



Control Number: 50200



Item Number: 1884

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SOAH DOCKET NO. 473-20-3110.WS  
PUC DOCKET NO. 50200



APPLICATION OF UNDINE TEXAS, § BEFORE THE STATE OFFICE  
LLC AND UNDINE TEXAS § OF  
ENVIRONMENTAL, LLC FOR § ADMINISTRATIVE HEARINGS  
AUTHORITY TO CHANGE RATES §

**SOAH ORDER NO. 1  
DESCRIPTION OF CASE, NOTICE OF PREHEARING CONFERENCE AND  
INTERVENTION DEADLINE, ADOPTION OF PROCEDURAL SCHEDULE,  
NOTICE OF HEARING ON THE MERITS, E-MAIL SERVICE, AND  
GENERAL PROCEDURAL REQUIREMENTS**

**I. DESCRIPTION OF CASE**

On December 20, 2019, Undine Texas, LLC (Undine) filed an application with the Public Utility Commission of Texas (Commission) for a rate/tariff change with a proposed effective date of January 24, 2020. Undine is a Class B utility that serves 6,034 water connections and, through its affiliate, Undine Texas Environmental, LLC (UTE),<sup>1</sup> serves 2,011 sewer connections.<sup>2</sup> Undine and UTE are referred to jointly as Applicants. The Applicants have acquired 73 small to mid-sized water and sewer systems since 2016 and request uniform rates for the systems, with one tariff each for all water and sewer customers.

On February 18, 2020, a Commission Administrative Law Judge (ALJ) issued an order finding the application administratively complete and the notice sufficient.<sup>3</sup> The Commission ALJ also suspended the effective date of the proposed rate change until October 15, 2020, under Texas Water Code § 13.1871(g).<sup>4</sup>

<sup>1</sup> The application states that Undine owns all of the membership units of UTE. Undine filed the application, but the case was later restyled to add UTE as an applicant. Order No. 3 (Feb. 7, 2020).

<sup>2</sup> Service is provided in Brazoria, Chambers, Fort Bend, Galveston, Harris, Johnson, Matagorda, Montgomery, Parker, and Tarrant Counties, Texas, pursuant to water certificate of convenience and necessity (CCN) No. 13760 and sewer CCN Nos. 20816, 20832, 21019, 21026, and 21106.

<sup>3</sup> Order No. 4 (Feb. 18, 2020).

<sup>4</sup> *Id.* Tex. Water Code § 13.1871(g) states that “the utility commission may suspend the effective date of a rate change for not more than 265 days from the proposed effective date.”

The Commission referred this case to the State Office of Administrative Hearings (SOAH) on March 19, 2020, requesting the assignment of an ALJ to conduct a hearing and issue a proposal for decision, if necessary. The order of referral states that the Commission will consider and possibly adopt at an open meeting scheduled for April 17, 2020, a preliminary order that includes a list of issues to be addressed in this proceeding and any necessary statement of Commission policy, precedent, or position on threshold issues.

The Commission has jurisdiction over this matter pursuant to Texas Water Code §§ 13.041, 13.042, 13.043, and 13.1871. SOAH has jurisdiction over matters in this case relating to the conduct of the hearing and issuance of a proposal for decision, if needed, pursuant to Texas Government Code § 2003.049.

## **II. NOTICE OF PREHEARING CONFERENCE AND INTERVENTION DEADLINE; ADOPTION OF PROCEDURAL SCHEDULE**

### **A. Prehearing Conference and Procedural Schedule**

Due to concerns regarding the coronavirus, the Commission has suspended rules requiring the Commission to act by a certain date, unless the requirement is also in a statute.<sup>5</sup> The suspension period for water utility rate changes is established by statute and, therefore, not subject to the Commission's suspension of its rules.<sup>6</sup> As a result, unless the deadline is extended by the applicant, this case must proceed in a manner that allows the Commission to issue a final order by the effective date of October 15, 2020.

