



Control Number: 44236



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SOAH DOCKET NO. 473-15-4944.WS
DOCKET NO. 44236

APPLICATION OF CUSTOM WATER COMPANY, LLC, FOR A RATE/TARIFF CHANGE	§ § § §	STATE OFFICE OFFICE OF THE ADMINISTRATIVE HEARINGS
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**COMMISSION STAFF'S RESPONSE TO CUSTOM WATER'S OCTOBER 20, 2015
PLEADINGS AND MOTION TO STRIKE**

COMES NOW the Commission Staff of the Public Utility Commission of Texas, representing the public interest, and files this Response to Custom Water's October 20, 2015 pleadings and Motion to Strike.

I. BACKGROUND

On January 12, 2015, Custom Water Company, LLC filed an application for a rate/tariff change with a proposed effective date of March 20, 2015. Under Custom Water's proposed rates, the monthly base rate including 1,000 gallons for a residential 5/8 or 3/4 pipe would increase from \$36.00 to \$54.43, and the gallonage charge would increase from \$5 to \$7 for each additional 1,000 gallons over the minimum.¹

In Order No. 1, the SOAH administrative law judge (ALJ) set a deadline of September 24, 2015 for Custom Water to file its direct case. On that date, Custom Water submitted the letter of Cris A. Lemon, C.P.A as its direct case. On October 6, 2015, Staff filed objections to and a Motion to Strike the letter by Cris A. Lemon. On October 20, 2015, Custom Water filed three pleadings in response to Staff's Motion to Strike. The first, Custom Water's "Written Response to Commission Staff's Motion to Strike and Request to Reschedule," (hereafter, "Custom Water's Response to Staff's Motion to Strike") attempts to rebut Staff's Motion to Strike, arguing as to the expert qualifications of Mr. Lemon and Mr. Fenoglio. The second, Exhibit 14, a document signed by Cris Lemon (hereafter, Exhibit 14), presumably attempts to demonstrate the qualifications of Mr. Lemon. The third, Custom Water's "1st. Supplement to Written Response to Commission Staff's Motion to Strike and

¹ Customer Water Company's Application at 34 (Jan. 12, 2015). On October 7, 2015, in SOAH ALJ's Order No. 2, interim rates were set at the previously approved rates.

Request to Reschedule” (hereafter “Custom Water’s 1st Supplement”) attempts to demonstrate the cost savings as a result of Mr. Fenoglio’s work by introducing the supplemental exhibit of Kerry D. Maroney. Staff did not receive electronic copies of any of the filings, but received hard copies of all on October 20, 2015. Staff now timely files this response to the October 20, 2015 pleadings.

II. MATERIALS IN PLEADINGS ARE NOT EVIDENCE AND SHOULD BE STRICKEN

Staff has already laid out its objections to Mr. Lemon’s letter and will not restate those here. However, Staff requests that to the extent that Custom Water’s Response to Motion to Strike, Exhibit 14, or Custom Water’s 1st Supplement is an attempt to improperly introduce evidence into the record, those materials be stricken from the record.

In Staff’s October 6, 2015 Motion to Strike, Staff stated that it was not opposed to giving Custom Water an extension of one to two weeks to resubmit its direct case to correct the issues Staff identified. However, no ruling was made to give Custom Water that extension, and in the interim, Intervenors have already filed direct testimony on October 12, 2015, and Staff has filed direct testimony as well on October 23, 2015.

The exact intent of Custom Water’s Response to Staff’s Motion to Strike and accompanying documents is unclear, though Custom Water states “Custom Water Company reserves the right under 16 TAC § 22.76(a)(2) to amend it’s [sic] pleadings with leave of the presiding officer to insure [sic] that we are presenting the Commission with data that is current and complete.”² It is inappropriate, in the context of a pleading, for Custom Water to attempt to submit direct testimony or evidence that should have been included when Custom Water’s direct testimony was due on September 24, 2015. The ALJ did not grant Custom Water the opportunity to resubmit direct testimony. Nor did the ALJ grant Custom Water permission to amend its application. Staff cannot speak for Intervenors, but Staff spent considerable resources meeting the October 23, 2015 filing deadline for Staff’s direct testimony, had already nearly finalized Staff’s testimony upon receiving Custom Water’s October 20, 2015 filings, and would be unfairly burdened and prejudiced if Custom Water

²Custom Water’s Response to Motion to Strike at 5.

were allowed at this late point to amend its application through Custom Water's October 20, 2015 pleadings. Presumably, Intervenor's would similarly be burdened and prejudiced.

Staff therefore respectfully requests that the portions of Custom Water's Response to Staff's Motion to Strike, Exhibit 14, and Custom Water's 1st Supplement that attempt to introduce evidence be stricken from the record.

III. POINT OF CLARIFICATION

Custom Water's Response to Staff's Motion to Strike also states "Mr. Lemon's letter is in the form of narrative testimony; this form was discussed and approved by Ms. Katherine Lengieza Gross during a conference with counsel for Custom Water Company prior to its submission." Staff would clarify that the undersigned counsel did speak with counsel for Custom Water by phone on September 23, 2015, the day before Custom Water's direct testimony was due. The undersigned counsel received the impression that Custom Water had not begun preparing testimony, and instead, was working on a response to Staff's Motion for Interim Rates. The undersigned counsel informed Custom Water's counsel that she cannot give the company legal advice, but that testimony was due from the company the following day, that testimony should support the application, and that the company could use the Commission's website to look up testimonies that had been filed in other cases for examples. Commission Staff endeavors to work with water companies following the September 1, 2014 transfer of water cases from the TCEQ to the PUC, as many of the water applicants are not familiar with the PUC process.

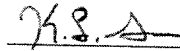
IV. CONCLUSION

Staff respectfully requests that the evidentiary portions of Custom Water's Response to Staff's Motion to Strike, Exhibit 14, and Custom Water's 1st Supplement be stricken from the record. Custom Water has not been granted leave to amend its application pursuant to 16 TAC § 22.76(a)(2), nor has Custom Water been granted an extension to resubmit its direct case. At this late point, after Intervenor's and Staff have already submitted direct testimony, parties would be unfairly burdened by Custom Water being allowed to amend its application or resubmit direct testimony.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on October 26, 2015 in accordance with 16 TAC § 22.74.



Katherine Lengieza Gross