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SOAH DOCKET NO. 473-19-5831.WS
PUC DOCKET NO. 49367

PETITION BY OUT OF DISTRICT § **BEFORE THE STATE OFFICE**
RATEPAYERS APPEALING THE §
WATER RATES ESTABLISHED BY §
EL PASO WATER CONTROL § **OF**
DISTRICT AND IMPROVEMENT §
DISTRICT NO. 4 § **ADMINISTRATIVE HEARINGS**

SOAH ORDER NO. 2
FILING DESCRIPTION, NOTICE OF PREHEARING CONFERENCE,
MEDIATION, AND PROCEDURES

I. FILING DESCRIPTION

On March 22, 2019, out-of-district ratepayers of the Mesa Del Norte subdivision¹ (Petitioners) filed a petition against El Paso County Water and Control and Improvement District No. 4 (District) to appeal water and wastewater rates. The Petitioners contest the District's 5% rate increase that went into effect January 1, 2019, and the 74.9% difference charged to out-of-district ratepayers as compared to in-district ratepayers. On April 22, 2019, the District filed a motion to dismiss for lack of jurisdiction by the Public Utility Commission of Texas (Commission) over the Petitioners appeal, and on May 13, 2019, the Commission Administrative Law Judge (ALJ) issued Order No. 4 denying the motion to dismiss. The Commission ALJ found that the petition appealing the District's rate change under Texas Water Code § 13.043(b) was sufficient for further processing.² The Commission issued a referral order on June 27, 2019, referring the case to the State Office of Administrative Hearings (SOAH) for assignment of an ALJ to conduct a hearing and issue a proposal for decision, if necessary. The Commission has jurisdiction over this case under Texas Water Code §§ 13.041 and 13.043(b). SOAH has jurisdiction over matters relating to the conduct of the hearing in these proceedings pursuant Texas Government Code § 2003.049. In its referral order, the Commission set a July 17, 2019, deadline

¹ In the petition to appeal rates “[n]early all of the residential out-of-district ratepayers reside in the Mesa Del Norte subdivision.”

² Staff of the Public Utility Commission of Texas recommended that the application be referred to the State Office of Administrative Hearings for an evidentiary hearing in accordance with 16 Texas Administrative Code § 24.307(a).

for the parties to file a list of issues to be addressed in this proceeding. The Commission will consider and possibly adopt a preliminary order in the open meeting currently scheduled to convene on August 8, 2019.

II. NOTICE OF PREHEARING CONFERENCE

The undersigned ALJ will convene a prehearing conference in this case **at 10:00 a.m., August 28, 2019**, at SOAH facilities located in the William P. Clements State Office Building, **300 West 15th Street, Fourth Floor, in Austin, Texas**. Those attending the prehearing conference are advised that they must check in with building security personnel in the lobby of the William P. Clements Building and be issued visitor badges before proceeding to the hearing room. The parties should allow sufficient time for the check-in procedure.

The ALJ will discuss the following matters at the prehearing conference:

- (1) The procedural schedule including scheduling the hearing on the merits;
- (2) Any motions filed by **3:00 p.m. on August 19, 2019**, and e-mailed to the ALJ assistant on that day;³
- (3) Procedures to be followed before and during the hearing;
- (4) Any other preliminary matters that may assist in the disposition of this proceeding in a fair and efficient manner.

The parties may confer before the prehearing conference regarding the procedural schedule that will apply in this case. Any proposed procedural schedule must include, at a minimum, deadlines for discovery and prefiled testimony, and three alternative dates for the hearing on the merits. If the parties are able to agree to a procedural schedule, they may file an agreed schedule no later than 3:00 p.m. **August 19, 2019**, and file a motion to cancel the prehearing conference.

³ erin.hurley@soah.texas.gov.

If parties agree to a procedural schedule and cancel the prehearing conference they should include a date and time for mediation.

III. MEDIATION

On July 23, 2019, parties filed a joint status report and agreed to participate in mediation following the prehearing conference. However, the District stated that its agreement to participate in mediation is contingent on a mutually agreed time after the prehearing conference. No later than **August 19, 2019**, parties shall file an agreed time for the mediation following the prehearing conference to be scheduled on **August 28, 2019**.

For more information on mediation parties may visit the following link that provides additional information on the mediation processes <http://www.soah.texas.gov/Hearings-And-Mediation/mediation.html>.

IV. PROCEDURES

A. Filing Procedures

Parties are expected to know how to file documents. The rules setting out how to file documents are found in Subchapter E of the Commission's procedural rules, which are available for viewing and downloading from the Commission's website at www.puc.state.tx.us.⁴ Pleadings and other documents shall be deemed filed when the proper number of legible copies is presented to the Commission filing clerk for filing. **All pleadings must contain both the SOAH and PUC docket numbers to allow for efficient processing.**

⁴ For those parties who may not be familiar with the Commission's processes, all PUC filings are available for viewing and downloading from the Commission's website at <http://www.puc.texas.gov>. Once there, click on "Filings," then click on "Filings Search," then click on "Filings Search," again. Then type in the control number (PUC Docket No.) and click on "Search." A list of documents filed in this docket will appear and you may access those documents by clicking on the document number.

All pleadings shall be filed with the Commission's filing clerk, not with the SOAH filing clerk. The Commission's filing clerk will forward a copy of the pleadings to SOAH. Parties desiring to hand-deliver a file-stamped copy of a pleading to the ALJ should deliver it to Room 504, 5th Floor, Clements Building, 300 W. 15th St., Austin, Texas.

B. Service Procedures

A copy of any document filed with the Commission must also be served on (given to) all parties. A copy of the service list, listing all parties, is attached to this order for the parties' convenience. All parties shall provide their current telephone and facsimile number, if available, and email address, if available, to all other parties.

All mail sent to the parties by the ALJ will be sent by first class mail or by fax. However, SOAH has implemented service by email for proposals for decision, orders, and other case-related documents and communications in general docket cases. If you would like to receive service by email from SOAH, please go to SOAH's website, www.soah.state.tx.us, for information and the form to request email service. Click on the "Request Service by Email" link in the Notices box.

C. Motions

Motions for continuance shall be governed by 16 Texas Administrative Code § 22.79. If a continuance or extension of time is sought, the motion shall propose a new date or dates and shall indicate whether the other parties agree to the new date or dates. Because the ALJ or a hearing room may not be available on a given day, a proposed range of dates would be preferable. The ALJ will not contact parties to ascertain their position or to negotiate dates. In the absence of a ruling by the ALJ, a contested motion for continuance or extension is not granted and the existing schedule remains in place.

Unless otherwise specified in the applicable procedural rules, responses to any motion or other pleading shall be filed within **five working days** from receipt of the motion or pleading. The

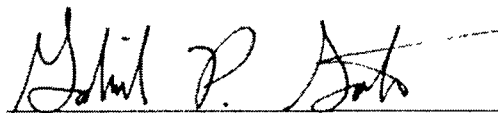
response shall state the date of receipt of the motion or pleading to which a response is made. If a party does not respond to a motion, the ALJ will assume that the party agrees with the motion or does not oppose the requested relief.

D. Other Procedural Matters

Any matters not addressed by this order shall be governed by the procedural rules of the Commission, which are available for viewing and downloading from the Commission's website at www.puc.state.tx.us.

Routine procedural and logistical questions may be directed to the ALJ's administrative assistant, Erin Hurley, at (512) 475-3419 or Erin.Hurley@soah.texas.gov. SOAH support personnel may not provide advice or interpret orders or regulations for the parties.

SIGNED July 29, 2019.



GABRIEL P. SOTO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS