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APPLICATION OF J&S WATER § BEFORE THE STATE OFFICE
COMPANY, LLC FOR A § OF
RATE/TARIFF CHANGE § ADMINISTRATIVE HEARINGS

PUBLIC UTILITY COMMISSION
PLANS CLERK

**SOAH ORDER NO. 3
SUMMARIZING PREHEARING CONFERENCE, ADMITTING INTERVENORS,
ADDRESSING REPRESENTATION, SERVICE LIST, PROCEDURES, AND
PROCEDURAL SCHEDULE; NOTICE OF HEARING AND PREHEARING
CONFERENCE**

On October 13, 2016, J&S Water Company, LLC (J&S) filed with the Public Utility Commission of Texas (Commission) an application for a Class B rate/tariff change for water and sewer service under Certificate of Convenience and Necessity (CCN) Nos. 12085 and 20658 (the Application). Commission Order No. 3, issued January 23, 2017, found the Application sufficient and suspended the April 1, 2017 effective date of the rate change for 265 days. In its January 26, 2017 Order of Referral, the Commission referred this case to the State Office of Administrative Hearings (SOAH), requesting the assignment of a SOAH Administrative Law Judge (ALJ) to conduct a hearing and to issue a proposal for decision, if such is necessary.

I. ADMITTING INTERVENORS AND ADDRESSING REPRESENTATION

On March 21, 2017, ALJ Elizabeth Drews conducted a prehearing conference at SOAH's hearing facility in Austin. J&S and the Commission staff (Staff) appeared through their attorneys, and Lori Franz appeared by telephone. No other person who submitted a request to intervene was present.¹ Ms. Franz orally moved to intervene on behalf of herself and many other persons on whose behalf she submitted written requests to intervene (collectively, Intervenors) (see attached list of Intervenors). The requests to intervene (except that of Ms. Franz) stated that Ms. Franz was authorized to represent the requester at the prehearing conference. All requests to intervene were unopposed and were granted by the ALJ. **All of the Intervenors should read this order carefully because it affects their rights and obligations in this case.**

¹ All requests to intervene were filed at the Commission later that day.

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Ms. Franz is not an attorney. At the prehearing conference, she stated that she understands the other Intervenors have authorized her to represent them throughout this case. Among other things, that means they authorize her: (1) to be served on behalf of the Intervenors (so service on the Intervenors is complete when Ms. Franz is served with a single copy of a filing); (2) to be the Intervenors' representative for all settlement communications, including at any settlement conference(s), and to sign settlement documents, if any, on behalf of the Intervenors; (3) to make written filings on behalf of the Intervenors; and (4) to be the Intervenors' representative at any proceeding in this case, including any prehearing conference and the hearing. Ms. Franz agreed that she will be responsible for communicating with the other Intervenors. Intervenors with access to the internet can also review filings in this case as described later in this order.

If any of the Intervenors does not agree to be represented by Ms. Franz as discussed in the preceding paragraph, that person SHALL file a document so stating no later than April 3, 2017.² In the event of such a filing, on a prospective basis, the person who made that filing will be added to the service list and participate in this case separately from the Intervenors whom Ms. Franz represents. Except for any person who makes such a filing, the Intervenors (collectively) will be considered a single party. A copy of this order ONLY is being sent to all of the Intervenors; the Intervenors' copy of future orders will be served only on Ms. Franz.

II. PROCEDURAL SCHEDULE; NOTICE OF PREHEARING CONFERENCE AND HEARING

Notice and jurisdiction (including jurisdiction over the Application and hearing and the adequacy of notice of the Application and the prehearing conference) are not contested. The Commission has jurisdiction in this matter pursuant to Texas Water Code §§ 13.041, 13.042, 13.043, and 13.1871. SOAH has jurisdiction over matters relating to the conduct of the hearing and issuance of a proposal for decision pursuant to Texas Government Code § 2003.049.

The parties agreed on, and the ALJ adopted, the following procedural schedule:

² Filing and service requirements for filings in this case are discussed later in this order.

| Event | Deadline |
|--|--|
| Prehearing Conference; Deadline for Motions to Intervene | March 21, 2017 |
| Effective Date (has been suspended for 265 days) | April 1, 2017 |
| J&S's Direct Testimony | April 26, 2017 |
| Objections to J&S's Direct Testimony | May 3, 2017 |
| Replies to Objections to J&S's Direct Testimony | May 10, 2017 |
| Intervenors' Direct Testimony | May 26, 2017 |
| Deadline to serve discovery on J&S's Direct Testimony | May 31, 2017 |
| Objections to Intervenors' Direct Testimony | June 12, 2017 |
| Replies to Objections to Intervenors' Direct Testimony | June 19, 2017 |
| Deadline to serve discovery on Intervenors' Direct Testimony | June 26, 2017 |
| Staff's Direct Testimony | June 30, 2017 |
| Deadline to serve discovery on Staff's Direct Testimony | July 7, 2017 |
| Objections to Staff's Direct Testimony | July 12, 2017 |
| Replies to Objections to Staff's Direct Testimony | July 17, 2017 |
| J&S's Rebuttal Testimony | July 17, 2017 |
| Settlement Conference | July 20, 2017 |
| Deadline to serve discovery on J&S's Rebuttal Testimony | July 24, 2017 |
| Objections to J&S's Rebuttal Testimony | July 28, 2017 |
| Replies to Objections to J&S's Rebuttal Testimony | August 1, 2017 |
| Prehearing Conference | August 4, 2017 at 10:00 a.m. |
| Hearing on the Merits | August 7, 9, and 10, 2017, at 9:00 a.m. until adjourned |
| Initial Briefs | August 18, 2017 |
| Reply Briefs (record closes) | August 23, 2017 |
| Jurisdictional Deadline | December 22, 2017 |

The parties also agreed that:

- Responses to discovery are due **within ten (10) calendar days of receipt**, unless expressly noted otherwise; and
- Objections to discovery are due **within five (5) calendar days of receipt**.

The ALJ is not involved in settlement negotiations. The parties make and communicate with each other about the arrangements, including the time and place, for any settlement conference. Parties may conduct settlement negotiations at any time, not merely during the settlement conference scheduled in this order.

The ALJ will convene a **prehearing conference on August 4, 2017, at 10:00 a.m.** at the SOAH hearing facility in the William P. Clements Office Building, 300 West 15th, Fourth Floor, Austin, Texas. Matters to be discussed include any pending motions and objections, procedures at the hearing, and any other matter that may assist in the disposition of this case in a fair and efficient manner. Any party may appear by telephone by notifying the ALJ's administrative assistant, Erin Hurley, at (512) 475-3419 or Erin.Hurley@soah.texas.gov. That notification shall be made **at least two working days before the prehearing conference** and include the phone number at which the ALJ can reach the party when convening the prehearing conference. If all parties ask to participate by telephone, the ALJ will call the parties from her office rather than from a hearing room.

The ALJ will convene the **hearing on the merits on August 7, 2017, at 9:00 a.m.**, at the SOAH hearing facility in the William P. Clements Office Building, 300 West 15th, Fourth Floor, Austin, Texas. Unless the ALJ states otherwise, the hearing will **reconvene at 9:00 a.m. on August 9 and 10, 2017, until the hearing is adjourned.**³

³ As noted above, the parties agreed to the hearing not taking place on consecutive days. Those attending the prehearing conference and hearing must check in with building security personnel in the lobby of the William P. Clements Building and be issued visitor badges before proceeding to the hearing room. The parties should allow sufficient time for the check-in procedure.

The parties are encouraged to coordinate with each in advance about whether any witnesses need not appear at the hearing because the other parties have no cross-examination for that witness. To participate in the hearing, all party representatives, and all witnesses whose prefiled testimony will be offered in evidence (unless all parties agreed to waive cross-examination of that witness), must appear in person, with the following exception. A party may request to appear at the hearing by telephone, or to present a witness for cross-examination by telephone, by filing a motion **no later than July 24, 2017**. The motion shall comply with 1 Texas Administrative Code § 155.405, which is in Subchapter I of SOAH's procedural rules, available at <http://www.soah.texas.gov/procedural-rules/index.asp>.⁴ Objections to such a motion shall be filed **no later than five working days after the motion is filed**. A motion that is opposed or is untimely is not granted unless the ALJ issues an order granting it. A timely, unopposed motion will be deemed granted unless denied by order. As discussed at the prehearing conference, **the parties are urged if possible to appear in person and (unless cross-examination of the witness has been waived by all parties) to present their witnesses in person at the hearing**. A person who participates only by telephone might be unable to follow the hearing, to review documents being discussed, or to participate as effectively, and parties should not expect the hearing to be delayed to address such problems.

III. GENERAL PROCEDURES

The parties **SHALL NOT** communicate with the ALJ about any issue in this case except by a document filed at the Commission and served in compliance with this order, or at a prehearing conference or hearing at which all parties have an opportunity to appear.

The parties may communicate with Ms. Hurley about routine procedural and logistical matters (such as providing a phone number at which they can be reached as described above). SOAH support personnel may not provide advice or interpret orders or regulations for the parties.

⁴ Ordinarily the procedural rules of the Commission, not SOAH, govern cases like this, but the Commission has no procedural rule relating to telephonic appearances.

A. Applicable Rules and Orders

All persons with access to the internet can view and download filings in this case from the Commission's website at <http://www.puc.texas.gov/>. Once there, click "Filings," then "Filings Search," then click "Filings Search" again, then type in the control number 46438 and press "enter." A list of documents filed in this docket will appear and those documents (with a few exceptions such as confidential documents) can be accessed by clicking on the document number.

All parties, whether or not represented by an attorney, are expected to be aware of and to comply fully with orders issued in this case (including orders issued before a party intervened) and with applicable Commission rules. This proceeding is governed by the Commission's procedural and water rules,⁵ which are available at <http://www.puc.texas.gov/agency/ruleslaws/Default.aspx>. This order summarizes some, but not all, of these requirements. Although the Staff attorney represents the public interest and is not the attorney for any other party, at the prehearing conference he offered to try to assist Intervenors with procedural questions they might have. His contact information is on the attached service list.

B. Service on Parties and Receipt of Documents Issued by SOAH

All documents filed in this case must be both filed at the Commission and served on the other parties' representatives on the service list. As the parties agreed at the prehearing conference, in addition to other methods of service permitted by the Commission's rules, a party may serve another party by email.

For the parties' convenience, an updated service list with current contact information for each party is attached to this order. Parties filing and serving documents are responsible for updating their service lists based on future filings.

⁵ 16 Tex. Admin. Code chs. 24 (water rules) and 22 (procedural rules).

Parties may wish to provide an email address in order to receive by email documents (such as orders and the proposal for decision) issued by SOAH. If so, the party should go to SOAH's website at <http://www.soah.texas.gov/index.asp>, click on "Request Email Service," and complete a short form. Otherwise, documents issued by SOAH will be sent to the party by another means, such as by regular mail or facsimile.


C. Motions and Responses to Motions and Other Pleadings

Unless a motion (a request for relief) states that all parties agree to or do not oppose it, the ALJ will not rule on the motion until after the deadline to respond to it. Unless otherwise specified, responses to a motion or other pleading shall be filed within **five working days** after receipt of the pleading. Responses shall state the date the responding party received the pleading. Failure to file a timely response will be considered acquiescence to the relief requested. **A motion is not granted unless and until the ALJ grants it.**

D. Discovery

Discovery has begun and is governed by the Commission's rules at 16 Texas Administrative Code chapter 22, subchapter H. Because the ALJ will not receive a copy of Requests for Information (RFIs) or responses to RFIs, motions to compel shall include a copy of every RFI and objection to which the motion applies. Any affidavits supporting an objection, motion to compel, or response shall be attached to the relevant document. The ALJ will decide discovery disputes based on the written documents, any sworn affidavits attached thereto, and any materials provided for *in camera* inspection, unless the ALJ concludes that a prehearing conference is necessary.

SIGNED March 22, 2017.



ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

GENERAL INFORMATION FOR PARTIES NOT REPRESENTED BY AN ATTORNEY

Overview of the Contested Case Process

- The contested case hearing will proceed like a trial, with witnesses testifying under oath, subject to cross-examination.
- The administrative law judge (ALJ) presides over the hearing process. The ALJ works for the State Office of Administrative Hearings (SOAH). SOAH is a state agency that provides impartial judges to preside over contested case hearings.
- At the end of the hearing process, the ALJ will make a written recommendation, which is known as a Proposal for Decision (PFD). A PFD is a recommendation to the three-member Public Utility Commission of Texas (Commission), which will make the final decision.
- The Commission's staff (Staff) participates in the hearing as a party. Staff is distinct from the three-member Commission that will ultimately decide this case.
- Issues in this case are listed in the Preliminary Order the Commission issued on March 9, 2017.

The Prehearing Phase

- In addition to settlement negotiations, two main things happen before the hearing: discovery; and filing of testimony. Deadlines for these activities are stated in this order.
- Discovery is the formalized exchange of information among parties.
- Unlike some trials in district court, in this case every witness's direct and rebuttal testimony (as applicable) will be in written form and filed by the deadlines stated in this order, which occur before the hearing. At the hearing, each witness will take the stand and be sworn in by the ALJ, and the witness's testimony will be admitted if it complies with the rules of evidence. The witness will then be subject to cross-examination by the other parties. (Sometimes, parties will waive cross-examination of a witness.)
- Testimony is evidence and includes assertions of fact. The ALJ cannot consider assertions of fact unless they are in testimony or a document in evidence. At the hearing, there will be no cross-examination of a party, if any, who did not file testimony but such a party may ask questions of other parties' witnesses.
- During the prehearing phase, the parties may also discuss whether the case can be resolved by a settlement agreed to by the parties. A settlement is presented for the Commission's consideration instead of a contested hearing and PFD. The ALJ and the Commission are not involved in settlement negotiations. Staff is a party and does participate in settlement negotiations.

The Hearing

- Each party must bring to the hearing four copies of each testimony the party will offer into evidence. (Bringing copies for other parties is unnecessary because each party should bring to the hearing a copy of documents, including other parties' prefiled testimony, that the party expects to need.)
- For all other exhibits a party offers into evidence, the party must bring to the hearing a copy for every other party and four additional copies.
- Prefiled testimony will be admitted (subject to objections based on the Texas Rules of Evidence), and witnesses will be subject to cross-examination. Testimony not admitted (such as because the witness did not appear to be cross-examined or the required number of copies were not provided) will be treated as a statement of position, which is not evidence.

The Post-Hearing Phase

- After the hearing, parties can file written closing arguments (briefs) by the deadlines established in this order.
- After considering the evidence and briefs, the ALJ will issue a PFD recommending an outcome.
- The ALJ's analysis will be based on the facts established through evidence introduced in the hearing and on applicable law.
- Parties who disagree with the ALJ's proposal can file written objections (exceptions) to the PFD.
- The Commission will set deadlines for exceptions and replies to exceptions to the PFD.
- The Commission will vote on a decision at a meeting open to the public, then issue a written order. The Commission's decision can be the same as or different from the ALJ's recommendation in the PFD.
- The deadline for the Commission's final order in this case is December 22, 2017.
- After the Commission issues its final order, parties may file motions for rehearing by the applicable deadline. The Commission may amend its final order based on such motions.

Filing and Serving Documents in the Case

- Whenever any party formally **files** any document in this case (such as a motion, request for or response to discovery, or testimony), the party must file the document with the Commission.
- Filings at the Commission must be filed by 3:00 p.m. on the date in question unless otherwise specified.
- The procedures regarding **filing** are specified in Subchapter E of the Commission's procedural rules and apply in this proceeding. Parties are expected to know those procedures and comply with them fully. A document is deemed to be filed when the proper number of legible copies is presented to the Commission's filing clerk for filing. All filings must contain both the SOAH and Commission docket numbers (which are listed at the top of each page of this order).
- At the same time a party **files** a document with the Commission, the party must also **serve** the filing on the other parties.
- **The Commission maintains an on-line document interchange that is a convenient way of keeping track of documents filed in a case.** Those documents are available for viewing and downloading from the Commission's website (<http://www.puc.texas.gov>). Once there, click at the top under "Filings," click on Filings Search, click on "Filings Search" again, type in the control number 46438, and press "enter." A list of documents filed in this docket will appear. The documents (except for confidential filings and court reporter transcripts) can be accessed by clicking on the document number.

LIST OF INTERVENORS

(consolidates duplicates and persons who share an address)

Lori Franz (non-lawyer who represents herself and the other Intervenors)

Mary Demura

Matthew Gray

Nanette Wilkinson

Joy Boul

Christy Reeves

Timothy Browder

Boyce Morris, Jr.

Adonna Creel

Traci Dillard

John And Deneice Randolph

Mary Hatcher

Renee Godeaux

Jerren Young

Cyndy Duff

Julius Browder

Patricia Fisher

Jimmy Hook

Lisa Baker

Kimberly Lopez

Tommy W. And Sharon Lynnette Morris

James E. Robinson, Jr.

James E. Robinson, Sr.

Teresa Cannon

Traci Dillard

Jacob Theiler

W. C. And Geraldine Miller

Patrick Malone

Christina Cox

David Price

Santiago San Miguel

Kelly Pechal

Gail R. Roberts

David Mitchell, Sr.

Kyle Holland

Michael Blakeney

Cindy McCurdy

Sue Sullivan

Joshua Johnson

Rhonda Martin

Kathy Pope

Aaron Dugat

Roger B. Johnson

Jacquelyn Johnson

Kenneth Owens
Keyin Brown
George Smith
Simple Simons Pizza