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PUC DOCKET NO. 56589

PETITION BY RESIDENTS OF GRAND	§	BEFORE THE
LAKES MUNICIPAL UTILITY DISTRICT	§	
NO. 2 APPEALING THE WATER RATES	§	PUBLIC UTILITY COMMISSION
ESTABLISHED BY THE DISTRICT'S	§	
BOARD OF DIRECTORS	§	OF TEXAS

REBUTTAL OF THE MUD'S OBJECTIONS TO PETITIONERS' MOTIONS TO COMPEL

I. Introduction

(1) Petitioners refer to:

[56589-121] MUD's Response to Petitioners' Motion for Sanctions.

[56589-122] MUD's Response to Petitioners' Motion to Compel Responses to Appellant's RFI No. 4.

[56589-127] MUD's Response to Petitioners' Motion to Compel Responses to Appellant's RFI No. 5.

(2) Petitioners are not legal experts. We have not studied or practiced law, but we are guided by logic and common sense. If we do not respond, we fear that false information, being uncontested, becomes factual. We also fear that without objecting our right to object is considered waived.

II. Sanctions: The MUD's Frivolous Motion to Dismiss

(3) The MUD's request to deny Petitioners' Motion for Sanctions must be denied/dismissed. Petitioners' Motion for Sanctions must be granted.

(4) Remedies offered in the Commission's administrative rules are *not* meant for fun, fantasy, or abuse by the MUD for no sensible reason. The MUD's motion to dismiss is frivolous, malicious, and lodged in bad faith. Commission Staff's recommendation that the Commission grant the MUD's Motion to Dismiss is fraudulent. Our pleadings (nos. 56589-49, -54, -55, -62, -63, -66, -86, -87, -88, -90) prove that the MUD lacks even a 0.1% chance of having the instant proceeding summarily dismissed. This chance is even further diminished with the damning evidence on the MUD's involvement in wrongdoing (*see* [56589-56], [56589-105], [56589-114], [56589-115], [56589-119]) and the reprehensible coordination between PUC's attorney Kevin Pierce and the MUD's attorneys (*see* the pleadings 56589-102, -123, -124, -125, -127, and -128). Many more violations will be uncovered as the MUD responds to petitioners' RFIs.

(5) Petitioners have an unconditional right to justice. Petitioners have an unconditional right to document criminal tampering consciously orchestrated by the MUD over so many years. Petitioners plea to protect 682 residents in Grand Lakes MUD No. 2 and 2,739 residents in the entire Grand Lakes community is lawful and warranted. Such plea cannot be falsely described by the perpetrator as increasing the cost of the proceeding. *Who* said that Requests for Information can only be lodged after the case is referred to the SOAH for a formal hearing on the merits?

III. Harm Inflicted on Petitioners

(6) The harm inflicted on 682 residents in Grand Lakes MUD No. 2 and 2,739 residents in the entire Grand Lakes community can be easily seen by an honorable observer. Petitioners will furnish a detailed cost statement when requested by the Commission. For now, petitioners specify the harm as follows:

* *Compensatory damages* for all expenses incurred as part of the instant proceeding and due to the MUD's persistent, consistent, long-lasting violations. Petitioners' costs, expenses, fees, and damages cannot be underestimated when the Lloyd Gosselink Rochelle Townsend attorneys charge \$425 an hour. For petitioners, 100 pleadings x 5 hours x \$750/hour = \$375,000. But there is no sign that this case is coming to an end soon, so this amount will be multiples.

* *Pain, suffering, and mental anguish*: An appropriate monetary value set by the Commission to account for such harm inflicted on petitioners.

* *Punitive damages* awarded to petitioners due to the malicious, defiant, arrogant, reprehensible behavior of the MUD's Board, Attorney (the law firm Schwartz, Page & Harding LLP), Water Company (Municipal District Services LLC), and other Consultants in the period leading to and during the instant proceeding. The purpose is to punish a fearless, lawless, guilty MUD that has wasted millions of dollars in ratepayer money.

(7) In assessing the gravity of the MUD's violations, the Commission must take the following factors into consideration:

- * Impact of the MUD's violations on ratepayers / residents.
- * Number of customers impacted by the violation.
- * How long have the violations lasted?
- * History and extent of previous violations.
- * How conscious, willful, voluntary, and complicit were the MUD's Board and Consultants?
- * Could the violations have been avoided and/or remedied?
- * Good faith, including actions taken by the MUD's Board and Consultants to rectify the violations.
- * Indifference and neglect of the duty of good faith.
- * Indifferent and neglect of the duty of loyalty.
- * Economic benefit gained by the MUD's Board and Consultants through the violations.
- * How can state agencies and the authorities deter future violations?
- * How can justice be secured?

IV. The PUC and SOAH: The Legal Authority to Discharge Their Functions

(8) Examination of the instant case by the Public Utility Commission of Texas (Commission) and the State Office of Administrative Hearings (SOAH) is not limited to Texas Water Code § 13.043. Once a petition (rate appeal) is lodged, the Commission and the SOAH know how to do their work and examine the case. They must not be told the legal authority supporting each and every argument. Our message to the MUD's attorneys is: "Stop talking about the legal authority supporting each statement. Let the Commission and SOAH do their work. At the end, each party is at will to request a rehearing or bring the case further to the district court, court of appeals, and even the supreme court if they admit it."

(9) The MUD is a public water/sewer/stormwater system; it is municipal; it is some sort of a utility; it is a district; it is a local government; and it is a Political Subdivision of the State. Texas Water Code § 13.002(13-a) defines a Municipal Utility District (MUD) as a political subdivision of the state operating under Texas Water Code, Chapter 54. Per 16 Texas Administrative Code § (Rule) 24.3(31), the MUD is a **Retail Public Utility**.

(10) Rule 24.381 is about 'Fair Wholesale Rates for Wholesale Water Sales to a District.' It is immaterial whether or not this rule applies to the MUDs. Why is it there? It is because water purchase contracts and the corresponding prices impact the utility or the district and the water rates. With this rule talking about water contracts and price setting, it is confirmed that our concerns are real and credible. In our case, there are appalling violations with the Grand Lakes MUD No. 2 claiming to purchase water from Grand Lakes MUD No. 4, but the two MUDs are administered by the same law firm (the law firm Schwartz, Page & Harding LLP) and operated by the same water company (Municipal District Services LLC), owned by the Chapline family. Who sets the purchase price and who approves it? Where is it documented? Isn't it concerning that the seller and buyer are one and the same? Why is this arrangement needed? Who benefits from it? TCEQ has already issued citations [56589-62] to the three Grand Lakes MUDs for not having proper water purchase contracts in place and for operating interconnects without TCEQ's approval.

(11) Before the Commission, proceedings under Texas Water Code (TWC) and Texas Government Code are automatically governed by 16 Texas Administrative Code, Chapter 22 and Chapter 24. See Rule 22.1(b)(2) and Rule 24.1(a). The Commission has jurisdiction to ensure that the MUD is compliant with TCEQ's and other agencies' rules and requirements (see below on Violations and Fines and Penalties).

* Rule 24.3(14) A MUD – § 59, Article XVI, Texas Constitution – is a District per TWC § 49.001(a)(1).

* Rule 24.3(31) A MUD – a Political Subdivision – is a Retail Public Utility.

* Rule 22.1(b)(2) Commission proceedings under Texas Water Code and Texas Government Code.

* Rule 22.246(b)(5) Violations of Texas Water Code, Commission Rules, or Commission Order.

* Rule 24.1(a) A comprehensive regulatory system under TWC, Chapter 13, to establish the rights and responsibilities of both the MUD and consumer; and govern the procedure and proceedings before the commission.

* Rule 24.1(c) Retail public utilities are responsible to remain in compliance with all applicable rules and requirements, including those imposed by TCEQ or other agencies.

* Rule 24.539 Fines and penalties collected under TWC, Chapter 13, from a retail public utility.

Chapter 22 Procedural Rules

Subchapter L Evidence and Exhibits – Contested Cases
Subchapter H Discovery Procedures
Subchapter G Prehearing Proceedings
Subchapter K Hearings
Subchapter J Summary Proceedings
Subchapter I Sanctions
§ 22.241 Investigations
§ 22.242 Complaints
§ 22.244 Review of Municipal Rate Actions
§ 22.246 Administrative Penalties
§ 22.261 Proposals for Decision
§ 22.262 Commission Action after a Proposal for Decision
§ 22.263 Final Orders
§ 22.264 Rehearing

Chapter 24 Substantive Rules – Water and Sewer Providers

§ 24.1 Purpose and Scope of this Chapter
§ 24.15 Notice of Wholesale Water Supply Contract
§ 24.31 Jurisdiction over Affiliated Interests
§ 24.33 Suspension of the Effective Date of Rates
§ 24.37 Interim Rates
§ 24.41 Cost of Service
§ 24.43 Rate Design
§ 24.44 Rate-case Expenses
§ 24.101 Appeal of Rate-making Decision, Per TWC §13.043
§ 24.103 Contents of Petition Seeking Review of Rates ...
§ 24.105 Refunds During Pendency of Appeal
§ 24.135 Regulatory Assessment
§ 24.201 Applicability
§ 24.203 Requirements by Others
§ 24.205 Adequacy of Water Utility Service
§ 24.207 Adequacy of Sewer Service
§ 24.209 Standards of Construction
Subchapter H Certificates of Convenience and Necessity
Subchapter K Enforcement, Supervision, and Receivership

(12) One must not forget that Chapter 2001 of the Government Code is the Administrative Procedure that guides the Commission through its day-to-day work. Additionally, below is some text from 16 TAC, Chapter 22 and Chapter 24, detailing the Commission's jurisdiction in discharging its work.

16 Texas Administrative Code

§ 22.1 Purpose and Scope

(b)(2) This chapter shall govern proceedings under the Texas Utilities Code, Texas Water Code, ..., Texas Government Code, or any other statute granting the ... Commission ... authority to conduct proceedings.

§ 22.246(b)(5) Administrative Penalties | Violation—Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), the Texas Water Code (TWC), commission rule, or commission order.

§ 24.1 Purpose and Scope of this Chapter

(a) This chapter is intended to establish a comprehensive regulatory system under Texas Water Code chapter 13 to ensure that rates, operations, and services are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. ... This chapter shall also govern the procedure for the institution, conduct and determination of all water and sewer rate causes and proceedings before the commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

(c) It is the responsibility of each retail public utility to ensure that it remains in compliance with all applicable rules and requirements, including those imposed by TCEQ or other agencies. ...

§ 24.3 Definitions of Terms

(14) **District**—District has the meaning assigned to it by TWC § 49.001(a). [TWC § 49.001(a)(1): "District" means any district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law, any conservation and reclamation district created pursuant to Chapter 62, Acts of the 52nd Legislature, 1951 (Article 8280-141, Vernon's Texas Civil Statutes), or any conservation and reclamation district governed by Chapter 36 unless a special law creating the district or amending the law creating the district states that this chapter applies to that district.]

(31) **Retail public utility**—Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

§ 24.359 Fines and Penalties

(a) Fines and penalties collected under TWC, Chapter 13, from a retail public utility that is not a public utility in other than criminal proceedings shall be paid to the commission and deposited in the general revenue fund.

V. The MUD's Objections to RFI No. 4 and the Motion to Compel

(13) Our pleadings 56589-58 and -85 have already responded to all the futile jargon brought time and again by the MUD's attorneys. Conflict of interest, impartiality, independence, recusal, and disqualification are critical issues in each and every proceeding; executive, administrative, or judicial. The disqualification of a MUD's officer *cannot* be ignored because we do not know the answers to so many questions: when, where, what, why, who, and how? We do not know the impact of the violation.

(14) Section IV above listed the standards that govern the Commission's jurisdiction. The MUD's attorneys must read Rule 22.1(b)(2). Texas Water Code, Texas Government Code, Texas Local Government Code, and all relevant state and federal laws are applicable when it comes to the Commission carrying out its mission.

(15) TWC § 13.003 states that the Administrative Procedure Act (APA | Chapter 2001 of the Texas Government Code) applies to all proceedings under TWC Chapter 13 except when inconsistent with the chapter. APA provides minimum standards of uniform practice and procedure for the Commission.

(16) Conflict of interest, impartiality, independence, disqualification, recusal, standard of conduct, and relationship or financial disclosure are important matters that the Legislature covered extensively in a number of codes (see below). Is an Oath of Office administered because impartiality and disqualification are irrelevant?! Do the codes talk about penalty, enforcement, and misdemeanor because the aforementioned topics are irrelevant?!

- * Texas Water Code §§ 49.052, 49.054, 49.055, 49.058, 49.214, and 54.101 talk about officers, duties, oath of office, and conflict of interest.

- * Government Code, Chapter 602: Administration of Oaths.

- * Government Code, Chapter 572: Personal Financial Disclosure, Standard of Conduct, Conflict of Interest.

- * Local Government Code, Chapter 145: Financial Disclosures and Standards of Conduct.
for Local Government Officers.

- § 145.009: Criminal Penalty.

- § 145.010: Civil Penalty.

- * Local Government Code, Chapter 176: Disclosure of Certain Relationships with Local Gov't Officers.

- § 176.013 Enforcement.

(17) In conclusion, the MUD's request to deny Petitioners' Motion to Compel Responses to RFI No. 4 must be denied/dismissed. Petitioners' Motion to Compel must be granted.

VI. The MUD's Objections to RFI No. 5 and the Motion to Compel

(18) Our pleadings 56589-64 and -94 have already responded to all the futile jargon brought time and again by the MUD's attorneys.

(19) Section IV above listed the standards that govern the Commission's jurisdiction. The MUD's attorneys must read Rule 22.1(b)(2). Texas Water Code, Texas Government Code, Texas Local Government Code, and all relevant state and federal laws are applicable when it comes to the Commission carrying out its mission.

(20) TWC § 13.003 states that the Administrative Procedure Act (APA | Chapter 2001 of the Texas Government Code) applies to all proceedings under TWC Chapter 13 except when inconsistent with the chapter. APA provides minimum standards of uniform practice and procedure for the Commission.

