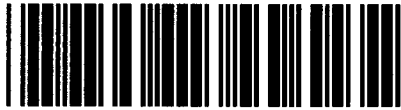




Control Number: 43891



Item Number: 4

Addendum StartPage: 0

House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
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

SOAH DOCKET NO. 582-03-3725
TCEQ DOCKET NO. 2003-0664-UCR

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IN RE: THE APPLICATION OF BEXAR § BEFORE THE STATE OFFICE
METROPOLITAN WATER DISTRICT § PUBLIC UTILITY COMMISSION
TO AMEND WATER CCN NO. 10675 IN § FILING CLERK
BEXAR COUNTY § OF
ADMINISTRATIVE HEARINGS

**ORDER NO. 9
GRANTING MOTION, SETTING HEARING ON THE MERITS, AND
SETTING OUT CASE PROCEDURES**

At a prehearing conference on June 6, 2005, for good cause shown, the ALJ *granted* Bexar Metropolitan Water District's (Bexar Met or Applicant) request to return this case to the active docket and set the hearing on the merits. This Order sets the hearing on the merits and also sets forth the prehearing schedule and procedures.

I. REPRESENTATION AND ATTORNEY OF RECORD

As agreed by the parties, Seagal V. Wheatly, attorney for BSR Water Company (BSR) in other matters, may appear for BSR in this case from time to time at the discretion of BSR. However, David L. Earl shall remain counsel of record in this case and will receive all pleadings and Orders issued in this case. Mr. Earl and Mr. Wheatly shall make arrangements for distribution between themselves of pleadings filed in this case.

II. SCHEDULE

The following schedule shall govern this case:

DATE	ACTIVITY
July 20, 2005	Bexar Met profiles its direct-case evidence in writing, including all testimony and exhibits, and proposed order of witnesses.
July 21 through August 25, 2005	Parties conduct discovery as permitted under Texas Commission on Environmental Quality (TCEQ) and this Order. (See Sec. IV below)

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DATE	ACTIVITY
September 1, 2005	BSR prefiles its direct-case evidence in writing, including all testimony and exhibits, and proposed order of witnesses.
September 22, 2005	ED prefiles his direct-case evidence in writing, including all testimony and exhibits, and proposed order of witnesses. <i>In the event the Public Interest Counsel (PIC) files a direct case, it is due on September 22, 2005.</i>
September 30, 2005	Deadline to file objections to prefiled evidence. Deadline to file dispositive motions, if any.
September 23 through October 7, 2005	Additional discovery by order and/or agreement of parties. <i>(See Sec. IV below)</i>
October 7, 2005	Deadline to file responses to objections to prefiled evidence. Deadline to file responses to dispositive motions, if any.
October 17, 2005	Prehearing conference to rule on objections to prefiled evidence and other pending motions will be held before the commencement of the hearing on the merits. ¹
October 17-19, 2005	Hearing on the merits.

Deadlines for the parties to file closing briefs or written argument will be determined at the hearing on the merits. Parties should anticipate filing briefs within approximately two weeks of receiving the transcript.

III. HEARING AND PREHEARING DATES AND LOCATIONS

The hearing on the merits will convene at **9 a.m. on October 17, 2005**, at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Unless parties are notified otherwise, the hearing will continue each day thereafter until it is concluded. Given the complexity and anticipated length, appearing at the hearing on the merits by telephone is not practical and will not be allowed.

¹ As the parties were advised, the assigned ALJ will be on annual leave or otherwise unavailable from September 21 through October 14, 2005. However, another ALJ will be providing back up in the event a matter needs immediate attention. Inquiries about presentation aides or the scheduled rooms should be directed to the ALJ's clerk, Patricia Pena, at 512/475-1515.

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IV. PROCEDURAL RULES

Except as otherwise provided herein, this case shall be conducted in accordance with the procedural rules of the Texas Commission on Environmental Quality (TCEQ) and the State Office of Administrative Hearings (SOAH). 30 TEX. ADMIN. CODE ch. 80 and 1 TEX. ADMIN. CODE ch. 155. In the event of conflict, the TCEQ's rules apply. 1 TEX. ADMIN. CODE § 155.1(b).

