

Control Number: 48099



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PUBLIC UTILITY COMMISSION

Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Hunter Burkhalter *JS*
Administrative Law Judge

RE: Docket No. 48099 – *Lester Brown II's Appeal of the Cost of Obtaining Service from Paint Creek Water Supply Corporation*

DATE: March 20, 2019

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the PFD.

Please place this docket on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

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DOCKET NO. 48099

LESTER BROWN II'S APPEAL OF	§	PUBLIC UTILITY COMMISSION
THE COST OF OBTAINING SERVICE	§	
FROM PAINT CREEK WATER	§	OF TEXAS
SUPPLY CORPORATION	§	

PROPOSAL FOR DECISION

This Proposal for Decision (PFD) recommends that the Public Utility Commission dismiss the appeal of Lester Brown II of the cost of obtaining water service from Paint Creek Water Supply Corporation, due to Mr. Brown's failure to prosecute under 16 Texas Administrative Code (TAC) § 22.181(d)(6). The administrative law judge (ALJ) recommends that the dismissal be without prejudice.

I. BACKGROUND

On February 23, 2018, Mr. Brown filed an appeal challenging the cost to obtain water service from Paint Creek WSC. As detailed in the proposed findings of fact and conclusions of law, Mr. Brown has failed to prosecute his appeal. For this reason, the ALJ concludes that, under 16 TAC § 22.181(d)(6), Mr. Brown's appeal should be dismissed.¹

In support of this recommendation, the ALJ proposes the following findings of fact, conclusions of law, and ordering paragraphs:

**II. FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING
PARAGRAPHS**

A. Findings of Fact

1. On February 23, 2018, Mr. Brown filed this appeal challenging the cost to obtain water service from Paint Creek WSC.
2. Paint Creek WSC timely responded to the appeal on June 7, 2018, in accordance with the deadline set forth in Order No. 3.
3. On July 25, 2018, Commission Staff recommended that the estimated cost of obtaining service that was provided by Paint Creek WSC to Mr. Brown be found to be consistent

¹ No hearing was held in this matter and none is necessary, because the facts are established as a matter of law by the administrative record, of which the ALJ takes official notice. 16 TAC § 22.181(c).

- with Paint Creek WSC's tariff, reasonably related to the cost of installing facilities to provide service, not clearly unreasonable, and otherwise consistent with the requirements of 16 TAC § 24.41(g)(1) and (2).
4. In Order No. 4 issued on July 30, 2018, the ALJ directed Mr. Brown to file, by no later than August 24, 2018, a request for a hearing or additional information clarifying on what basis he contended that Paint Creek WSC's estimate of the cost of obtaining service is inconsistent with the utility's tariff or clearly unreasonable.
 5. Mr. Brown did not respond to Order No. 4.
 6. On August 31, 2018, Commission Staff reaffirmed its opinion that Paint Creek WSC's estimated cost for providing service to Mr. Brown is consistent with the utility's tariff, reasonably related to the cost of installing facilities to provide service, not clearly unreasonable, and otherwise consistent with the requirements of 16 TAC § 24.41(g)(1) and (2).
 7. In Order No. 5 issued on January 30, 2019, the ALJ directed Mr. Brown to, by no later than February 15, 2019, either request a hearing or withdraw his appeal. Order No. 5 admonished: *"If Mr. Brown does not comply with this order, the ALJ will draft a proposal for decision recommending that his petition be dismissed for fail to prosecute."*²
 8. Mr. Brown did not respond to Order No. 5.
 9. In Order No. 6 issued on February 27, 2019, the ALJ provided notice to the parties of his intent to dismiss this case for want of prosecution, and gave the parties 20 days to file any response.
 10. Neither party responded to Order No. 6.
 11. Mr. Brown has filed nothing in this docket since filing his appeal on February 23, 2018.

B. Conclusions of Law

1. The Commission has jurisdiction over this matter under TWC § 13.043(g).

² Emphasis in original.

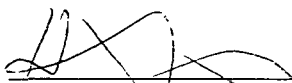
2. The ALJ may recommend to the Commission that it dismiss a proceeding with or without prejudice for "failure to prosecute." under 16 TAC § 22.181(d)(6).
3. Dismissal of a proceeding may be made upon the motion of the ALJ, and an ALJ's motion must be provided by written order or stated on the record. 16 TAC § 22.181(e)(2).
4. When the ALJ recommends dismissal of a case, he or she must prepare a PFD. The Commission must then consider the PFD as soon as is practicable. 16 TAC § 22.181(f)(2).
5. Under 16 TAC § 22.181(d)(6), this proceeding should be dismissed from the Commission docket, without prejudice, due to Mr. Brown's failure to prosecute this proceeding.

C. Proposed Ordering Provisions

1. Docket No. 48099 is **DISMISSED**, without prejudice, due to Mr. Brown's failure to prosecute.
2. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 22nd day of March 2019.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE