



Control Number: 48099



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

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 PUBLIC UTILITY COMMISSION
 PUBLIC UTILITY COMMISSION
 FILING CLERK
 OF TEXAS

ORDER

This Order addresses Lester Brown II's appeal of the cost of obtaining service from Paint Creek Water Supply Corporation (Paint Creek WSC). The proposal for decision recommended dismissal of Mr. Brown's appeal, without prejudice, under 16 Texas Administrative Code (TAC) § 22.181(d)(6) for failure to prosecute. The Commission adopts the proposal for decision, including findings of fact and conclusions of law. The Commission dismisses the complaint without prejudice.

I. Findings of Fact

The Commission adopts the following 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 with Paint Creek WSC's tariff, reasonably related to the cost of installing facilities to provide service, not clearly unreasonable, and otherwise in accordance with the requirements of 16 TAC § 24.41(g)(1) and (2).
4. In Order No. 4 issued on July 30, 2018, the administrative law judge (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 in accordance 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 failure to prosecute.*"¹
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 a 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.

II. Conclusions of Law

The Commission adopts the following conclusions of law:

1. The Commission has jurisdiction over this matter under Texas Water Code (TWC) § 13.043(g).
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 under 16 TAC § 22.181(e)(2).
4. The ALJ must prepare a proposal for decision when recommending dismissal of a case. The Commission must then consider the proposal for decision as soon as is practicable in accordance with 16 TAC § 22.181(f)(2).

¹ Emphasis in original.

5. Under 16 TAC § 22.181(d)(6), this proceeding should be dismissed from the Commission docket, without prejudice, because of Mr. Brown's failure to prosecute this proceeding.

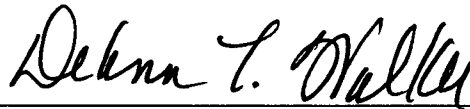
III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission adopts the proposal for decision, including findings of fact and conclusions of law.
2. The Commission dismisses the complaint, without prejudice, because of Mr. Brown's failure to prosecute.
3. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

Signed at Austin, Texas the _____ day of April 2019.

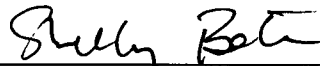
PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER