



## **Filing Receipt**

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**Item Number - 206**

**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

**PETITIONERS' REBUTTAL OF THE COMMISSION'S MEMO OF 8/14/2024  
BY CHAIRMAN THOMAS J. GLEESON, EMAILED TO US AT 2:41PM**

**Attention**

- Chairman Thomas J. Gleeson		thomas.gleeson@puc.texas.gov
- Commissioner Lori Cobos		lori.cobos@puc.texas.gov
- Commissioner Jimmy Glotfelty		jimmy.glotfelty@puc.texas.gov
- Commissioner Kathleen Jackson		kathleen.jackson@puc.texas.gov
- Commissioner Courtney K. Hjaltman		courtney.hjaltman@puc.texas.gov
- Commission Counsel Shelah Cisneros		shelah.cisneros@puc.texas.gov

(1) This pleading refutes the Commission's Memo of 8/14/2024 by Chairman Thomas J. Gleeson, emailed to us at 2:41pm.

(2) Obviously drafted by a Commission Advising attorney, not by Chairman Gleeson himself, the memo is *enormously* flawed and deficient. The memo continues the Commission's arbitrary, unlawful mishandling of our case. The ratepayers request the Commission to look into our meritorious case with impeccable integrity, morality, and ethics; stop the distortion of facts and exclusion of evidence (what the Commission has repeatedly done thus far); respond to **each and every** point in our Exceptions [56589-192 (8/1/2024)] to the baseless, fraudulent PFD [56589-167 (7/23/2024)]; and apply the law properly.

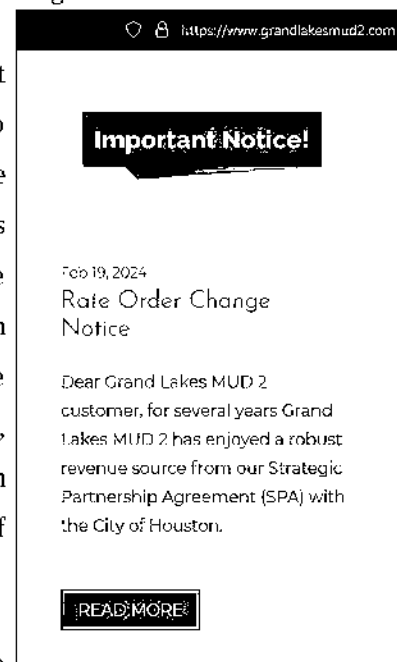
(3) The ratepayers maintain that the Commission's position is *utterly* wrong; that the Commission continues to come up with futile, facile, irrelevant arguments that—in objective and in result—circumvent the law and deny residents/ratepayers justice.

(4) The Public Utility Commission of Texas *must* be shut down if its staff arbitrarily limit the Commission's role under TWC § 13.043 to (*unintended*) text of the statute. The Commission, its commissioners, and its staff must understand the *essence* and *spirit* of the law. This is when smart, innovative, evolutionary application and interpretation of the (essence and spirit of the) law become important. Justice, the law, and the rule of law become fictitious, artificial, and of no use or value had the legislature been so naïve to have meant that the Commission lose jurisdiction even when conscious, criminal tampering with an official governmental document/record is evident and indisputable.

(5) The Commission's focus on "the effective date of the rate change" is malicious; has no legal basis; and is aimed at facilitating injustice and unlawful dismissal of our petition. The futility in the Commission's argument is evident by considering a simplistic example—A MUD issues a rate order that increases the water rates by ten times, with an effective date of ten years in the past. The MUD insists that the ratepayers are obliged to retroactively pay the new rates for the past 10 years. The ratepayers appeal to the Commission. According to the Commission's futile, facile, baseless arguments, the Commission decides that it has no jurisdiction because the rate appeal is filed too late (much later than 90 days beyond 10 years in the past). We all know that such an argument lacks credibility, reliability, and legitimacy and could *not* be trusted by a rational observer, because that is not the essence and spirit of the law; because the legislature is *much* smarter than the Commission thinks.

(6) The Commission's memo states: "In this proceeding, it is uncontested that the new rates set by the MUD started to be charged on February 1, 2024." Petitioners remind that the MUD's enforcement of the new rates as of February 1, 2024 is **at best a lawless act of fraud and criminality**. It is the Commission's role to protect ratepayers and stop the injustice and fraud. The Commission becomes consciously involved in wrongdoing when refusing to act on wrongdoing brought to its attention.

(7) The Commission's memo states: "... the ratepayers admit that February 1, 2024 is the "correct effective date" and filed no exceptions to finding of fact 4." The ratepayers **reject** this statement *vehemently*. The ratepayers did not, and do not, admit that the correct effective date is February 1, 2024. Time and again, the ratepayers stated that the Commission, and the same goes for a court, cannot base its rulings on assumptions. Additionally, the ratepayers have repeatedly stated that the rate order cannot have a retroactive effect; much like any executive, administrative, or judicial ruling. A rate order that was announced<sup>1</sup> on February 19, 2024 can by no means ever have an effective date of February 1, 2024.



(8) The Commission's memo revises Findings of Fact No. 6 to state: "On or about February 26, 2024, legal counsel for Grand Lakes MUD No. 2 revised the rate order to state that the new rates would become effective February 1, 2024." In continuing to intend to dismiss our petition, the Commission would be consciously, arbitrarily, and unlawfully denying ratepayers justice because 90

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<sup>1</sup> Available at <https://www.grandlakesmud2.com/posts/2024-02-19/rate-order-change-notice>

days from February 26, 2024 get us to May 26, 2024. By filing on May 7, 2024, the ratepayers have undoubtedly met the 90-day deadline.

(9) The Commission's memo proposes amending Conclusions of Law No. 6 to include "or are established as a matter of law" to the conditions for dismissal of a proceeding without a hearing Under 16 TAC § 22.181(c). Petitioners see this as malicious; aimed at facilitating injustice and unlawful dismissal of our petition. The dismissal of the instant proceeding without a hearing is wrong and unjustified—the facts necessary to support the dismissal are *strongly* contested; the facts necessary to support the dismissal are **not** established as a matter of law. The Commission's attorneys and ALJ are consciously, arbitrarily, and unlawfully distorting the law with the malicious intention of crushing a meritorious rate appeal.

(10) As detailed below, the ratepayers maintain that the Commission has jurisdiction in the instant proceeding because **the MUD's rate order is void on its face** and the MUD had no entitlement to enact, or enforce, such a rate order; such that the Commission has an *unconditional obligation* to declare the rate order null and void.

(11) *First*, the rate order announced on 2/19/2024 carried an effective date of 2/1/2023. Such a rate order cannot be enforced. Neither the MUD nor the Commission can claim or assume that it was just a scrivener's error; it can be forgotten as the effective date should have been 2/1/2024. The Commission's rulings **cannot** be based on assumptions.

(12) *Second*, the rate order was announced on 2/19/2024 but was enforced from 2/1/2024. The order could **not** have retroactive effect. Even if it had a correct effective date, a rate order announced on 2/19/2024 could have been enforced from 2/19/2024 onward; **never** from 2/1/2024.

(13) *Third*, on 2/26/2024 at 9:27:59AM, and as confirmed by her affidavit dated 6/4/2024 [56589-203], paralegal Melia Berry at the MUD's Attorney (the law firm Schwartz Page Harding LLP) tampered with the rate order; changing the effective date from February 1, 2023 [56589-5] to February 1, 2024 [56589-6]. The revision is *nowhere* documented via standard date/revision control schemes. The revision was *never* publicized or made known to the residents/ratepayers through a public announcement. The revised rate order was *never* voted on anew or signed anew. Such a treatment violates Texas Government Code §§ 551.041, 551.042, and 551.043, making the revised rate order a **voidable action** under Texas Government Code § 551.141.

(14) *Fourth*, tampering with a governmental record is a **criminal offense** under Texas Local Government Code §180.010(a) and Texas Penal Code, Title 8, § 37.10.

(15) *Fifth*, the rate order is illegitimate pursuant to Texas Government Code § 551.042. The MUD's governing body is *prohibited* from discussing items/ subjects/ topics/ matters/ issues that are **not** listed on the Agenda for a meeting for which notice was already posted. Item no. 11 "Operation and Maintenance Report" on the Agenda<sup>2</sup> for the MUD's Board Meeting of 12/18/2023 did **not** give notice for a rate order amendment proposal. Yet, a deliberation of and decision about the subject (rate order amendment proposal) took place at the actual meeting on 12/18/2023. The matter ended up being documented under "OPERATIONS AND MAINTENANCE REPORT" in the Minutes<sup>3</sup> for the 12/18/2023 Board Meeting, approved in the next monthly meeting on 1/29/2024. [Later on 2/14/2024 at 11:35:14AM, the Minutes were scanned (converted to a PDF document) on a Canon iR-ADV C7770 copier/printer. The date 2/14/2024, the earliest the Board Meeting Minutes would/could have become public, confirms that the 90-day deadline has been met with the May 7, 2024 filing.] This is a stark violation of Texas Government Code § 551.042. The MUD's Board should have **prevented** the water company from presenting the rate order amendment proposal. The MUD's Board was *limited* to propose placing the subject/item (proposal for a rate order amendment) on the agenda for a subsequent board meeting.

(16) *Sixth*, the rate schedule approved in the MUD's Board Meeting of 12/18/2023 increased the water/ wastewater rates for residential customers *only*, not any other class of customers; making the rate order preferential, discriminatory, and unlawful under Texas Water Code § 13.043(j).

(17) *Seventh*, the rate order is illegitimate, being based on unlawful communications and a meeting in November-December 2023, confirmed through discovery in the instant proceeding (*see* [56589-56], [56589-105], [56589-114], [56589-115]). This is a violation of Texas Government Code § 551.042, whereby the MUD's business must always be discussed, voted on, and approved in regular Board Meetings with quorum established, provided that a 72-hour notice (Texas Government Code §§ 551.041 and 551.043) has been given for the subject in question and the subject became listed on the Agenda for said meeting. Even if the MUD's business were to be permitted outside of Board Meetings, a meeting and/or communication to that effect must be perfected by a quorum of members. If not, such a meeting and/or communication become a **criminal offense** under Texas Government Code § 551.143. In the instant case, the participation of only two (McClusky and Baker) of the MUD's five Board Members in the November-December 2023 email exchanges and meeting on 12/6/2023, constitutes a **criminal offense** under Texas Government Code § 551.143.

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2 [https://www.grandlakesmud2.com/static/55eb275284eb2d4a0965c6acb4937e7a/12\\_18\\_23\\_Agenda\\_Gl\\_MUD\\_2\\_2eb955c87a.pdf](https://www.grandlakesmud2.com/static/55eb275284eb2d4a0965c6acb4937e7a/12_18_23_Agenda_Gl_MUD_2_2eb955c87a.pdf)

3 [https://www.grandlakesmud2.com/static/6f2cd9293360e4a960dc863323b089e7/12\\_18\\_2024\\_Minutes\\_1dc5ea670f.pdf](https://www.grandlakesmud2.com/static/6f2cd9293360e4a960dc863323b089e7/12_18_2024_Minutes_1dc5ea670f.pdf)

(18) The ratepayers document anew the **criminal coordination** between PUCT's attorney Kevin Pierce and MUD's attorney Jamie Mauldin (Lloyd Gosselink Rochelle Townsend), in appalling breach of Texas Code of Judicial Conduct, Texas Disciplinary Rules of Professional Conduct, 16 Texas Administrative Code § 22.161(c)(6), Texas Government Code § 21.013(e)/(f), Texas Penal Code, Title 8, § 36.04 "Improper Influence" and/or § 39.02 "Abuse of Official Capacity".

Monday, June 17, 2024 2:31 PM

Kevin,  
Thanks for sending. In advance of the deadlines next week (6/29), is there anything we should discuss on procedural schedule? Do you know yet how your SMEs will be commenting on the petition?  
Give me a call to discuss if you'd like.  
Thanks,  
Jamie [Mauldin]  
Principal  
Lloyd Gosselink Rochelle & Townsend, P.C.

Monday, June 17, 2024 3:47 PM

Good afternoon Jamie,  
Just as a point of clarification the ALJ moved the deadlines to July 1, so we have a little more time to prepare everything.  
I'm not 100% finished with my review, both on my own and through my reviewers, but I think that we're likely to move for dismissal and therefore not recommend a procedural schedule until the motions to dismiss are addressed.  
Best Regards,  
Kevin Pierce  
Attorney, Legal Division  
Public Utility Commission of Texas

Wednesday, June 26, 2024 9:08 AM

Hi Kevin,  
I was just looking at my calendar and wanted to confirm that we don't need to confer on scheduling/processing for a filing Monday. I know Staff usually handles that in their recommendation but let me know if you need anything else on that.  
Thanks-  
Jamie [Mauldin]  
Principal  
Lloyd Gosselink Rochelle & Townsend, P.C.

Wednesday, June 26, 2024 12:29 PM

Good afternoon Jamie,  
I appreciate you checking in. We don't believe it'll be necessary to discuss a procedural schedule at this time. Subject to some unanticipated, last-minute course-reversal I intend to move for dismissal of the petition, and a procedural schedule would be moot given that motion.  
Let me know if you'd like to discuss anything else on this docket.  
Best Regards,  
Kevin Pierce  
Attorney, Legal Division  
Public Utility Commission of Texas

Wednesday, May 15, 2024 12:48 PM

... I'm also happy to hop on a call to discuss this docket if there is anything y'all want to discuss at the outset. ...

Wednesday, May 15, 2024 2:11 PM

I'll be available next Monday between 9:30-12, 3-4:30 and Tuesday between 9-10am, 11:30am-3:30pm. Let me know if there's a time that works for you in there.

