

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

September 19, 2012

Les Trobman, General Counsel  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin Texas 78711-3087

Re: SOAH Docket No. 582-12-6877; TCEQ Docket No. 2012-1070-UCR; In Re:  
Appeal of Water Rates Established by Riverside Water Supply Corporation

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **October 9, 2012**. Any replies to exceptions or briefs must be filed in the same manner no later than **October 19, 2012**.

This matter has been designated **TCEQ Docket No. 2012-1070-UCR; SOAH Docket No. 582-12-6877**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in cursive script that reads "William G. Newchurch".

William G. Newchurch  
Administrative Law Judge

WGN:nl  
Enclosures  
cc: Mailing List

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)  
STYLE/CASE: RIVERSIDE WATER SUPPLY CORPORATION  
SOAH DOCKET NUMBER: 582-12-6877  
REFERRING AGENCY CASE: 2012-1070-UCR

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STATE OFFICE OF ADMINISTRATIVE  
HEARINGS

ADMINISTRATIVE LAW JUDGE  
ALJ KERRIE QUALTROUGH

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REPRESENTATIVE / ADDRESS

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EXECUTIVE DIRECTOR

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**SOAH DOCKET NO. 582-12-6877**  
**TCEQ DOCKET NO. 2012-1070-UCR**

**APPEAL OF WATER RATES  
ESTABLISHED BY RIVERSIDE  
WATER SUPPLY CORPORATION**

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§  
§

**BEFORE THE STATE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

At its meeting on December 8, 2011, the Board of Directors of Riverside Water Supply Corporation (Riverside) voted to increase its water rates, effective January 1, 2012. On or about March 28, 2012, a petition to appeal those new rates (Petition),<sup>1</sup> signed by 263 people<sup>2</sup> (Petitioners), was filed with the Texas Commission on Environmental Quality (TCEQ) and served on Riverside.

Once invalid signatures are excluded, however, Riverside contends that fewer than the required 10% of its ratepayers signed the Petition. For that reason, Riverside asks the Commission to find that the Petition failed to invoke the Commission's appellate jurisdiction under Tex. Water Code § 13.043(c) and dismiss the Petition. The Executive Director (ED) and the Office of Public Interest Counsel (OPIC) do not take positions on this jurisdictional objection.

The Administrative Law Judge (ALJ) cannot find that the Petition was signed by at least the legally required 10% of Riverside's ratepayers. Accordingly, he recommends that the Commission find that its jurisdiction was not invoked and grant Riverside's motion to dismiss the Petition.

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<sup>1</sup> ED Ex. A.

<sup>2</sup> Riverside Ex. A (admitted to show the number of signatures and provide a reference number for each.)

## II. APPEARANCES

On September 5, 2012, the ALJ held a preliminary hearing to consider the Petition, at which the following appeared:

Party	Representative
Riverside	Anthony S. Corbett
ED	Dinniah Tadema
OPIC	Eli Martinez

Because jurisdiction was not proven, the ALJ did not admit additional parties. However, James C. Bonney is a Riverside ratepayer and led the Petition drive. The ALJ allowed Mr. Bonney to fully participate at the preliminary hearing and advocate for the sufficiency of the Petition.

## III. JURISDICTION

### A. Applicable Law

Water Code § 13.043(b), (c), and (d) provide:

(b) Ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water, drainage, or sewer rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 67;

...

(c) An appeal under Subsection (b) of this section must be initiated by filing a petition for review with the commission and the entity providing service within 90 days after the effective day of the rate change . . . . The petition must be signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal under Subsection (b) of this section.

(d) In an appeal under Subsection (b) of this section, each person receiving a separate bill is considered a ratepayer, but one person may not be considered more than one ratepayer regardless of the number of bills the person receives. The

petition for review is considered properly signed if signed by a person, or the spouse of a person, in whose name utility service is carried.

To implement the above statute, Commission rule 30 TAC § 291.42 provides:

(a) Petitions for review of rate actions filed pursuant to the Texas Water Code §13.043(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:

(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 rate 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.

(b) A petition must be received from a total of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal, whichever is less.

...

## **B. The Petitioners Have the Burden of Proof**

Water Code § 13.184(c) provides:

In any proceeding involving any proposed change of rates, the burden of proof shall be on the utility to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable.

Very similarly, 30 TAC § 291.12 provides:

In any proceeding involving any proposed change of rates, the burden of proof shall be on the provider of water and sewer services to show that the proposed change, if proposed by the retail public utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.

