



Control Number: 49154



Item Number: 14

Addendum StartPage: 0

DOCKET NO. 49154

RECEIVED

RATEPAYERS' APPEAL OF THE
DECISION BY LAGUNA MADRE
WATER DISTRICT TO CHANGE
RATES

§
§
§
§

PUBLIC UTILITIES COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

**LAGUNA MADRE WATER DISTRICT'S RESPONSE TO SOUTH PADRE
ISLAND GOLF COURSE VIA SPI GOLF HOMEOWNERS JV, INC.
FIRST AMENDED PETITION APPEALING RAW WATER RATE**

COMES NOW, Laguna Madre Water District ("*District*") and files this Response to South Padre Island Golf Course via SPI Golf Homeowners JV, Inc. (hereinafter "*Ratepayers*") pursuant to Order No. 3 Requiring Responses and Addressing other Procedural Matters.

1. In response to District's arguments and the Commission Staff's recommendation to dismiss its appeal, Ratepayers abandoned their appeal under Chapter 13 of the Texas Water Code and now appeal under Chapters 11 and 12 by revising their petition and including a complaint under the Open Meetings Act found in the Texas Government Code. The Commission lacks jurisdiction under Chapters 11 and 12 and has no jurisdiction to address allegations of Open Meetings Act violations. As such, the Amended Petition should be dismissed.

I. Procedural History

2. On January 28, 2019, Ratepayers filed their petition appealing the District's raw water rate. On February 27, 2019, District filed Laguna Madre Water District's Response to Ratepayer's Petition to Appeal. On March 6, 2019, Commission Staff's Recommendation and Motion to Dismiss was filed. On March 8, 2019, Ratepayers filed their First Amended Petition challenging the District's raw water rate.

II. Chapter 12 of the Texas Water Code Does Not Provide Jurisdiction

3. Jurisdiction under Chapter 12 is addressed by the Commission Staff in Footnote 7 of Commission Staff's Recommendation and Motion to Dismiss:

Chapter 12 provides the Commission with jurisdiction to set reasonable rates concerning certain sales of untreated water. TWC § 12.013(a). However, the Commission's jurisdiction under §12.013 is specifically limited to water furnished "to another political subdivision on a wholesale basis." Id. SPI cannot argue that it qualifies as a political subdivision of the state, and it therefore cannot avail itself of the jurisdiction provided by § 12.013. See, e.g., Tex. Gov't Code Ann § 305.026(b) (West, Westlaw current through 2017 1st C.S.) ("In this section, 'political subdivision' includes: a municipality; a county; and a special district created under the constitution or laws of this state...").

4. District agrees with this argument set forth by the Commission Staff and concurs that the Commission lacks jurisdiction under Chapter 12 and requests the First Amended Petition be dismissed accordingly.

III. Chapter 11 of the Texas Water Code Does Not Provide Jurisdiction

5. Ratepayers seek relief under §§ 11.036 and 11.041 of the Texas Water Code, however the Commission does not have jurisdiction under these provisions.

6. First, §§ 11.036 and 11.041 confer jurisdiction to the TCEQ, not the PUC. "Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present **to the commission** a written petition showing that he is entitled to receive or use the water." Tex. Water Code Ann. § 11.041(a)(1) (West) (emphasis added). "Commission" means the Texas Commission on Environmental Quality. Tex. Water Code Ann. § 11.002(1) (West). While "Utility Commission" means the Public Utility Commission of Texas. Tex. Water Code Ann. § 11.002(21) (West). Even if Ratepayers could show they are entitled to receive or use the water, which they have not, this chapter provides jurisdiction only to the TCEQ and not the PUC.

7. Second, § 11.036 applies only to a "person, association of persons, corporation, or water improvement or irrigation district" which has possession and control of "storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter..." Tex. Water Code Ann. § 11.036 (West). "Conserved water" is defined as that amount of water saved by a

holder of an existing permit, certified filing, or certificate of adjudication through practices, techniques, and technologies that would otherwise be irretrievably lost to all consumptive beneficial uses arising from storage, transportation, distribution, or application. Tex. Water Code Ann. § 11.002(9) (West). The water supplied by the District is not storm water, floodwater, or rainwater, and is not “conserved water” as defined by this statute. Rather the raw water supplied to Ratepayers is water pumped directly by the District from the Rio Grande River.

8. Further, § 11.036 is permissive, but does not require such an entity to enter into a contract to supply such water. A person, association of persons, corporation, or water improvement or irrigation district having in possession and control any storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter **may** contract to supply the water. Tex. Water Code Ann. § 11.036 (West) (emphasis added). As such, Ratepayers have failed to show they are entitled to the raw water supplied by the District.

9. The District respectfully requests this Commission dismiss Ratepayer’s request for an appeal under Chapter 11 of the Texas Water code.

IV. Open Meetings Act Complaint

10. Ratepayers complain of alleged Open Meetings Act violations, but cite no authority granting the Public Utility Commission jurisdiction under Texas Government Code § 551.143 to address such a complaint. The Commission has no jurisdiction to enforce the Open Meetings Act, and as such the District respectfully requests the Commission dismiss Ratepayer’s complaint under Texas Government Code § 551.143.

V. Conclusion

Ratepayers Original Petition failed because it was filed pursuant to Chapter 13 of the Water Code which only applies to potable and sewer water and as such, did not confer jurisdiction to the Commission. In its Amended Petition Ratepayers drop their Chapter 13 appeal and attempt to

appeal under Chapters 11 and 12. However, Ratepayer's Chapter 12 argument fails because Ratepayers do not qualify as a political subdivision of the state. Ratepayer's Chapter 11 argument fails because Chapter 11 only confers jurisdiction to the TCEQ and not the PUC, and even if the Commission had jurisdiction, the water supplied to Ratepayers is not "conserved water." Finally, the Commission does not have jurisdiction to hear complaints of Open Meetings Act violations.

WHEREFORE, PREMISES CONSIDERED, District prays and respectfully requests the Commission dismiss Ratepayer's 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) in its entirety.

Respectfully Submitted,

FRYER & HANSEN, PLLC

1352 West Pecan Boulevard

McAllen, Texas 78501

Telephone: (956) 686-6606

Facsimile: (956) 686-6601

Email: Email@fryerandhansen.com

By: 

Brian J. Hansen

State Bar No. 24072139

Richard W. Fryer

State Bar No. 24085316

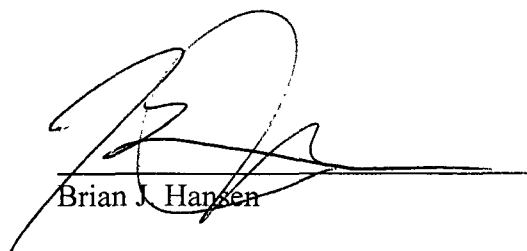
**ATTORNEYS FOR LAGUNA MADRE
WATER DISTRICT**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing **Laguna Madre Water District's Response to South Padre Island Golf Course via SPI Golf Homeowners JV, Inc. First Amended Petition Appealing Raw Water Rate** has been served on the 5th day of April 2019 to the following in the manner indicated:

Via U. S. Postal Service

Liliana Elizondo
James H. Hunter, Jr.
Royston, Rayzor, Vickery & Williams, LLP
55 Cove Circle
Brownsville, Texas 78521
Counsel for South Padre Island Golf Course



Brian J. Hansen