



Control Number: 45207



Item Number: 15

Addendum StartPage: 0

2016 FEB -3 PM 4:46
BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK

COMPLAINT OF J. HINKEN

§

AGAINST

§

§

BASTROP WEST WATER AND
PAUL KLAUS

§

§

§

ADMINISTRATIVE HEARINGS

MOTION TO AMEND PROCEDURAL SCHEDULE

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW Bastrop West Water and Paul Klaus (collectively BWB), through their attorney of record, and files this Motion to Amend the Procedural Schedule and to support this motion shows the following:

Lack of Notice

To date, neither BWB nor its attorney has received a copy of Order No. 2 or the Commission Staff's Settlement Conference Information by mail or electronic means.

According to the Commission's procedural Rule 22.101, any person may appear before the commission or in a hearing by authorized representative. The presiding officer may require a representative to submit proof of his or her authority to appear on behalf of another person. The authorized representative of a party shall specify the particular persons or classes of persons the representative is representing in the proceeding. Thereafter, a party is required to provide notice if the authorized representative changes.

The Commission's rules require a party, at or before the time any document or pleading regarding a proceeding is submitted to a presiding officer, to file a copy of such document or

pleading with the Commission filing clerk and serve that document on all parties¹. 16 Texas Administrative Code §22.54 requires the Commission to provide notice in accordance with APA in addition to any other notice required by law. SOAH's procedural rules require a party, on the same date a document is filed, to serve that document on each party or the party's authorized representative by hand-delivery; by regular, certified or registered mail; by electronic mail, upon agreement of the parties; or by facsimile transmission². Both SOAH's rule and Commission Rule 22.74(d) require a certificate of service that indicates the method of service.

SOAH's Rule 155.155(b) states an Administrative Law Judge's ruling that is not made orally at a recorded prehearing conference or hearing shall be in writing and issued to all parties of record.

On November 30, 2015, attorney Deea Western entered a written appearance on behalf of BWW when she filed BWW's Response to Order of Referral. That responsive pleading contained all applicable contact information for Ms. Western and indicated the party(ies) she represented. On January 5, 2016, Ms. Western appeared in person on behalf of BWW at the Prehearing Conference. At that conference, Ms. Western provided the Commission's attorney with an email address the Commission could use to serve documents electronically.

Unfortunately, Order No. 2 was not served on Ms. Western. Similarly, the Commission Staff's Settlement Conference Information, dated January 19, 2016, was not served on Ms. Western. BWW's attorney did not discover either document had been filed in this matter until January 27th after Ms. Western received an email from the Commission's attorney³.

Burden of Proof

Order No. 2 improperly places the burden of proof on BWW.

¹ 16 Texas Administrative Code §22.74.

² 16 Texas Administrative Code §155.103(a).

³ Exhibit 1.

According to the Commission's Rule 24.12, in any proceeding involving any proposed change of rates, the burden of proof shall be on the provider of water and sewer services to show that the proposed change, if proposed by the retail public utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. *In any other matters or proceedings, the burden of proof is on the moving party* [emphasis added].

The excerpt below is from a consumer informational brochure the Commission has posted on its website⁴. The Commission clearly explains to consumers who file a complaint with that the burden of proof is on the individual that files a formal complaint.

What happens if a hearing is required?

The hearing is much like a trial where testimony and evidence can be admitted for the Administrative Law Judge's (ALJ) consideration in making a decision on the case. In a hearing, testimony is provided in written form and filed before the hearing. After considering the evidence admitted during the hearing, the ALJ will make a recommendation to the PUC on *whether the complainant has provided sufficient proof to show that the utility or other entity was in compliance with or in violation of any PUC law, order, rule, or regulation* [emphasis added].

According to all authoritative sources, the burden of proof in this matter is on Ms. Hinken. Footnote 3 in Order No. 2 is further support for this conclusion. Footnote 3 refers to SOAH Rule 155.503(a), which authorizes dismissal of a contested case, in whole or in part, for want of prosecution *if the party seeking affirmative relief or the party requesting the hearing* [emphasis added]:

- (A) fails to appear for any hearing of which the party had notice; or
- (B) fails to prosecute the case in accordance with a requirement of statute, rule, or order of the judge.

Ms. Hinken filed a formal complaint. Ms. Hinken, not BWW, is seeking affirmative relief. Therefore, the burden of proof rests on Ms. Hinken.

⁴ Exhibit 2.

Proposed Amended Procedural Schedule

BWW has discussed this motion and the proposed amendments with the Commission.

In order to avoid hardship on Ms. Hinken by simply reversing the direct testimony filing deadlines, BWW proposes the following amendments to the schedule:

EVENT	DEADLINE
Complainant's direct testimony due	March 7, 2016
BWW's direct testimony due	April 7, 2016
Staff's direct testimony due	May 6, 2016
Rebuttal testimony for all parties due	June 6, 2016
Discovery period ends	June 17, 2016
Objections to direct and rebuttal testimony due	July 1, 2016

These schedule changes will also require the hearing dates to be reset. BWW proposes that the contested case hearing be reset to one of following dates:

- July 6-8 or
- July 11 – 15

Relief Requested

BWW respectfully requests that the Administrative Law Judge find that the burden of proof rests with the complainant, Ms. Hinken. BWW also respectfully requests that the Judge amend the procedural schedule and hearing dates as requested.

Sincerely,



Deea Western
Attorney for BWW
223 Mandy Lane
Red Rock, TX 78662
(512) 581-1090
deewestfall@gmail.com
SBN: 00785378

Certificate of Service

I certify that a copy of **BWW's Motion to Amend the Procedural Schedule** was served on the complainant by certified mail, return receipt requested, and the Commission's attorney by email on February 3, 2016.



Deea Western

EXHIBIT 1

Western, Deea

From: Deea Westfall <deeawestfall@gmail.com>
Sent: Friday, January 29, 2016 9:02 AM
To: Western, Deea
Subject: Fwd: PUC Docket No. 45207 Settlement Conference

Sent from my iPhone

Begin forwarded message:

From: "Aldridge, Jason" <Jason.Aldridge@puc.texas.gov>
Date: January 27, 2016 at 10:28:03 AM CST
To: T PE <real0est@hotmail.com>, "deeawestfall@gmail.com" <deeawestfall@gmail.com>
Cc: "Aldridge, Jason" <Jason.Aldridge@puc.texas.gov>
Subject: PUC Docket No. 45207 Settlement Conference

All,

I have reserved a meeting room for those that will attend the settlement conference in person. It is on the eighth floor of the PUC building at 1701 N. Congress Avenue. It is not in the secured portion of the building so you can go directly to the eighth floor and it is next to the elevators in room 8 Central. For those that would prefer to call in I have also arranged a conference bridge. You need to call the toll free number and enter the access code and you will be able to participate by phone. If you have any questions feel free to email or call me.

* USA Toll-Free: (877)226-9790

* ACCESS CODE: 2130913

Thanks,

Jason Aldridge
Attorney – Legal Division
Public Utility Commission of Texas
Jason.aldridge@puc.texas.gov

1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

TEL: (512) 936-7255
FAX: (512) 936-7268

EXHIBIT 2

recommendation to the PUC on whether the complainant has provided sufficient proof to show that the utility or other entity was in compliance with or in violation of any PUC law, order, rule, or regulation.

Usually, the participants, also called Parties, in a complaint case are the complainant, the service provider, and PUC staff.

The basic steps of the hearing process are as follows:

- An Administrative Law Judge (ALJ) will set a schedule for the case, which will include a hearing date. A prehearing conference in Austin may be held for this purpose or to address other preliminary matters.
- The Parties will have the opportunity to "conduct discovery", or obtain information about the case from each other.
- The Parties will file written testimony or a statement of position before the date of the hearing.
- The hearing is held in Austin, and witnesses must be present and able to be questioned by other Parties to the case.
- After the hearing, the Parties can file arguments or briefs, about the evidence presented at the hearing and why the ALJ ruling should be in the Party's favor.
- The Administrative Law Judge prepares a recommendation, or Proposal for Decision, (PFD), which the PUC Commissioners will consider. Parties who disagree with the ALJ's recommendation may object to the recommendation by filing documents called "exceptions."
- The Commissioners will discuss the case at a public meeting and make a decision

to adopt the PFD, modify and adopt the PFD, or may make an entirely different decision. You are not required to attend the public meeting but are encouraged to do so because the Commissioners may ask questions about the case.

- Once the decision has been made the Commissioners will issue a "final order." Parties who are dissatisfied with the PUC's decision may file motions for rehearing, asking the Commissioners to reconsider the decision.
- Parties have the right to appeal the decision to district court in Travis County after they have filed a motion for rehearing.

What happens if I don't need a hearing?

If there is no disagreement about the facts of the case, the PUC's Administrative Law Judge may ask the Parties to file documents or briefs arguing whether the PUC should grant the relief you are requesting. The Commissioners will then consider a proposed order in a public meeting.

IMPORTANT PROCEDURAL INFORMATION

Where do I send documents about my Formal Complaint?

Unless you are instructed otherwise by an ALJ, send 10 copies of your documents to:

Public Utility Commission of Texas
Central Records
Attn: Filing Clerk
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

After filing your documents, they will be

assigned a docket number. Include this docket number on all future submissions.

Am I required to follow special rules?

You will be expected to comply with the PUC's procedural rules. A failure to comply with those rules may serve as grounds for your case to be dismissed.

Where can I get a copy of those rules?

A complete set of rules is available on the PUC's web site at www.puc.state.tx.us. From the site map, go to "Rules and Laws," then "Procedural Rules," or "Sub. Rules - Electric." You can review or download the rules by section or as a complete set.

In addition, you may purchase copies of the PUC rules from Central Records, or you may come to the PUC's office.

Do I need to include a complaint number when I file documents with the PUC?

Always include the docket number on all filings with the PUC. It is very important to provide the number so your documents can be filed correctly.

Each time you file additional documents, you must submit the correct number of copies to Central Records. Please refer to Procedural Rule 22.71 for document and filing requirements.

