



Control Number: 49351



Item Number: 127

Addendum StartPage: 0

RECEIVED
SOAH DOCKET NO. 473-19-5674.WS

DOCKET NO. 49351021 MAR -5 PM 3:27

RATEPAYERS' APPEAL OF THE § BEFORE THE STATE OFFICE
DECISION BY BEAR CREEK SPECIAL § FILING CLERK
UTILITY DISTRICT TO CHANGE § OF
RATES §
§ ADMINISTRATIVE HEARINGS

RATEPAYERS' POST-HEARING BRIEF

COMES NOW, the Ratepayers' Co-Representative of the Bear Creek Special Utility District ("Ratepayers") and files this, their *Post Hearing Brief* to the Trial proceedings held on January 28, 2021. Pursuant to the *SOAH Order No. 12 Post-Hearing Briefing Schedule; Guidelines* filed on February 8, 2021, the Initial Post Hearing Briefs were scheduled to be due on March 5, 2021. As such, Ratepayers' brief is timely filed.

Respectfully submitted,

Deborah G. Fato

Deborah G. Fato
In her individual capacity as
Petition Co-Representative and Ratepayer
1007 Hilltop Drive
Lavon, Texas 75166
(310) 569-0940 cell
deb.fato@gmail.com

127

**SOAH DOCKET NO. 473-19-5674.WS
DOCKET NO. 49351**

CERTIFICATE OF SERVICE

I 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 to all parties on this the 5th day of March, 2021.

Deborah G. Fato

**SOAH DOCKET NO. 473-19-5674.WS
DOCKET NO. 49351**

RATEPAYERS' POST HEARING BRIEF

1) INTRODUCTION

Ratepayers brought this action in an effort to contest the unjust increase of the monthly service fee from \$25.00 to \$35.00. The \$10.00 increase is unjust, unfair, excessive, and should be reduced.

2) VALIDITY OF THE PETITION (Uncontested Issue)

a) Protests

Ratepayers contend the Petition is valid and this issue is uncontested. No protests.

b) Effective Date of Rate Change

Ratepayers confirm the Effective Date of the Rate Change was December 18, 2018.

3) INTERIM RATES (Uncontested Issue)

Ratepayers have no further discussion to the Uncontested Issue of Interim Rates.

4) JUST AND REASONABLE RATES (Contested Issue)

a) Requirements of 13.043(j)

b) Information Available to Bear Creek at time of Rate Change

Ratepayers contend that at the time Bear Creek SUD approved the Rate Change in October of 2018, it did not base the \$10 increase in the Service Fee (from \$25.00 to \$35.00) on any substantive information to support that increased amount. The SUD did not do a rate study. Instead, the SUD simply relied on the suggestion of Drew Satterwhite, General Manager of the Greater Texoma Utility Authority, that a \$10

increase was appropriate.¹ Ratepayers contend it was not appropriate, just, or reasonable, and is in fact excessive.

Ratepayers are in complete agreement with the Testimony of Debi Loockerman, and her analysis which appears on Table 2, on page 11 of 18 of testimony², which identifies a reasonable rate increase to \$29.00 rather than the \$35.00 amount charged.

c) Revenue Requirement

Ratepayers were unable to afford the engagement of experts or counsel in these Petition proceedings to be able to offer any knowledgeable testimony as to the Revenue Requirement of the SUD. As such, Ratepayers are aligned with and in agreement with the PUC Staff Attorney's and Experts' testimony offered at the Trial proceedings.

i) Debt Service Coverage

Ratepayers were unable to afford the engagement of experts or counsel in these Petition proceedings to be able to offer any knowledgeable testimony as to the Debt Service Coverage of the SUD. As such, Ratepayers are aligned with and in agreement with the PUC Staff Attorney's and Experts' testimony offered at the Trial proceedings.

d) Rate Design & Allocation

Ratepayers were unable to afford the engagement of experts or counsel in these Petition proceedings to be able to offer any knowledgeable testimony as to the Rate Design and Allocation of the SUD. As such, Ratepayers are aligned with and in agreement with the PUC Staff Attorney's and Experts' testimony offered at the Trial proceedings.

¹ Trial Transcript, Page 70, Lines 21-24.

² (Deb to insert Debi Loockerman Testimony cite)

e) Refund or Surcharges

Ratepayers are in agreement with the *Direct Testimony of Debi Loockerman*, particularly her recommended refund of \$6.00 per ¾” meter customer for the overcharge of the \$35.00 service fee, which in her analysis opinion was only justified to raise to \$29.00 per month (a difference of \$6.00). To illustrate, for the some 3,000+ Ratepayers the SUD currently has, if you take that \$6.00 overcharge every month, times 12 months per year (Jan – Dec 2019 [$\$6.00 \times 12 = \72.00]), times two years (2019 and 2020 [$\$72.00 \times 2 = \144.00]), times 3,000 Ratepayers ($\$144.00 \times 3,000 = \$432,000$), then the amount overcharged to the Ratepayers throughout this Petition’s proceedings is in the ball park of just under half a million dollars, roughly.

The amount of attorney’s fees incurred by the SUD defending this action is well under \$400,000. This shows the SUD owes more in refunds to the Ratepayers than the Ratepayers would owe the SUD in attorney’s fees.

