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**SOAH DOCKET NO. 473-20-1117.WS
PUC DOCKET NO. 48697**



APPLICATION OF ANDERSON	§	BEFORE THE STATE OFFICE
	§	
WATER COMPANY, INC. FOR	§	OF
	§	
AUTHORITY TO CHANGE RATES	§	ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 7
REQUIRING RESPONSE TO MOTION FOR INTERIM RATES**

Staff of the Public Utility Commission of Texas (Commission) filed a motion for interim rates, asserting that Anderson Water Company, Inc. (Anderson) began charging its proposed rates in May 2019, notwithstanding its agreement to suspend the effective date beyond the suspension period the Commission may impose by statute.¹ Anderson’s position on the motion and assertions therein is unknown: the motion did not contain a certificate of conference and Anderson did not file a response. After reviewing the motion and the history of this application, the Administrative Law Judge (ALJ) has determined that he does not have sufficient information to rule on the motion, which involves persisting issues concerning the effective date.

This rate change application was filed pursuant to Texas Water Code § 13.1871,² which provides that the Commission may “suspend the effective date of a rate change for not more than 265 days from the proposed effective date.” Tex. Water Code § 13.1871(g). “If the utility commission does not make a final determination on the proposed rate before the expiration of the suspension period, the proposed rate shall be considered approved.” Tex. Water Code § 13.1871(g).

¹ Commission Staff’s Motion for Interim Rates (August 17, 2020).

² With 84 customers, Anderson was a Class C utility at the time the application was filed, but would now be considered a Class D utility. Tex. Water Code § 13.002(4-c) (eff. Sept. 1, 2019). The legislature has recognized that the application process for such utilities should be facilitated, and not made unduly difficult. *See* Tex. Water Code § 13.1873(2) (“[T]he utility commission shall ensure that a . . . Class D utility can file a less burdensome and complex application than is required of a Class A or Class B utility.”).

Here, after curing various deficiencies in its application, Anderson sent notice to its customers that proposed an effective date of April 26, 2019, which was then suspended for the 265 days until January 16, 2020 “or until the issuance of an order setting final rates.”³

After referral to SOAH, Anderson filed a document requesting “extension of the jurisdictional deadline which is currently set for January 16, 2020.”⁴ Given that Anderson requested something not authorized by law, the ALJ noted that the suspension period is not jurisdictional, but merely caps the period that the presiding officer can keep the utility from charging its proposed rates, while *utilities*, can, and often do, agree to suspend charging those rates beyond this period.⁵ The ALJ further noted that if Anderson wished to do so, it “shall file an agreement to that end,” and required a status report. The status report, filed by Staff, asked to cancel a March 3, 2020 prehearing conference and stated that “[t]he Parties would respectfully request that a new effective date of December 1, 2019 be set for Anderson’s rates.”⁶

The ALJ denied the request to cancel the prehearing conference for which customers had received notice,⁷ but did not set a new effective date for Anderson’s rates until the issue could be discussed, as noticed, at the prehearing conference. Following the March 3, 2020 prehearing conference, the ALJ noted that the agreed proposed procedural schedule was problematic with respect to the rates’ effective date, and required a clear statement to be filed by Anderson:

While simultaneously agreeing that the suspension period expired on January 16, 2020, the parties have proposed a procedural schedule that sets December 1, 2019, as the “agreed upon effective date,” and August 22, 2020—exactly 265 days later—as the “jurisdictional deadline.” Both cannot be true.

³ Order No. 7, Addressing Sufficiency of Notice and Suspending Rate Effective Date (May 8, 2019). As explained in SOAH Order No. 1, the ALJ construed this statement, in conjunction with the statutory language, to mean that the effective date was suspended for the lesser of those dates.

⁴ Letter to Request Extension of the Jurisdictional Deadline (Dec. 13, 2019).

⁵ See SOAH Order No. 2 (Dec. 18, 2019).

⁶ Joint Status Report and Request to Cancel Prehearing Conference (Jan. 10, 2020).

⁷ SOAH Order No. 3 (Jan. 13, 2020); see also 16 Tex. Admin. Code § 24.27(d)(2)(B), (C).

Either the rates went into effect on January 16, 2020, and are therefore “considered approved” under Texas Water Code § 13.1871(g), or, as discussed in SOAH Order No. 2, Anderson has agreed to extend the suspension period to a date certain. Accordingly, by March 27, 2020, Anderson shall file a report stating whether its rates went into effect January 16, 2020, as authorized by law, and whether it agrees to extend the effective date, and if so, the date certain to which it agrees to extend it.

Anderson’s response was less than clear, stating, “Anderson Water Company, Inc. does agree to extend the effective date to December 1, 2019 as the date certain.”⁸

Without resolving this ambiguity, the parties submitted a joint request for mediation and abatement.⁹ In that filing, the parties “represent that Anderson has agreed to a day-for-day extension of the effective date for the period that the case is abated.” Noting that representation, the ALJ abated the procedural schedule for 60 days and referred the case to mediation, where it remains.¹⁰ If, as Staff’s motion asserts, Anderson had been charging the proposed rates since May, it is not clear on what basis Anderson has done so, given the representation that it had agreed to suspend the effective date through the mediation process.

Given this background, it is plain that Anderson does not share the common understanding of the meaning of suspending the effective date of its rates. The ALJ, like the legislature, recognizes that the Class B rate change application process does not readily lend itself to the limited resources of a smaller utility, such as Anderson. But this potential misunderstanding likely lies at the root of the problem reflected in Staff’s interim rate motion. Thus, the ALJ finds it appropriate to consider Anderson’s response before ruling on that motion.

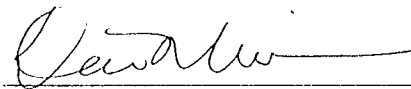
⁸ Pre-filed Direct Testimony of Jessica Sechelski (Apr. 6, 2020).

⁹ Joint Request for Mediation and Request to Abate Procedural Schedule (Apr. 9, 2020).

¹⁰ SOAH Order No. 6 (Apr. 16, 2020).

Accordingly, it is **ORDERED** that, no later than **September 15, 2020**, Anderson shall **file a response to Staff's motion for interim rates**, including whether Anderson agrees with the interim rates proposed by Staff, along with any additional information relevant to the propriety of setting interim rates given the unusual procedural posture of this case. In the alternative, by the same date, Anderson may request a prehearing conference on this issue.

SIGNED September 4, 2020.

A handwritten signature in black ink, appearing to read "Daniel Wiseman", is written over a horizontal line.

DANIEL WISEMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS