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APPLICATION OF QUADVEST, L.P. FOR  
RATE/TARIFF CHANGE

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**QUADVEST L.P.'S RESPONSE TO OPUC'S REQUEST TO EXTEND INTERVENTION  
DEADLINE AND OBJECTION TO NOTICE**

Quadvest L.P. ("Quadvest") submits the following response to the Office of Public Utility Counsel's ("OPUC") request to extend the intervention deadline and objection to notice and, in support thereof, respectfully shows as follows:

OPUC asserts that the intervention deadline in this case should be extended (although it fails to propose a date) and that Quadvest should re-issue notice of the February 2, 2016 prehearing conference to its customers. OPUC makes this request because it wrongly asserts that Quadvest was required to issue notice to its customers ten days before the prehearing conference. OPUC's request is entirely unreasonable and without merit, and should be rejected. Moreover, the time to raise this objection would have been at the prehearing conference. OPUC failed to raise any issue with respect to the notice while at the hearing, despite the fact that the proof of notice was filed over a week before the hearing. Thus, OPUC clearly waived its right to raise any objection to notice. While Quadvest does not object to OPUC's request to extend the intervention deadline to ensure customers have adequate time to participate if they so choose, for the reasons discussed below, Quadvest strongly objects to the assertion that it should be required to issue another notice in this case.<sup>1</sup>

First, OPUC's request that Quadvest issue notice on January 14, 2016 would have been impossible for Quadvest to comply with. OPUC asserts that this case was referred to SOAH on

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<sup>1</sup> To the extent that OPUC requests that the intervention deadline be extended to ensure that customers have adequate time to participate should they so choose, Quadvest does not oppose OPUC's request for extension.

January 12, 2016. However, the order setting the prehearing conference was not issued until the afternoon of *January 15, 2016*. While OPUC faults Quadvest for failing to issue notice of the hearing on January 14, 2016, it would have been impossible for Quadvest to issue notice of the hearing on January 14, 2016 because there was not even a hearing set until January 15, 2016. Until the date and time of the hearing was actually set, Quadvest could not have provided notice to its customers.

Second, from a practical matter, Quadvest was simply unable to issue notice any sooner than it did. In fact, because the timing of Order No. 1 coincided with issuance of bills, Quadvest was actually able to issue notice sooner than it otherwise would have. Average notice to the vendor for a large mailout such as this, if done as a standalone notice, is at least seven business days. Quadvest actually had notice scheduled to be delivered on Thursday and Friday, January 21<sup>st</sup> and 22<sup>nd</sup>, well before it otherwise would have been able to issue notice. However, due to the storms on the east coast, the mailer was physically unable to mail the notices until Monday, January 25, 2016, 8 days before the hearing.<sup>2</sup> Furthermore, based on tracking information provided by the mailer, Quadvest has determined that the vast majority of customers actually received the notice within 2-3 days.<sup>3</sup>

Third, OPUC fails to mention that, although Staff requested that the ALJ order Quadvest to issue notice of the prehearing, the ALJ did not grant this request or address it in Order No. 1. OPUC relies upon Section 2001.051 of the Administrative Procedure Act to argue that Quadvest should have provided notice thirteen days before the hearing. However, this provision contains no requirement that the utility be the one to provide the notice. In fact, the ALJ's issuance of Order No. 1 is sufficient notice, as customers were all provided notice of the initial rate filing.

Moreover, this provision contemplates notice of a contested case hearing where *factual information* is decided. See TEX. GOV'T CODE § 2001.051 ("In a contested case, each party is entitled to an opportunity: (1) for hearing after reasonable notice of not less than 10 days; and (2) *to respond and to present evidence and argument on each issue involved in the case.*") (emphasis added). There were no disputed facts decided at the hearing. The only issue discussed was the

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<sup>2</sup> Notices are prepared and mailed from the east coast location.

<sup>3</sup> According to tracking information provided by the mailer, the median time for delivery was 54 hours, and the average delivery time was 58 hours. Thus, most customers received notice on January 27<sup>th</sup> or 28<sup>th</sup>.

adoption of a procedural schedule and protective order. Thus, it is questionable whether Section 2001.051 applies.

As noted at the prehearing conference, while the Commission has since adopted Substantive Rule 24.22(d)(2)(B), requiring a utility to provide twenty days' notice of a hearing, there was no such rule in effect at the time this case was filed. PUC Substantive Rule 24.22(d)(2)(B) became effective after this case was filed.

Furthermore, OPUC's request results in harm to Quadvest because the cost to re-issue notice will be over \$4,500. A portion of this cost would be passed on to ratepayers and a portion absorbed by Quadvest. Quadvest should not be economically harmed because it was impossible for it to issue notice as requested by OPUC.

Finally, it should be noted that this case has been on file since June 5, 2015. Notice was provided to all customers. Only eleven protests were filed, out of nearly 9000 customers. Clearly, there has been ample notice of this proceeding and opportunity for customers to participate if they deemed it appropriate. Nonetheless, as discussed above, Quadvest does not object to extending the intervention deadline by ten to fourteen days to address OPUC's concern that there may be customers who did not have adequate time to intervene. However, for the reasons stated above, Quadvest objects to having to re-issue notice in this case.

Respectfully submitted,

**COZEN O'CONNOR**

By: Tammy Wavle Shea  
Tammy Wavle Shea *by permission*  
State Bar No. 24008908 *Debra Ellis*  
1221 McKinney, Suite 2900  
Houston, Texas 77010  
Phone: (713) 750-3148  
Fax: (832) 214-3905  
Email: [tshea@cozen.com](mailto:tshea@cozen.com)

**ATTORNEYS FOR QUADVEST, L.P.**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Quadvest L.P.'s Response to OPUC's Request to Extend Intervention Deadline and Objection to Notice was served on all parties of record in this proceeding on this the 5<sup>th</sup> day of February, 2016, by facsimile, electronic mail, U.S. first-class mail, postage prepaid, or by hand delivery.

Tammy Wavle Shea  
Tammy Wavle-Shea  
*by permission*  
*Debra Ellis*