Ratepayers are in agreement with structuring the rate case expenses being offset by the refund of service fee overcharges to Ratepayers over a five year period, as suggested in Debi Loockerman’s testimony on page 10 of 18, on lines 14-20.

Ratepayers do not approve of any recommendations for the SUD to surcharge all its Ratepayers for a one time lump sum billing for the recovery of any rate case expenses incurred, which is what has been suggested by the SUD since the inception of this case.

5) RATE CASE EXPENSES (Contested Issue)

An Attitude of Excessive Expenses. Ratepayer Representative Deborah Fato forgot to ask Bear Creek SUD General Manager Camille Reagan during her trial testimony if there was a mint

on the pillow of the almost Five Hundred Dollar a night hotel room she booked on August 13, 2019 at Ratepayer's anticipated expense when she traveled to Austin, Texas to attend the Preliminary Hearing of this action on August 14, 2019.³ This example of abuse of the SUD's policy to force the Ratepayers to pay for all the expenses incurred in this Ratepayer Appeal action, and how much General Manager Camille Reagan enjoys the idea of spending money with no concerns as to the burden of payment of mounting costs, such as to punish Ratepayers for bringing this action by racking up attorney's fees to the maximum potential, is indicative of the corruption and callousness of the management of this SUD.

No Willingness to Arbitrate, Mediate or Attempt Settlement. Ratepayers contend that no efforts were made to engage in any settlement, arbitration, or mediation proceedings by counsel for Bear Creek SUD⁴. Ratepayers reached out many times, through SOAH Judges Steve Neinast and Meitra Farhadi, assigned as Arbitrators to this case. Not once did the SUD offer any willingness to discuss a pathway to resolution with Ratepayers. And why should they? Knowing Ratepayers would be saddled with attorney's fees only guarantees that SUD's counsel could proceed unbridled, and there was no reason to try to stop the 'Greed Gravy Train'⁵. This attitude served no purpose other than to make Attorney John Carlton a richer man.

Ratepayers object to the attorney's fees incurred in the frivolous attempt to disqualify Co-Ratepayer Representative Michael Dillon in or about May of 2019.⁶ The SUD attempted to explain the necessity of the motion to disqualify Mr. Dillon as simply 'strategic' even though the SUD was aware of his qualified residence from when he submitted his application to become a Director on the SUD board and participated in the 2016 General Election process with that very

³³ (Deb to insert hotel expense page reference)

⁴ Trial Transcript, Page 22, Lines 9-11.

⁵ Trial Transcript, Page 21, Lines 3-4.

⁶ Trial Transcript, Page 21, Lines 19-21

same residence information. *See Bear Creek Special Utility District's Response In Opposition and Motion to Strike Ratepayers' Notice of Substitution of Ratepayer Representative* which was filed on May 23, 2019 as Item 18 in the Index of the docket of the Control Number 49351 Proceedings. Every expense billed for the attorney's fees incurred to bring this Motion by SUD's counsel was entirely unnecessary.

Ratepayers object to payment of attorney fees for Kristen Fancher, who is general counsel for Bear Creek SUD, for her hourly rate for the time spent in attendance at the trial of this matter on January 28, 2021. She was merely observing the hearing, was not a required attendee, offered no substantive value to the proceedings, and was not a participant in any way. For Ratepayers to be ordered to pay those many hundreds of dollars as a result of these proceedings amounts to simple unjust enrichment of Ms. Fancher at the expense of the Ratepayers.⁷

Ratepayers note that the SUD's counsel incurred inflated travel expenses in this action. The trip from the Dallas area to the Austin area is less than a four hour drive. Yet counsel chose to fly between the cities. Ratepayers can only assume that this was for billing reasons rather than for convenience. More hours were billed for travel for flight than to travel by car.

As for the attorney's fees in general, the SUD has made it clear to Ratepayers that they would be charged for the Petition action from the inception of this case. They even sent out a notice in the September 2019 water bills that Ratepayers may incur a surcharge for reimbursement of expenses of the defense of this Petition action. Ratepayers' response to that is 'How is that even fair?' This Petition action is the only way to get the Public Utility Commission's attention. And to be punished with payment of fees for bringing

⁷ Trial Transcript, Page 23, Lines 22-24.

6) CONCLUSION

This has been a Herculean effort for the Ratepayers to bring this action all the way to Trial, without any assistance from the engagement of counsel or experts, and without any money to fund this process. For most communities, it is just about impossible to bring any attention by authorities to complaints against their utility providers, because it is so very cost prohibitive to pay for anyone to bring an action.

Knowing this, the Bear Creek SUD's manager has taken full advantage of treating Ratepayers poorly. Hopefully, the Public Utility Commission will take Ratepayers' allegations seriously, and make an Order as to the just and reasonable service fee rate, and demand that it be reduced as recommended.

Finally, Ratepayers ask the Public Utility Commission to take note of Bear Creek SUD General Manager Camille Reagan's trial testimony, in which she admitted that the SUD has never tendered money to the Texas Comptroller that was deposit money not returned to the customer after they closed the account.⁸ That is simply criminal, and the SUD should be dealt with accordingly for this illegal policy of keeping forfeited deposit monies.

⁸ Trial Transcript, Page 60, Lines 19 – 24.