At this time, SOAH has suspended all non-emergency live hearings through April 10, 2020, due to the coronavirus,<sup>7</sup> and there is uncertainty whether this will extend beyond that date. The

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<sup>5</sup> See *Issues Related to the State of Disaster for the Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020), available at: [http://interchange.puc.texas.gov/Documents/50664\\_3\\_1055816.PDF](http://interchange.puc.texas.gov/Documents/50664_3_1055816.PDF).

<sup>6</sup> See Tex. Water Code § 13.1871(g).

<sup>7</sup> The March 16, 2020 letter from SOAH's Chief Administrative Law Judge regarding the updated precautionary measures for coronavirus is located on SOAH's website at <http://www.soah.texas.gov>. Parties should review this information and are encouraged to check SOAH's website for updates.

ALJs conclude that setting an in-person prehearing conference as early as is customary in water rate cases is inadvisable given uncertainties relating to the coronavirus. Moreover, the ALJs are concerned that a telephonic prehearing conference may not be feasible at this time because more than 1,000 ratepayers have protested and the number of intervenors is unknown.

Given the circumstances, the ALJs depart from the normal practice for Class B applications as explained below:<sup>8</sup>

All requests for intervention must be in writing by the deadline set out below. **There will not be a separate opportunity for requesting to intervene in person at the prehearing conference.**

Additionally, given the effective date, the ALJs expect that a hearing on the merits would have to convene by late June to allow sufficient time for post-hearing briefing, 60 days for the proposal for decision, exceptions and replies to exceptions, and two open meeting dates for the Commission to consider the matter. To avoid delay and ensure that the parties have sufficient time to develop the evidentiary record, the ALJs find that it is appropriate to establish a provisional procedural schedule to govern this proceeding, subject to future input by the parties, as discussed next.

By the deadline set out below, the Applicants **SHALL** file any proposed revisions to the procedural schedule. Any proposed revisions must account for the steps listed above to enable the Commission to make a final decision by October 15, 2020, or in the alternative, a subsequent date if the Applicants agree to extend the effective date. Although the ALJs are adopting a procedural schedule that will allow the Commission to make a final decision by the effective date, the Applicants are encouraged to work with the parties to develop a mutually agreeable schedule, and **SHALL** state in their filing which other parties agree to the proposed schedule, if any. Parties that

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<sup>8</sup> Typically, parties may intervene by written submission or by appearing in person at the prehearing conference, after which a hearing is set after input by the parties.

are not in agreement will then have an opportunity to file comments on the proposed schedule. A prehearing conference will then be convened to address any remaining issues, if necessary.

Accordingly, the following schedule will govern until further notice:

<b>EVENT</b>	<b>DEADLINE</b>
Intervention (Motions Must Be Filed Online)	April 21, 2020
Objections to Motions to Intervene	April 27, 2020
Applicants Proposed Procedural Schedule <sup>9</sup>	April 27, 2020
Comments on Proposed Procedural Schedule	May 1, 2020
<b>Prehearing Conference</b>	<b>10:00 a.m., June 2, 2020</b>
Intervenor Direct Testimony/Statement of Position	June 3, 2020
Staff Direct Testimony	June 10, 2020
Applicants Rebuttal Testimony; Intervenor and Staff Cross-Rebuttal Testimony	June 18, 2020
<b>Hearing on the Merits</b>	<b>June 29 to July 3, 2020<sup>10</sup></b>

**Any intervenor who does not file direct testimony or a statement of position by the deadline set out above is subject to being stricken as a party under 16 Texas Administrative Code §§ 22.124 and 22.161.**

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<sup>9</sup> Served on parties and persons who filed a pending motion to intervene.

<sup>10</sup> The ALJs have presumed a five-day hearing, but the parties may propose a longer or shorter hearing as they deem necessary.

