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**SOAH DOCKET NO. 473-20-1674.WS
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APPLICATION OF NORTHTOWN ACRES WATER SUPPLY FOR AUTHORITY TO CHANGE RATES	§ § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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**NORTHTOWN ACRES’ MOTION TO DISMISS INTERVENORS AND MOTION TO
STRIKE STATEMENTS OF POSITION**

COMES NOW Sheroll and Roger Richardson d.b.a. Northtown Acres Water Supply (“Northtown Acres”) and files this Motion to Dismiss Intervenor and Motions to Strike Statements of Position.

I. Background

State Office of Administrative Hearings (“SOAH”) Order No. 14 established the agreed procedural schedule in this case including a deadline of June 16, 2021, for intervenors to file testimony or statements of position. No intervenor filed testimony or any evidence by the deadline. Only two intervenors, Frank Marx, III and Mark Parker, timely filed statements of position.

II. Motion to Dismiss Intervenor

Northtown Acres’ respectfully requests the SOAH Administrative Law Judge (“ALJ”) strike any intervenor not filing a timely statement of position, testimony, or evidence. In addition to failing to comply with SOAH Order No. 14, intervenors may not present evidence or arguments in a final hearing under 16 Texas Administrative Code (“TAC”) § 22.225 unless all testimony and evidence that a party intends to introduce at trial is prefiled by the deadline set by the ALJ. Parties that do not file testimony may not litigate issues unless they file a statement of position under 16 TAC § 22.124(a). By failing to file the required testimony or statements of position, intervenors have failed to raise any contested issue and dismissal of any potential issue that could have been raised is appropriate under 16 TAC § 22.181(b). Further, dismissal of the parties is the accepted procedure for intervenors who fail to timely file testimony or statements of position.¹

¹ See e.g., *Application of AEP Texas Inc. to Amend its Certificate of Convenience and Necessity for the Brackettville-to-Escondido 138-KV Transmission Line in Kinney and Maverick Counties*, Docket No. 50545, SOAH Docket No. 473-20-3472, SOAH Order No. 6 Dismissing Intervenor (Aug. 14, 2020).

III. Motion to Strike Statements of Position

Statements of position are not evidence. However, Northtown Acres objects to and moves to strike the portions of the statements of position of Frank Marx, III and Mark Parker that address hearsay, out of court confidential settlement negotiations or agreements, and issues irrelevant to this rate setting proceeding.

- The objected to portions of the Statement of Position of Mark Parker are paragraphs 6 and 7.
- The objected to portions of the Statement of Position of Frank Marx, III are:
 - the first paragraph starting with the sentence beginning with “The current water company” through the next sentence ending in “ . . . docket number 50285.”; and
 - the fifth paragraph starting with the sentence beginning with “That may be true” through the end of the paragraph.

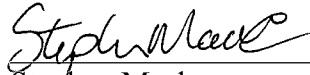
The statements of position refer to a complaint and settlement in Docket No. 50285 that are irrelevant under Texas Rule of Evidence 401 to the cost of service, the rate setting in this case, or any issue provided in the Commission’s Preliminary Order, are hearsay, and provide confidential settlement negotiations contrary to Texas Rule of Evidence 408.

IV. Conclusion

For the above stated reasons, Northtown Acres respectfully requests the ALJs dismiss all intervenors failing to timely file testimony or statements of position and the ALJs strike the above referenced portions of intervenor statements of position that are irrelevant, inadmissible, and allude to confidential settlement negotiations.

Dated: July 27, 2021

Respectfully submitted,



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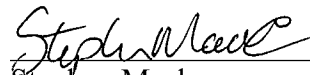
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on July 27, 2021, in accordance with 16 TAC § 22.74.



Stephen Mack