



Control Number: 47863



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PUBLIC UTILITY COMMISSION  
FILING CLERK

December 17, 2020

Via PUC Interchange & email to: [tujuana.tate@soah.texas.gov](mailto:tujuana.tate@soah.texas.gov)

The Hon. Holly Vandrovec  
The Hon. Pratibha Shenoy  
Administrative Law Judges  
State Office of Administrative Hearings  
300 West 15th Street, Suite 504  
Austin, Texas 78701

Re: SOAH Docket No. 473-18-1905.WS, PUC Docket 47863, *Petition of the Cities of Garland, Mesquite, Plano, and Richardson Appealing the Decision by North Texas Municipal Water District Affecting 2018 Wholesale Water Rates*

SOAH Docket No. 473-19-2805.WS, PUC Docket 49043, *Petition of the Cities of Garland, Mesquite, Plano, and Richardson Appealing the Decision by North Texas Municipal Water District Affecting 2019 Wholesale Water Rates*

Dear Judges Vandrovec and Shenoy:

On December 14, 2016, the Cities of Garland, Mesquite, Plano, and Richardson (the “**Petitioning Cities**”) appealed the North Texas Municipal Water District’s (“**District**”) 2016-17 rates to the Public Utility Commission (“**Commission**”) in Docket No. 46662.<sup>1</sup> The Commission referred the case to SOAH, where it was assigned SOAH Docket No. 473-17-4964.WS.

During the Commission’s and SOAH’s processing of that appeal, the Petitioning Cities appealed the District’s 2017-18 and 2018-19 rates to the Commission in Docket Nos. 47863 and 49043, respectively.<sup>2</sup> The Commission referred those cases to SOAH, where they were assigned SOAH Docket Nos. 473-18-1905.WS and 473-19-2805.WS, respectively. To allow for processing of the Petitioning Cities’ appeal of the District’s 2016-17 rates, these SOAH dockets were abated.<sup>3</sup>

On October 29, 2020, the Petitioning Cities, the District, and the other parties to the contract at issue filed a joint report (“**Joint Report**”) informing the Commission that the parties had resolved all outstanding issues in the proceeding by agreement.<sup>4</sup> To give effect to the parties’ settlement, the parties

<sup>1</sup> Original Petition Appealing Wholesale Water Rates (Dec. 14, 2016) (PUC Docket No. 46662).

<sup>2</sup> Original Petitions Appealing Wholesale Water Rates (Dec. 15, 2017; Dec. 20, 2018) (PUC Docket Nos. 47863 and 49043)

<sup>3</sup> See, e.g., SOAH Order No. 1 at 2 (SOAH Docket No. 473-19-2805).

<sup>4</sup> Joint Report to the Commission and Agreed Motion to Withdraw Appeals and Dismiss Proceedings with Prejudice (Joint Report) (Oct. 29, 2020) (PUC Docket Nos. 46662, 47863 and 49043) (Attachment A).

requested that the Commission permit withdrawal of the Petitioning Cities' appeal of the District's 2016-17 rates in Commission Docket No. 46662.<sup>5</sup> On November 19, 2020, the Commission issued an order granting the Petitioning Cities' request to withdraw their appeal and dismissed the proceeding in Docket No. 46662 with prejudice.<sup>6</sup>

In the Joint Report, the Petitioning Cities pledged that upon the Commission's order dismissing Docket No. 46662 becoming final and non-appealable, the Petitioning Cities would, under the Commission's rules, unilaterally withdraw their appeals of the District's 2017-18 and 2018-19 rates in Commission Docket Nos. 47863 and 49043, respectively.<sup>7</sup> On December 15, 2020, the Petitioning Cities notified the Commission of their withdrawal of those appeals and requested that the Commission issue an order dismissing those proceedings and closing the dockets.<sup>8</sup> However, because the Commission previously referred those proceedings to SOAH, the Petitioning Cities have been notified that SOAH must dispose of the proceedings, too. Because the parties have resolved all outstanding issues in these proceedings by agreement, the Petitioning Cities request that SOAH dismiss SOAH Docket Nos. 473-18-1905.WS and 473-19-2805.WS as moot<sup>9</sup> and return the proceedings to the Commission, where the Commission will formally close the associated dockets.

Respectfully Submitted,



Michael J. Tomsu

*Attorney for the Petitioning Cities*

cc: Parties of Record  
Commission Filing Clerk (Commission Docket Nos. 47863 and 49043)

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<sup>5</sup> *Id.* at 1.

<sup>6</sup> Order Granting Withdrawal and Dismissing Appeal (Nov. 19, 2020) (Docket No. 46662) (Attachment B).

<sup>7</sup> Joint Report at 1-2 ("Promptly upon that dismissal order in Docket No. 46662 becoming final and non-appealable, the Petitioning Cities will unilaterally withdraw their appeals of the District's 2017-18, 2018-19, and 2019-20 rates, respectively, and further request a Commission order dismissing with prejudice the proceedings in Docket Numbers 47863, 49043, and 50382.").

<sup>8</sup> Notification of Withdrawal of Appeals and Motion for Dismissal with Prejudice (Dec. 15, 2016) (PUC Docket Nos. 47863 and 49043) (Attachment C).

<sup>9</sup> 1 Tex. Admin. Code § 155.503(d)(1)(C).

ATTACHMENT A

PUC DOCKET NOS. 46662, 47863, 49043, 50382

PETITION OF THE CITIES OF §  
GARLAND, MESQUITE, PLANO, AND §  
RICHARDSON APPEALING THE §  
DECISION BY NORTH TEXAS §  
MUNICIPAL WATER DISTRICT §  
AFFECTING WHOLESALE WATER §  
RATES §

BEFORE THE  
  
PUBLIC UTILITY COMMISSION  
  
OF TEXAS



**JOINT REPORT TO THE COMMISSION AND AGREED MOTION TO WITHDRAW  
APPEALS AND DISMISS PROCEEDINGS WITH PREJUDICE**

**TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:**

Consistent with the directive of the Public Utility Commission (“*Commission*”) that the parties attempt to resolve these proceedings by agreement,<sup>1</sup> the Cities of Garland, Mesquite, Plano and Richardson (“*Petitioning Cities*”) and the Cities of Allen, Farmersville, Forney, Frisco, McKinney, Princeton, Rockwall, Royse City, and Wylie (the *Petitioning Cities* and the Cities of Allen, Farmersville, Forney, Frisco, McKinney, Princeton, Rockwall, Royse City, and Wylie collectively referred to hereinafter as the “*Member Cities*”), and the North Texas Municipal Water District (“*District*”), each a party to the 1988 Amendatory Contract, the underlying contract that gave rise to the *Petitioning Cities*’ petition, are pleased to report that they have resolved all of the outstanding issues in these proceedings by agreement.

To give effect to the parties’ settlement, the *Member Cities* and the *District* request that the Commission permit withdrawal of the *Petitioning Cities*’ appeal of the *District*’s 2016-17 rates in Docket No. 46662 and issue an order dismissing with prejudice Docket No. 46662. Promptly upon that dismissal order in Docket No. 46662 becoming final and non-appealable, the *Petitioning Cities* will unilaterally withdraw their appeals of the *District*’s 2017-18, 2018-19, and 2019-20 rates,

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<sup>1</sup> Order (Apr. 17, 2020) (“The Commission determined that before the Commission issues its preliminary order for phase II, the parties should attempt to resolve this proceeding by agreement.”).

respectively, and further request a Commission order dismissing with prejudice the proceedings in Docket Numbers 47863, 49043, and 50382.

## **I. BACKGROUND**

The District charges wholesale water rates pursuant to a 14-party contract. The District and the above-listed Member Cities are the only parties to that contract.

On December 14, 2016, the Petitioning Cities appealed the District's 2016-17 rates in Docket No. 46662.<sup>2</sup> On June 29, 2017, the Commission issued a preliminary order and referred the proceeding to the State Office of Administrative Hearings ("*SOAH*").<sup>3</sup> On March 15, 2019, the SOAH Administrative Law Judges issued their proposal for decision.<sup>4</sup> On April 17, 2020, before taking action on the proposal for decision, the Commission ordered the parties to attempt to resolve the proceeding by agreement.<sup>5</sup>

On December 15, 2017, December 20, 2018, and December 19, 2019, the Petitioning Cities appealed the District's 2017-18, 2018-19, and 2019-20 rates in Docket Nos. 47863, 49043, and 50382, respectively.<sup>6</sup> Those proceedings have been abated pending Commission processing of Docket No. 46662, and no party has presented its direct case in these subsequent proceedings.