Wednesday, June 5, 2024 12:15 PM

I wanted to confirm, is GLMUD not contesting the number of valid signatures? I just want to make sure I didn't miss the argument if you made it somewhere. Thank you!

Wednesday, June 5, 2024 12:25 PM

... I hope you'll understand me taking some additional time to make sure everything is airtight and cleared with my leadership team before filing our response. ...

Monday, June 24, 2024 11:13 AM

Let me know if there are any questions or anything you wish to chat about. Thanks!

Wednesday, June 26, 2024 12:28:56 PM

Let me know if you'd like to discuss anything else on this docket.

(19) The Commission must not, and cannot, be proud of its work and its procedures. The Commission must not, and cannot, be proud of not acting against ALJ Katie Moore Marx or against PUC's attorneys Kevin Pierce / Scott Miles of the Legal Division for conscious criminal falsification of facts and evidence and conscious criminal tampering with the law.

(20) ALJ Katie Moore Marx breached every element of the Texas Code of Judicial Conduct, even if such code is not meant for administrative law judges. Canons 1, 2, and 3 in said code set the standard as to what is expected of any individual entrusted as arbiter of facts, evidence, and law. With knowledge, will, and deliberate intent, ALJ Katie Moore Marx chose to disregard such principles.

**Texas Code of Judicial Conduct**

Canon 1: Upholding the Integrity and Independence of the Judiciary

Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently

(21) As a lawyer, ALJ Katie Moore Marx breached a good number of the rules of Texas Disciplinary Rules of Professional Conduct—Recitals 1, 4, 5, 8, and 9 in the Preamble and Rules 3.01, 3.02, 3.03, 3.04, 3.05, 4.01, 4.04, 8.03, and 8.04.

**Texas Disciplinary Rules of Professional Conduct**

Rule 3.01. Meritorious Claims and Contentions

Rule 3.02. Minimizing the Burdens and Delays of Litigation

Rule 3.03. Candor Toward the Tribunal

Rule 3.04. Fairness in Adjudicatory Proceedings

Rule 3.05. Maintaining Impartiality of Tribunal

Rule 4.01. Truthfulness in Statements to Others

Rule 4.04. Respect for Rights of Third Persons

Rule 8.03. Reporting Professional Misconduct

Rule 8.04. Misconduct

(22) Through the Commission's *appalling* treatment of docket no. 56589, ratepayers' / petitioners' rights have been prejudiced and the administrative findings, inferences, conclusions, and decisions are (*see* APA § 2001.176):

- \* in violation of a number of statutory provisions;
- \* in excess of the agency's statutory authority;
- \* made through unlawful procedure;
- \* affected by several errors of law;
- \* not reasonably supported by the reliable and probative evidence in the record; and
- \* arbitrary, capricious, based on abuse of discretion, and based on unwarranted exercise of discretion.

(23) The ratepayers will exhaust the remedies before the PUCT by filing a Motion for Rehearing. After having exhausted all remedies, the ratepayers will, under APA § 2001.176, initiate a Judicial Review before a Travis County District Court, where Chairman Gleeson, Commissioner Cobos, Commissioner Glotfelty, Commissioner Jackson, Commissioner Hjaltman, Commission Counsel Shelah Cisneros, ALJ

Katie Moore Marx, and PUCT's attorneys Kevin Pierce / Scott Miles will be put on the stand and asked to explain to the public their judgment; their conscious choice to exclude evidence and distort facts; and their conscious, arbitrary choice to misinterpret the law and devise new meanings for justice, logic, reason, and common sense.

(24) Against the preceding background: [i] The Commission *must* reverse or remand the case for further proceedings. [ii] By mishandling our case since May 7, 2024 and now—through conscious tampering with the facts, evidence, and law—intending to crush our petition without any hearing, after 100 days of tedious work and some 150 pleadings, the Commission is asked to reimburse the ratepayers' fees, expenses, and time spent refuting the Commission's arbitrary, indifferent, unlawful treatment of our case. Our demands will be brought to a Travis County District Court and we will prevail.

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

Respectfully submitted,  
**on behalf of Grand Lakes MUD No. 2 ratepayers**



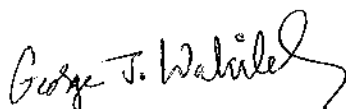
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**PUC DOCKET NO. 56589**

**CERTIFICATE OF SERVICE**

I certify that the filing of this pleading is notified to all parties of record, in addition to Chairman Gleeson, Commissioner Cobos, Commissioner Glotfelty, Commissioner Jackson, Commissioner Hjaltman, and Commission Counsel Shelah Cisneros, via e-mail on August 14, 2024.



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George J. Wakileh, Ph.D.