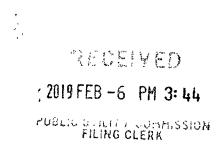


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## **OPEN MEETING COVER SHEET**

## **COMMISSIONER MEMORANDUM**

**DATE DELIVERED:** February 6, 2019

AGENDA ITEM NO.: 30

**CAPTION:** 

**ACTION REQUESTED:** 

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

Discussion and possible action with respect to Commissioner Botkin Memorandum

Distribution List. Commissioners' Offices (6) Journeay, Stephen Urban, John Paul Margaret Pemberton (5) OPD Support Team Pine, Alex Kramer, John Central Records (Open Meeting Notebook) DeAnn T. Walker Chairman

Arthur C. D'Andrea Commissioner

Shelly Botkin Commissioner

John Paul Urban Executive Director



Greg Abbott Governor

## **Public Utility Commission of Texas**

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

All Parties of Record (via electronic transmission)

- FROM: Alex Pine **Δ**? 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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## Memorandum

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

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.

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

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