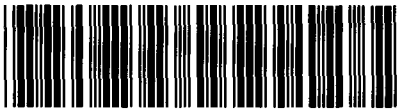

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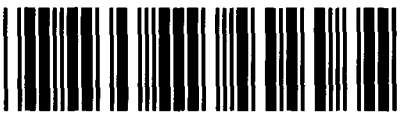

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PUC DOCKET NO. 47863

PETITION OF THE CITIES OF GARLAND, MESQUITE, PLANO, AND RICHARDSON APPEALING THE DECISION BY NORTH TEXAS MUNICIPAL WATER DISTRICT AFFECTING 2018 WHOLESALE WATER RATES	§ § § § § § §	**PUBLIC UTILITY COMMISSION OF TEXAS**

THE PETITIONING CITIES' REPLY TO THE NORTH TEXAS MUNICIPAL WATER DISTRICT'S GENERAL DENIAL AND RESPONSE TO PETITION

The Cities of Garland, Mesquite, Plano, and Richardson ("***Petitioning Cities***") hereby reply to the North Texas Municipal Water District's ("***District***") response to the petition initiating this docket. This reply is timely filed.[1]

I. BACKGROUND

On December 15, 2017, the Petitioning Cities appealed to the Public Utility Commission of Texas ("***Commission***" or "***PUC***") wholesale water rates charged by the District.[2] On December 18, 2017, the Commission's presiding officer ordered Commission Staff to recommend by January 14, 2018 "whether the appeal meets the requirements of 16 TAC § 24.130."[3] On December 22, 2017, the District responded to the petition, requesting that the Commission deny the petition or, in the alternative, "set[] a procedural schedule for briefing on

[1] 16 Tex. Admin. Code (TAC) § 22.78(a) (responsive pleadings are due within five working days of receipt of the pleading to which the response is made).

[2] Original Petition Appealing Wholesale Water Rates, Docket No. 47863 (Dec. 15, 2017).

[3] *Petition of the Cities of Garland, Mesquite, Plano, and Richardson Appealing the Decision by North Texas Municipal Water District Affecting 2018 Wholesale Water Rates*, Docket No. 47863, Order No. 1 (Dec. 18, 2017).

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whether this matter should be referred to the State Office of Administrative Hearings and for an evidentiary hearing on any issues raised in the Petition ...."[4]

II.
THE DISTRICT'S REQUEST IS INCONSISTENT WITH COMMISSION RULES AND PRACTICE

Within 30 days of wholesale water rates being appealed to the Commission, the Commission must determine whether the petition contains the information required by P.U.C. SUBST. R. 24.130.[5] The Commission's initial review is limited:[6] the Commission forwards the appeal to SOAH for an evidentiary hearing[7] if the petition (1) states the statutory authority invoked, specific factual allegations, and the relief sought, (2) includes the applicable contract, (3) was timely filed, and (4) was served on the party against whom relief is sought and other appropriate parties.[8]

If the Commission determines that a petition is insufficient, the Commission does not deny the appeal, but gives the petitioner the opportunity to correct any deficiencies.[9] When Commission Staff recommends that a petition is sufficient, the only additional briefing

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[4] North Texas Municipal Water District's General Denial and Response to Petition, Docket No. 47863 (Dec. 22, 2017).

[5] 16 TAC § 24.131(a) ("When a petition or appeal is filed, the commission **shall determine** within 30 days of the filing of the petition or appeal whether the petition contains all of the information required by this subchapter.") (emphasis added).

[6] *Id.* ("[T]he initial review of probable grounds shall be limited to a determination whether the petitioner has met the requirements § 24.130 of this title (relating to Petition or Appeal).").

[7] *Id.* ("If the commission determines that the petition or appeal does meet the requirements of § 24.130 of this title, the commission **shall forward** the petition or appeal to the State Office of Administrative Hearings for an evidentiary hearing.") (emphasis added).

[8] *Id.* at § 24.130(a)-(c); Tex. Water Code § 13.043(f); *see, e.g., Petition of Blueberry Hills Water Works, LLC Appealing a Decision by the City of Beeville to Change Wholesale Water Rates*, Docket No. 44463, Order No. 2 (Feb. 24, 2015) ("[T]o satisfy P.U.C. Subst. R. 24.130, it must be determined that the petition is in writing and properly served on the party against whom relief is sought; the petition clearly states the statutory authority invoked, specific factual allegations and relief requested, and any applicable contract is attached; and the petition must be timely.").

[9] 16 TAC § 24.131(a) ("If the commission determines that the petition or appeal does not meet the requirements of § 24.130 of this title, the commission shall inform the petitioner of the deficiencies within the petition or appeal and allow the petitioner the opportunity to correct these deficiencies.")

traditionally sought from the parties by the Commission has been regarding the issues to be addressed in the SOAH proceeding.[10]

Thus, with respect to the Commission's initial review of the petition, neither its rules nor its practices contemplate the Commission denying an appeal "on all grounds" or "setting a procedural schedule for briefing on whether this matter should be referred to the State Office of Administrative Hearings"—as requested by the District.[11] The District's response to the petition does not allege that the petition fails to comply with P.U.C. SUBST. R. 24.130's basic pleading requirements,[12] which is the only matter relevant to the Commission's initial review.[13] Further, the unspecified briefing requested by the District will unnecessarily delay SOAH referral, and recent precedent indicates that delay should be avoided.[14]

The Commission has given Commission Staff until January 14, 2018, to recommend whether the petition initiating this docket complies with P.U.C. SUBST. R. 24.130's minimal

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[10] *See, e.g., Petition by Kempner Water Supply Corporation to Revise Rates for Wholesale Water Service to the City of Lampasas*, Docket No. 45711 (petition filed March 9, 2016, order of referral and request for list of issues filed March 14, 2016, Staff recommendation filed April 5, 2016, SOAH order regarding sufficiency of petition issued April 8, 2016, preliminary order with list of issues filed April 25, 2016); *Appeal of M.E.N. Water Supply Corporation*, Docket No. 43931 (petition filed December 9, 2014, Staff recommendation issued December 12, 2014, order of referral and request for list of issues filed December 15, 2014, preliminary order with list of issues filed February 4, 2015); *Petition of the City of Dallas*, Docket No. 43674 (petition filed October 30, 2014, Staff's recommendation issued November 7, 2014, order of referral and request for list of issues filed November 10, 2014, preliminary order with list of issues filed December 18, 2014).

[11] North Texas Municipal Water District's General Denial and Response to Petition, Docket No. 47863, at pp. 1-2.

[12] *Id.* ("The District denies each and every, all and singular, allegations contained in the Petition and demands strict proof thereof. The District also specifically denies that Petitioners are entitled to have the Commission fix a wholesale water rate, as Petitioners are not challenging the rate and, in any event, are unable to demonstrate that the protested rate is adverse to the public interest or that Petitioners or their customers will suffer an unreasonable economic hardship by reason of the allegedly protested rate.").

[13] 16 TAC § 24.131(a) ("[T]he initial review of probable grounds shall be limited to a determination whether the petitioner has met the requirements § 24.130 of this title (relating to Petition or Appeal).").

[14] *Petition of Blueberry Hills Water Works, LLC Appealing a Decision by the City of Beeville to Change Wholesale Water Rates*, Docket No. 44463, Order No. 2 (Feb. 24, 2015) (denying Commission Staff's request for additional time to review petition because a "more limited review" is all that is required under 16 TAC § 24.131); *Petition by Kempner Water Supply Corporation to Revise Rates for Wholesale Water Service to the City of Lampasas*, Docket No. 45711, Order No. 2 (Mar. 31, 2015) (extending Commission Staff's deadline to issue a recommendation but reminding Commission Staff that no further extensions would be granted because the determination on a petition's sufficiency must be made within 30 days of its filing).

pleading requirements.[15] When the Commission determines that the petition complies, it can and should "forward the petition ... to the State Office of Administrative Hearings"[16] without the briefing requested by the District.

III.
PRAYER

The Petitioning Cities request that the Commission deny the relief sought by the District in its response to the petition and forward the petition to SOAH upon determining that the petition complies with P.U.C. SUBST. R. 24.130's minimal pleading requirements.

Respectfully submitted,

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[15] *Petition of the Cities of Garland, Mesquite, Plano, and Richardson Appealing the Decision by North Texas Municipal Water District Affecting 2018 Wholesale Water Rates*, Docket No. 47863, Order No. 1 (Dec. 18, 2017).

[16] 16 TAC § 24.131(a) ("If the commission determines that the petition or appeal does meet the requirements of § 24.130 of this title, the commission **shall forward** the petition or appeal to the State Office of Administrative Hearings for an evidentiary hearing.") (emphasis added).

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on all parties of record via e-mail, regular mail, hand-delivery, or fax on this 29th day of December, 2017.

Taylor Holcomb

Taylor Holcomb