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## OPEN MEETING COVER SHEET

**MEETING DATE:** June 9, 2016

**DATE DELIVERED:** June 2, 2016

**AGENDA ITEM NO.:** 39

**CAPTION:** Docket No. 45710; SOAH Docket No. 473-16-3914.WS - Application of Kempner Water Supply Corporation for Section 13.252 Cease and Desist Order Against the City of Lampasas

**ACTION REQUESTED:** Discussion and possible action with respect to Preliminary Order

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***Public Utility Commission of Texas***

TO: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: John Kramer  
Commission Advising

RE: June 9, 2016 Open Meeting, Agenda Item No. 39  
Draft Preliminary Order, PUC Docket No. 45710, SOAH Docket No. 473-16-3914.WS - *Application of Kempner Water Supply Corporation for Section 13.252 Cease and Desist Order Against the City of Lampasas*

DATE: June 2, 2016

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the June 9, 2016 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the June 9, 2016 open meeting.

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**SOAH DOCKET NO. 473-16-3914.WS  
PUC DOCKET NO. 45710**

<b>APPLICATION OF KEMPNER WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SUPPLY CORPORATION FOR</b>	<b>§</b>	
<b>SECTION 13.252 CEASE AND DESIST</b>	<b>§</b>	<b>OF TEXAS</b>
<b>ORDER AGAINST THE CITY OF</b>	<b>§</b>	
<b>LAMPASAS</b>	<b>§</b>	

**DRAFT PRELIMINARY ORDER**

On March 9, 2016, Kempner Water Supply Corporation filed with the Commission an application seeking the issuance of a cease and desist order against the City of Lampasas, which has built a water transmission line that is within Kempner's certificated service area. On April 28, 2016, the Commission referred this case to the State Office of Administrative Hearings. On May 6, Commission Staff filed a list of issues. On May 16, Lampasas and Kempner each filed lists of issues.

Lampasas has constructed a water transmission line within a 151-acre business park owned by the Lampasas Economic Development Corporation (LEDC) and located within the municipal boundary of Lampasas. The business park is located within the boundaries of both Lampasas's and Kempner's current certificates of convenience and necessity. Kempner filed this application for a cease and desist order against Lampasas regarding Lampasas's construction of the water line in the business park pursuant to Texas Water Code § 13.252. Kempner asserts that Lampasas will use the newly-constructed water line in the business park to provide water service within Kempner's certificated service area.

### **I. Issues to be Addressed**

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).<sup>1</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Does Lampasas's construction of the water line within the business park constitute interference, or an attempt to interfere, with the operations of Kempner? TWC § 13.252.
2. Does the construction the water line constitute an act of furnishing retail service within Kempner's certificated area? TWC § 13.252.
3. How far does Lampasas's water line encroach upon Kempner's exclusive certificated territory?
4. What is the legal and financial relationship between Lampasas and the LEDC?
5. What agreement is there, if any, between Lampasas and the LEDC for Lampasas to provide retail water service to the business park? If there is such an agreement, on what date was the agreement reached?
6. What water service infrastructure, if any, does Kempner maintain within the business park?
7. What percentage of the business park is certificated exclusively to Kempner? What percentage of the park is certificated exclusively to Lampasas? Is there any part of the park that is jointly certificated to both Kempner and Lampasas?
8. Is Kempner current providing water service to any retail customer within the 151-acre tract that is the subject of its application?

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<sup>1</sup> TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000).

9. What is the current state of Lampasas's construction of its water line within the business park? Has Lampasas ceased construction of the line and, if so, how does this cessation affect any portion of the line that has already been constructed within Kempner's exclusively certificated territory?
10. If Lampasas's newly-constructed water line within the business park constitutes interference, or an attempt to interfere, with Kempner's retail water service operations, within the meaning of TWC § 13.252, what are the appropriate remedies for Kempner?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under TEX. GOV'T CODE ANN. § 2003.049(e).

## **II. Effect of Preliminary Order**

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the \_\_\_\_\_ day of June 2016.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

\_\_\_\_\_  
**BRANDY MARTY MARQUEZ, COMMISSIONER**