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APPLICATION OF THE COMMONS
WATER SUPPLY, INC. FOR A
RATE/TARIFF CHANGE

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BEFORE THE STATE OFFICE OF
ADMINISTRATIVE HEARINGS
COMMISSION
FILING CLERK

SOAH ORDER NO. 7
GRANTING REQUEST TO WITHDRAW, CANCELING HEARING,
AND DISMISSING CASE

On March 22, 2018, the applicant, Commons Water Supply, Inc. (The Commons) filed an Unopposed Motion to Withdraw (Motion). In its Motion, The Commons advises that on March 19, 2018, it learned that its operator inadvertently provided inaccurate gallonage information that overstated revenues by at least \$40,000 [in the rate filing]. The error flows through The Commons' filing and affects the testimony in this case. The error was discovered approximately one the week before the hearing on the merits was scheduled to begin. Because of the fundamental nature of the error, and because the error affects the testimony in this case, there is not enough time to correct the rate filing and the testimony before the beginning of the hearing on the merits in this case, which was scheduled to begin this day, March 26, 2018.

The Commons asserts that 16 Texas Administrative Code § 22.181(g)(2) permits the ALJ to grant the Motion after the presentation of The Commons' direct case, but prior to the issuance of a proposed order or proposal for decision. In that situation, a party, such as the Commons, may request to withdraw its application with or without prejudice, and withdrawal may be granted only upon a finding of good cause by the presiding officer.¹


¹ Unopposed Motion to Withdraw (Motion) at 1. The Administrative Law Judge (ALJ) notes that evidence has not yet been admitted in this case. While The Commons has filed its case and testimony has been *filed*, the hearing has not been convened at this point and no evidence has been *admitted*. Therefore, The Commons' Motion can also be granted pursuant to 16 Texas Administrative Code § 22.181(g)(1).

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The Commons states that it relied on the incorrect information in good faith, and upon learning of the error, it contacted Staff (the only other party to this case), who did not oppose The Commons' proposed relief.

After reviewing The Motion, the ALJ finds that The Commons may withdraw its case pursuant to 16 Texas Administrative Code § 22.181(g)(1). Further, the ALJ also finds that good cause exists pursuant to 16 Texas Administrative Code § 22.181(g)(2) to grant the Motion. In that regard, the error that formed the basis for the Motion was not an attempt to deceive the Commission, Staff, or any other party, and The Commons' relied on the information in good faith. That being the case, the ALJ **GRANTS** the Motion to Withdraw, and this case is **DISMISSED WITHOUT PREJUDICE** from the docket of the State Office of Administrative Hearings.

SIGNED March 27, 2018.



FERNANDO RODRIGUEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS