



Control Number: 49225



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PETITION BY OUTSIDE CITY
 RATEPAYERS APPEALING THE
 WATER AND WASTEWATER RATES
 ESTABLISHED BY THE CITY OF
 CELINA

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BEFORE THE
 PUBLIC UTILITY COMMISSION
 OF TEXAS

**PETITIONERS' RESPONSE TO CITY OF CELINA'S
NOTICE OF CORRECTED EFFECTIVE DATE**

COME NOW, Petitioners who file this Response to the City of Celina's ("City") Notice of Corrected Effective Date ("Response") and will respectfully show the following:

I. BACKGROUND

On November 13, 2018, the City Council adopted City Ordinance 2018-66 increasing water and wastewater rates for Petitioners. These rates went into effect on January 1, 2019. On February 14, 2019, Petitioners filed their Original Petition and an Amended Petition on March 15, 2019, which stated that the effective date of the City's new rate was January 1, 2019. The City began charging Petitioners the rates effective January 1, 2019. On April 5, 2019, the City filed a Notice of Corrected Effective Date of the rates subject of Ordinance 2018-66. In its Notice of Corrected Effective Date, the City stated that the rates attached to Ordinance 2018-66 were in error because the columns were "off by one year each."¹ The City also stated that the notices and published rate schedules "reflected the correct rates."² This Response is timely filed.

II. RESPONSE

In its Notice of Corrected Effective Date, the City stated that the rates listed in the columns of the attachment to the City's rate ordinance, Ordinance 2018-66 were "off" by one column.³ However, the notice of rates that the City (1) published in the local newspaper, the *Celina Record*, (2) posted on the City's website, and (3) mailed via postcard to the Petitioners "reflected the correct

¹ City of Celina Notice of Corrected Effective Date at 1 (April 5, 2019).

² *Id.*

³ *Id.*

rates.”⁴ In other words, the City provided the correct information about the City’s rate increase to the Petitioners. Petitioners properly based their February 14, 2019 Original Petition and March 15, 2019 First Amended Petition on the information that the City provided to the Petitioners regarding the rates.

Now that the City has identified its column error on the attachment to the original rate ordinance, the City has re-adopted Ordinance 2019-8, which is the same ordinance as Ordinance 2018-66.⁵ According to the Notice of Corrected Effective Date, the City intends to publish a new notice and refund the additional revenue that the City collected under the new rates since the original effective date.⁶ The City argued that the corrected rate notice would trigger a new effective date of March 19, 2019.⁷

On March 18, 2019, the City acknowledged that the Petition met the 10% threshold required in TWC § 13.043 (c).⁸ The Petitioners properly and timely appealed the higher rates within ninety (90) days of the original effective date of January 1, 2019. The City cannot now claim that by readopting the same ordinance with its corrected formatting, the City has somehow negated or made moot the Petition, or somehow made the Petition no longer “ripe” for appeal, because the customer signatures were acquired and Petition filed before the “new” effective date of the re-adopted ordinance.

Last year, Chairman Walker addressed the issue of whether petitioners must refile a petition due to a new effective date in Docket No. 47897. In that case, the utility also had an issue with its proposed rate filing, and the Chairman proposed requiring a new effective date for the utility’s rates.⁹ However, in its Preliminary Order, the Commission did **NOT** require the

⁴ *Id.*

⁵ *Id.* at 2.

⁶ *Id.*

⁷ *Id.*

⁸ *See* City of Celina’s Response to Commission Staff’s First Request for Information, l-1(b) (Mar. 18, 2019) (The City acknowledges that, “the ten percent threshold appears to have been met.”).

⁹ *Application of Forest Glen Utility Company for Authority to Change Rates*, Docket No. 47897, Memo from Chairman Walker (May 24, 2018).

petitioners to refile their petition appealing the proposed rates.¹⁰ For the purpose of determining whether a sufficient number of petitioners opposed the rates, the Commission used the protests filed **BEFORE** the revised effective date. Otherwise, the appellants did not have a sufficient number of signatures to proceed with their rate appeal.

The Chairman's position on this matter makes perfect sense from a policy perspective. If a new effective date were allowed to negate the appeal of rate protestants, then utilities could simply adopt new effective dates in an effort to dismiss the rate appeals. If appellants managed to obtain the sufficient number of signatures a second time, then the utility could intentionally continue to adopt new effective dates until such time as the utility exhausted the efforts of the appellants.

Petitioners should not have the undue burden of reacquiring the required number of signatures or refiling the appeal due to the City's admitted formatting error. When obtaining the signatures and filing this appeal, Petitioners were aware of the City's new rates, as the City had already adopted and noticed those rates once before.

III. PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully pray that the Commission:

1. Declare the Amended Petition complete and effective for the determination of whether Petitioners met the statutory and regulatory requirements of TWC § 13.043(c) and 16 TAC §§ 24.101-24.103;
2. Refer this Appeal to SOAH for a contested case proceeding under TWC § 13.043(b) and require the City to show through a cost of service study that its rates are just and reasonable and based upon the City's actual cost of providing service, in compliance with the Texas Water Code and the Commission Rules;

¹⁰ *Application of Forest Glen Utility Company for Authority to Change Rates*, Docket No. 47897, Preliminary Order (Jun 14, 2018).

3. Set interim rates at the same rates that were in effect prior to the effective date of the City's rates adopted pursuant to City of Celina Ordinance 2018-66 on November 13, 2018, until such time as the Commission makes a final decision on this appeal;
4. Enter an Order vacating the City of Celina's unjust, unreasonable, prejudicial, preferential, and discriminatory water and wastewater rates as those rates apply to Petitioners; and,
5. Grant such other and further relief as the Petitioners may show themselves to be entitled.

Respectfully submitted,

Randall B. Wilburn
State Bar No. 24033342
Helen Gilbert
State Bar No. 00786263
GILBERT WILBURN PLLC
7000 North MoPac Blvd., Suite 200
Austin, Texas 78731
Telephone: (512) 535-1661
Telecopier: (512) 535-1678

By: _____

Randall B. Wilburn

COUNSEL FOR PETITIONERS

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested on all parties on the 12th day of April 2019.

Randall B. Wilburn