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**SOAH DOCKET NO. 473-17-5770.WS
PUC DOCKET NO. 46923**

**APPLICATION OF WOLFE AIR PARK §
CIVIC CLUB, INC. TO OBTAIN A §
WATER CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
BRAZORIA COUNTY §**

2018 APR 18 PM 1:33
BEFORE THE STATE OFFICE
PUBLIC UTILITIES COMMISSION
OF
ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 5
DENYING REQUEST FOR EXTENSION OF DEADLINE
TO FILE INTERVENOR DIRECT TESTIMONY
AND CHANGING FINAL PREHEARING CONFERENCE
TO A TELEPHONIC HEARING**

I. DENYING REQUEST FOR AN EXTENSION OF TIME TO FILE TESTIMONY

On April 16, 2018, Intervenor Joe Walker filed a request for an extension of the March 16, 2018 deadline for intervenors to file direct testimony. As the basis for his request, Mr. Walker contends that he did not receive a copy of Wolfe Air Park Civic Club, Inc.'s (Applicant) direct testimony on February 16, 2018 (the deadline for such testimony to be filed), and that he was waiting to receive such testimony given that Applicant had requested and was given additional time over the Christmas holidays. Mr. Walker requests that the deadline be extended to April 20, 2018, and that a copy of Applicant's direct testimony be sent to him for review. Finally, he mentions that he requested additional time to file his direct testimony by email, and that he received no objections.

On April 17, 2018, Applicant filed a response in opposition to Mr. Walker's request. Applicant notes that it filed its direct testimony on October 5, 2017, and asserts that a copy of that testimony was served on Mr. Walker via email on that same date. Further, Applicant represents that although it requested and was granted additional time to respond to Staff's First Request for Information due to the Christmas holidays, it never sought an extension of the deadline to file its direct testimony. According to Applicant, Mr. Walker communicated his intention to seek additional time for filing his direct testimony in early March 2018, and Staff informed him that he would need to file a motion for such relief, which he indicated he would.

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Applicant argues that Mr. Walker has failed to explain why he then waited until approximately a month after the March 16, 2018 deadline had passed before filing his request for additional time.

Staff also filed a response in opposition to Mr. Walker's request. Staff argues that pursuant to 16 Texas Administrative Code § 22.4(b), Mr. Walker was required to file his motion seeking additional time to file his direct testimony before the deadline had passed. Further, Staff contends that Mr. Walker failed to show good cause for extending the deadline. Finally, Staff acknowledges that Mr. Walker expressed in a March 6, 2018 email (10 days before the deadline for filing his direct testimony) that he was planning to request additional time to file the testimony, and that Staff had no objections at that time. However, Mr. Walker did not file his request until well over a month later, and Staff's position has changed.

After reviewing Mr. Walker's request and the responses filed by Applicant and Staff, the undersigned Administrative Law Judges (ALJs) agree with Staff that Mr. Walker's request for additional time to file his direct testimony is untimely. The ALJs also find that Mr. Walker has not shown good cause for the extension. Mr. Walker asserts that he was waiting for Applicant to file its direct testimony on February 16, 2018, before he filed his direct testimony, and that Applicant did not do so. However, Applicant had already filed direct testimony on October 5, 2017, and the certificate of service for Applicant's testimony shows that it was served on Mr. Walker by email on that date. Although SOAH Order No. 4 set February 16, 2018, as the deadline for Applicant's direct testimony, it did not require Applicant to re-file testimony on that date. Although Mr. Walker states that Applicant was given extra time over the holidays to file its direct testimony, Applicant never sought additional time to file direct testimony, but rather additional time to respond to Staff's First Request for Information.

Even if Mr. Walker had not received Applicant's direct testimony by email in October 2017, he was not justified in simply waiting, instead of communicating with Applicant or Staff as to the status of the filing, pursuant to SOAH Order No. 4. Furthermore, he had a duty to check the filings in this docket on the PUC website as explained in SOAH Order No. 1. Nor was he excused from meeting the deadline set forth in SOAH Order No. 4 for filing his own

direct testimony or filing for an extension of the deadline before that deadline passed. Staff informed Mr. Walker ten days prior to the deadline that he would need to file a formal motion with the ALJs to obtain an extension of the deadline. Nevertheless, Mr. Walker did not file his request until almost one month after that deadline had passed, allegedly because he did not learn until April 11 that Applicant did not file direct testimony on February 16. For the reasons set forth above, the ALJs do not find this explanation constitutes good cause for either the late filing of his request or the request itself.

Finally, any extension of Mr. Walker's testimony deadline would result in other deadlines being extended, which the ALJs find is not in the interests of judicial economy and would add to the cost of this case for the other parties. Pursuant to SOAH Order No. 4, Staff has already filed its testimony by the April 13, 2018 deadline. The deadline for rebuttal testimony, if any is filed, is April 20, 2018. The final prehearing conference is set for April 23, 2018, and the hearing on the merits will begin on April 26, 2018. All of these dates would be affected by extending Mr. Walker's deadline to file testimony.


For the foregoing reasons, Mr. Walker's request for additional time to file his direct testimony is denied.


II. ADDRESSING FINAL PREHEARING CONFERENCE

Pursuant to SOAH Order No. 4, **the final prehearing conference is set to begin at 10 a.m. on April 23, 2018**, at the State Office of Administrative Hearings. **The final prehearing conference shall be conducted telephonically, unless the parties request a live hearing.** At the beginning of the hearing, the ALJs will contact the parties at the numbers listed on the service list, unless a party provides a different number to the ALJs for the prehearing.

If the parties deem a final prehearing conference unnecessary, they shall file an agreed request to waive the hearing **as soon as possible**. It is quite likely that any prehearing matters may be addressed at the beginning of the hearing on the merits.

SIGNED April 18, 2018.



TRAVIS VICKERY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

CASEY A. BELL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS