



Control Number: 44291



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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. 582-12-6658
DOCKET NO. 2012-1058-UCR

IN THE APPLICATION OF AQUA	§	BEFORE THE STATE OFFICE
TEXAS, INC., AQUA UTILITIES, INC.,	§	
AQUA DEVELOPMENT, INC.,	§	
HARPER WATER COMPANY, INC.,	§	
AND KERRVILLE SOUTH WATER	§	OF
COMPANY, INC., DBA AQUA TEXAS	§	
FOR NORTH AND SOUTH WEST	§	
REGION WATER RATE/TARIFF	§	ADMINISTRATIVE HEARINGS
CHANGES	§	

SOAH DOCKET NOS. 582-13-0755 and 582-13-0757
TCEQ DOCKET NOS. 2012-1989-UCR and 2012-2006-UCR

APPEAL OF AQUA TEXAS, INC.,	§	BEFORE THE STATE OFFICE
AQUA UTILITIES, INC., AQUA	§	
DEVELOPMENT, INC., KERRVILLE	§	
SOUTH WATER COMPANY, INC.,	§	
AND HARPER WATER COMPANY,	§	OF
INC. DBA AQUA TEXAS, CCN NOS.	§	
11157, 11421, 11484, 12902, & 13201, OF	§	
CITY OF KERRVILLE AND CITY OF	§	
BRAZOS BEND RATEMAKING	§	ADMINISTRATIVE HEARINGS
ACTIONS	§	

CONSOLIDATED ORDER NO. 1
CONSOLIDATING CASES AND ESTABLISHING PROCEDURAL SCHEDULE

On December 10, 2012, the Administrative Law Judges (ALJs) convened a preliminary hearing in regard to the appeal by Aqua Texas, Inc., Aqua Utilities, Inc., Aqua Development, Inc., Harper Water Company, Inc., and Kerrville South Water Company, Inc., d/b/a Aqua Texas (Aqua Texas) from the ratemaking actions of the City of Kerrville and the City of Brazos Bend. At that preliminary hearing, the ALJs confirmed the consolidation of those appeals with the currently-pending rate case involving the customers outside the city limits of these jurisdictions (which action is docketed at SOAH Docket No. 582-12-6658). This order memorializes the matters taken at that time, as well as sets out the procedures and schedule for the consolidated action.

I. JURISDICTION

The Executive Director (ED) offered exhibits ED-D2, ED-D3, ED-E2, and ED-E3 for the limited purpose of establishing the jurisdiction of the Texas Commission on Environmental Quality (TCEQ or Commission) and the State Office of Administrative Hearings (SOAH) over the proceedings. The ALJs admitted these exhibits to establish jurisdiction, and found that jurisdiction and notice have been properly established in regard to the appeals of the ratemaking actions of the City of Kerrville and the City of Brazos Bend.

II. CONSOLIDATION

It is **ORDERED** that SOAH Docket Nos. 582-12-6658, 582-13-0755, and 582-13-0757 are consolidated at this time for purposes of hearing. The dockets shall each retain their separate SOAH and TCEQ identifying docket numbers. However, until severed or otherwise noted by the ALJs, the cases shall move forward procedurally as a single matter and any filings in the future should list all docket numbers on the filing.

III. SCHEDULE

The ALJs adopt the following schedule as proposed and agreed to by the parties:

January 8, 2013	Deadline for making disclosures
January 10, 2013	Hearing on Request for Interim Rates for the ratepayers in the City of Kerrville and the City of Brazos Bend
January 24, 2013	Deadline for filing Applicant's pre-filed direct testimony and exhibits
February 22, 2013	Deadline for all other parties, except ED and Applicant, to file pre-filed testimony and exhibits (any party not filing testimony must submit a statement of position).
March 11, 2013	Deadline for ED to file prefiled evidence

March 18, 2013	Deadline for filing motions for summary disposition
March 22, 2013	Deadline to serve written discovery
March 27, 2013	Deadline for filing objections to prefiled evidence of the other parties
April 11, 2013	Deadline for filing responses to objections to prefiled evidence of parties
April 19, 2013	Deadline for filing motions to compel on written discovery
April 19, 2013	Deadline for completing depositions
April 23, 2013	Prehearing conference if requested and ordered by ALJs
April 29 - May 10, 2013	Hearing on the merits

IV. NOTICE OF HEARING

Consistent with the schedule identified above, the ALJs hereby provide notice to the parties that the hearing on the merits will convene at **9:00 a.m. on April 29, 2013**, at the State Office of Administrative Hearings, 300 W. 15th Street, Fourth Floor, Austin, Texas. Unless the parties are notified otherwise, the hearing will continue from day-to-day until concluded. The parties estimate that the hearing on the merits should take 10 days and should conclude May 10, 2013.