V. DISCOVERY

A. General Rules

Discovery shall generally be conducted according to the Texas Rules of Civil Procedure (TEX. R. CIV. P.), as supplemented and altered by the Commission's and SOAH's discovery rules, 30 TEX. ADMIN. CODE § 80.151, *et seq.*, and 1 TEX. ADMIN. CODE § 155.31. The Rules of Civil Procedure shall be interpreted consistently with Chapter 80 of the TCEQ's rules, the Texas Water Code, the Texas Health and Safety Code, and the APA. 30 TEX. ADMIN. CODE § 80.151.

B. Primary Discovery Period—July 25, 2005 through August 25, 2005

The abbreviated discovery period is based on the premise that the parties, through prior settlement discussions and informal information exchanges, have already obtained a significant amount of basic information about each other's cases. At the scheduling conference, it appeared to be the intention of the parties to focus on depositions of persons already identified as key personnel. In the event the Parties determine they need to conduct written discovery, *i.e.*, disclosures under TEX. R. CIV. P. 194, that would alter the schedule above, the Parties should file their proposed amended schedule for consideration.

In the interests of efficiency, the Parties may work out a schedule beforehand of the depositions to be taken during the primary discovery period. Any requests to subpoena a witness or

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for issuance of a commission for deposition should be made in conformance with 30 TEX. ADMIN. CODE §§ 80.153 and 80.155, and those sections of the APA referenced therein.

C. Additional Discovery Period—September 23 through October 7, 2005

Any Party seeking to take any additional depositions or conduct any other type of extraordinary discovery during this period should file a motion setting forth the reasons such additional discovery is needed. Any answer will be due within *two working days* of the motion. Parties should confer to attempt to resolve these issues.

D. Deposition Time Limits

Commission rule 30 Tex. Administrative Code§ 80.152(c) provides:

... [T]he total time per side for oral depositions may not exceed 50 hours and the total number of written interrogatories that any party may serve on any other party may not exceed 25. If one side designates more than two experts, the opposing side may have an additional six hours of total deposition time for each additional expert designated.

E. Discovery Disputes

Pursuant to SOAH Rule 155.23(3), 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 and only those portions relevant to the dispute shall be attached to any pertinent motion.

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

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F. Motions to Compel

If a motion to compel is filed, the Party asserting a privilege from discovery shall produce the documents in question to the ALJ for an *in camera* inspection within three (3) working days after receiving the motion under the procedures set out at 1 TEX. ADMIN. CODE § 155.23(2). *In camera* documents will be returned only to the Party that provided them regardless of the ruling. If the ruling is against the producing Party, production shall follow on either the 10th working day or if this date has passed, then within two (2) working days. To the extent discovery requests involve confidential materials having a limited privilege (e.g., TRE 507 trade secrets), the Parties should file a motion seeking a protective order to facilitate discovery. Additionally, if it would facilitate orderly and efficient discovery, any Party, after conferring with all other Parties, may seek the issuance of a general protective order.

Responses to written discovery, if any is conducted, shall identify the preparer(s) and witness sponsor(s) of that response.

VI. PLEADINGS

Unless specified or agreed otherwise, to be considered filed on a particular day, filings must be received by the ALJ and the Parties by 5:00 p.m. on that date. *When something is due by a certain date or time, it is not sufficient to merely mail the filing on that day.*

Unless one Party seeks additional oral argument 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 specifies otherwise.

Motions or other correspondence may be faxed to the ALJ and the other Parties. SOAH's fax number is (512) 475-4994. Filings should be sent to all Parties contemporaneously (i.e., that same day) with any filing to the ALJ. If a deadline is approaching and a Party cannot get a fax

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through for reasons beyond its control, e.g. SOAH's fax number has been busy since 4:00 p.m., call and tell SOAH's Docketing Division, (512) 475-3445, of the problem.

VII. PREFILED EVIDENCE

All Parties shall prefile their direct-case evidence in writing. One copy shall be served on the representative of every other Party, and one copy shall be filed with the Judge. Rebuttal evidence and documents used for impeachment or rebuttal purposes need not be prefiled. The prefiled evidence should include all testimony and other evidence necessary to support a Party's direct case.

Evidence even considered for use in a direct case should be prefiled, although a Party may later choose not to introduce every item it prefiled. Evidence that is not prefiled may not be introduced as part of a Party's direct case absent a showing of good cause. Good cause will be determined on a case-by-case basis. Generally, good cause will be determined after considering the offering Party's need to introduce the evidence, the reasonableness of that Party's not having anticipated that need, and the prejudice other Parties will suffer by the introduction of evidence that was not prefiled.

The Applicant is hereby warned against trying to obtain a tactical advantage by saving evidence for rebuttal that is more reasonably part of its direct case. Such evidence will not be admitted as "rebuttal" absent a showing of good cause, particularly that the need for such "rebuttal" evidence could not have been reasonably anticipated and prefiled with the direct case.

Prefiled testimony should be written as if the questions were asked by the Party's lawyer and answered by the witness. The witness must be called to testify and adopt the prefiled testimony under oath, the testimony must be offered as an exhibit, and the witness must be passed for cross-examination by the other Parties. *When no Party wishes to cross-examine a witness, the Parties should agree to the admission of the witness' testimony so that the witness need not come to the hearing for no purpose.* A Party may offer the deposition of a witness as part of their direct case or

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in lieu of live cross-examination. If such an offer is not agreed to by all the Parties, such a request will be taken up by the ALJ on a case-by-case basis.

Since the purpose of prefiling evidence is to shorten the length and minimize the cost of the hearing, the Judge will discourage non-substantive evidentiary objections to prefiled evidence that seem to have little purpose other than lengthening the hearing and leaving evidentiary gaps, *e.g.* form-of-the-question and leading-the-witness objections. Counsel to all Parties are expected to confer and reach agreements on ways to minimize all such evidentiary objections.

An anticipated order in which the witnesses will be called shall be filed with the prefiled testimony. If there is a necessity to deviate from the established order, this should be raised with the ALJ and the other Parties as soon as it becomes known. Absent extraordinary circumstances, witness order will be not changed after the prehearing conference.

Every page of every prefiled document shall be appropriately numbered to allow easy identification and reference.

On the day they will be offered, an additional set of all exhibits shall be provided to the court reporter before the hearing starts, so that the court reporter can mark them and not delay the hearing.

VIII. OPEN GOVERNMENT

The Judge intends to strictly limit admission of evidence under seal and closing of the hearing on the merits to the public. The Parties shall attempt either to agree on redacted versions of confidential exhibits that they can be admitted unsealed or to stipulate to facts to which those confidential exhibits pertain. If the Parties are legitimately unable to reach an agreement, the Judge will resolve the dispute at the hearing.

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IX. TRANSCRIPT


For any proceeding in a docket set to last longer than one day, a court reporter is generally required. 1 TEX. ADMIN. CODE § 155.43(b). Upon her own motion, the ALJ may request a verbatim record and an original and two copies of a transcript of a proceeding. 30 TEX. ADMIN. CODE § 80.23 (b)(4).

In that the Parties estimate that the hearing on the merits will take more than one day, a court reporter will be needed at the hearing on the merits to transcribe the hearing and to deliver one copy of that transcript to the ALJ. The Applicant shall work with the TCEQ Chief Clerk's Office to ensure that a court reporter attends the hearing. The Applicant shall pay the cost of that recording and transcription subject to an allocation of those costs among all the Parties at the end of the case, based on the factors set forth in the rule. 30 TEX. ADMIN. CODE § 80.23.

X. ORDER OF HEARING

Unless otherwise ordered, the Parties will present their cases and conduct cross-examination in the following order: Bexar Met, BSR, PIC, if they appear, and the ED. The party with the burden of proof, Bexar Met, will have the opportunity to introduce rebuttal evidence, which it need not prefile.

SIGNED June 16, 2005.


CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

William P. Clements Building

300 West Fifteenth Street

Room 502

Austin, Texas 78701

Phone (512) 475-4993

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DATE:

June 16, 2005

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582-03-3725

TCEQ DOCKET NO.:

2003-0664-UCR

REGARDING:

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FROM:

JUDGE CASSANDRA J. CHURCH

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Bruce Wasinger (City of Bulverde-Courtesy Copy)	320-5638
Janessa Glenn (BSR Water Company)	404-3520
Kennedy Reporting	474-6704
Seagal V. Wheatly (BSR Water Company)	210/246-5999

xc: Docketing, State Office of Administrative Hearings

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AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY (TCEQ)

STYLE/CASE: IN THE APPLICATION OF BEXAR METROPOLITAN WATER
DISTRICT TO AMEND WATER CCN NO. 10675 IN BEXAR
COUNTY

SOAH DOCKET NUMBER: 582-03-3725

TCEQ DOCKET NUMBER: 2003-0664-UCR

ADMINISTRATIVE COURT

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

CASSANDRA J. CHURCH
PRESIDING ADMINISTRATIVE LAW JUDGE

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