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PUBLIC UTILITY COMMISSION  
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FILING CLERK  
OF TEXAS

RATEPAYERS' APPEAL OF THE §  
DECISION BY BEAR CREEK SPECIAL §  
UTILITY DISTRICT TO CHANGE §  
RATES §

**COMMISSION STAFF'S LIST OF ISSUES**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this List of Issues. In support thereof, Staff shows the following:

**I. BACKGROUND**

On March 18, 2019, certain ratepayers (Petitioners) filed a petition under Texas Water Code (TWC) § 13.043(b) to appeal the decision by Bear Creek Special Utility District (Bear Creek) to change rates.

Order of Referral, issued by Commission Office of Policy and Docket Management on June 21, 2019, referred the docket to the State Office of Administrative Hearings and stated that Staff may file a list of issues to be addressed in the docket by July 3, 2019.<sup>1</sup> Therefore, this pleading is timely filed.

**II. STAFF'S LIST OF ISSUES**

Staff, referencing TWC, 16 Texas Administrative Code (TAC) § 22 Subchapter J and § 24 Subchapter C, and the list of issues in prior water rate appeal cases,<sup>2</sup> has identified the following issues that should be considered by the Commission in this proceeding:

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<sup>1</sup> On May 13, 2019, counsel for Bear Creek filed a vacation letter advising that he would unavailable from June 21, 2019 to July 8, 2019. On June 24, 2019, counsel for Bear Creek filed a Notice of Vacation and Request for Extension.

<sup>2</sup> *Ratepayers' Appeal of the Decision by South Central Calhoun Count Water Control and Improvement District No. 1 to Change Rates*, Docket No. 47912, Preliminary Order (March 29, 2018); *Ratepayers' Appeal of the Decision by Galveston County Municipal Utility District No. 12 to Change Rates*, Docket No. 47998, Preliminary Order (April 27, 2018).

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1. Did the petition appealing the rate change by the district follow the requirements of TWC §§ 13.043(b), (c), and (d); 16 Texas Administrative Code (TAC) §§ 24.41(b), (c), and (d); and 16 TAC §§ 24.42(a) and (b)?
  - a. Was the petition filed within 90 days after the effective date of the rate change? TWC § 13.043(c) and 16 TAC § 24.41(b).
  - b. What number of ratepayers had their rates changed? TWC §§ 13.043(c) and (d) and 16 TAC § 24.41(d).
  - c. Did the lesser of 10,000 or 10% of those ratepayers file valid protests to the rate change? TWC § 13.043(c) and 16 TAC § 24.41(b).
2. Should the Commission establish or approve interim rates to be in effect until a final decision is made? TWC § 13.043(h) and 16 TAC §§ 24.41(e)(6) and (h).
3. Do the retail water rates being charged by the district fulfill the requirements of TWC § 13.043(j)?<sup>3</sup>
  - a. Are the rates just and reasonable?
  - b. Are the rates not unreasonably preferential, prejudicial, or discriminatory?
  - c. Are the rates sufficient, equitable, and consistent in application to each class of customers?
4. If the rates being charged by the district meet the requirements of TWC § 13.043(j), must this appeal be dismissed?<sup>4</sup>

If the rates being charged by the district do not meet the requirements of TWC § 13.043(j), please address the following issues.

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<sup>3</sup> See TWC § 13.043(j); see also *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 335–36 (Tex. App.—Austin 1994) (applying TWC § 13.043(j) in an appeal under § 13.043(f)).

<sup>4</sup> See *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App.—Austin 1994). In the *Fort Worth* case, the Austin Court of Appeals found that “the Commission made no finding as to the reasonableness of rates . . . , which is the initial inquiry under § 13.043(j) defining the scope of agency review.” *Id.* at 335. The Court ruled that the scope of appellate review under § 13.043(f) requires an initial determination under § 13.043(j). *Id.* at 336. However, the TWC does not limit the application of subsection (j) to appeals under § 13.043(f). Therefore, the same initial inquiry under subsection (j) must be made in this appeal under § 13.043(b) before the Commission can reset rates.

5. Considering only the information available to the district's governing body at the time of its decision, what are the just and reasonable rates for the district that are sufficient, equitable, and consistent in application to each customer class and that are not unreasonably preferential, prejudicial, or discriminatory? TWC § 13.043(e) and (j) and 16 TAC §§ 24.41(e) and (i).
  - a. What is the appropriate methodology to determine just and reasonable rates for the district?
  - b. What is the revenue requirement that would give the district sufficient funds to provide adequate retail water service?
  - c. What is the appropriate allocation of the revenue to customer classes?
  - d. What is the appropriate design of rates for each class to recover the district's revenue requirement?
6. What are the reasonable expenses incurred by the district in this proceeding? TWC § 13.043(e) and 16 TAC § 24.41(e)(2).
  - a. Should the Commission allow recovery of these reasonable expenses?
  - b. If so, what is the appropriate recovery mechanism?
7. What is the appropriate effective date of the rates fixed by the Commission in this proceeding? TWC § 13.043(e) and 16 TAC § 24.41(e)(3).
8. If the Commission establishes rates different than the rates set by the district's board, should the Commission order refunds or allow surcharges to refund or recover the difference in revenues? If so, what is the appropriate amount and over what time period should the refund or surcharge be in place? TWC § 13.043(e) and 16 TAC § 24.41(e)(4).

### **III. ISSUES NOT TO BE ADDRESSED**

Staff has not identified any issues not to be addressed.

### **IV. THRESHOLD LEGAL AND POLICY ISSUES**

Staff has not identified any threshold legal and policy issues to be addressed.

**V. CONCLUSION**

Staff respectfully requests that the Commission adopt a preliminary order with the above issues to be addressed.


**DATED:** July 3, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF  
TEXAS LEGAL DIVISION**

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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on July 3, 2019, in accordance with 16 TAC § 22.74.



Sarah D. McDaniel