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APPLICATION OF SIMPLY
AQUATICS INC. FOR A PRICE INDEX
RATE ADJUSTMENT (EL PINION) §
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PUBLIC UTILITY COMMISSION
REGULATORY DIVISION
FILING CLERK
OF TEXAS

ORDER

This Order addresses the application of Simply Aquatics, Inc. for a price-index rate adjustment for the El Pinion water system. On January 2, 2019, the administrative law judge (ALJ) issued a proposal for decision recommending that Simply Aquatics' application be dismissed for failure to prosecute and failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient. The Commission adopts in part and rejects in part the proposal for decision, including findings of fact and conclusions of law, except as discussed in this Order.

The applicant has made no filing in this docket subsequent to its application. The Commission agrees with the ALJ that dismissal without prejudice is appropriate for failure to prosecute its application. Based on the facts of this case, the Commission disagrees that dismissal should also be based upon a failure to amend the application after repeated determinations that the application is not sufficient. The Commission modifies conclusions of law 2 and 4 to reflect the Commission's determination that 16 Texas Administrative Code (TAC) § 22.181(d)(7) does not apply to the facts in this case. In addition, the Commission makes other non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering and readability.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. On April 13, 2018, Simply Aquatics applied to the Commission for a price-index rate adjustment under Texas Water Code (TWC) § 13.1872(e) and 16 Texas Administrative Code (TAC) § 24.49 for the El Pinion water system.
2. On April 19 and April 20, 2018, Commission Staff wrote letters to Simply Aquatics identifying a number of deficiencies with the application and asking Simply Aquatics to

- file, by May 4, 2018, additional information correcting the deficiencies so that Commission Staff could continue evaluating the application.
3. Simply Aquatics filed nothing in response to Commission Staff's April 19 and April 20, 2018 letters.
 4. On May 11, 2018, Commission Staff recommended that the application be found administratively incomplete.
 5. In Order No. 2 issued on May 21, 2018, the ALJ found the application to be administratively incomplete and ordered Simply Aquatics to, by no later than June 11, 2018, file the additional information needed to cure the deficiencies in the application.
 6. Simply Aquatics filed nothing in response to Order No. 2.
 7. On July 11, 2018, Commission Staff moved to have this case dismissed, without prejudice, due to the applicant's failure to prosecute and failure to amend its application such that it is sufficient after repeated determinations that the application is insufficient under 16 TAC § 22.181(d)(6) and (7), respectively.
 8. Simply Aquatics filed nothing in response to Commission Staff's motion to dismiss.
 9. In Order No. 3 issued on July 20, 2018, the ALJ directed Simply Aquatics to, by no later than July 31, 2018, either respond to the motion to dismiss or request withdrawal of the application. The ALJ admonished Simply Aquatics that, failure to respond to this Order may result in dismissal of the application.
 10. Simply Aquatics has filed nothing since the issuance of Order No. 3.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter under TWC §§ 13.041 and 13.1872.
2. An ALJ may recommend that the Commission dismiss a proceeding with or without prejudice for, among other reasons, the applicant's failure to prosecute its application. 16 TAC § 22.181(d)(6).
3. An ALJ must prepare a proposal for decision to recommend dismissal of a case and the Commission must then consider the proposal for decision as soon as practicable. 16 TAC § 22.181(f)(2).

4. The applicant failed to prosecute its application. 16 TAC § 22.181(d)(6).

III. Ordering Paragraphs

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

1. The Commission adopts in part and rejects in part the proposal for decision, including findings of fact and conclusions of law.
2. The application is dismissed, without prejudice for the reasons discussed in this Order.
3. The Commission denies all other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 13th day of February 2019.

PUBLIC UTILITY COMMISSION OF TEXAS


DEANN T. WALKER, CHAIRMAN


ARTHUR C. D'ANDREA, COMMISSIONER


SHELLY BOTKIN, COMMISSIONER