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

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS
PUBLIC UTILITY COMMISSION
FILED'S CLERK

**BEAR CREEK SPECIAL UTILITY DISTRICT'S
COMMENTS AND AGREED PROPOSED PROCEDURAL SCHEDULE**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

In accordance with SOAH Order No. 1, Bear Creek Special Utility District (the "District") files these comments and agreed proposed procedural schedule and would respectfully show the following:

BACKGROUND

On March 18, 2019, retail customers of the District (the "Ratepayers") filed a petition pursuant to Section 13.043(b) of the Texas Water Code entitled "Petition to Oppose Water Rate Increase by Ratepayers of the Bear Creek Special Utility District" (the "Petition"), which was referred to the State Office of Administrative Hearings ("SOAH") on June 21, 2019. SOAH Order No. 1 was issued July 11, 2019 and required the parties to confer and submit an agreed procedural schedule by July 25, 2019, and "confer to determine if this case potentially could be resolved through mediation"; therefore, this pleading is timely filed.

SUFFICIENCY OF PETITION

On March 18, 2019, retail customers of Bear Creek Special Utility District (the "District") filed a petition pursuant to Section 13.043(b) of the Texas Water Code entitled "Ratepayers Appeal of the Decision by Bear Creek Special Utility District to Change Rates" (the "Petition"). Public Utility Commission ("PUC") Rule 24.41 governs the Petition, and PUC Rule 24.42 sets forth the required contents for petitions for review of rate actions filed pursuant to Texas Water Code

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§13.043(b).¹ In relevant part, PUC Rule 24.42 requires that a petition for review of rate actions contain the following:

- 1) A clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description *and date of that action*;
- 2) The name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer;
- 3) The effective date of the decision being appealed;
- 4) The basis of the request for review of rates; and
- 5) Any other information the Commission may require.²

PUC Rule §24.42(a)(1) specifically requires that a rate appeal petition brought under Texas Water Code §13.043(b) include the date of the action being appealed. The District does not challenge the sufficiency of the petition.

PROCESSING THE PETITION

If the PUC concludes that the Petition is valid and satisfies the requirements found in Texas Water Code, Section 13.043, Subsections (b), (c) and (d), the Petition must be processed as provided in Subsection (e) of that Section,³ which provides for a de novo proceeding in which the PUC fixes rates at the level that those rates should have. However, the PUC is limited to considering only the information that was available to the District at the time it made its decision and evidence of reasonable expenses incurred in the appeal proceedings.⁴ In addition, the PUC must ensure that the rates are just and reasonable, and not unreasonably preferential, prejudicial,

¹ PUC Subst. Rule 24.41 and 24.42.

² PUC Subst. Rule 24.42.

³ Texas Water Code §13.043(e)

⁴ Id. and PUC Subst. Rule 24.41(e)(5).

or discriminatory.⁵ The PUC must also “use a methodology that preserves the financial integrity of the retail public utility” and recognizes the District’s determination of customer classes.⁶

PROCEDURAL SCHEDULE

Counsel for the District has conferred with counsel for Commission Staff and with the Ratepayers’ Representative, Debora G. Fato, and the parties have agreed on the following procedural schedule:

ACTION	TIME PERIOD
Preliminary Hearing to Establish Parties	Week of August 12
District to file direct testimony	September 20, 2019
Deadline to file written objections to District direct testimony	September 27, 2019
Petitioners to file direct testimony	October 11, 2019
Deadline to file written objections to Petitioners’ direct testimony	October 18, 2019
PUC staff to file direct testimony	November 15, 2019
Deadline to file written objections to PUC staff direct testimony	November 22, 2019
Deadline to propound discovery on direct case	December 6, 2019
District to file rebuttal testimony	January 24, 2020
Deadline to propound discovery on rebuttal testimony	February 7, 2020
Deadline to conduct all depositions	February 7, 2020
Deadline to file responses to any motions for summary disposition	February 7, 2020

⁵ Texas Water Code §13.043(j) and PUC Subst. Rule 24.41(i).

⁶ Id.

Deadline to file written objections to rebuttal testimony	February 14, 2020
Responses to Objections on rebuttal testimony are due	February 28, 2020
Prehearing conference	March 3, 2020
Hearing on the merits	March 9-11, 2020

CONSIDERATION OF MEDIATION

Counsel for the District has discussed the potential of mediating this proceeding with counsel for Commission Staff and the Ratepayers’ Representative, and the parties are amenable to mediation within SOAH.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Bear Creek Special Utility District requests that the agreed procedural schedule be adopted, this proceeding be referred to mediation with SOAH, and for such other relief as the District may show itself to be entitled.

Respectfully submitted,



John J. Carlton
The Carlton Law Firm P.L.L.C.
4301 Westbank Drive, Suite B-130
Austin, Texas 78746
(512) 614-0901
Fax (512) 900-2855
State Bar No. 03817600

ATTORNEY FOR BEAR CREEK SPECIAL
UTILITY DISTRICT

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 to all parties on this the 25th day of July, 2019.



John J. Carlton