



Control Number: 42866



Item Number: 10

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83<sup>rd</sup>  
Legislature, Regular Session, transferred the functions  
relating to the economic regulation of water and sewer  
utilities from the TCEQ to the PUC effective  
September 1, 2014.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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ORDER NO. 1 - SETTING CASE SCHEDULE & PROCEDURES

DOCKET NUMBER:

582-14-3382

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**SOAH DOCKET NO. 582-14-3382  
TCEQ DOCKET NO. 2014-0439-UCR**

<b>PETITION OF TRAVIS COUNTY</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>MUNICIPAL UTILITY DISTRICT NO.</b>	<b>§</b>	
<b>12 APPEALING CHANGE OF</b>	<b>§</b>	<b>OF</b>
<b>WHOLESALE WATER RATES</b>	<b>§</b>	
<b>IMPLEMENTED BY</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>
<b>WEST TRAVIS COUNTY PUBLIC</b>	<b>§</b>	
<b>UTILITY AGENCY;</b>		
<b>CITY OF BEE CAVE, TEXAS;</b>		
<b>HAYS COUNTY, TEXAS; AND</b>		
<b>WEST TRAVIS COUNTY MUNICIPAL</b>		
<b>UTILITY DISTRICT NO. 5</b>		

**ORDER NO. 1  
SETTING CASE SCHEDULE AND PROCEDURES**

**I. INTRODUCTION**

On June 11, 2014, a preliminary hearing was held in this case. The jurisdiction of the Texas Commission on Environmental Quality (TCEQ) under Texas Water Code § 13.043(f) was proven. The Administrative Law Judge (ALJ) did not rule on other claimed, but disputed, legal bases for the Commission's jurisdiction because he saw no need to make that determination at this time. The ALJ's jurisdiction is not disputed.

The following appeared and were admitted as parties:

PARTY	REPRESENTATIVE
Travis County Municipal Utility District No. 12 (District 12)	Kay Trostle & Miguel Huerta
West Travis County Public Utility Agency (PUA)	David Klein & Stephanie Albright
City Of Bee Cave, Texas (City)	Jim Haley
Hays County, Texas (County)	did not appear
West Travis County Municipal Utility District No. 5 (District 5)	Randy Wilburn

<b>PARTY</b>	<b>REPRESENTATIVE</b>
Executive Director (ED)	Ron Olson & Jessica Gray
Office of Public Interest Counsel (OPIC)	Rudy Calderon

## **II. SCHEDULE**

The following is adopted to govern this case:

<b>DATE</b>	<b>EVENT</b>
July 14, 2014	Discovery begins and responses to discovery requests are due in 30 days.
August 15, 2014	Deadline for requests for disclosure.
September 11, 2014	Prehearing conference to consider adjustments necessary due to transfer of jurisdiction from the Commission to the Public Utility Commission of Texas (PUC).
October 17, 2014, through October 31, 2014	District 12 is not required to respond to any discovery or motion. Any response deadline during this period is tolled.
October 31, 2014	Deadline for District 12 to prefile its direct case in writing, including all testimony and exhibits.
December 5, 2014, through December 19, 2014	Parties other than District 12 and the ED are not required to respond to any discovery or motion. Any response deadline during this period is tolled.
December 19, 2014	Deadline for parties other than District 12 and the ED to prefile their direct cases in writing, including all testimony and exhibits.
December 22, 2014, through January 1, 2015	Hiatus for holidays.

DATE	EVENT
January 23, 2015, through February 6, 2015	The PUC Staff is not required to respond to any discovery or motion. Any response deadline during this period is tolled.
February 6, 2015	Deadline for PUC Staff to prefile its direct cases in writing, including all testimony and exhibits.
March 6, 2015	Discovery to District 12 on direct case ends. Deadline to file motions for summary disposition.
March 6, 2015, through March 20, 2015	District 12 is not required to respond to any discovery or motion. Any response deadline during this period is tolled.
March 13, 2015	Deadline to file objections to and motions to strike any prefiled direct-case evidence.
March 16, 2015	Deadline to file responses to motions for summary disposition.
March 20, 2015	Deadline for District 12 to file rebuttal evidence.
March 20, 2015	Discovery ends for non-rebuttal discovery.
March 27, 2015	Deadline to propound discovery concerning District 12's rebuttal. Objections to this discovery are due within 10 days, and responses to objections are due ten days after objections are served.
March 27, 2015	Deadline to file responses to objections and motions to strike direct-case prefiled evidence.
April 10, 2015	Deadline to conduct depositions.
April 12, 2015	Prehearing conference to rule on objections to prefiled evidence and other pending matters.
April 20, 2015	Hearing on the merits of case begins.
April 24, 2015	Estimated end of the hearing on the merits.

The above schedule reflects the ALJ's understanding of the written proposal submitted by the parties. To the extent it is inaccurate or modification is warranted, the parties should submit a joint motion to amend it.

### **III. HEARING AND PREHEARING DATES AND LOCATION**

**The hearing on the merits will convene at 9:00 a.m., April 20, 2015, at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas.** Unless the Parties are notified otherwise, the hearing on the merits will continue each workday until it has concluded. Given the complexity and anticipated length, appearing at the hearing on the merits by telephone is not practical and will not be allowed.

**The September 11, 2014, and April 12, 2015, preliminary hearings will be held at 10:00 a.m., at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas.**

### **IV. APPLICABLE RULES**

This case is governed by the rules of Commission, as supplemented by SOAH's procedural rules, until and if ordered otherwise after jurisdiction transfers to the PUC.

### **V. DISCOVERY**

Discovery shall be conducted according to the Texas Rules of Civil Procedure (TRCP), as supplemented by TCEQ's and SOAH's discovery rules. 30 Tex. Admin. Code § 80.151 and 1 TAC § 155.251. The TRCP shall be interpreted consistent with chapter 80 of the TCEQ's rules, the Texas Water Code, the Texas Health and Safety Code, and the Administrative Procedure Act. 30 Tex. Admin. Code § 80.151. Pursuant to 1 Tex. Admin. Code § 155.251(c)(2),

discovery documents shall be served on the other Parties but shall not be filed with the ALJ unless such materials are the subject of a discovery dispute.

The Parties are expected to attempt to resolve discovery disputes; however, disputes that cannot be resolved should be brought to the ALJ's attention in a motion to compel. Any such motion shall include a copy of any discovery correspondence necessary for an informed ruling on the dispute.

The total time for each party to take oral depositions may not exceed 50 hours. Each may divide its total time among witnesses as it sees fit. The total number of written interrogatories that any party may serve on any other party may not exceed 25. 30 Tex. Admin. Code § 80.152(c).

## **VI. PLEADINGS**

Unless a party seeks a hearing and the motion is granted, the ALJ will rule on motions based on the written pleadings. If oral argument is granted, it shall be conducted by telephone conference, unless the ALJ orders otherwise.

The Parties may fax pleadings to SOAH at 512-322-2061. If a deadline is approaching and a party cannot get a fax through for reasons beyond its control, the party should call SOAH's Docketing Division, 512-475-4993, to discuss the problem.

When filing or serving documents, the parties shall use the service list attached to this order and attach a copy of that list to each filing. A party may be served through its fax number or email included on the service list.

## VII. PREFILED EVIDENCE

Every party shall file its direct-case evidence in writing before the hearing (prefile) as required by the case schedule. One copy shall be served on the representative of every other party, and one copy shall be filed with the ALJ. The prefiled evidence should include all testimony and other evidence that the party plans to offer during its direct case. Every page of every prefiled document shall be appropriately numbered to allow easy identification and reference. Rebuttal evidence and documents used for impeachment or rebuttal purposes need not be prefiled.

Non-rebuttal and non-cross-examination evidence that is not prefiled will not be admitted unless the offering party shows that there is good cause to do so and that the other parties will not be placed at an unreasonable disadvantage by the late offering. Good cause will be determined primarily based the offering party's showing that a need for the evidence could not have been reasonably anticipated or that the evidence was inadvertently not prefiled due to an error. The party with the burden of proof is cautioned not to attempt to gain a strategic advantage by saving evidence for rebuttal that is more properly part of its direct case, since that might lead to a motion for summary disposition.

Prefiled testimony shall be written as if the questions were asked by the party's lawyer and answered by the witness. Each witness must be called to testify and adopt the prefiled testimony under oath. The testimony should then be offered as an exhibit. Every other party will have an opportunity to cross-examine the witness unless that opportunity has been waived. If all other parties have waived cross-examination, the witness's testimony shall be admitted without the witness appearing.

When a party prefiles testimony, it shall indicate the sequence in which it intends to call its witnesses. If there is a need to deviate from that order, the ALJ and the other parties shall be



informed at least 24-hours before the witness is called to testify unless the ALJ permits shorter notice.

At the hearing, two copies of every exhibit, which will be referred to as the "Record Set" and the "Appeal Set," shall be provided to the court reporter before the hearing starts, so that the court reporter can mark them without delaying the hearing.

### **VIII. OPEN GOVERNMENT**

The ALJ intends to strictly limit admission of evidence under seal and closing of the hearing on the merits to the public. The parties shall negotiate prior to the hearing and attempt to agree on redacted versions of confidential documents that can be admitted or to stipulate to facts to which they pertain. If the parties are unable to reach an agreement, the ALJ will resolve the dispute at the hearing in a session closed to the public.

### **IX. TRANSCRIPT**

For any proceeding set to last longer than one day, a court reporter is generally required. 1 Tex. Admin. Code § 155.423(b). Upon their own motion, judges may request an original and two copies of a transcript of a proceeding and may require the applicant to pay for the transcript in advance subject to reimbursement from other parties upon assessment of costs. 30 Tex. Admin. Code § 80.23 (b)(4) and (5).

The ALJ estimates that the hearing on the merits will last longer than one day. District 12 shall arrange for and pay a court reporter to record and transcribe the hearing on the merits and deliver the original transcript to the ALJ and two copies to the TCEQ's Chief Clerk within two weeks after the end of the hearing. The delivered transcript shall also include electronic copies thereof on disc in text format. When the Commission or the PUC makes a final

decision in this case, the costs of the recording and transcription shall be allocated among the parties in accordance with 30 Tex. Admin. Code § 80.23.

**SIGNED June 12, 2014.**



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

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**SERVICE LIST**

**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)  
**STYLE/CASE:** WEST TRAVIS COUNTY PUBLIC UTILITY AGENCY  
**SOAH DOCKET NUMBER:** 582-14-3382  
**REFERRING AGENCY CASE:** 2014-0439-UCR

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE**  
**ALJ WILLIAM G. NEWCHURCH**

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WEST TRAVIS COUNTY MUD NO. 5

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CITY OF BEE CAVE

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## Liz Slick

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