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DOCKET NO. 47912

RATEPAYERS APPEAL OF THE
DECISION BY SOUTH CENTRAL
CALHOUN COUNTY WATER
CONTROL AND IMPROVEMENT
DISTRICT NO. 1 TO CHANGE
RATES

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§

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

STATE UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF'S RESPONSE TO MOTION TO ABATE PROCEDURAL
SCHEDULE PENDING MEDIATION**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and objects to the motion to abate procedural schedule pending mediation. In support thereof, Staff shows the following:

I. BACKGROUND

On December 28, 2017, Mr. Eric Englund, on behalf of the ratepayers of South Central Calhoun County Water Control and Improvement District No. 1 ("District"), filed a petition to appeal retail sewer rates implemented by the District.

On April 10, 2018, the State Office of Administrative Hearings ("SOAH") issued Order No. 1 establishing a prehearing conference for April 25, 2018. Prior to the prehearing conference, Commission Staff, a representative of the ratepayers, Mr. Eric Englund, and counsel for the District conferred and established an agreed proposed procedural schedule. On April 25, 2018, Mr. Englund appeared via telephone at the prehearing conference on behalf of the ratepayers.

On a date between April 25, 2018 and April 28, 2018, Mr. Englund communicated with Staff that due to reasons beyond his control, he was unable to continue as the ratepayers' representative. On April 29, 2018, Mr. Englund sent an email to the parties stating that Mr. Windell Durant would replace him as ratepayers' representative, and that email correspondence was filed on May 16, 2018.

On May 7, 2018, SOAH issued Order No. 2, memorializing the prehearing conference, adopting the proposed procedural schedule agreed upon by the parties, setting a hearing on the merits, and referring the case for mediation evaluation. On May 30, 2018, Staff emailed the mediation evaluator to agree to mediation. On a date between May 30, 2018 and June 6, 2018, counsel for the District asked Staff about Staff's thoughts on abating the case. It was explained to counsel for the District that it is not Staff's practice to agree to abatement of dockets upon referral

for mediation evaluation. On June 6, 2018, SOAH issued the evaluators report referring the case to mediation. A mediation date has not yet been set. On June 15, 2018, the District filed an “Emergency Opposed Motion to Abate Procedural Schedule Pending Mediation.” Commission Staff now timely filed this response.

II. OBJECTION TO ABATEMENT OF PROCEDURAL SCHEDULE

Pursuant to Texas Water Code § 13.043, the Public Utility Commission (“Commission”) has jurisdiction to hear an appeal and establish rates of certain entities if a petition of review is filed with the Commission and the entity providing service within 90 days after the effective date of the rate change, and the petition is signed by the lesser of 10,000 or 10 percent of those ratepayers whose rates have been changed and who are eligible to appeal.¹ In this case, Mr. Englund filed the petition within the appropriate deadlines, and over 10% of eligible ratepayers indicated a desire to appeal. The rate that is subject to this appeal has been in effect since November 1, 2017. According to the current procedural schedule, the current rates will have been in effect for a year at the time of the hearing on the merits. SOAH Order No. 2 specifically states that the procedural schedule will remain in effect while this case is referred to mediation, unless and until further order from the administrative law judge.² Staff is charged with representing the public interest. This interest includes the individual ratepayers who signed the petition to appeal the rates. Delaying the proceeding during mediation, which is by no means guaranteed to result in settlement, will extend the period during which appealing ratepayers are required to pay a rate that may not be just and reasonable. At some point in the future, if parties are able to reach agreement on a settlement, or make significant progress towards reaching an agreement on settlement, abatement may be reasonable, but the case is not yet at that juncture.

III. CONCLUSION

For the reasons discussed above, Staff opposes abatement of the case during mediation. Staff respectfully requests that the case proceed according to the procedural schedule presented in SOAH Order No. 2.

¹ Tex. Water Code § 13.043(c)

² SOAH Order No. 2 (May 7, 2018)

Dated: June 20, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney



Oshea Spencer
State Bar No. 24039190
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7289
(512) 936-7268 (facsimile)
oshea.spencer@puc.texas.gov

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CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on June 20, 2018 in accordance with 16 TAC § 22.74.



Oshea Spencer