannot be certain of what has motivated LMWD Director Houston to act in the way that he has, but it is clear that LMWD has not treated Petitioner in a fair or just manner as required by law.

## **VI. Damages**

6.1. LMWD has negatively affected the property values of the South Padre Island Golf Club and of SPI Golf Homeowners JV, Inc. The past and future damage to the properties in question are estimated to be in the tens of millions of dollars.

6.2. Petitioner seeks a refund from the date of this petition for rate review once the rate is fixed by the Public Utility Commission, plus interest at the statutory rate, pursuant to §12.013(f).

## **VII. Review by TCEQ**

7.1. By agreement dated March 1, 1996, the reasonable cost for the raw irrigation water in question was determined by good faith contractual negotiations. As part of this agreement, LMWD calculated the cost/price to be \$0.31 per 1000 gallons. *See Exhibit C, Laguna Madre Water District Calculation of Raw Water Rate February 1996.*

7.2. Petitioner has used LMWD's method of calculation using current data. See *Exhibit D, Calculation of Raw Water Rate Based on LMWD Method as of 12/31/18*.

7.3. Petitioner has used LMWD's method of calculation using current data, without depreciation or with reinvestment equal to depreciation. See *Exhibit E, Calculation of Raw Water Rate Based on LMWD Method as of 12/31/18*.

7.4. Petitioner has made calculations that show a cost of \$750,000 or more to LMWD if raw water is denied to Petitioner. See *Exhibit F, Calculations of Future Cost to LMWD through 2022*. See also *Exhibit G, Calculations of Increase in Revenue Requirements to Justify Rate Increase*.

7.5. Petitioner requests that the Texas Commission on Environmental Quality review the decisions by the LMWD Board to determine if the rates established are just and reasonable. The initial rate it was charged was \$0.55 per 1000 gallons, and it has increased to \$1.04 per 1000 gallons in the span of one (1) year.

#### **VIII. Designation of Counsel**

8.1. The undersigned designate the law firm of **Royston, Rayzor, Vickery & Williams, LLP** as their representative in this matter. Correspondence to Petitioner's representative may be directed to attorneys James H. Hunter, Jr. and Liliana Elizondo, **Royston, Rayzor, Vickery & Williams, LLP**, 55 Cove Circle, Brownsville, Texas 78521, (956) 542-4377.

#### **IX. Prayer**

9.1. Petitioner prays that this Commission find that the rates charged to Petitioner by LMWD are unfair, unjust, unreasonable, and illegal. Petitioner further prays that this Commission establish just and reasonable rates for Petitioner to

purchase irrigation raw water (untreated water), in accordance with applicable laws and principles of equity and fairness. Petitioner seeks damages, a refund in the difference of the rate as of the date of this petition and the rate set by the Commission, plus interest. Petitioner requests such other and further relief, at law or in equity, to which it may show itself justly entitled.

**ROYSTON, RAYZOR, VICKERY & WILLIAMS, L.L.P.**

By: /s/ Liliana Elizondo  
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**ATTORNEYS FOR PETITIONER**

**Certificate of Service**

I hereby certify, that a true and correct copy of the above and foregoing document was served via facsimile, certified mail/regular U.S. first class mail, and/or e-mail upon the following counsel of record on this the 7<sup>th</sup> day of March 2019.

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