

Control Number: 49220



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PETITION OF SWWC UTILITIES, §
INC. DBA WATER SERVICES, INC. §
APPEALING THE ORDER OF THE §
CITY OF BULVERDE IN §
COMPLAINT NO. 2018-01 §

PUBLIC UTILITY COMMISSION
OF TEXAS

2019 SEP 12 AM 11:4
PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF’S RESPONSE TO SWWC UTILITIES, INC., DBA WATER SERVICES, INC.’S MOTION TO REINSTATE

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to SWWC Utilities, Inc., dba Water Service, Inc.’s Motion to Reinstate. The motion should be denied. In support thereof, Staff shows the following:

I. BACKGROUND

On March 5, 2019, SWWC Utilities, Inc., dba Water Services, Inc. (SWWC), filed a petition in this docket appealing the City of Bulverde’s (City’s) order in Complaint No. 2018-01. The City’s order, issued on February 12, 2019, required SWWC to refund Sue Wahl, the complainant, in the amount of \$604.79 for overcharges related to water service.

On March 7, 2019, Order No. 1 was issued, establishing a deadline of March 19, 2019, for Staff to file a recommendation on the sufficiency of the petition, including whether the material submitted confidentially by SWWC complied with Commission rules. On March 19, 2019, Staff filed a recommendation that the petition be deemed deficient and that the petitioner be ordered to address the identified deficiencies. Specifically, Staff recommended that SWWC submit additional content, referred to by SWWC as “Exhibit A” in the City’s order, to adequately assess the petition. Further, Staff recommended that the petition may not have been accurately filed as an appeal under Texas Water Code (TWC) § 13.043 and 16 Texas Administrative Code (TAC) § 24.201(a). Rather, Staff recommended that the docket may more appropriately be restyled as a formal complaint under 16 TAC § 22.242.

On April 5, 2019, the Commission administrative law judge (ALJ) issued Order No. 2, finding the petition administratively incomplete and deficient for further review. The ALJ required SWWC to supplement the petition to cure the deficiencies described by Staff in its March 19, 2019 filing by providing the information omitted from the original petition. Additionally, the ALJ



required SWWC to respond to Staff's assertion that the matter should be handled as a complaint proceeding under 16 TAC § 22.242.

On May 1, 2019, instead of addressing the ALJ's requirements, SWWC chose to withdraw its petition. SWWC stated that it would refile the matter as a formal complaint.

On May 3, 2019, the Commission ALJ issued Order No. 2,¹ granting SWWC's withdrawal request, without prejudice, under 16 TAC § 22.181(g)(1).

On May 20, 2019, SWWC refiled the same cause of action as a formal complaint under 16 TAC § 22.242. The matter is still ongoing in Docket No. 49554.

On September 5, 2019, SWWC filed a Motion to Reinstate in the present docket. SWWC requests that the ALJ reinstate the appeal introduced in its initial petition under TWC § 13.043 and 16 TAC § 24.101(a). SWWC also requests that the ALJ regard the Motion to Reinstate as SWWC's response to the recommendation made by Staff in its March 19, 2019 filing.

Under 16 TAC § 22.78(a), the Commission rule states that "...a responsive pleading, if made, shall be filed by a party within five working days after receipt of the pleading to which the response is made."² Staff received the Motion to Reinstate on September 5, 2019. Five working days following the receipt of the Motion to Reinstate is September 12, 2019. Therefore, this responsive pleading is timely filed.

II. SWWC'S WITHDRAWAL OF ITS PETITION WAS PROPER

SWWC's withdrawal was proper under the Commission rules. Staff's sufficiency recommendation on March 19, 2019, stated that SWWC's petition "may more accurately be conducted as a complaint matter under 16 TAC § 22.242."³ Staff's filing did not recommend, nor discuss in any manner, withdrawal of the application.

In the Commission ALJ's subsequent order, issued on April 5, 2019, SWWC was directed to respond to Commission Staff's assertion that this matter should be handled as a complaint

¹ Though titled as "Order No. 2," this was the third order issued by the Commission ALJ in the present docket.