The information in this brochure is not intended to provide a complete and comprehensive guide to pursuing formal complaints at the PUC and the rights and duties of complainants before the PUC. This brochure is not a substitute for legal advice or the PUC's rules.

July 2011

HOW TO FILE A FORMAL COMPLAINT



Public Utility Commission
1701 N. Congress Ave.
P.O. Box 13326
Austin, TX 78711-3326
1-888-782-8477
www.puc.state.tx.us

CALL TOLL FREE 1-888-782-8477 (TTY 512-936-7136) LOG ON TO WWW.PUC.STATE.TX.US

FILING A FORMAL COMPLAINT

When may I file a formal complaint at the PUC?

If you are a customer of an electric or telecommunications service provider who filed an informal complaint with the Public Utility Commission (PUC) and you are not satisfied with the resolution, you may file a formal complaint.

If your complaint is against your electric utility, or local wires company, and you reside within the city limits, you may be required to first submit your complaint to the city in which you live. The utility or local wires company is the company that delivers electricity to a customer's home or business along the poles and wires.

If you live in a city that has not given up its authority to resolve complaints, you must first submit your complaint to the city. You may file a formal complaint with the PUC after the city has issued a decision on your complaint or a statement that it will not consider the complaint. If the city does not act on your complaint within 30 days, you may request that PUC staff send an inquiry to the city about your case. If the city does not respond within 30 days to PUC staff's inquiry, then you may file a formal complaint with the PUC.

If your city has given up its authority to resolve complaints within the city's limits, you may file a formal complaint directly with the PUC. You can see which cities have given up their authority to resolve complaints in their city limits at

www.puc.state.tx.us/consumer/complaint/seedingCities.pdf

Is it always necessary to complete the informal complaint process before filing a formal complaint?

In almost all cases, yes. The PUC is able to help most customers by resolving problems using the informal process.

What information do I need to include with my formal complaint?

To file a formal complaint with the PUC, you must file a document that includes the following information:

- Your name (the account holder), customer account number, billing and service addresses, telephone number, and fax number (if it is available). Note: The same information must be provided by any person representing you.
- The name of the electric or telecommunications service provider or other person against whom you have the complaint.
- A description of the facts leading to the complaint. You may attach supporting documents to your complaint.
- A statement of the relief that you are seeking, specifying the disputed amount if there is any.
- If your complaint is with a utility, or local wires company, state whether the complaint relates to service that you received within the limits of a city.
- If you are seeking relief against a utility, or local wires company within the limits of a city, describe any complaint proceedings conducted by the city and state what the city decided.
- State whether you have attempted an informal resolution through the PUC. Include the date on which the informal resolution concluded, or indicate if the time for attempting an informal resolution has passed. You must submit an original complaint plus 10 copies to the PUC Central Records

Office. Each time you file a document you must file the original document plus the necessary number of copies as provided for in the PUC's procedural rules discussed in the "IMPORTANT PROCEDURAL INFORMATION" section at the end of this brochure.

Do I need to hire an attorney?

You are not required to have an attorney to participate in a PUC proceeding. If you file a formal complaint, you will be required to timely respond to requests for information from other parties, send copies of any documents you file to every Party, and attend any prehearing conferences or hearings. If you file testimony, you must appear at the hearing to be cross-examined.

You may want to hire an attorney to advise you and help you present your case to the PUC.

Will the PUC staff help me?

A PUC staff attorney will be assigned to your complaint.

The staff attorney's job is to represent the public interest. He or she can answer questions about PUC rules and procedures. The staff attorney cannot advise you or represent you individually and may ultimately take a position adverse to yours.

Do not contact the Administrative Law Judge or the Commissioners and their staff by mail, telephone, or email. The law does not allow them to discuss pending cases with a Party. The recommendations and decisions of these Parties must be based on the evidence and arguments that are formally presented in the case.

THE FORMAL COMPLAINT PROCESS

What can I expect to happen after my formal complaint is filed?

Your formal complaint will be given a docket number, or control number, and an Administrative Law Judge (ALJ) will be assigned to the docket. The ALJ will issue a document called an order requiring the party that is the subject of your complaint to respond by a certain date and provide a deadline for PUC staff to make a recommendation on how the case should be handled. The ALJ will have to determine whether your requested relief is something that the PUC can order. The PUC can order a variety of corrective actions including adjustments to a customer's bill but does not have the authority to award monetary damages.

Next, the PUC will determine whether the case can be decided based on the law or whether a hearing will be required in order for the PUC to decide any facts in dispute by the parties.

If there are factual disputes, the PUC will refer the case to the State Office of Administrative Hearings (SOAH) for a hearing. SOAH is a neutral and independent agency where Texas agencies, like the PUC, and private citizens or entities can resolve legal disputes.

What happens if a hearing is required?

The hearing is much like a trial where testimony and evidence can be admitted for the Administrative Law Judge's (ALJ) consideration in making a decision on the case. In a hearing, testimony is provided in written form and filed before the hearing. After considering the evidence admitted during the hearing, the ALJ will make a

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