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State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

July 25, 2017

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

VIA FACSIMILE (512) 936-7208

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

Dear Mr. Journeay:

On July 11, 2017, the undersigned Administrative Law Judge (ALJ) issued in the above-referenced docket a Proposal for Decision Recommending Dismissal for Failure to Prosecute (PFD). On July 18, 2017, Harris County MUD No. 480 (Harris County MUD) filed its Exceptions to and Request for Withdrawal of PFD (Exceptions). Harris County MUD urges withdrawal of the PFD on the basis of an alleged "error in facts."¹ On July 20, 2017, Public Utility Commission (Commission) staff (Staff) filed a letter addressed to you in which Staff informed the Commission that it supported the PFD and did not intend to file exceptions to the PFD.

After reviewing the Exceptions filed by Harris County MUD, the undersigned ALJ recommends no changes to the PFD or the recommendation contained therein that the case should be dismissed for failure to prosecute. The reasons for that recommendation are as follows.

First, there is no "error in facts," as asserted by Harris County MUD. As the PFD explains, this case has been characterized by a series of continuances to allow the parties to file status reports reporting on their progress in acquiring necessary approvals from the Texas Commission on Environmental Quality. Harris County MUD has failed to comply with the directives in various SOAH orders to file status reports, to the point where Staff stated in its

¹ Harris County MUD Exceptions at 1.

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Status Report, filed May 19, 2017, that “no status report has been filed in this case since Staff’s last status update, filed December 30, 2016.”² Staff also indicated in the same status report that it “has not been able to get an update from the parties since March 2017.”

Second, in SOAH Order No. 1 the ALJ included the standard ordering language that “[p]leadings and other documents shall be deemed filed when the proper number of legible copies is presented to the Commission’s filing clerk for *filing*.”³ Later in the same order, the ALJ stated pointed out that “. . . all documents filed in this case must be *filed at the Commission*.”⁴ A review of the SOAH orders documented in the PFD demonstrates that Harris County MUD and HOE Water Supply Corporation have continually missed filing deadlines to file status reports. Only Staff has diligently abided by the filing deadlines resulting from the parties’ regular requests for additional abatements.

Third, Harris County MUD states that “. . . the PFD does not indicate that the District *filed* on May 2, 2017, a comprehensive Informational Filing, responding in detail to all of the PUC’s informational requests, and clearly stating why the application should be granted.”⁵ Harris County MUD is mistaken.

On July 18, 2017, Harris County MUD attached to its Exceptions its Informational Filing, dated May 2, 2017. However, reference to the Commission’s Interchange shows that nothing was filed at the Commission on May 2, 2017. Sending an attachment to an ALJ does not constitute filing the document, particularly since the ALJ cannot tell whether the other parties received the filing, and if so, what significance the ALJ should attach to the material SOAH received on July 18, 2017. Moreover, SOAH docket management system has no record of any such document being received on or about May 2, 2017, which is beside the point in any event because SOAH is not the entity with which parties are expected to file documents in a given case.

Fourth, whether Harris County MUD meant to file timely reports and simply failed to do so, is unknown. Suffice it to say that material included in Harris County MUD’s Exceptions (as well as the Exceptions themselves) was not filed with the Commission on or about May 2, 2017, and has still not been filed as of this date. Indeed, reference to the Commission’s Interchange indicates that the last proper filing made by Harris County MUD was on August 29, 2016, when it filed a Response to Staff’s Second Request for Information.

² Staff’s Status Report, May 19, 2017, at 1.

³ SOAH Order No. 7 at 1, (emphasis added).

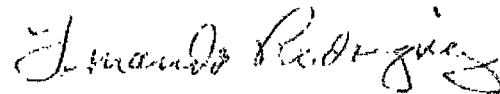
⁴ SOAH Order No. 1 at 2-3, (emphasis added).

⁵ Harris County MUD Exceptions at 1. Emphasis added.

In Order No. 7, the ALJ noted that Harris County MUD had faxed to SOAH a purported status report on March 15, 2017. At that time, the ALJ pointed out that, “[h]owever, a review of the Public Utility Commission (Commission) Interchange does not show the document was filed. The parties are reminded that all documents in the case must be filed with the Commission’s Filing Clerk.”⁶ As a result, Harris County MUD was clearly apprised in SOAH Order No. 1 of the Commission’s filing requirements, and in SOAH Order No. 7 was directly reminded of the necessity to properly file documents with the Commission’s Filing Clerk.

As a result of the discussion above, the ALJ does not recommend any changes to the PFD.

Sincerely,



Fernando Rodriguez
Administrative Law Judge

xc: All Parties of Record

⁶ SOAH Order No 7.

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STYLE/CASE: HOE WATER SUPPLY CORPORATION AND HARRIS COUNTY
MUD NO. 480
SOAH DOCKET NUMBER: 473-17-0249.WS
REFERRING AGENCY CASE: 45510

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ FERDIE RODRIGUEZ**

REPRESENTATIVE / ADDRESS

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HARRIS COUNTY MUD NO. 480
