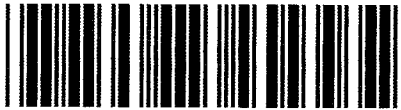


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PETITION BY KEMPNER WATER § BEFORE THE PUBLIC UTILITY COMMISSION
SUPPLY CORPORATION TO § THE STATE OFFICE
REVISE RATES FOR WHOLESALE § OF
WATER SERVICE TO THE CITY §
OF LAMPASAS § ADMINISTRATIVE HEARINGS

**KEMPNER WATER SUPPLY CORPORATION'S
RESPONSE TO LAMPASAS' ARGUMENTS RELATING TO
THE SUFFICIENCY OF THE PETITION**

To the Honorable Administrative Law Judge:

Pursuant to the Commission's¹ Order of Referral (March 14, 2016), on March 24, 2016, Kempner Water Supply Corporation (Kempner), Commission Staff and the City of Lampasas (Lampasas) each filed a "List of Issues" for the Commission's consideration in generating the preliminary order to the SOAH Administrative Law Judge assigned to this proceeding.² The Order of Referral provides that "Parties shall not file responses to any pleading submitted in response to this Order, unless specifically requested." Kempner is not intending to respond to any list of issues or otherwise affect the development of the preliminary order as contemplated in the Order of Referral.

While couched as a "list of issues," Lampasas devoted a substantial part of its 12-page submittal to argument relating to the sufficiency of Kempner's petition, in apparent response to SOAH Order No. 1 (March 16, 2016), which required Commission Staff's comments on the sufficiency of the petition under 16 TAC § 24.130, on or before March 24,

¹ In addition to those defined in this filing, abbreviations and acronyms utilized include: "Commission" or "PUC" for the Public Utility Commission of Texas, "SOAH" for the State Office of Administrative Hearings, "Lampasas" for the City of Lampasas, Texas (the Respondent), "TAC" for the Texas Administrative Code, and "TWC" for the Texas Water Code.

² The Order of Referral also permits any person to (1) identify any issue(s) which should not be addressed in the docket, and (2) identify any threshold legal and/or policy issue(s) which should be briefed for purposes of a preliminary order.

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the same day that the lists of issue were due. SOAH Order No. 1 also allowed any other party to submit comments. On March 24, 2016, Commission Staff requested an extension until April 5, 2016, in order to submit comments regarding the sufficiency of the petition.³

To the extent that Commission Staff or the Administrative Judge may reference or rely on Lampasas' arguments regarding the sufficiency of Kempner's petition, clarifications and corrections are appropriate to distinguish between the instant petition and the district court case⁴. Because Kempner received Lampasas' filing on March 24, this submittal is timely filed.

The district court case addressed the parties' differing interpretations of the contract when Kempner is forced to use water treated at Kempner's water treatment plant to satisfy Lampasas' demand due to operational issues or interruption of supply from Central Texas WSC. Under the contract, *as construed by the district court*, Kempner must supply free water to Lampasas under such circumstances.

With specific regard to the supply of free water to Lampasas, the Kempner petition asks whether the contract, *as construed by the court*, is contrary to law under statutes providing the Commission with exclusive jurisdiction. Lampasas and its legal representatives are well aware of the distinctions between what was addressed by the district court, what is presented in the instant petition, and the various other bases for Commission action under Kempner's petition,⁵ but they have filed a response that appears to be intended

³ Kempner does not oppose Commission Staff's request for additional time.

⁴ *City of Lampasas v. Kempner Water Supply Corp.*, Ca. No. 19005, in the 27th Judicial District Court of Lampasas County, Texas.

⁵ Kempner's petition also alleges that the contract grants unlawful preferential treatment to Lampasas and is contrary to the public interest for all or any one of several other reasons *unrelated* to the free service issue, among them:


- a) Under the contract as written, Kempner must pay a significant portion of the Central Texas WSC operation and maintenance expense even though the contract requires that one hundred percent of the

to obfuscate these distinctions. Simply put, the Commission's consideration of this petition is not subject to abatement under the PUCT rules because there is nothing more for the district court to decide regarding the interpretation of this portion of the contract. These and other bases of Kempner's petition are sufficiently pled.

WHEREFORE, PREMISES CONSIDERED, Kempner Water Supply Corporation respectfully requests that its petition be found to be sufficient and for any further relief to which it may be entitled.

Respectfully submitted,

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water from Central Texas WSC be transported to Lampasas and the contract prohibits Kempner from using water obtained from Central Texas WSC to supply other customers. The resulting costs are passed through to Kempner's other customers. *E.g.*, Petition at 4-5.

- b) Under the contract as written, a stated percentage of the capacity of the several components used to supply water to Lampasas is reserved to be used solely to supply water to Lampasas. Yet, under the contract as written, when capital repairs are required for any of these components, Lampasas may refuse, and has refused, to pay for such repairs. This cost is passed through to Kempner's other customers. *E.g.*, Petition pp. 4-6.
- c) Under the contract as written, Lampasas does not pay for or contribute to the cost of water that is lost during the transmission of the water approximately 43.2 miles. While Kempner takes commercially reasonable efforts to reduce water loss, all water transmission mains. Whether this lost water is purchased from Central Texas WSC, or treated at Kempner's water plant, the cost of this lost water is approximately \$53,000 to \$65,000 per year and is borne by Kempner. *E.g.*, Petition p. 5.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been delivered by facsimile to the service list on this, the 30 of March, 2016.


Paul M. González