Additionally, the ALJs adopt the following provisions regarding discovery and service that shall be in effect in this proceeding, unless modified by agreement of all parties:

1. For written discovery on the Applicants' application and direct testimony:
  - a. Responses are due within 10 calendar days of the discovery request;
  - b. Objections are due within 5 calendar days of the discovery request;
  - c. Motions to compel are due within 5 calendar days of the objection(s); and
  - d. Responses to motions to compel are due within 3 calendar days of the motion to compel.
2. For written discovery on Staff's and Intervenors' direct testimony:
  - a. Responses are due within 4 calendar days of the discovery request;
  - b. Objections are due within 4 calendar days of the discovery request;
  - c. Motions to compel are due within 2 calendar days of the objection(s); and
  - d. Responses to motions to compel are due within 2 calendar days of the motion to compel.
3. For written discovery on the Applicants' rebuttal testimony and Staff's and Intervenors' cross-rebuttal testimony:
  - a. Responses are due within 2 calendar days of the discovery request; and
  - b. Objections, motions to compel, and responses to motions to compel may be made orally at the hearing.
4. E-mail Service. Service via electronic mail is required and must include the Commission docket number and a brief description of the document in the subject line of the e-mail. If the e-mail is received after 3:00 p.m., it will be deemed to have been received the following business day.

**B. Required Notice**

Within 10 days after the date of this order, the Applicants **SHALL** provide notice of the prehearing conference to the governing body of each affected municipality and county and to each

ratepayer.<sup>11</sup> The notice **SHALL** include the text of the three paragraphs immediately following this paragraph. Before providing notice, the Applicants **SHALL** consult with Commission staff (Staff) regarding the notice to be provided. The Applicants **SHALL, no later than April 10, 2020**, file an affidavit and a copy of the notice demonstrating that it provided the notice as required.

A prehearing conference will convene at **10:00 a.m. on June 2, 2020, at the State Office of Administrative Hearings, 300 West 15th Street, 4th Floor, Austin, Texas**. Matters that may be discussed include procedures, pending motions, possible settlement of issues, and other matters that may aid in the efficient and fair processing of this case. Persons who attend the prehearing conference must first check in with building security personnel in the building's lobby and be issued visitor badges, and should allow sufficient time for the check-in procedure.

To intervene (*i.e.*, participate in this case as a party), a person shall move to intervene by filing a written motion to intervene with the Commission **no later than April 21, 2020**. Any motion shall refer to SOAH Docket No. 473-20-3110.WS and PUC Docket No. 50200, include the person's contact information (including at a minimum the person's address, telephone number, and e-mail address), and otherwise comply with the Commission's procedural rules. Previous submission of a protest does not meet the requirement that a person who wants to participate as a party must move to intervene as described above. **Due to the coronavirus, the Commission is only accepting filings made online through the Commission's Interchange e-file system at <https://interchange.puc.texas.gov/filer>**. When making online filings for this case, use the "control number" 50200. Where affected customers have similar interests, they are encouraged to file a joint request to intervene and designate in that request or as soon as possible in a subsequent filing a single representative to act for the group.

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<sup>11</sup> Tex. Water Code § 13.1871(m)-(n); 16 Tex. Admin. Code § 24.27(d)(2). While 16 Tex. Admin. Code § 24.27(d)(2) states that notice must be provided at least 20 days before the hearing, for reasons relating to the coronavirus, the ALJs find good cause to require that notice be provided earlier to allow requests to intervene and a proposed procedural schedule to be addressed in advance.

A procedural schedule has been set in this case and is available on the Public Utility Commission of Texas Interchange at <http://interchange.puc.texas.gov>, by entering the control number 50200, pressing “search,” and clicking on the document number for SOAH Order No. 1.

### III. NOTICE OF HEARING ON THE MERITS

The hearing on the merits will convene at **10:00 a.m. on June 29, 2020**, at SOAH, William P. Clements State Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing on the merits will conclude by no later than **July 3, 2020**.

### IV. E-MAIL SERVICE REQUIRED

When a party files a document with the Commission, that party is also required to serve (*i.e.*, provide a copy of that document to) every other party. **At this time, due to the coronavirus, service must be accomplished by e-mail.**<sup>12</sup> Any party to this proceeding who has not previously provided an e-mail address **SHALL, no later than 7 days after the date of this order**, file a notice informing the parties of the e-mail address to be used for service.

### V. GENERAL PROCEDURAL REQUIREMENTS

The parties should be aware that, due to the coronavirus, the Commission has suspended certain rules and is requiring e-mail service and online filings.<sup>13</sup> The Commission’s order is available at: [http://interchange.puc.texas.gov/Documents/50664\\_3\\_1055816.PDF](http://interchange.puc.texas.gov/Documents/50664_3_1055816.PDF).

Commission filings are available for viewing and downloading from the Commission’s Interchange at <http://interchange.puc.texas.gov>, by entering the control number 50200 and

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<sup>12</sup> See *Issues Related to the State of Disaster for the Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020), available at: [http://interchange.puc.texas.gov/Documents/50664\\_3\\_1055816.PDF](http://interchange.puc.texas.gov/Documents/50664_3_1055816.PDF); see also 16 Tex. Admin. Code § 22.74(c).

<sup>13</sup> See *Issues Related to the State of Disaster for the Coronavirus Disease 2019*, Docket No. 50664, Order Suspending Rules (Mar. 16, 2020).



pressing “search.” A list of documents filed in this docket will appear, which (with a few exceptions such as confidential documents, if any) can be accessed by clicking on the document number. The Commission’s procedural rules are available on the Commission’s website at <http://www.puc.texas.gov/agency/rulesnlaws/procrules/Procedural.aspx>. The procedural rules will govern the conduct of this case, and the parties are expected to comply with those rules.

Routine procedural and logistical questions may be directed to the ALJs’ administrative assistant, Erin Hurley, at 512-475-3419 or [erin.hurley@soah.texas.gov](mailto:erin.hurley@soah.texas.gov). SOAH support personnel may not provide advice or interpret orders or regulations for the parties.

**A. Filing**

Due to the coronavirus, the Commission is only accepting filings made online through the Commission’s Interchange e-file system at <https://interchange.puc.texas.gov/filer>. When making online filings for this case, use the “control number” 50200. The parties should review the Commission’s website for the latest information on how the coronavirus is impacting Commission filing requirements. **All filings must contain both the SOAH and Commission docket numbers.**

**B. Motions**

A motion seeking a continuance or extension of time **SHALL** propose a new date or dates and indicate whether the other parties agree to the new date or dates. Because the ALJs or a hearing room may not be available on a given day, proposing a range of dates is advisable. The ALJs will not contact parties to ascertain their position or to negotiate dates. In the absence of a ruling by the ALJs, the motion is not granted and the existing schedule remains in place.

Unless otherwise specified in the Commission’s procedural rules or an order issued in this case, any responses to a motion or other pleading shall be filed within **five working days** from

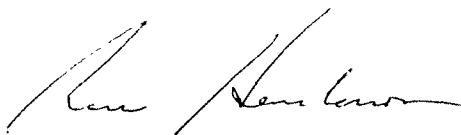
receipt of the motion or pleading. If a party does not respond, the ALJs will assume that the party agrees with or does not oppose the requested relief.

**C. Discovery**

Discovery may begin immediately in compliance with the Commission's procedural rules and orders issued in this case. Copies of requests for information (RFIs) and objections and responses to RFIs will not be provided to the ALJs. If a party files a motion to compel responses to discovery, the motion shall include every RFI and objection to which the motion applies. The motion must also include a certificate of conference and detail any efforts to resolve the dispute among the parties. Any affidavits supporting an objection, motion to compel, or response shall be attached to the relevant document. The ALJs will resolve discovery disputes based on the written documents, any sworn affidavits attached thereto, and materials, if any, provided for *in camera* inspection, unless the ALJs conclude that a prehearing conference on the discovery dispute should be held.

If a party seeks *in camera* review of documents in accordance with 16 Texas Administrative Code § 22.144(g), it will submit the documents to the ALJs at SOAH. Documents submitted for review should not be filed with the Commission filing clerk. If they are filed with the Commission filing clerk, even inadvertently, the documents may not be physically removed from the Commission. Further, any claim to privilege or exemption may be waived by the filing.

**SIGNED March 26, 2020.**



ROSS HENDERSON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



CASSANDRA QUINN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS