



Control Number: 43832



Item Number: 42

Addendum StartPage: 0

SOAH DOCKET NO. 473-14-4782.WS  
PUC DOCKET NO. 43832

RECEIVED

APPLICATION OF PALO DURO §  
SERVICE COMPANY, INC. TO AMEND §  
ITS CERTIFICATE OF CONVENIENCE §  
AND NECESSITY IN PARKER AND §  
WISE COUNTIES §

BEFORE THE STATE OFFICE

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PUBLIC UTILITY COMMISSION  
OF  
FILING CLERK

ADMINISTRATIVE HEARINGS

**COMMISSION STAFF'S MOTION TO DISMISS**

Commission Staff (Staff) of the Public Utilities Commission of Texas files Commission Staff's Motion to Dismiss in response to SOAH Order No. 5. In support thereof, Staff shows the following:

**I. BACKGROUND**

On November 21, 2014 Palo Duro Service Company (Palo Duro) filed with the Public Utility Commission of Texas (Commission) a request for correction of maps related to water certificate of convenience (CCN) No. 12200 in Parker and Wise Counties. The Administrative Law Judge (ALJ) set July 26, 2016, for Staff to file a final recommendation or joint proposed order. Thus, this motion is timely filed.

**II. MOTION TO DISMISS**

Pursuant to 16 Tex. Admin. Code § 24.102(a) (TAC), the Commission must ensure the Applicant has the technical capability to serve the new area. Palo Duro currently has multiple outstanding violations with the Texas Commission on Environmental Quality (TCEQ) for one of its existing water systems. Palo Duro's application cannot be approved until these violations are resolved. Palo Duro has been afforded ample time to resolve these issues but has been unable to do so. The continued failure of Palo Duro to resolve the TCEQ violations places this docket in a state of limbo in that it cannot proceed as long as the violations are outstanding. Pursuant to 16 TAC § 22.181(a)(1)(H) a proceeding may be dismissed for "other good cause shown." Further, 16 TAC § 22.181(a)(1)(G) provides for dismissal of an action for failure to prosecute. The failure of Palo Duro to rectify the TCEQ violations, thereby preventing this docket from moving

42

forward, equates to a failure to prosecute. In the alternative, 16 TAC § 181(a)(1)(H) is applicable as rendering the proceeding immobile constitutes sufficient good cause for dismissal.

### III. CONCLUSION

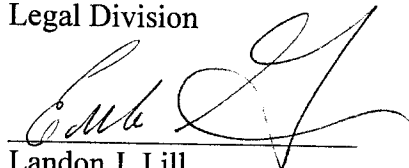
Staff respectfully requests that Palo Duro's application be dismissed without prejudice pursuant to 16 TAC § 22.181(a)(1)(G) and/or 16 TAC § 181(a)(1)(H).

July 25, 2016

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

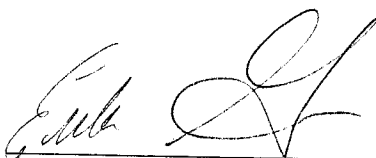
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### CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record July 25, 2016, in accordance with 16 TAC § 22.74.

for   
Landon J. Lill