Whether Riverside's rates are just and reasonable are not issues before the Commission at this point. Instead, the current question is whether the Petition is sufficient to invoke the Commission's jurisdiction. Accordingly, this jurisdictional dispute is another type of matter in which the Petitioners, who are moving that the Commission consider their Petition, have the burden of proving that the Petition is adequate.

**C. Evidence Does Not Show That 10% or More of Riverside's Ratepayers Signed the Petition**

Riverside's Office Manager is Cindy Drake. She works daily with Riverside's electronic database of members and ratepayers, manages the monthly billing of those customers, and handles customer complaints. She testified at the hearing concerning her review of the number of signatures on the Petition and provided an affidavit<sup>3</sup> and a table<sup>4</sup> that she compiled to identify invalid signatures. The ALJ found Ms. Drake to be a knowledgeable, competent, credible, and responsive witness.

When the Petition was filed, Riverside had 1,886 members whose property Riverside served. Some of the members rented their property to others. If separately billed by Riverside, a renter was recorded in the database as a ratepayer. Rounding off to the benefit of the Petitioners, 188 or 10% of separately billed ratepayers, including members and renters, had to sign the Petition for it to be sufficient to invoke the Commission's jurisdiction.

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<sup>3</sup> Riverside Ex. C.

<sup>4</sup> Riverside Ex. B.

Ms. Drake and two other Riverside employees under her direction used Riverside’s database to determine whether each of the signatures on the Petition was valid. Ms. Drake convincingly testified that she erred in favor of the Petitioners. Despite that, Ms. Drake could confirm the validity of only 173 of the 263 signatures on the Petition.

If she could determine from the Petition and the database that the person who signed was a Riverside ratepayer, whether a member or a renter, she counted the signature as valid, even if other information was missing from the Petition. When an illegible or no address was given in the Petition, she searched the database for phone numbers given in the Petition to find matches for the name. After counting the first signature for a served address, she deemed additional signatures for that address ineligible, whether signed by the same or another person. If a signature did not match the name of a ratepayer in the database for the address given on the Petition, she excluded that signature. If a signer gave an address that was not within the area that Riverside’s certificate of convenience and necessity (CCN) authorized Riverside to serve (CCN area), she deemed the signature ineligible.

The following table summarizes the results of Ms. Drake’s review<sup>5</sup>:

<b>Total Signatures</b>	<b>263</b>
<b>Invalid Signatures</b>	
Address not within CCN area	(9)
Additional signature for same address within CCN area <sup>6</sup>	(38)
Not a ratepayer for given address within CCN area	(10)
<b>Validity of Signature Could Not Be Verified</b>	
No or incomplete service address given	(21)
No phone number or other information given to indicate a ratepayer	(11)
No information beyond signature	(1)
<b>Signatures Proven Valid</b>	<b>173</b>

The ALJ finds that Ms. Drake correctly concluded that some of the signatures were invalid, and the validity of others was not shown. Under Water Code § 13.043(c) and (d), the

<sup>5</sup> To increase clarity, the ALJ has reworded and combined some of categories of signatures that Ms. Drake excluded.

<sup>6</sup> In Riverside Ex. B, Ms. Drake referred to these as either “Duplicate Address” or “Duplicate.” The ALJ has combined these categories.

Petition must be signed by ratepayers who receive separate bills and whose rates have been changed, and a ratepayer may not sign more than once. People who are not in Riverside's database of ratepayers or reside outside Riverside's CCN area are not billed, and their signatures are ineligible. Only one signature is eligible for a residence served by Riverside, since others at that same location are not separately billed.

The documentary evidence is consistent with Ms. Drake's analysis. No evidence was offered to contradict her analysis. The ALJ finds that only 173 of the signatures on the Petition have been proven valid. That is an insufficient number of the signatures to give the Commission jurisdiction to consider the merits of the Petition.

#### IV. SUMMARY

The ALJ recommends that the Commission adopt the attached proposed order and dismiss the Petition because it is insufficient to invoke the Commission's jurisdiction under the standards of Water Code § 13.043(b), (c), and (d) and 30 TAC § 291.42.

**SIGNED September 19, 2012.**



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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER DISMISSING A PETITION APPEALING THE WATER RATES  
ESTABLISHED BY RIVERSIDE WATER SUPPLY CORPORATION,  
TCEQ DOCKET NO. 2012-1070-UCR,  
SOAH DOCKET NO. 582-12-6877**

On \_\_\_\_\_, the Texas Commission on Environmental Quality (Commission or TCEQ) considered this matter and the Proposal for Decision of William G. Newchurch, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). The Commission adopts the following Findings of Fact and Conclusions of Law.

**I. FINDINGS OF FACT**

1. At its meeting on December 8, 2011, the Board of Directors of Riverside Water Supply Corporation (Riverside) voted to increase its water rates, effective January 1, 2012.
2. On or about March 28, 2012, a petition to appeal those new rates (Petition), signed by 263 people (Petitioners), and designating Jim Bonney as their representative was filed with the Commission and served on Riverside.
3. In the Petition, nine Petitioners gave addresses that Riverside did not serve and were outside the area that Riverside's Certificate of Convenience and Necessity (CCN) authorized Riverside to serve (CCN area).
4. Another 38 Petitioners gave addresses served by Riverside that other Petitioners had also given.
5. Another 10 Petitioners are not listed in Riverside's accounts as the ratepayers for the addresses that they wrote in the Petition, and there is no evidence that any of them is the spouse of a ratepayer.
6. Another 21 Petitioners gave addresses that were too incomplete to confirm that they were Riverside ratepayers.

7. Another 12 Petitioners gave no address, phone number, or other information to confirm that they were Riverside ratepayers.
8. Another Petitioner gave his name but no other information to confirm that he was a Riverside ratepayer.
9. When the Petition was filed, Riverside served 1,886 ratepayers. Rounding off to the benefit of the Petitioners, 10% of that total was 188 ratepayers.
10. On July 23, 2012, a notice of hearing on the Petition was mailed to Riverside, Mr. Bonney, and the Commission's Executive Director (ED) and Office of Public Interest Counsel (OPIC).
11. On August 8, 2012, an amended notice of hearing on the Petition, changing the date and time of the hearing, was mailed to Riverside, Mr. Bonney, the ED, and the OPIC.
12. The amended notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
13. On August 30, 2012, Riverside filed a motion to dismiss the Petition, arguing that it was not signed by 10% or more of Riverside's separately billed ratepayers as required by law to invoke the Commission's jurisdiction to consider the Petition.
14. On September 5, 2012, as indicated in the amended notice of hearing, Judge Newchurch held a preliminary hearing to consider the Petition. He also admitted evidence and heard arguments concerning Riverside's motion to dismiss the Petition.
15. Mr. Bonney appeared for the Petitioners at the preliminary hearing.
16. Anthony S. Corbett, attorney, appeared for Riverside at the preliminary hearing.
17. Dinniah Tadema, attorney, appeared for the ED at the preliminary hearing.
18. Eli Martinez, attorney, appeared for the OPIC at the preliminary hearing.
19. The preliminary hearing was concluded and the record was closed on September 5, 2012.

## II. CONCLUSIONS OF LAW

1. To invoke the Commission's jurisdiction to consider an appeal of Riverside's rates, a Petition must be signed by 10% of Riverside's separately billed ratepayers or their spouses, in accordance with the provisions of Water Code § 13.043(b), (c), and (d) and 30 TAC § 291.42.
2. As the movants, the Petitioners have the burden of proving that the Commission has jurisdiction to consider their appeal of Riverside's rates. Water Code § 13.184(c) and 30 TAC § 291.12.
3. Based on the above Findings of Fact, 57 of the Petitioners are not separately billed Riverside ratepayers who are entitled, under Water Code § 13.043(b), (c), and (d) and 30 TAC § 291.42, to appeal to the Commission to review Riverside's rates.
4. The evidence does not show that 33 other Petitioners are Riverside ratepayers entitled, under Water Code § 13.043(b), (c), and (d) and 30 TAC § 291.42, to petition the Commission to review Riverside's rates.
5. The Petitioner contains valid signatures of only 173 separately billed Riverside ratepayers, which is less than 10% of Riverside's separately billed ratepayers.
6. The Petitioners have failed to carry their burden of proving that the Petition was signed by 10% of Riverside's separately billed ratepayers or their spouses.
7. The Commission has no jurisdiction to consider the Petition, and it should be dismissed.

**NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:**

1. The March 28, 2012 Petition appealing the water rates established by Riverside Water Supply Corporation on December 8, 2011, to become effective on January 1, 2012, is dismissed.
2. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted, are denied.
3. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Tex. Gov't Code § 2001.144.

4. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
5. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

**ISSUED:**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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**Bryan W. Shaw, Ph.D., Chairman**  
**For the Commission**