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APPLICATION OF SIMPLY AQUATICS INC FOR A PRICE INDEX RATE ADJUSTMENT FOR EL PINION	§ § § §	PUBLIC UTILITY COMMISSION PUBLIC UTILITY COMMISSION FILING CLERK OF TEXAS
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COMMISSION STAFF’S MOTION TO DISMISS

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Motion to Dismiss. In support thereof, Staff shows the following:

I. BACKGROUND

On April 13, 2018, Simply Aquatics Inc (Simply Aquatics) filed an application for a price index rate adjustment under Tex. Water Code (TWC) § 13.1872 and 16 Texas Administrative Code (TAC) § 24.36 for its El Pinion water system (Application).¹ On April 17, 2018, the Administrative Law Judge (ALJ) issued Order No. 1 requiring Staff to file a recommendation on the administrative completeness of the Application and notice on or before May 11, 2018.² Staff filed a letter of deficiency on April 19, 2018, providing 10 days for Simply Aquatics to file certain required information missing from the Application.³ Simply Aquatics did not responded to the deficiencies set out by Staff. On May 11, 2018, Staff filed a Recommendation on Administrative Completeness recommending that the Application be found administratively incomplete.⁴

On May 21, 2018, the ALJ issued Order No. 2, finding the Application administratively incomplete and requiring Simply Aquatics to provide the necessary information to cure the

¹ *Application of Simply Aquatics, Inc. for a Price Index Rate Adjustment (El Pinion)* (April 13, 2018).

² Order No.1 Requiring Comments on Administrative Completeness and Notice; and Addressing Procedural Matters (April 17, 2018).

³ Commission Staff’s Letter to Ms. Smith (April 19, 2018).

⁴ Commission Staff;s Recommendation on Administrative Completeness (May 11, 2018).

identified deficiencies by June 11, 2018.⁵ To date, Simply Aquatics has not filed the required additional information. Order No. 2 required Staff to file a supplemental recommendation on the sufficiency of the application and notice, and to propose a procedural schedule, if appropriate, on or before July 11, 2018.⁶ Therefore, this pleading is timely filed.

II. MOTION TO DISMISS

Simply Aquatics still has not filed the documents responsive to Staff's recommendation and Order No. 2. Therefore, Staff moves for Simply Aquatics's application to be dismissed without prejudice for failure to prosecute and failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient, pursuant to 16 TAC § 22.181(d)(6) and (7), respectively.

III. CONCLUSION

For the reasons presented, Staff respectfully requests that the ALJ dismiss this docket without prejudice.

⁵ Order No.2 Finding Application Incomplete and Deficient; and Establishing Opportunity to Cure (May 21, 2018).

⁶ *Id.*

Date: July 11, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on July 11, 2018, in accordance with 16 TAC § 22.74.



Heath D. Armstrong