(21) As part of its hearing of the main cause (rate appeal), the Commission does not lack jurisdiction to look into violations of Texas Government Code, Chapter 551 "Open Meetings"; cf. Rule 22.1(b)(2).

(22) Texas Government Code, Chapter 551 "Open Meetings" requires water districts to:

- * Have open meetings (§ 551.002); minutes of all open meetings (§ 551.021) as public records (§ 551.022).
- * Give notice of meetings (§ 551.041) and have the notice accessible 72 hours in advance (§ 551.043).
- * Deliberate and decide in open meetings only items already posted at the meeting's agenda (§ 551.042).
- * Notify the news media of the emergency meeting or emergency item (§ 551.047).
- * First convene in open meeting (§ 551.101) and vote and decide only in an open meeting (§ 551.102).
- * Keep a certified agenda or make a recording of the proceedings of each closed meeting (§ 551.103).
- * Preserve the certified agenda or recording of a closed meeting for at least two years (§ 551.104).
- * #Post the board's meeting minutes to the district's website when one exists (§ 551.1283(c)).
- * #Post to the district's website financial, operating, budget, and tax rate information (§ 551.1283(d)).
- * Not engage outside of an open meeting in communications that concern an issue within the jurisdiction of the governmental body if those engaging in the communications do not constitute a quorum of board members (§ 551.143).
- * Not to call or aid in calling or organizing a closed meeting that is not permitted (§ 551.144(a)(1)).
- * Not to close a regular meeting to the public (§ 551.144(a)(2)).
- * Not to participate in a closed meeting that is not permitted (§ 551.144(a)(3)).
- * Not to participate in a closed meeting that keeps no certified agenda or recording (§ 551.145).
- * Not to disclose the certified agenda or recording of a closed meeting (§ 551.146).

Applicable to water districts with a population of 500 or more – i.e.; apply to Grand Lakes MUD No. 2.

(23) Below are some provisions from Texas Government Code, Chapter 551 “Open Meetings”.

**Texas Government Code
Chapter 551 – Open Meetings**

§ 551.002 Open Meetings Requirement
§ 551.005 Open Meetings Training
§ 551.006 Written Electronic Communications Accessible to Public
§ 551.021 Minutes or Recording of Open Meeting Required
§ 551.022 Minutes and Recordings of Open Meeting: Public Record
§ 551.023 Recording of Meeting by Person in Attendance
§ 551.041 Notice of Meeting Required
§ 551.0411 Meeting Notice Requirements in certain Circumstances
§ 551.042 Inquiry Made at Meeting
§ 551.043 Time and Accessibility of Notice – General Rule
§ 551.045 Exception to General Rule: Notice of Emergency Meeting or Emergency Addition to Agenda
§ 551.047 Special Notice to News Media of Emergency Meeting or Emergency Addition to Agenda.

Subchapter D Exception to Requirement that Meetings be Open [Closed Meetings]
Subchapter E Procedures Relating to Closed Meeting

Subchapter F Meetings Using Telephone, Videoconference, or Internet
§ 551.1283 Governing Body of Certain Districts: Internet Posting of Meeting Materials – Recording of Certain Hearings

Subchapter G Enforcement and Remedies – Criminal Violations
§ 551.141 Action Voidable
§ 551.142 Mandamus – Injunction
§ 551.143 Prohibited Series of Communications – Offense – Penalty
§ 551.144 Closed Meeting – Offense – Penalty
§ 551.145 Closed Meeting without Certified Agenda or Recording – Offense – Penalty
§ 551.146 Disclosure of Certified Agenda or Recording of Closed Meeting – Offense – Penalty – Civil Liability

(24) In conclusion, the MUD's request to deny Petitioners' Motion to Compel Responses to RFI No. 5 must be denied/dismissed. Petitioners' Motion to Compel must be granted.

VII. PRAYER

Petitioners' prayer in response to the MUD's unwarranted requests is:

(25) The MUD's request to deny Petitioners' Motion for Sanctions must be denied/dismissed. Petitioners' Motion for Sanctions must be granted.

(26) The MUD's request to deny Petitioners' Motion to Compel Responses to RFI No. 4 must be denied/dismissed. Petitioners' Motion to Compel must be granted.

(27) The MUD's request to deny Petitioners' Motion to Compel Responses to RFI No. 5 must be denied/dismissed. Petitioners' Motion to Compel must be granted.

Katy, Texas on the 14th day of July 2024.

Respectfully submitted,

on behalf of Grand Lakes MUD No. 2 ratepayers



George J. Wakileh, Ph.D.
6819 Rosemont Park Ln
Katy, TX 77494-6590
george.wakileh@gmail.com

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CERTIFICATE OF SERVICE

I certify that the filing of this pleading is notified to all parties of record via e-mail on July 14, 2024.



George J. Wakileh, Ph.D.