² 16 TAC § 22.78(a).

³ Commission Staff's Recommendation on Sufficiency of Petition, Confidential Material Designation, Proposed Notice and Procedural Schedule at 2 (Mar. 19, 2019).

proceeding under 16 TAC § 22.242.⁴ The Commission ALJ did not require SWWC to address withdrawal of its application in its response to Order No. 2.

Following the issuance of Order No. 2, on May 1, 2019, SWWC filed a letter in the current docket. The letter reiterated the two requirements listed in Order No. 2,⁵ effectively demonstrating that SWWC understood what was required in response to the ALJ's order. Instead of providing the required response, SWWC stated that the purpose of the letter was to notify the ALJ that it was withdrawing its original petition and would refile the matter as a formal complaint.⁶ SWWC did subsequently refile the matter, and the case is still currently pending before the Commission in Docket No. 49554.

On May 3, 2019, the ALJ granted SWWC's request to withdraw its petition, without prejudice, pursuant to 16 TAC § 22.181(g)(1), which states, "[a] party that initiated a proceeding may withdraw its application without prejudice to refile of same, at any time before that party has presented its direct case."⁷ SWWC initiated the proceeding in the current docket. It filed its request to withdraw the petition prior to its direct case. Therefore, contrary to SWWC's assertion in its Motion to Reinstate, the withdrawal of the petition was proper under Commission rules.

III. SWWC'S MOTION TO REINSTATE IS UNTIMELY

Though SWWC's letter requesting withdrawal of its petition was granted without prejudice, its current Motion to Reinstate is untimely under both the Administrative Procedure Act⁸ and the Commission rules.

SWWC's request to withdraw its petition was granted on May 3, 2019. Following the ALJ's order to withdraw the petition, SWWC had the opportunity to file a motion for rehearing, but that timeframe has since expired. Under 16 TAC § 22.264, the Commission rule states that "[a] motion for rehearing is untimely if it is not filed by the deadlines specified in APA § 2001.146 or, if the commission extends the time to file such motion or reply or approves a time agreed to by the parties, the date specified in the order of the commission extending time or approving time."⁹

⁴ Order No. 2 Finding Petition Deficient and Establishing an Opportunity to Cure at 1 (Apr. 5, 2019).

⁵ SWWC Letter to the Administrative Law Judge (May 1, 2019).

⁶ *Id.*

⁷ 16 TAC § 22.181(g)(1).

⁸ Administrative Procedure Act, Tex. Gov't Code §§ 2001.001-.902 (APA).

⁹ 16 TAC § 22.264.

The Commission did not agree to extend the time to file the motion for rehearing, nor did the parties present an agreement proposing to extend the timeframe. Therefore, the deadlines identified under the APA will control.

Under APA § 2001.146, the statute states that “a motion for rehearing in a contested case must be filed by a party not later than the 25th day after the date the decision or order that is the subject of the motion is signed, unless the time for filing the motion for rehearing has been extended under Section 2001.142, by an agreement under Section 2001.147, or by a written state agency order issued under Subsection (e).”¹⁰ None of the three options to extend the time to file a motion for rehearing under APA § 2001.146 are applicable, so it is appropriate that the deadline to file such motion was 25 days following the ALJ order to withdraw the petition. Therefore, the statutory deadline to file a motion for rehearing in the present docket was May 28, 2019. SWWC did not file a motion for rehearing by the statutory deadline. Furthermore, SWWC has not presented any procedural mechanism that would allow for its petition to be reinstated.

IV. CONCLUSION

For the reasons discussed above, Staff respectfully recommends that the withdrawal of SWWC’s petition was proper and that its Motion to Reinstate be denied.

¹⁰ APA § 2001.146.

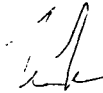
Dated: September 12, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 49290

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on September 12, 2019, in accordance with 16 TAC § 22.74.



Richard A. Nemer