



Control Number: 44291



Item Number: 3

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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 §

ORDER NO. 1
MEMORIALIZING PRELIMINARY HEARINGS AND
SETTING OUT HEARING SCHEDULE AND PROCEDURES

On July 16, 2012, the Administrative Law Judges (ALJs) convened a preliminary hearing in the above referenced matter. This order memorializes the preliminary hearing and sets forth the schedule and procedures that will be followed in this case.

I. JURISDICTION

The Executive Director (ED) offered the following exhibits 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):

- ED Exhibit A: Notice of Proposed Rate Change
- ED Exhibit B: Notice of July 16, 2012 Hearing
- ED Exhibit C: Affidavit of Notice Customers of the Public Hearing
- ED Exhibit D: Affidavit of Notice Customers of the Public Hearing

Larry Westfall of the Kerrville South Community Action Group (CAG) requested that an additional preliminary hearing be held in Kerr County. Mr. Westfall alleged that CAG and other customers did not have adequate time to prepare for the July 16, 2012 preliminary hearing and some customers did not receive notice.

The ALJs decline to schedule an additional preliminary hearing in Kerr County. The notice requirements have been met and, given the nature of a preliminary hearing, persons had adequate time to prepare for the July 16, 2012 hearing. The ALJs admitted ED Exhibits A through D to establish jurisdiction.

II. PARTIES

The following are parties to this proceeding:

Party	Representative
Aqua Texas, Inc., Aqua Utilities, Inc., Aqua Development, Inc., Harper Water Company, Inc., and Kerrville South Water Company, Inc., d/b/a Aqua Texas (Applicant)	Paul Terrill, Mark Zeppa, and Geoffrey P. Kirshbaum
ED	Ross Henderson and Dinniah Tadema
Office of Public Interest Counsel (OPIC)	Amy Swanholm
John Quest and the Canyon Springs Resort Property Owners Association (POA)	John Quest, <i>pro se</i>
Terry Pence and the Owners Association of Kings Cove	Terry Pence, <i>pro se</i>
Louise Lagutchik	Louise Lagutchik, <i>pro se</i>
Geoffrey S. Cline and the Cardinal Valley Water System customers	Geoffrey S. Cline, <i>pro se</i>
David Burghard and the Mountain Crest Home Owners Association (HOA)	David Burghard, <i>pro se</i>
Jay E. Yount	Jay E. Yount, <i>pro se</i>
William J. Wood and the Falling Water POA	William J. Wood, <i>pro se</i>
Venishia Taylor	Venishia Taylor, <i>pro se</i>
Marian Stasney	Marian Stasney, <i>pro se</i>
Blue Water Shores POA	Rick Guzman, attorney
Charles J. Wittmer	Charles J. Wittmer, <i>pro se</i>
Larry Norwood and the Safari Waters Ranch POA	Larry Norwood, <i>pro se</i>
Gene Huffty and the Sharon Acres HOA	Gene Huffty, <i>pro se</i>
Richard Hunsberger	Richard Hunsberger, <i>pro se</i>
Darla Blackmon and the Eagles Bluff HOA	Darla Blackmon, <i>pro se</i>
Julie Wilson	Julie Wilson, <i>pro se</i>
Larry Westfall and the Kerrville South Community Action Group (CAG)	Larry Westfall, <i>pro se</i>
Nancy Armstrong and the Oak Ridge POA	Nancy Armstrong, <i>pro se</i>

Party	Representative
Clovis Lafleur and the Deerwood Subdivision POA	Clovis Lafleur, <i>pro se</i>
Forrest Nikorak and the Gillespie County Aqua Customers and the Apartments Gillespie County Aqua Customers	Forrest Nikorak
Brian Hawkins and the Tierra Vista HIOA	Brian Hawkins, <i>pro se</i>
William H. Cathey	William H. Cathey, <i>pro se</i>

The parties agreed to the following alignment of four protestant groups for purposes of discovery and the hearing:

The Recently Acquired Water Systems Group, represented by John Quest

John Quest and the Canyon Springs Resort POA; Terry Pence and the Owners Association of Kings Cove; Louise Lagutchik; Geoffrey S. Cline and the Cardinal Valley Water System customers; and David Burghard and the Mountain Crest HOA

The Southwest Region Existing Water Systems Group, represented by Jay E. Yount

Jay E. Yount; William J. Wood and the Falling Water POA; Venishia Taylor; and Marian Stasney

The North Region Group, represented by Rick Guzman

Bluc Water Shores POA; Charles J. Wittmer; Larry Norwood and the Safari Waters Ranch POA; Gene Huffty and the Sharon Acres HIOA; Richard Hunsberger; Julie Wilson; and Darla Blackmon and the Eagles Bluff HOA

The Hill Country Group, represented by Larry Westfall

Larry Westfall and the Kerrville South Community Action Group (CAG); Nancy Armstrong and the Oak Ridge POA; Clovis Lafleur and the Deerwood Subdivision POA; Forrest Nikorak and the Gillespie County Aqua Customers and the Apartments Gillespie County Aqua Customers; Brian Hawkins and the Tierra Vista HOA; William H. Cathey

All parties will receive a copy of Order No. 1, and a party should notify the ALJ of any errors or omissions. However, subsequent orders and other items needing to be served on the parties will only be sent to the representatives of the Applicant, ED, OPIC, and the four aligned protestant groups.

III. SCHEDULE

The AIJ adopts the following schedule as proposed by the parties:

July 16, 2012	Preliminary hearing; discovery period commences
August 16, 2012.	Deadline for Protestants to furnish information regarding name and address, and proof of representation to Applicant and ED.
December 6, 2012	Deadline for filing Applicant's pre-filed direct testimony and exhibits
January 25, 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).
February 22, 2013	Deadline for ED to file prefiled evidence
March 1, 2012	Deadline for filing motions for summary disposition
March 20, 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 AIJs
April 29 - May 10, 2013	Hearing on the merits

IV. NOTICE OF HEARING

The hearing on the merits will convene at:

9:00 a.m. on April 29, 2013
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.

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 seek to 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 the other 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 prefiling 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. 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 the parties at the end of the case. 30 Tex. Admin. Code § 80.23(b)(5).

XI. ORDER OF HEARING

Unless otherwise ordered, the parties will present their cases in the following order: Applicant, Protestants, OPIC, and ED. The Applicant will have the opportunity to introduce rebuttal evidence, which it need not prefile.


XII. SERVICE BY EMAIL

The SOAH has implemented service by email for proposals for decision, orders, and other case-related documents and communications in general docket cases. You may obtain additional information and the form to request email service at SOAH's website, www.soah.state.tx.us, and click on the "Request Service by Email" link in the Notices box.


XIII. PROCEDURAL QUESTIONS

If a party has a procedural question, the party may contact Carmen Montalvo (512) 475-3419 or at carmen.montalvo@soah.state.tx.us.

SIGNED July 20, 2012.



KERRIE JO QUALTROUGH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING

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AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
(TCEQ)
STYLE/CASE: AQUA UTILITIES, INC., AQUA TEXAS, INC. AQUA
DEVELOPMENT, INC
SOAH DOCKET NUMBER: 582-12-6658
TCEQ DOCKET NUMBER: 2012-1058-UCR

STATE OFFICE OF ADMINISTRATIVE HEARINGS	KERRIE JO QUALTROUGH ADMINISTRATIVE LAW JUDGE
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REPRESENTATIVE

PARTIES/ADDRESS

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DATE: 07/20/2012
NUMBER OF PAGES INCLUDING THIS COVER SHEET 17

**ORDER NO. 1 - MEMORIALIZING PRELIMINARY HEARINGS AND SETTING OUT
HEARING SCHEDULE AND PROCEDURES**

AGENCY: TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
(TCEQ)

STYLE/CASE: AQUA UTILITIES, INC., AQUA TEXAS, INC. AQUA
DEVELOPMENT, INC

SOAH DOCKET NUMBER: 582-12-6658

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Terry Pence	Reg. Mail
Louise Lagutchik	Fax: 830/899-2280
Geoffrey S. Cline	Reg. Mail
David Burghard	Reg. Mail
Jay E. Yount	Reg. Mail
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Docket Clerk (TCEQ)	512/239-3311
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