## **II. REQUEST FOR WITHDRAWAL AND DISMISSAL**

The Petitioning Cities seek dismissal with prejudice of Docket Nos. 46662 and the conditional dismissal of Docket Numbers 47863, 49043, and 50382 pursuant to Section

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<sup>2</sup> Original Petition Appealing Wholesale Water Rates (Dec. 14, 2016).

<sup>3</sup> Preliminary Order (Jun. 29, 2017).

<sup>4</sup> Proposal for Decision – Public Interest Phase (Mar. 15, 2019).

<sup>5</sup> Order (Apr. 17, 2020) ("The Commission determined that before the Commission issues its preliminary order for phase II, the parties should attempt to resolve this proceeding by agreement.").

<sup>6</sup> Original Petitions Appealing Wholesale Water Rates (Dec. 15, 2017; Dec. 20, 2018; Dec. 19, 2019).

22.181(d)(10),<sup>7</sup> which include withdrawal of an application consistent with Section 22.181(g) as among the permissible grounds for dismissal.<sup>8</sup> In relevant part, Section 22.181(g) provides:

22.181(g)(1): A party that initiated a proceeding may withdraw its application without prejudice to refiling of same, at any time before that party has presented its direct case. A party may agree to withdraw its application with prejudice.

22.181(g)(3): A request to withdraw an application with or without prejudice after a proposed order or proposal for decision has been issued, may be granted only upon a finding of good cause by the commission. In ruling on the request, the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.

The Member Cities and the District agree that there is good cause for the Commission to grant the Petitioning Cities' motion to withdraw its applications in the above-referenced proceedings for the reasons that follow.

A. **Good Cause Exists for the Commission to Allow Withdrawal of Docket No. 46662**

Sections 22.181(g)(3) governs the request for withdrawal of the Petitioning Cities' appeal of the District's 2016-17 rates in Docket No. 46662 because a proposal for decision<sup>9</sup> has been issued. Those rules permit withdrawal upon the Commission's finding of good cause. In determining good cause, the Commission will weigh the importance of the matter being addressed to the Commission's jurisprudence and the public interest.

Regarding the public interest, after multiple years of litigation, the parties to the contract underlying the appealed rates have agreed to amend its rate-setting provisions. Each of the governing bodies of the 13 Member Cities have approved the amendment to the contract and a settlement agreement, as has the Board of Directors of the District. The Member Cities and the District have resolved all outstanding issues related to this appeal. Permitting withdrawal of the

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<sup>7</sup> 16 Tex. Admin. Code § 22.181(d)(10) (TAC).

<sup>8</sup> *Id.*

<sup>9</sup> Proposal for Decision – Public Interest Phase (Mar. 15, 2019).

rate appeal filed by the Petitioning Cities in Docket No. 46662 and dismissing the proceeding will give effect to the contract amendment and settlement agreement, will resolve a longstanding regional dispute between the parties to the contract, and will avoid the additional expenditure of public funds for a costly rate proceeding and judicial appeals.

The Commission's grant of the requested withdrawal will not affect the Commission's jurisprudence. The issues considered by the Commission in phase one of this proceeding are fact specific in nature and are not the subject of a final order,<sup>10</sup> such that the settlement of the outstanding issues between the parties to the contract and the dismissal of this wholesale water rate appeal should not impact other pending or future wholesale water rate appeals.

An agreed form of proposed final order permitting the withdrawal of the Petitioning Cities' application in Docket No. 46662 and the dismissal of the docket with prejudice is attached hereto.

**B. Petitioning Cities' Conditional Withdrawal of Docket Nos. 47863, 49043, and 50382**

Section 22.181(g)(1) permits the Petitioning Cities to unilaterally withdraw their appeals of the District's 2017-18, 2018-19, and 2019-20 rates in Docket Nos. 47863, 49043, and 50382, respectively, because no party has presented its direct case in those proceedings. To the extent that the Commission permits withdrawal of Docket No. 46662 and dismisses that proceeding, once the dismissal order in Docket No. 46662 becomes final and non-appealable, the Petitioning Cities will immediately unilaterally withdraw their petitions in Docket Nos 47863, 49043, and 50382, with prejudice.

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<sup>10</sup> 16 TAC § 24.313(b) ("If the commission determines the protested rate adversely affects the public interest, the commission will remand the matter to the State Office of Administrative Hearings for further evidentiary proceedings on the rate. The remand order is not a final order subject to judicial review.").

### III. CONCLUSION AND REQUEST FOR RELIEF

The Member Cities and the District request that the Commission find that good cause exists to permit withdrawal of the Petitioning Cities' application in Docket No. 46662 and issue an order dismissing with prejudice the proceedings in Docket No. 46662. Upon that order becoming final and non-appealable, the Petitioning Cities will immediately withdraw their applications in Docket Nos. 47863, 49043, and 50382, and the Member Cities and the District request that the Commission issue an order dismissing those dockets.

Date: October 29, 2020

Respectfully submitted,



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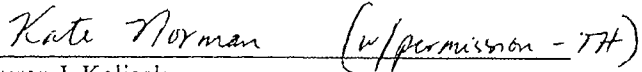
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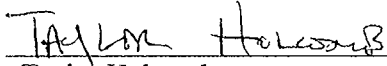
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*Attorneys for North Texas Municipal Water District*

### CERTIFICATE OF SERVICE

I certify that a copy of this petition was hand-delivered, sent via overnight mail, sent via certified mail return receipt requested, sent via U.S. first class mail, or sent via fax to all parties of record on October 29, 2020.

  
Taylor Holcomb

**PUC DOCKET NO. 46662  
SOAH DOCKET NO. 473-17-4964.WS**

<b>PETITION OF THE CITIES OF GARLAND, MESQUITE, PLANO, AND RICHARDSON APPEALING THE DECISION BY NORTH TEXAS MUNICIPAL WATER DISTRICT AFFECTING WHOLESALE WATER RATES</b>	<b>§ § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION   OF   TEXAS</b>
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**ORDER**

On December 14, 2016, the cities of Garland, Mesquite, Plano, and Richardson (collectively, the Petitioning Cities) appealed the wholesale water rates charged by the North Texas Municipal Water District (District) for the 2017 fiscal year.<sup>1</sup> On June 29, 2017, the Commission referred the proceeding to the State Office of Administrative Hearings (SOAH). The ALJs granted motions for intervention filed by the cities of Princeton, Rockwall, Wiley, McKinney, Royse City, Forney, Frisco, Allen, and Farmersville (collectively, the non-Petitioning Cities). The Petitioning Cities and the non-Petitioning Cities (collectively, the Member Cities) and the District are the only parties to the contract by which the District charges the rates at issue.

After conducting a hearing on the phase one issues, the SOAH ALJs filed a proposal for decision on March 15, 2019. At its open meeting on April 17, 2020, the Commission determined that before taking action on the proposal for decision in phase one or issuing its preliminary order for phase two, the parties should attempt to resolve this proceeding by agreement.

On October 29, 2020, the Member Cities and the District jointly reported that the parties have resolved this proceeding by agreement. To give effect to the parties' agreement, the Petitioning Cities have requested that the Commission permit withdrawal of their appeal and issue an order dismissing with prejudice Docket No. 46662.

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<sup>1</sup> Original Petition Appealing Wholesale Water Rates (Dec. 14, 2016).

## **I. LEGAL STANDARD**

The Petitioning Cities seek dismissal with prejudice of Docket No. 46662 pursuant to Section 22.181(d)(10), which includes withdrawal of an application consistent with Section 22.181(g) as among the permissible grounds for dismissal. Section 22.181(g)(3) governs the request for withdrawal because a proposal for decision has been issued. In relevant part, Section 22.181(g)(3) permits withdrawal of an application after a proposal for decision has been issued “only upon a finding of good cause by the commission.” In determining good cause under Section 22.181(g)(3), “the commission will weigh the importance of the matter being addressed to the jurisprudence of the commission and the public interest.”

## **II. FINDING OF GOOD CAUSE**

The Commission finds that there is good cause to grant the Petitioning Cities request to withdraw their appeal. Each of the governing bodies of the 13 Member Cities has agreed to resolve this proceeding by agreement, as has the Board of Directors of the District. The Member Cities and the District have resolved all outstanding issues related to this appeal. Granting withdrawal of the appeal and dismissing the proceeding will give effect to the parties’ agreement, will resolve a longstanding regional dispute between the parties to the contract, and will avoid the additional expenditure of public funds for a costly rate proceeding and judicial appeals. The Commission granting the requested withdrawal will not affect the Commission’s jurisprudence because the issues considered by the Commission in phase one of this proceeding are fact specific in nature and are not the subject of a final order, such that permitting withdrawal and dismissing this docket should not impact other pending or future wholesale water rate appeals.

## **III. DISMISSAL OF PROCEEDING**

The agreed motion to withdraw is granted and Docket No. 46662 is dismissed with prejudice to refiling of same.

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

**PUBLIC UTILITY COMMISSION OF TEXAS**

\_\_\_\_\_  
**DEANN T. WALKER, CHAIRMAN**

\_\_\_\_\_  
**ARTHUR C. D'ANDREA, COMMISSIONER**

\_\_\_\_\_  
**SHELLY BOTKIN, COMMISSIONER**

**ATTACHMENT B**

**DOCKET NO. 46662**  
**SOAH DOCKET NO. 473-17-4964.WS**

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<b>PETITION OF THE CITIES OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>GARLAND, MESQUITE, PLANO, AND</b>	<b>§</b>	
<b>RICHARDSON APPEALING THE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>DECISION BY NORTH TEXAS</b>	<b>§</b>	
<b>MUNICIPAL WATER DISTRICT</b>	<b>§</b>	
<b>AFFECTING WHOLESALE WATER</b>	<b>§</b>	
<b>RATES</b>	<b>§</b>	

**ORDER GRANTING WITHDRAWAL AND DISMISSING APPEAL**

On December 14, 2016, the cities of Garland, Mesquite, Plano, and Richardson (the petitioning cities) appealed the fiscal year 2017 (October 1, 2016 to September 30, 2017) wholesale water rates imposed by the North Texas Municipal Water District.<sup>1</sup> On October 29, 2020, the Cities of Garland, Mesquite, Plano, Richardson, Allen, Farmersville, Forney, Frisco, McKinney, Princeton, Rockwall, Royse City, and Wylie and the North Texas Municipal Water District, all the parties to the underlying contract<sup>2</sup> that gave rise to the petitioning cities' appeal, reported an agreement that resolved all of the outstanding issues between them. This order addresses the parties' agreed motion to withdraw the appeal and dismiss the proceeding with prejudice.

Under 16 Texas Administrative Code (TAC) § 22.181(g)(3), a request to withdraw the appeal with or without prejudice after a proposal for decision has been issued may be granted only upon a finding of good cause by the Commission. After multiple years of litigation, the parties to the contract underlying the appealed rates have agreed to amend its rate-setting provisions. Each of the governing bodies of all the contracting cities have approved the amendment to the contract and a settlement agreement, as has the Board of Directors of the District. Granting withdrawal of the rate appeal filed by the petitioning cities in Docket No. 46662 and dismissing the proceeding will not adversely affect the jurisprudence of the Commission. Moreover, granting of the withdrawal with prejudice will give effect to the contract amendment and settlement agreement,

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<sup>1</sup> Original Petition Appealing Wholesale Water Rates at 1 (Dec. 14, 2016).

<sup>2</sup> The August 1, 1988 Regional Water Supply Facilities Amendatory Contract.

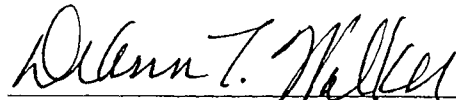
will resolve a longstanding regional dispute between the parties to the contract, and will avoid the additional expenditure of public funds for a costly rate proceeding and judicial appeals.

Therefore, based upon the Commission's consideration of the motion to withdraw the appeal and its procedural requirements for withdrawal, the Commission finds that good cause exists to grant the request for withdraw of the appeal, with prejudice.

The Commission grants the parties motion to withdraw the appeal in this proceeding. The Commission dismisses the appeal with prejudice under 16 TAC § 22.181(d)(10).

Signed at Austin, Texas the 19<sup>th</sup> day of November 2020.

**PUBLIC UTILITY COMMISSION OF TEXAS**



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER



ATTACHMENT C

PUC DOCKET NOS. 47863, 49043, and 50382

PETITIONS OF THE CITIES OF §  
GARLAND, MESQUITE, PLANO, AND §  
RICHARDSON APPEALING THE §  
DECISION BY NORTH TEXAS §  
MUNICIPAL WATER DISTRICT §  
AFFECTING WHOLESALE WATER §  
RATES §

BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

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**NOTIFICATION OF WITHDRAWAL OF APPEALS AND  
MOTION FOR DISMISSAL WITH PREJUDICE**

**TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:**

The Cities of Garland, Mesquite, Plano and Richardson (“*Petitioning Cities*”) hereby notify the Public Utility Commission (“*Commission*”) of their intent to withdraw with prejudice the appeals they filed initiating the above-numbered dockets. The Petitioning Cities also request that the Commission’s presiding officer issue an order of dismissal memorializing the withdrawals and dismissing the above-numbered dockets with prejudice.

**I. BACKGROUND**

On December 14, 2016, the Petitioning Cities appealed the North Texas Municipal Water District’s (“*District*”) 2016-17 rates in Docket No. 46662.<sup>1</sup> On October 29, 2020, the Petitioning Cities, the District, and the other parties to the contract at issue filed a joint report (“*Joint Report*”), informing the Commission that the parties had resolved all outstanding issues in the proceeding by agreement.<sup>2</sup> To give effect to the parties’ settlement, the parties requested that the Commission permit withdrawal of the Petitioning Cities’ appeal in Docket No. 46662.<sup>3</sup> On November 19, 2020,

<sup>1</sup> Original Petition Appealing Wholesale Water Rates (Dec 14, 2016)

<sup>2</sup> Joint Report to the Commission and Agreed Motion to Withdraw Appeals and Dismiss Proceedings with Prejudice (Joint Report) (Oct. 29, 2020)

<sup>3</sup> *Id.* at 1.

the Commission issued an order granting the Petitioning Cities' request to withdraw their appeal and dismissed the proceeding in Docket No. 46662 with prejudice.<sup>4</sup> No motions for rehearing were filed by the December 14, 2020 deadline, and therefore the Commission's order is now final and non-appealable.<sup>5</sup>

On December 15, 2017, December 20, 2018, and December 19, 2019, the Petitioning Cities appealed the District's 2017-18, 2018-19, and 2019-20 rates in Docket Nos. 47863, 49043, and 50382, respectively.<sup>6</sup> Those proceedings were abated pending Commission processing of Docket No. 46662, and no party presented its direct case in those subsequent proceedings.

## **II. NOTIFICATION OF WITHDRAWAL AND REQUEST FOR DISMISSAL**

In the Joint Report, the Petitioning Cities pledged that upon the Commission's order dismissing Docket No. 46662 becoming final and non-appealable, the Petitioning Cities would unilaterally withdraw their appeals of the District's 2017-18, 2018-19, and 2019-20 rates and request a Commission order dismissing the proceedings in Docket Nos. 47863, 49043, and 50382 with prejudice.<sup>7</sup>

Section 22.181(g)(1) of the Commission's rules permits the Petitioning Cities to unilaterally withdraw their appeals of the District's rates in Docket Nos. 47863, 49043, and 50382,

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<sup>4</sup> Order Granting Withdrawal and Dismissing Appeal (Nov. 19, 2020).

<sup>5</sup> Tex. Gov't Code § 2001.146(a) ("A motion for rehearing in a contested case must be filed by a party not later than the 25th day after the date the decision or order that is the subject of the motion is signed . . ."); Tex. Gov't Code 2001.144(a)(1) ("A decision or order in a contested case is final if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing.").

<sup>6</sup> Original Petitions Appealing Wholesale Water Rates (Dec. 15, 2017; Dec. 20, 2018; Dec. 19, 2019)

<sup>7</sup> Joint Report at 1-2 ("Promptly upon that dismissal order in Docket No. 46662 becoming final and non-appealable, the Petitioning Cities will unilaterally withdraw their appeals of the District's 2017-18, 2018-19, and 2019-20 rates, respectively, and further request a Commission order dismissing with prejudice the proceedings in Docket Numbers 47863, 49043, and 50382.").

because no party has presented its direct case in those proceedings.<sup>8</sup> The Petitioning Cities hereby notify the Commission of the withdrawal of their appeals with prejudice in Docket Nos. 47863, 49043, and 50382.

Section 22.181(d)(10) of the Commission's rules empowers the Commission's presiding officer to dismiss proceedings upon withdrawal of appeals under Section 22.181(g).<sup>9</sup> Therefore, to give effect to the parties' settlement, the Petitioning Cities request that the Commission's presiding officer issue an order of dismissal with prejudice in Docket Nos. 47863, 49043, and 50382, pursuant to Section 22.181(g)(5) of the Commission's rules.<sup>10</sup>

### **III. CONCLUSION AND REQUEST FOR RELIEF**

The Petitioning Cities hereby withdraw with prejudice their appeals in Docket Nos. 47863, 49043, and 50382, and request that the Commission's presiding officer issue an order dismissing each of those proceedings with prejudice. A proposed final order is attached hereto.

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<sup>8</sup> 16 Tex. Admin. Code (TAC) § 22.181(g)(1) ("A party that initiated a proceeding may withdraw its application without prejudice to refiling of same, at any time before that party has presented its direct case. A party may agree to withdraw its application with prejudice.").

<sup>9</sup> 16 TAC § 22.181(d)(10) ("Dismissal of a proceeding or one or more issues within a proceeding may be based on one or more of the following reasons. . . . (10) withdrawal of an application consistent with subsection (g) of this section.").

<sup>10</sup> 16 TAC § 22.181(g)(5) ("If a request to withdraw an application is granted, the presiding officer shall issue an order of dismissal stating whether the dismissal is with or without prejudice.").

Date: December 15, 2020

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael J. Tomsu", written over a horizontal line.


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### CERTIFICATE OF SERVICE

I certify that a copy of this petition was hand-delivered, sent via overnight mail, sent via certified mail return receipt requested, sent via U.S. first class mail, or sent via fax to all parties of record on December 15, 2020.

A handwritten signature in black ink, appearing to read "Mike Tomsu", written over a horizontal line.

Mike Tomsu

**PUC DOCKET NOS. 47863, 49043, and 50382**

<b>PETITIONS OF THE CITIES OF</b>	<b>§</b>	
<b>GARLAND, MESQUITE, PLANO, AND</b>	<b>§</b>	
<b>RICHARDSON APPEALING THE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>DECISION BY NORTH TEXAS</b>	<b>§</b>	
<b>MUNICIPAL WATER DISTRICT</b>	<b>§</b>	
<b>AFFECTING WHOLESALE WATER</b>	<b>§</b>	<b>OF TEXAS</b>
<b>RATES</b>	<b>§</b>	

**ORDER**

On December 14, 2016, the Cities of Garland, Mesquite, Plano, and Richardson (the petitioning cities) appealed the fiscal year 2017 (October 1, 2016 to September 30, 2017) wholesale water rates imposed by the North Texas Municipal Water District. On November 19, 2020, the Commission issued an order granting the petitioning cities' request to withdraw and dismiss that appeal. No party filed a motion for rehearing by the applicable deadline. Thus, on December 14, 2020, the Commission's order became final and non-appealable.

In an October 29, 2020 filing, the petitioning cities pledged to withdraw their appeals of the North Texas Municipal Water District's fiscal year 2018, 2019, and 2020 rates in Docket Nos. 47863, 49043, and 50382, respectively, upon the Commission's dismissal order in Docket No. 46662 becoming final and non-appealable. On December 15, 2020, the petitioning cities notified the Commission of their withdrawal with prejudice of their appeals in Docket Nos. 47863, 49043, and 50382, and requested that the Commission issue an order dismissing each of those proceedings with prejudice.

Under 16 Texas Administrative Code (TAC) § 22.181(g)(1), a party may unilaterally withdraw its appeal when the party has not presented its direct case in the proceeding. No party has presented its direct case in Docket Nos. 47863, 49043, and 50382. The Commission dismisses these proceedings with prejudice under 16 TAC § 22.181(d)(10) and 16 TAC § 22.181(g)(5), and closes Docket Nos. 47863, 49043, and 50382.

**Signed at Austin, Texas the \_\_\_\_\_ day of December 2020.**

Public Utility Commission of Texas

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Stephen Journeay (for the Commission)  
Director, Office of Policy and Docket Management