

Control Number 45711



Item Number 27

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PETITION BY KEMPNER WATER §
SUPPLY CORPORATION TO REVISE §
RATES FOR WHOLESALE WATER §
SERVICE TO THE CITY OF LAMPASAS §
§

BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS

THE CITY OF LAMPASAS'S REQUEST FOR ORAL ARGUMENT

Pursuant to 16 Tex. Admin. Code ("TAC") § 22.262(d), the City of Lampasas ("City") files this Request for Oral Argument at the Public Utility Commission Open Meeting on September 8, 2016, and as grounds for this motion shows the following:

I. BACKGROUND

Kempner Water Supply Corporation ("Kempner") seeks in this proceeding to revise the rates it charges the City under a wholesale water supply contract it has with the City. That same contract is the subject of litigation in Cause No. 19005, *City of Lampasas v. Kempner Water Supply Corp.* in the District Court of Lampasas County, Texas, 27th Judicial District. The City filed a Motion to Dismiss or, Alternatively, to Abate this proceeding, asserting that the Commission lacked jurisdiction to consider Kempner's petition and alternatively seeking abatement while the district court lawsuit was pending. The Administrative Law Judge (ALJ) found that the Commission did not have jurisdiction under any of the statutes Kempner relied on, except for one – Texas Water Code § 12.013.¹ The ALJ granted the City's alternative request for abatement.²

¹ SOAH Order No. 5 at 6-7.

² SOAH Order No. 5 at 8.

On June 30, 2016, the City appealed the ALJ's ruling that the Commission has jurisdiction of Kempner's petition under Texas Water Code § 12.013. On July 11, 2016, the Commission set the matter on the Commissioner's Open Meeting agenda for September 8, 2016.

The sole issue before the Commission on the appeal is whether § 12.013 confers jurisdiction on the Commission to review the rates under the wholesale water supply contract between the City and Kempner. In its Request for Oral Argument, Kempner asserts that the Commission has jurisdiction under both TWC §§ 11.036(b) and 12.013 and seeks to present those arguments to the Commission on both statutes.³ The ALJ properly found that the Commission does not have jurisdiction under § 11.036(b) in its June 20, 2016 Order, which Kempner did not appeal.⁴ Jurisdictional arguments on § 11.036(b) should not be permitted.

II. REQUEST FOR ORAL ARGUMENT

Pursuant to 16 TAC § 22.262(d), the City requests that the Commission allow oral argument on the issue of jurisdiction under § 12.013 at the Commission's September 8, 2016 Open Meeting. The City further requests that if oral argument is granted, that the Commission advise the parties of the time allotted for each party's argument and the issues on which the Commission will hear argument. As the appealing party, the City respectfully requests the opportunity to open and close the oral argument before the Commission, as provided in 16 TAC § 22.262(d)(2).

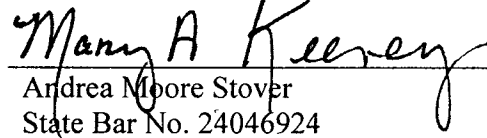
III. CONCLUSION AND PRAYER

For the reasons stated, the City of Lampasas respectfully requests that the Commission grant Oral Argument, limit the argument to the only issue properly appealed and grant the City such other and further relief to which it is entitled.

³ See Kempner Request for Oral Argument at 1.

⁴ SOAH Order No. 5 at 6-7.

Respectfully submitted,



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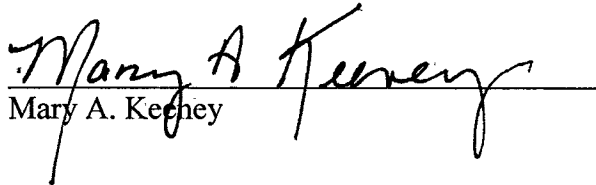
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ATTORNEYS FOR THE CITY OF LAMPASAS

CERTIFICATE OF SERVICE

I certify that on the 18th day of August, 2016, a true and correct copy of the foregoing instrument was served on all parties of record by email, hand delivery, Federal Express, regular first class mail, certified mail, or facsimile transmission.


Mary A. Keeney