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PUBLIC UTILITY COMMISSION  
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# OPEN MEETING COVER SHEET

## COMMISSIONER MEMORANDUM

**MEETING DATE:** February 7, 2019

**DATE DELIVERED:** February 6, 2019

**AGENDA ITEM NO.:** 30

**CAPTION:** *Docket No. 48269 - Application of Simply Aquatics Inc for a Price Index Rate Adjustment (El Pinion)*

**ACTION REQUESTED:** Discussion and possible action with respect to Commissioner Botkin Memorandum

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Commissioner

**Shelly Botkin**  
Commissioner

**John Paul Urban**  
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**Greg Abbott**  
Governor

## *Public Utility Commission of Texas*

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TO: Chairman DeAnn T. Walker  
Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

All Parties of Record (*via electronic transmission*)

FROM: Alex Pine **AP**  
Commission Advising

RE: *Application of Simply Aquatics Inc. for a Price Index Rate Adjustment (El Pinion),*  
Docket No. 48269, February 7, 2019 Open Meeting, Item No. 30

DATE: February 6, 2019

Please find enclosed a memorandum by Commissioner Botkin regarding the above-referenced docket. No other commissioner will file a memorandum in this docket.

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# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Chairman DeAnn T. Walker  
Commissioner Arthur C. D'Andrea

**FROM:** Commissioner Shelly Botkin *SB*

**DATE:** February 6, 2019

**RE:** Open Meeting of February 7, 2019 – Agenda Item No. 30  
Docket No. 48269, *Application of Simply Aquatics Inc. for a Price Index Rate Adjustment (El Pinion)*

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The proposal for decision that is before the Commission recommends that this proceeding be dismissed without prejudice on two, separate grounds: failure to prosecute and failure to amend an application such that it is sufficient *after repeated determinations* that the application is insufficient.<sup>1</sup>

While I agree with the administrative law judge's recommendation that dismissal without prejudice is appropriate because the applicant has failed to prosecute its application, I do not believe that the facts in this proceeding support dismissal for failure to amend after repeated determinations that the application was insufficient. That is because I can only locate one determination of insufficiency by the ALJ in this proceeding.<sup>2</sup> (Commission Staff made more than one recommendation that the application be found insufficient, but those recommendations are not determinations.) Therefore, I recommend that the Commission adopt in part and reject in part the proposal for decision, dismissing this proceeding without prejudice solely on the basis of failure to prosecute.

I also propose delegating to the Office of Policy and Docket Management staff the authority to modify the Commission's order to conform to the *Citation and Style Guide for the Public Utility Commission of Texas* and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I look forward to discussing this matter with you at the open meeting.

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<sup>1</sup> See 16 Texas Administrative Code § 22.181(d)(6) and (7).

<sup>2</sup> Order No. 2 (May 21, 2018).