The hearing on requests for interim rates will convene at **9:00 a.m. on January 10, 2013**, at the same location identified above for the hearing on the merits.

V. PROCEDURAL RULES

Except as otherwise provided herein, this case will be conducted in accordance with the procedural rules of the TCEQ and 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).

VI. DISCOVERY

Discovery shall be conducted according to Texas Rules of Civil Procedure (TRCP), as supplemented by the TCEQ's and SOAH's discovery rules. The TRCP shall be interpreted consistently 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 ALJs 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 will have 30 days to file written responses to discovery requests. The parties are expected to attempt to resolve discovery disputes. However, significant disputes which cannot be resolved should be brought to the ALJs' attention. Any request for relief should include a copy of any discovery correspondence necessary for an informed ruling on the dispute.

VII. ELECTRONIC CASE INFORMATION SYSTEM

Access through SOAH's public website. SOAH's Electronic Case Information System may be accessed from SOAH's website at www.soah.state.tx.us. Click the "Electronic Case Files" link at the upper right-hand corner of SOAH's home page to enter the system. The system allows parties and the public to view all public documents filed in SOAH cases on November 8, 2010, or later.

Fax number. In conjunction with the electronic system, SOAH's new fax number for all general docket cases in Austin is **(512) 322-2061**. This number should be used for all faxed filings relating to this case. However, this fax number should not be used for submission of confidential mediation communications.

Filing methods. As alternatives to faxed filings, parties may continue to file documents by mail or hand delivery and may now also file most documents by electronic upload via the electronic system. To upload documents, click on the Electronic Case Files link and click again on the button at the bottom of the page that appears. Parties must register with SOAH in order to file by electronic upload. Directions to register are provided on the website.

Confidential documents and documents containing personal identifiers. Documents filed in otherwise public cases containing confidential information or personal identifiers such as social security numbers or drivers' license numbers should not be filed by fax or electronic upload in general docket cases. 1 TAC §§ 155.101(b) and 155.413. Personal identifiers and confidential information should either be redacted (thoroughly blacked out) or filed by delivery of the physical document in a sealed envelope or container clearly marked as "Confidential." Otherwise, the document will be published and made available to the public on SOAH's website.

Prefiled testimony and exhibits. The parties must file hard copies of prefiled testimony and exhibits. The filing of these documents will be noted in the electronic case index, but they will not be scanned into the electronic case file. The hard copies of documents offered into evidence at the hearing will constitute the record copy.

VIII. PLEADINGS AND MOTIONS

Unless specified or agreed otherwise, filings must be received by the ALJs and the parties by 5:00 p.m. on the due date to be considered filed on a particular day. When something is due by a certain date or time, it is not sufficient to merely mail the filing on that day; receipt is required. This is particularly important when deadlines for responses are involved since it will be assumed that all parties received a filing the same day the ALJs did and their time is running for responses. A party may file a response to a motion within **five business days** after receipt of the motion. A party must file the original of any motion or other correspondence with the TCEQ pursuant to the TCEQ's rules. The party must also provide copies to SOAH and the other parties.

The ALJs will rule on motions based on the written pleadings unless a party seeks additional oral argument and the ALJs grant the motion. If the ALJs grant a request for oral argument, the ALJs may convene a telephone conference or require the parties' presence in a SOAH hearing room. Parties shall use the ALJs' service list and this list should be attached to all filings.

IX. PREFILED EVIDENCE

All parties must prefile their direct-case evidence in writing. The parties must file the original prefiled evidence with the TCEQ and serve one copy on the representatives for the Applicant, ED, OPIC, and the four protestant groups. Each party must also provide two copies of their prefiled evidence to the ALJs. The parties need not prefile rebuttal testimony and documents used for impeachment or rebuttal purposes.

The ALJs' copies of the prefiled testimony must also comply with the following requirements:

1. The ALJs' copies must be in a three-ring binder.
2. There must be a title page containing the name of the party and the volume number, if more than one volume of exhibits is needed. This information must also appear on the spine of the binder.
3. Each exhibit must be tabbed.
4. Each binder must contain an exhibit list showing the exhibit number, tab number, document title, and date of the document.
5. Each page of every prefiled document must be numbered.
6. The ALJs' copies of the prefiled evidence must be double-sided.

A party may not introduce evidence that is not prefiled as part of a party's direct case absent a showing of good cause. The ALJs will consider good cause on a case-by-case basis upon a showing of need, the reasonableness of not having anticipated its use, and whether parties will be prejudiced by its late entry into the record. 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. A party should prefile any evidence that it may use in its direct case, although a party may later choose not to introduce every item it prefiles.


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. If a party does not wish to cross-examine a witness, that party should notify the sponsoring party so that the parties can agree to the admission of the witness' testimony without requiring the witness to come to the hearing on the merits.

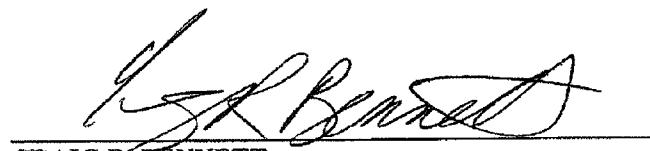
Since the purpose of prefilings evidence is to shorten the length and minimize the cost of the hearing, the ALJs discourage non-substantive evidentiary objections to prefiled evidence that seem to have little purpose other than lengthening the hearing and leaving evidentiary gaps, *e.g.* form-of-the-question and leading-the-witness objections. The ALJs expect the parties to confer and reach agreements on ways to minimize evidentiary objections. At the beginning of the hearing of the merits, each party shall provide to the court reporter two copies of every exhibit. This will allow the court reporter to mark them and not delay the hearing.

X. TRANSCRIPT

For any proceeding in a docket set to last longer than one day, a court reporter is generally required. Upon his or her own motion, an 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). Since the parties estimate that the hearing on the merits will take more than one day, the ALJs require a court reporter at the hearing on the merits to transcribe the hearing and to deliver one copy of that transcript and exhibits to the ALJs. Aqua Texas shall work with the TCEQ Chief Clerk's Office to ensure that a court reporter attends the hearing, and shall pay the cost of recording and transcription subject to allocation of costs among the parties at the end of the case. 30 Tex. Admin. Code § 80.23(b)(5).

SIGNED December 12, 2012.


KERRIE JO QUALTROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS


CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: AQUA UTILITIES, INC., AQUA TEXAS, INC. AQUA
DEVELOPMENT, INC
SOAH DOCKET NUMBER: 582-12-6658
REFERRING AGENCY CASE: 2012-1058-UCR

STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ CRAIG R. BENNETT

REPRESENTATIVE / ADDRESS

PARTIES

MARK ZEPPA
ATTORNEY
LAW OFFICE OF MARK H. ZEPPA, P.C.
4833 SPICEWOOD SPRINGS RD., SUITE 202
AUSTIN, TX 78759-8436
(512) 346-4011 (PH)
(512) 346-6847 (FAX)
markzeppa@austin.rr.com

AQUA UTILITIES, INC.

PAUL TERRILL
ATTORNEY
THE TERRILL FIRM, P.C.
810 WEST 10TH STREET
AUSTIN, TX 78701
(512) 474-9100 (PH)
(512) 474-9888 (FAX)
pterrill@terrill-law.com

AQUA UTILITIES, INC.

ROSS W. HENDERSON
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-173 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-6257 (PH)
(512) 239-0626 (FAX)
rhenders@tceq.texas.gov

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

RICK GUZMAN
LAW OFFICE OF RICK GUZMAN
2201 DOUBLE CREEK DRIVE, SUITE 5001
ROUND ROCK, TX 78664
(512) 388-7800 (PH)
(512) 388-7801 (FAX)
rguzman@rickguzmanlaw.com

NORTH REGION GROUP

JIM BOYLE
HERRERA & BOYLE, PLLC
816 CONGRESS AVENUE, SUITE 1250
AUSTIN, TX 78701
(512) 474-1492 (PH)
(512) 474-2507 (FAX)
jboyle@herreraboylelaw.com

CITY OF KERRVILLE

DINNIAH TADEMA
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENVIRONMENTAL LAW DIVISION
MC-173 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-0617 (PH)
(512) 239-0606 (FAX)
dtadema@tceq.texas.gov

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

GEOFFREY P. KIRSHBAUM
ATTORNEY AT LAW
THE TERRILL FIRM, P.C.
810 WEST 10TH STREET
AUSTIN, TX 78701
(512) 474-9100 (PH)
(512) 474-9888 (FAX)
gkirshbaum@terrill-law.com

AQUA UTILITIES, INC.

AMY SWANHOLM
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-6363 (PH)
(512) 239-6377 (FAX)
amy.swanholtm@tceq.texas.gov

TCEQ PUBLIC INTEREST COUNSEL

JOHN QUEST
833 HILLSIDE LOOP
CANYON LAKE, TX 78133
(830) 214-4454 (PH)
jq@gvvc.com

RAWS GROUP

JAY E. YOUNT
206 CHERRY FALLS
COMFORT, TX 78013
(830) 995-5844 (PH)
eyou42@hotmail.COM

SW REGION EXISTING SYSTEM GROUP

LARRY WESTFALL
450 RIM ROCK ROAD
KERRVILLE, TX 78028
(830) 792-5506 (PH)
(830) 792-5510 (FAX)
lgwestfall@aol.com

HILL COUNTRY GROUP

Note: THIS CASE HAS BEEN CONSOLIDATED WITH DOCKET NO. 582-13-0755 AND 582-13-0757 FOR PURPOSE OF HEARING.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

SERVICE LIST

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STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ CRAIG R. BENNETT

REPRESENTATIVE / ADDRESS

PARTIES

PAUL TERRILL
ATTORNEY
THE TERRILL FIRM, P.C.
810 WEST 10TH STREET
AUSTIN, TX 78701
(512) 474-9100 (PH)
(512) 474-9888 (FAX)
pterrill@terrill-law.com

AQUA UTILITIES, INC.

ROSS W. HENDERSON
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-173 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-6257 (PH)
(512) 239-0626 (FAX)
rhenders@tceq.texas.gov

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

JIM BOYLE
HERRERA & BOYLE, PLLC
816 CONGRESS AVENUE, SUITE 1250
AUSTIN, TX 78701
(512) 474-1492 (PH)
(512) 474-2507 (FAX)
jboyle@herreraboylelaw.com

CITY OF KERRVILLE

AMY SWANHOLM
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-6363 (PH)
(512) 239-6377 (FAX)
amy.swanholtm@tceq.texas.gov

OFFICE OF PUBLIC INTEREST COUNSEL

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AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

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STATE OFFICE OF ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ CRAIG R. BENNETT

REPRESENTATIVE / ADDRESS

PARTIES

PAUL TERRILL
ATTORNEY
THE TERRILL FIRM, P.C.
810 WEST 10TH STREET
AUSTIN, TX 78701
(512) 474-9100 (PH)
(512) 474-9888 (FAX)
pterrill@terrill-law.com

AQUA UTILITIES, INC.

ROSS W. HENDERSON
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-173 P.O. BOX 13087
AUSTIN, TX 78711-3087
(512) 239-6257 (PH)
(512) 239-0626 (FAX)
rhenders@tceq.texas.gov

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AMY SWANHOLM
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF PUBLIC INTEREST COUNSEL
P.O. BOX 13087, MC-103
AUSTIN, TX 78711-3087
(512) 239-6363 (PH)
(512) 239-6377 (FAX)
amy.swanholtm@tceq.texas.gov

OFFICE OF PUBLIC INTEREST COUNSEL

MAYOR VERNON OECHSLE
CITY OF BRAZOS BEND
1905 CANAVERAL CT.
BRAZOS BEND, TX 76048
(817) 573-5212 (PH)

CITY OF BRAZOS BEND

Note: THIS CASE HAS BEEN CONSOLIDATED WITH DOCKET NO. 582-12-6658 AND 582-13-0755 FOR PURPOSE OF HEARING