



Control Number: 40114



Item Number: 37

Addendum StartPage: 0

COMPLAINT OF CITY OF HOUSTON
AGAINST SOUTHWESTERN BELL
TELEPHONE LP, d/b/a AT&T TEXAS

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PUBLIC UTILITY COMMISSION
OF TEXAS

**CITY OF HOUSTON'S REPLY TO AT&T TEXAS' OBJECTION AND
RESPONSE TO CITY OF HOUSTON'S MOTION TO COMPEL**

COMES NOW the City of Houston ("Houston") and submits its Reply to AT&T Texas' Objection and Response to City of Houston's Motion to Compel. On February 8, 2013 AT&T filed its Objection and Response to City of Houston's Motion to Compel. Therein, AT&T stated:

*Houston did not **file** the Motion to Compel with the Public Utility Commission ("the Commission") within 5 working days of its receipt of AT&T's objections.' Houston's Motion to Compel was due on or before February 4, 2013. Pursuant to PUC Proc. Rule 22.144(e), "[a]bsence of a motion to compel will be construed as an indication that the parties have resolved their dispute." Accordingly, Houston's failure to **file** the Motion to Compel within the required time indicates that Houston is no longer pursuing the discovery requests to which AT&T objected. As such, AT&T objects to Houston serving AT&T with a copy of the Motion to Compel that was ultimately not filed. Although AT&T is not required to respond to a motion that is not on file, in the abundance of caution, AT&T nevertheless provides a response to Houston's Motion to Compel without waiving this objection.¹*

Under Commission rules, AT&T's response to Houston's motion to compel is due "within five working days after receipt of the motion."² When Houston filed or whether Houston filed is irrelevant. What is relevant is whether AT&T received the motion,

¹ Southwestern Bell Telephone expressly recognized when this rule was adopted that when "technical", inadvertent errors are made, rather than wholesale rejection of non-conforming filings, an opportunity to cure should be afforded, particularly when no party is harmed, as they will have received copies of the filings. See PUC Docket No. 25342, Rulemaking to Amend Rules in Chapter E (PUC Rule 22.71), Southwestern Bell Telephone, L.P., Reply Comments, (May 17, 202, p. 2-3).

² PUC Proc. R. §22.144(e): "**Responses to motions to compel.** Responses to a motion to compel shall be filed within five working days after receipt of the motion, and shall include all factual and legal arguments the respondent wants to present regarding the motion."

which it did on February 1, 2013. That AT&T was served is made clear from AT&T's own pleading.

Houston would contend it did properly and timely file the Motion to Compel on February 4, 2013 provisionally and further that all parties of record were served before that due date, by facsimile copies on February 1, 2013, including ATT&T. Therefore if there was a delay, due to a series of inadvertent errors in the technical filing as to the size of the envelope by Houston, and as to who was to review and notify Houston of that non-conformity, no party was harmed by the Commission filing delay.

Attached hereto, as Exhibit A, is Houston's electronic filing confirmation showing that Houston properly and timely electronically pre-filed the pleading on February 1, 2013. All parties of record were served on February 1, 2013, including AT&T. (See attached Exhibit C, the facsimile transmittal confirmation sheet to AT&T). Attached hereto as Exhibit B is the FedEx tracking and proof of delivery of the pleading, which the Commission's central records received on the morning of February 4, 2013. According to the P.U.C. Procedural Rules:

§22.71(e) Receipt by the commission. Pleadings and any other documents shall be deemed filed when the required number of copies and the electronic copy, if required, in conformance with §22.72 of this title are presented to the commission filing clerk for filing. The commission filing clerk shall accept pleadings and documents if the person seeking to make the filing is in line by the time the pleading or document is required to be filed.

Houston timely filed its Motion to Compel, which contained two exhibits that were redacted for confidential information. Simultaneously, Houston filed confidential copies of the unredacted exhibits as a separate filing (as evidenced by its separate item number on Interchange). Central records rejected the filings and did not time-stamp the filing because the two confidential exhibits were in a 9X12 envelope rather than a 10X13 envelope required by PUC Proc R. 22.71(d)(1)(A). However, this particular non-conforming envelope defect is not grounds for rejection *by the filing clerk; respectfully, that determination can only be made by the confidential documents manager of the Legal Division.* Pursuant to PUC Proc R. 22.71(d)(1):

“...If the confidential envelope meets the requirements of subparagraph (A)(i)-(vii) of this paragraph, Central Records shall accept it on a provisional basis...”³

Houston's filings met all of the requirements of 22.71(a)(1)(A)(i)-(vii) and were required to be provisionally accepted by Central Records. Then, after having been provisionally accepted, pursuant to 22.71(d)(1):

*“...The confidential documents manager for the Legal Division shall review **the confidential envelope and documents for compliance with subparagraphs (A) — (C) of this paragraph.** Any envelope and/or documents that do not meet the requirements of these subparagraphs will be returned to the submitting party by the confidential documents manager. The submitting party shall be required to **bring the envelope and/or materials into compliance with this section and resubmit the envelope and materials through Central Records.** Parties shall resubmit any documents returned by either the filing clerk or the confidential documents manager no later than **3:00 p.m. the next working day after notification of the deficiency...**”*

[Emphasis added]. Central Records improperly “rejected” the filing and therefore failed to log the receipt of the filing. Under the rule, the filings should have been provisionally accepted, and Houston should have been given notice of the defect by the confidential documents manager for the Legal Division and given until *3:00 p.m. the next working day after notification of the deficiency* an opportunity to cure the defect. (Though according to the filing clerk, it is typically the practice of central records to place the confidential material in the proper sized envelope for the filing party (thus curing the defect)).

Even assuming *arguendo*, that the Central Records was the responsible entity to make the determination if the envelope was non-confirming, and did properly reject the submittal for filing, those materials were to be immediately returned to Houston, which

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PUC Proc. R. 22.71 (d)(1)(A)(i)-(vii) requirements include:
(i) the word "CONFIDENTIAL" in bold print at least one-half inch in size;
(ii) the control number, if available;
(iii) the style of the proceeding;
(iv) the name of the submitting party;
(v) Brief description of contents, i.e., "Response to {Name of RFI requestor}'s First RFI No. 1-1";
(vi) Bate Stamped or consecutive page number range of documents enclosed;
(vii) Number and quantity of envelopes, i.e., one of one or one of two, two of two (If the confidential material fits into one envelope, each copy would be marked "one of one." If the confidential material requires two envelopes, each copy would be marked "one of two, two of two")

did not occur. (In good faith Central records did attempt to contact Houston via email on February 4, 2013, but based on informal discussions with the Central records it appears that email was inadvertently sent to an incorrect address.)

To reiterate, Houston was never notified by the *confidential documents manager of the Legal Division* of any defect (nor did Central records immediately return this material), so Houston was never allowed the “until 3:00 p.m. the next working day after notification of the deficiency” to cure the defect. Neither did Central Records contact the submitting party regarding the defect. Instead, they simply set the entire filing aside.

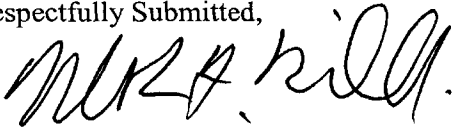
Lastly, PUC Proc. R. 22.71(d)(1) provides:

“...Any issue regarding timeliness of the filing shall be addressed by the administrative law judge assigned to the proceeding...”

CONCLUSION

The presiding officer has substantial discretion in how to conduct this proceeding. While Houston argues its Motion to Compel was timely filed, Houston urges the ALJ to deem the pleading timely and compel responses to Houston’s requests for information.

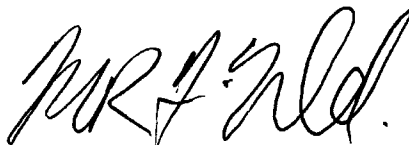
Respectfully Submitted,



Mark A. Wilder
Southwestern Tariff Analyst (Authorized Representative for the City of Houston)
2514 Tangle Street
Houston, TX 77005
713-522-7568 phone
713-522-0145 fax

CERTIFICATE OF SERVICE

I, Mark Wilder, Authorized Agent for the City of Houston, certify that a copy of this document was served on all parties of record in this proceeding on February 12, 2013 in the following manner: FedEx to the Public Utility Commission and via facsimile to all other parties of record.



February 12, 2013

Exhibit A

Public Utility Commission, Tx
Filing Submission

Control Number: 40114
Filing Party: CITY OF HOUSTON
Tracking Code: 5BBLJ5MF
Type: PLEADINGS
Documents:
C: \PUC\40114 - Motion to Compel RFIS FINAL.doc
C: \PUC\EXHIBITS.pdf
Total Number of Pages: 28
Addendum Start Page: 27
Submission Method: FTP (69 KB)

Submitted By:

Southwestern Tariff Analyst
2514 Tangley Street
Houston, TX 77005
713-522-7568
mark@STAAudit.com

2/1/2013 10:46:26 AM

Tracking Number: 5BBLJ5MF



Exhibit B

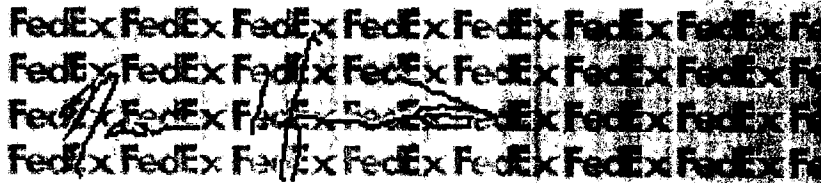
February 11, 2013

Dear Customer:

The following is the proof-of-delivery for tracking number 899262301359.

Delivery Information:

Status:	Delivered	Delivered to:	Receptionist/Front Desk
Signed for by:	N.HUGGINS	Delivery location:	1701 N CONGRESS AVE STE 8 TX 78711
Service type:	FedEx Standard Overnight	Delivery date:	Feb 4, 2013 08:40
Special Handling	Deliver Weekday		



Shipping Information:

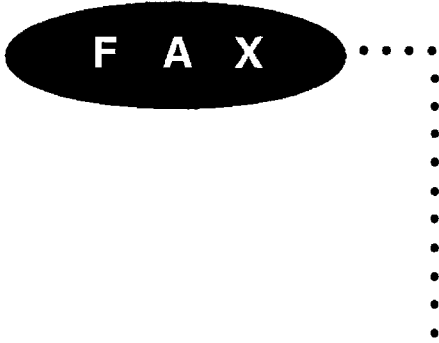
Tracking number:	899262301359	Ship date:	Feb 1, 2013
		Weight:	4.0 lbs/1.8 kg

Recipient:
FILING WGRK CENTRAL KEORDS
PUC OF TX

Shipper:
MARK WILDER
MARKETING ON HOLD
2514 TANGLEY ST
770052516 US

Thank you for choosing FedEx.

Exhibit C



To: Christie Villarreal
Fax number: 1 512 870-3420

From: Mark Wilder
Fax number: (713) 522-0145
Business phone:
Home phone:

Date & Time: 2/1/2013 8:16:40 AM
Pages: 29
Re:
