



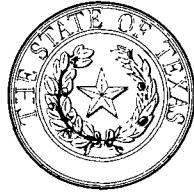
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State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

July 11, 2017

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2017 JUL 11 PM 1:51
PUBLIC UTILITY COMMISSION
FILING CLERK

TO: Stephen Journeay, Director
Commission Advising and Docket Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701

Courier Pick-up

RE: SOAH Docket No. 473-17-0249.WS
PUC Docket No. 45510

Application of Hoe Water Supply Corporation and Harris County Mud No. 480 for Sale, Transfer, or Merger of Certificate Rights in Harris County

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fernando Rodriguez".

Fernando Rodriguez
Administrative Law Judge

FR/dk

Enclosure

xc: All Parties of Record

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**SOAH DOCKET NO. 473-17-0249.WS
PUC DOCKET NO. 45510**

APPLICATION OF HOE WATER	§	BEFORE THE STATE OFFICE
SUPPLY CORPORATION AND HARRIS	§	
COUNTY MUD NO. 480 FOR SALE,	§	OF
TRANSFER, OR MERGER OF	§	
CERTIFICATE RIGHTS IN HARRIS	§	
COUNTY	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION RECOMMENDING
DISMISSAL FOR FAILURE TO PROSECUTE**

I. INTRODUCTION

The Administrative Law Judge (ALJ) recommends that the Public Utility Commission (Commission) Staff (Staff) of Texas dismiss this case for failure to prosecute.¹ On January 11, 2016, HOE Water Supply Corporation (HOE WSC) and Harris County Municipal Utility District No. 480 (Harris County MUD) filed an application for the sale, transfer, or merger (STM) of facilities and certificate of convenience and necessity (CCN) rights in Harris County, Texas. The Commission referred this case to the State Office of Administrative Hearings (SOAH) on September 20, 2016. At the behest of the parties, the ALJ granted several continuances to allow Harris County MUD additional time to acquire certain approvals from the Texas Commission on Environmental Quality (TCEQ). The ALJ also ordered the parties to provide several status updates. In its latest response to a request for a status report, Staff advises that it has not received a response from the applicants since March 2017. Other than from Staff, the ALJ did not receive a response to Order No. 7, which required a status report by May 19, 2017. Given the circumstances, the ALJ recommends that the Commission dismiss this docket for failure to prosecute.

¹ 16 Tex. Admin. Code § 22.181(d)(6).

II. JURISDICTION AND NOTICE

No party questioned jurisdiction or notice, and those matters will not be discussed here. They will be taken up in the findings of fact and conclusions of law. Prior to the referral of this case to SOAH, Staff indicated that HOE WSC's notice was sufficient.²

III. PROCEDURAL HISTORY

On January 11, 2016, HOE WSC and Harris County MUD filed an application for an STM. In the STM application, Harris County MUD proposed to acquire part of the CCN currently held by HOE WSC to provide service to a new development owned by John N. Taylor.³ Mr. Taylor's development stretches across the existing CCN boundaries of HOE WSC and Harris County MUD, but Mr. Taylor desired service solely from Harris County MUD.⁴ The Commission referred the case to SOAH on September 20, 2016, and adopted a Preliminary Order on November 1, 2016.

On October 3, 2016, the ALJ issued SOAH Order No. 1 acknowledging the referral of the case, outlining jurisdiction, discussing discovery procedures and procedures for litigating the case, and establishing a date for the initial prehearing conference as November 2, 2016. On October 26, 2016, Staff filed its Unopposed Motion to Abate, in which it stated that the parties were working to gather information that might prevent needless expense related to a prehearing conference. On behalf of the parties, Staff requested that the case be abated to provide Harris County MUD time to acquire necessary approvals from the TCEQ. Staff also requested that the parties be allowed to file monthly status reports in lieu of adopting a formal procedural schedule.

² Commission ALJ Order No. 5, June 14, 2016. 16 Tex. Admin. Code § 24.112(c). 16 Texas Administrative Code § 24.112, addressing notice, was repealed effective December 21, 2016. References to the Commission's applicable rules are to those rules in effect when this case was filed.

³ STM Application, Interchange item No. 1.

⁴ STM Application at 5, Interchange item No. 1.

On October 28, 2016, the ALJ issued SOAH Order No. 2 canceling the prehearing conference and ordering the parties to provide monthly status reports beginning November 30, 2016. Based on Staff's status report, filed on November 30, 2016, the ALJ issued Order No. 3 on December 5, 2016, continuing the abatement of the case. Staff was directed to file a status report on or before December 30, 2016, advising whether the case could be settled, whether a further abatement was in order, or whether a prehearing conference should be set at which time the ALJ would establish a procedural schedule and hearing date. On December 30, 2016, Staff filed a status report advising that the parties were continuing to seek necessary TCEQ approvals. However, Staff also advised that Harris County MUD was in a better position to provide information regarding the status of its progress at the TCEQ and requested that Harris County MUD be charged with the task of providing more informative status updates.

On January 20, 2017, the ALJ issued SOAH Order No. 4 continuing the abatement of the case. SOAH Order No. 4 also required Harris County MUD to file a status report on or before February 15, 2017, advising whether any real progress had been made, whether a continued abatement was appropriate, or whether a procedural schedule and hearing date should be set.

On February 16, 2017, the ALJ issued SOAH Order No. 5, which noted that Harris County MUD had not filed the required status report by the February 15, 2017 deadline. Harris County MUD was ordered to file the status report by February 24, 2017, at which time the ALJ would decide if the abatement should be continued or whether a procedural schedule should be established and the case set for hearing.

On March 15, 2017, the ALJ received by facsimile Harris County MUD's "Status Update" in which Harris County MUD requested until April 15, 2017, to file a detailed status report.⁵ Harris County MUD stated that, among other problems, it had been unable to secure cooperation

⁵ Harris County MUD's March 15, 2017 Status Report was not filed on the Commission's Interchange, and the ALJ is not certain whether the other parties received copies of Harris County MUD's filing. The ALJ noted the discrepancy in Order No. 7, issued on May 9, 2017. The ALJ is unable to discern whether Harris County MUD ever properly served the other parties with its March 15, 2017 informational filing.

from HOE WSC. On April 13, 2017, the ALJ issued SOAH Order No. 6 requiring Harris County MUD to file a status report by May 1, 2017. The ALJ also ordered Harris County MUD to consult with Staff and HOE WSC prior to filing its status report, and to include in the status report the results of its discussions with the other parties.

On May 9, 2017, the ALJ issued SOAH Order No. 7 noting that Harris County MUD had missed the May 1, 2017 date for filing the required status report. The parties were ordered to file a status report by May 19, 2017, advising whether the docket could proceed to hearing expeditiously or whether the docket should be dismissed for failure to prosecute. On May 19, 2017, Staff was the only party to file a status report. Staff advised in its status report that no status reports had been filed by either of the other two parties since December 30, 2016. Staff further advised that it had “attempted to contact the parties regarding the status of the case but has not been able to get an update from them since March 2017.”⁶ Staff concluded its report by recommending that this case be dismissed for failure to prosecute, and because of “the absence of guidance from or contact with the parties, and due to the extended nature of this proceeding to date. . . .”⁷

IV. RECOMMENDATION

The ALJ concurs with Staff’s assessment of this case. In view of the failure of Harris County MUD and HOE WSC to comply with SOAH orders to file status reports, and particularly in view of the fact that neither party has contacted Staff since March 2017, the ALJ recommends that the Commission dismiss this docket without prejudice for failure to prosecute, pursuant to 16 Texas Administrative Code § 22.181(d)(6).

⁶ Staff’s Status Report, May 19, 2017 at 1. Interchange item No. 44.

⁷ Staff’s Status Report, May 19, 2017 at 1. Interchange item No. 44.

**V. PROPOSED FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDERING PARAGRAPHS**

A. FINDINGS OF FACT

1. On January 11, 2016, HOE Water Supply Corporation (HOE WSC) and Harris County Municipal Utility District No. 480 (Harris County MUD) filed an Application for a Sale, Transfer, or Merger (STM) to acquire facilities and transfer certificate of convenience and necessity (CCN) rights in Harris County, Texas.
2. In their STM application, HOE WSC and Harris County MUD sought to transfer some of HOE WSC's certificated area to Harris County MUD to allow Harris County MUD to construct new facilities to serve a development owned by John N. Taylor.
3. On October 3, 2016, the Administrative Law Judge (ALJ) issued State Office of Administrative Hearings (SOAH) Order No. 1 that, among other things, scheduled a prehearing conference for November 2, 2016.
4. On October 27, 2016, the Public Utility Commission (Commission) Staff (Staff) of Texas filed its Unopposed Motion to Abate on behalf of all parties. The Unopposed Motion to Abate sought to cancel the prehearing conference to provide Harris County MUD sufficient time to acquire necessary approvals from the Texas Commission on Environmental Quality (TCEQ).
5. On October 28, 2016, the ALJ issued SOAH Order No. 2 canceling the prehearing conference and ordering the parties to file monthly status reports beginning November 30, 2016.
6. On December 5, 2016, the ALJ issued SOAH Order No. 3 continuing the abatement in this case to provide the parties sufficient time to obtain necessary TCEQ approvals. SOAH Order No. 3 also directed Staff to file a status report by December 30, 2016, advising the ALJ on the parties' progress.
7. On December 30, 2016, Staff filed the required status report and advised that the parties were working on acquiring the necessary TCEQ approvals. Staff also advised that Harris County MUD should be ordered to file regular status reports because it was in the best position to report on its progress at TCEQ.
8. On January 20, 2017, the ALJ issued SOAH Order No. 4 continuing the abatement of the case and ordering Harris County MUD to file a status report on or before February 15, 2017.
9. On February 16, 2017, the ALJ issued SOAH Order No. 5 that noted Harris County MUD had failed to file the required status report by February 15, 2017. Harris County MUD was

ordered to file a status report by February 24, 2017, advising whether the abatement should be continued or whether a procedural schedule and hearing date should be set.

10. On March 15, 2017, the ALJ received by facsimile a status update from Harris County MUD that sought additional time until April 15, 2017, to file a more detailed status report. Harris County MUD also alleged that it had been unable to secure cooperation from HOE WSC.
11. Harris County MUD did not file the March 15, 2017 status update on the Commission's Interchange.
12. On April 13, 2017, the ALJ issued SOAH Order No. 6 ordering Harris County MUD to file a status report by May 1, 2017, and to consult with Staff and HOE WSC regarding the then-current status of the case.
13. On May 9, 2017, the ALJ issued SOAH Order No. 7, which noted that Harris County MUD had failed to file a status report by May 1, 2017. SOAH Order No. 7 ordered the parties to file a status report on or before May 19, 2017, advising whether the case could proceed to settlement or whether a procedural schedule and hearing date should be adopted.
14. On May 19, 2017, Staff filed a status report advising that it had attempted to contact HOE WSC and Harris County MUD regarding the status of the case and received no response from either party. As a result, Staff recommended that the case be dismissed for failure to prosecute in accordance with 16 Texas Administrative Code § 22.181(d)(6).
15. As of July 10, 2017, neither HOE WSC nor Harris County MUD had filed any response to SOAH Order No. 7.

B. CONCLUSIONS OF LAW

1. HOE WSC and Harris County MUD are retail public utilities and are subject to the jurisdiction of the Public Utility Commission of Texas (Commission) with respect to certificates of convenience and necessity (CCN) to provide potable water service for compensation. Tex. Water Code §§ 13.002(19), 13.241.
2. The Commission has jurisdiction over the transfer of CCN rights from HOE WSC to Harris County MUD. Tex. Water Code §§ 13.251, 13.301; 16 Tex. Admin. Code § 24.109.
3. SOAH has jurisdiction over this matter. Tex. Util. Code (PURA) § 14.053; 16 Tex. Admin. Code § 24.109.
4. HOE WSC may not sell, assign, or lease its CCN until the Commission has determined that the assignee or purchaser is capable of rendering adequate and continuous service to every

consumer within the certificated area. The sale, assignment, or lease shall be on the terms prescribed by the Commission. Tex. Water Code § 13.251.


5. Harris County MUD and HOE WSC must report the STM of CCN rights and give proper notice as prescribed by the Commission. Proper notice was provided in this case. Tex. Water Code §§ 13.246, 13.301; 16 Tex. Admin. Code 24.112(c).
6. Under 16 Texas Administrative Code § 22.181(d), the presiding officer may dismiss a proceeding on his or her own motion or the motion of a party, and recommend to the Commission that it dismiss the proceeding with or without prejudice for failure to prosecute.
7. When the presiding officer recommends dismissal of a case for failure to prosecute, he or she must prepare a proposal for decision. The Commission shall consider the proposal for decision recommending dismissal for failure to prosecute as soon as is practicable. 16 Tex. Admin. Code § 181(f)(2).
8. HOE WSC and Harris County MUD's failure to comply with orders issued by the ALJ and failure to communicate with Staff regarding the status of this case justify dismissal for failure to prosecute.

C. ORDERING PARAGRAPHS

In accordance with the findings of fact and conclusions of law, the Commission issues the following order:

1. Docket No. 45510 is **DISMISSED** for failure to prosecute.
2. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted, are denied.

SIGNED July 11, 2017.


FERNANDO RODRIGUEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS