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**SOAH DOCKET NO. 473-19-5831.WS
PUC DOCKET NO. 49367**

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PETITION BY OUT OF DISTRICT	§	BEFORE THE STATE OFFICE
RATEPAYERS APPEALING THE	§	
WATER RATES ESTABLISHED BY	§	OF
THE EL PASO WATER CONTROL	§	
AND IMPROVEMENT DISTRICT NO.	§	ADMINISTRATIVE HEARINGS
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COMMISSION STAFF’S RESPONSE TO SOAH ORDER NO. 6

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response. Staff recommends that the Out-of-District Ratepayers’ Motion for Partial Summary Decision and El Paso Water Control and Improvement District No. 4’s Motion for Full or Partial Summary Decision both be denied. In support thereof, Staff would show the following:

I. BACKGROUND

On March 22, 2019, Out-of-District Ratepayers (Ratepayers) filed a petition contesting a rate action by El Paso Water Control and Improvement District No. 4 (District). The petition was filed pursuant to 16 Tex. Admin. Code (TAC) § 24.103 and Tex. Water Code (TWC) § 13.043. On June 27, 2019, this matter was referred to the State Office of Administrative Hearings (SOAH).

On September 3, 2019, Ratepayers filed a motion for partial summary decision and request for interim rates. On September 6, 2019, the District filed a motion for full or partial summary decision. On September 9, 2019, the Administrative Law Judge (ALJ) issued SOAH Order No. 6, requiring any responsive pleading to these motions be filed by September 20, 2019. This pleading, therefore, is timely filed.

II. STAFF’S RESPONSE

Summary Decision Standard

According to the Commission’s procedural rules, “[t]he presiding officer, on motion by any party, may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially

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timely filed, the January 1, 2019 rate change affected all ratepayers and therefore, there are not enough signatures. Staff respectfully disagrees with the District's arguments and will briefly address each, summarizing Staff's previous arguments on these topics, filed May 6, 2019.

First, the District contends that, as the five percent rate increase was for all customers, the petition lacks sufficient signatures. A petition of this nature must be signed by the lesser of 10,000 or ten percent of eligible ratepayers.⁷ The District has 2,383 total water ratepayers, of which 247 are classified as out-of-district ratepayers. The District contends that to be sufficient, the petition must have been signed by at least 239 ratepayers. The District cites to a previous Commission decision in Docket No. 46701 to support its contention.⁸

Staff respectfully disagrees: Docket No. 46701 is distinguishable from the present matter and the out-of-district ratepayers need only have 25 signatures for the petition to be sufficient. In Docket No. 46701, the petitioning group of ratepayers was not a unique group. The residents of Howardwick, while geographically distinct, paid the exact same rate as the rest of the utility's ratepayers.⁹ As such, the petitioners in that matter were not a unique group and were required to produce at least ten percent of the signatures of the entire body of ratepayers.

In contrast, the out-of-district ratepayers in the present matter are a unique group and have sufficient signatures for the petition. Unlike Docket No. 46701, Docket No. 44010 addressed a situation where one group were being charged a different rate than the other customers of the water utility.¹⁰ Therein, the petitioners were "being charged different rates from other . . . customers" and could petition for review for the unique set of rates they were experiencing. The SOAH ALJ therein determined that the petitioners need only have gathered ten percent of the signatures of the unique group and not the entire body of ratepayers.

Similarly, here, the out-of-district ratepayers pay a unique and higher rate than is charged to the rest of the district. Although the five percent increase is across the board, this different

⁷ TWC § 13.043(c); 16 TAC § 24.103(b).

⁸ *City of Howardwick Ratepayers' Appeal of the Decision of the Red River Authority of Texas' Decision Affecting Water and Sewer Rates*, Docket No. 46701, Dismissing Proceeding (Feb 17, 2017)

⁹ *Id.* at Ratepayers' Appeal at Bates pg. 2 Staff notes that the water rates detailed are comprised of a base rate and "Demand Block 1" and "Demand Block 2." These blocks are rate differences based on volume of usage – Block 1 for 2,001-7,000 gallons a customer uses, Block 2 for any water used over 7,000 gallons. Otherwise there is no difference between the rates charged to any groups of customers within the Red River Authority.

¹⁰ *Petition of Ratepayers of the River Place Water and Wastewater Systems for Review of a Decision by the City of Austin to Charge Retail Rates*, Docket No. 44010, SOAH Order No. 6 on Jurisdiction, Notice, and Request for Interim Rates at 10 (May 7, 2015).

petitioners need only have gathered at least 25 signatures of the eligible out-of-district ratepayers. This distinction of the out-of-district ratepayers as a unique group does not preclude other configurations of the District's ratepayers from filing similar petitions: it merely means that the out-of-district ratepayers are a unique group and present petition meets the requirements of TWC § 13.043.

Ratepayers' Motion for Partial Summary Decision and Request for Interim Rates

The Ratepayers assert that materials obtained in discovery establish that the District cannot meet its burden to show that the rate differential is just and reasonable. Staff is inclined to agree that, thus far, the District has failed to provide sufficient information to determine if rates are just and reasonable. However, Staff has requested the rate design and formulas utilized by the consultant hired by the District to perform the rate study and rates in question.¹⁴ If the District's answers to those discovery requests provide that information and those formulas, then Staff will be able to form an opinion on the reasonableness of the rates. If those answers are not forthcoming, or that information unavailable, then Staff will be inclined to agree with the Ratepayers on this issue.

As for the request for interim rates, Staff is unopposed to such a request, but offers no further opinion on the matter.

III. CONCLUSION

Staff respectfully requests the both motions for summary decision be denied.

Dated: September 20, 2019

¹⁴ Commission Staff's Third Request for Information to El Paso Water Control and Improvement District No. 4 at 5 (Sep. 10, 2019)