



## Filing Receipt

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

<b>RATEPAYERS' APPEAL OF THE DECISION BY BEAR CREEK SPECIAL UTILITY DISTRICT TO CHANGE RATES</b>	<b>§ § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**RATEPAYERS' REPLY TO  
BEAR CREEK SPECIAL UTILITY DISTRICT'S  
MOTION FOR REHEARING**

TO THE HONORABLE PUBLIC UTILITY COMMISSION:

COMES NOW, the Ratepayers' Co-Representative of the Bear Creek Special Utility District ("Ratepayers") and files this, their *Ratepayers' Reply to Bear Creek Special Utility District's Motion for Rehearing* filed on October 22, 2021.

**I. INTRODUCTION**

On March 18, 2019, customers of the District ("Ratepayers") filed a petition entitled "Petition to Oppose Water Rate Increase by Ratepayers of the Bear Creek Special Utility District" (the "Petition"), appealing the District's rates to the Public Utility Commission of Texas ("Commission").<sup>1</sup> The Commission referred the appeal to SOAH for a hearing on June 21, 2019.<sup>2</sup> On January 28, 2021, the ALJs conducted the hearing on the merits via Zoom videoconference with representatives of the District, the Ratepayers' representatives, and Commission Staff. On May 18, 2021, the ALJ entered a Proposal for Decision ("PFD") granting Ratepayers' appeal, which was considered by the Public Utility Commission of Texas at an open meeting on July 29, 2021. In the Order, the Commission adopted the PFD with certain changes.

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<sup>1</sup> Ratepayers' Opposition to Rate Increase and Petition to Appeal Rates Established by the Board of Directors of Bear Creek Special Utility District (March 18, 2019).

<sup>2</sup> Order on Referral (June 21, 2019)

In the event BCSUD's *Motion for Rehearing* is granted, Ratepayers also request that the Commission reconsider and decide upon certain issues that were not addressed in the *Final Order* issued on September 29, 2021.

**II. THE FINAL ORDER IS SILENT ON THE MONTHLY BASE RATE DURATION**

In its *Final Order* the Commission did not address the duration of how long the new Monthly Base Rate of \$30.81 should be fixed. Ratepayers contend that this rate should stay in effect through the duration of the loan that triggered the increase of the Monthly Base Rate. If the loan's duration is set at 10 years, Ratepayers contend that the \$30.81 Monthly Base Rate or "Monthly Service Fee" should be fixed for the same amount of time. The new rate should stay at \$30.81 until the 10 year anniversary of the effective date of the rate (which was October 18, 2018), or until October 2028. Ratepayers request the Commission establish a restriction that the BCSUD may not raise the Monthly Base Rate until October 2028.

**III. THE FINAL ORDER IS SILENT ON REIMBURSING RATEPAYERS WHO HAVE CLOSED ACCOUNTS BUT STILL PAID THE OVERCHARGED FEES.**

There is no provision in the *Final Order* to allow for reimbursement of overcharged Monthly Base Rate fees to those Ratepayers who have closed accounts and moved away during the pendency of this Ratepayer appeal action (between when the first \$35 monthly service fee was charged on February 18, 2019 to the present). Ratepayers request that the Commission establish a provision in any revision of the *Final Order* that the BCSUD should allow for reimbursement of overcharges of \$4.19 per month ( $\$35.00 \text{ minus } \$30.81 = \$4.19$ ) for the months charged from February 2019 billings to the month the former Ratepayer's account was closed.

**IV. THE FINAL ORDER IS SILENT ON WHY REIMBURSING RATEPAYERS SHOULD ONLY BE FOR THE FOURTEEN (14) MONTHS.**

Ratepayers contend that it is unfair to only reimburse overcharged Monthly Base Rates for only the 14 months from the October 18, 2018 rate increase until the next rate increase of February 20, 2020. Although the water rates were increased in the subsequent rate hike of February 20, 2020, the Monthly Base Rate or ‘Service Fee’ that was raised \$10.00 from \$25.00 to \$35.00 in 2018 remained the same. And, was it proper for the BCSUD to enact another rate increase during the pendency of an appealed rate increase?

At the time, in February 2020, this Petition action to appeal the \$35.00 service fee was still pending. It would have been unreasonable and futile for the PUC to expect Ratepayers to bring a second Petition action to appeal this \$35.00 service fee during the pendency of the original action. To ‘cut off’ the reimbursement of overcharges to Ratepayers at only 14 months is unfair. The BCSUD should not be unjustly enriched for allowing the overcharges to continue to the present but only be required to pay back only 14 months of the now 36 months of overcharges. Ratepayers request the Commission revise its *Final Order* to allow for full reimbursement of all overcharged amounts. To illustrate, by example, a Ratepayer whose account has remained open from October 2018 to the present has paid 36 monthly payments of \$35.00. The calculation for reimbursement should be  $\$35.00 - \$30.81 = \$4.19 \times 36 = \$150.84$  per Ratepayer. Not the \$58.66 amount as currently provided for in the *Final Order*.

**V. THE ATTORNEYS FEES REIMBURSEMENT PROVISIONS OF THE FINAL ORDER ARE SILENT WITH REGARD TO ANY CONTINUANCE OF THE ACTION BEYOND THE CONCLUSION OF THIS CASE 49351.**

The attorney’s fees continue to mount as BCSUD opposes this appeal action. And throughout this entire action, the source of funds paying the attorney’s fees has always been, and

will continue to be, paid with revenue that has been collected from the overcharging of Ratepayers of the Monthly Base Rate or monthly ‘service fee’. Ratepayers would also seek a revision to the *Final Order* from the Commission to address the issue that should the District file any appeal of the final outcome of this Petition proceeding, that the source of revenue to pay for any such appeal proceedings come from a source other than Ratepayer revenue. In other words, the District should not keep incurring expenses fighting its stance that the \$35.00 Service Fee amount was fair and should be maintained throughout any appeal, to the unjust detriment to the Ratepayers. The \$409,000+ amount incurred to date has already been financed by the overcharging to Ratepayers. For BCSUD to allege that it needs to now be ‘reimbursed’ for monies the Ratepayers have already paid is ‘Double Dipping’ and unfair.

## VI. CONCLUSION

The Ratepayers have been charged a \$35.00 service fee for the past 36 months, from the rate increase of October 2018 to October 2021. The Commission has determined that the service fee should have been \$30.81. The amount of the \$4.19 overcharge, times 36 months, times a rounded off number of now 3,000 Ratepayers, calculates that the total amount overcharged is \$452,520.00 more or less. This amount is more than the \$409,000 figure for attorney fees. Ratepayers suggest that the Commission consider revising the *Final Order* to determine that the amount of overcharges versus attorney’s fees to be deemed ‘a wash’ and balance out such that Ratepayers are not surcharged for attorney fees at the proposed \$4.77 per month for the next 36 months, nor that BCSUD should not be reimbursing Ratepayers \$4.19 per month.

It would be easier for all to simply move forward with fixing the Monthly Base Rate at \$30.81 for the next 10 years and foregoing the financial nightmare of credits and surcharges. In the alternative, Ratepayers ask that an independent third party be engaged to oversee the credit and

surcharge calculations and monitor the adherence to the *Final Order* provisions, and not rely on the BCSUD to oversee that task without supervisory authority or remedies for Ratepayers if BCSUD deviates from following any PUC order.

Respectfully submitted,

*Deborah G. Fato*

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**Deborah G. Fato**

In her individual capacity as  
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**SOAH DOCKET NO. 473-19-5674.WS  
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**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 29<sup>th</sup> day of October, 2021.

*Deborah G. Fato*

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