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Arthur C. D'Andrea  
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Commissioner

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## Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman  
Arthur C. D'Andrea, Commissioner  
Shelly Botkin, Commissioner

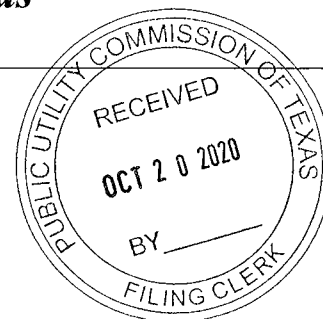
All Parties of Record

A handwritten signature, likely of Hunter Burkhalter, in dark ink.

FROM: Hunter Burkhalter  
Chief Administrative Law Judge

RE: **Docket No. 50552** – *Application of G. Kelly Brewer for a Class D Annual Rate Adjustment*

DATE: October 20, 2020



**Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.**

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the PFD.

Please place this docket on an open meeting agenda for the Commissioners' consideration. There is no deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadline for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

**If there are no corrections or exceptions, no response is necessary.**

ag  
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**DOCKET NO. 50552**

<b>APPLICATION OF G. KELLY</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>BREWER FOR A CLASS D ANNUAL</b>	<b>§</b>	
<b>RATE ADJUSTMENT</b>	<b>§</b>	<b>OF TEXAS</b>

**PROPOSAL FOR DECISION**

This Proposal for Decision (PFD) recommends that the Commission dismiss the application of G. Kelly Brewer for a Class D annual rate adjustment, due to the applicant's failure to prosecute and failure to amend the application such that it is sufficient after repeated determinations that the application is insufficient under 16 Texas Administrative Code (TAC) § 22.181(d)(6) and (d)(7), respectively. The administrative law judge (ALJ) recommends that the dismissal be without prejudice.

**I. Background**

On February 14, 2020, Mr. Brewer filed an application for a Class D annual rate adjustment under Texas Water Code (TWC) § 13.1872. As detailed in the proposed findings of fact and conclusions of law, the ALJ has, on multiple occasions, deemed the application deficient and instructed Mr. Brewer to cure the deficiencies. Mr. Brewer has filed nothing in this proceeding since his original application and has not responded to inquiries from Commission Staff nor to orders from the ALJ. For these reasons, the ALJ concludes that, under 16 TAC § 22.181(d)(6) and (d)(7), Mr. Brewer's application should be dismissed.

**II. Findings of Fact**

The ALJ makes the following findings of fact.

**Applicant**

1. Mr. Brewer operates, maintains, and controls facilities for providing water service in Orange County under certificate of convenience and necessity (CCN) number 12400.
2. According to his application, Mr. Brewer serves 270 active water connections.
3. On February 14, 2020, Mr. Brewer filed an application for a Class D annual rate adjustment.

4. On February 24, 2020, Commission Staff filed a notice advising that there were deficiencies in Mr. Brewer's application.
5. In Order No. 2 filed on February 25, 2020, the ALJ directed Mr. Brewer to submit, by March 20, 2020, the additional materials required to cure the deficiencies in his application.
6. Mr. Brewer did not respond to Order No. 2 and did not cure the deficiencies in his application.
7. In Order No. 3 filed on June 12, 2020, the ALJ deemed the application to be deficient, and directed Mr. Brewer to submit, by July 2, 2020, the additional materials required to cure the deficiencies in his application.
8. Mr. Brewer did not respond to Order No. 3 and did not cure the deficiencies in his application.
9. On July 23, 2020, Commission Staff filed a motion to dismiss on the grounds that Mr. Brewer had failed to prosecute his application.
10. In Order No. 4 filed on July 24, 2020, the ALJ denied the motion to dismiss, deemed that the application remained deficient, and directed Mr. Brewer to submit, by August 24, 2020, the additional materials required to cure the deficiencies.
11. Mr. Brewer did not respond to Order No. 4 and did not cure the deficiencies in his application.
12. On September 23, 2020, Commission Staff filed a second motion to dismiss, arguing for dismissal on the grounds that Mr. Brewer had failed to prosecute his application and failed to amend his application such that it is sufficient after repeated determinations that the application is insufficient.
13. Mr. Brewer did not respond to the second motion to dismiss.
14. Mr. Brewer has filed nothing in this docket since his February 14, 2020 application.
15. No hearing was held on the motion to dismiss, and none is necessary, because the relevant facts are established as a matter of law by the administrative record, of which the ALJ takes official notice.

### III. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has authority over this matter under TWC §§ 13.041 and 13.1872.
2. The ALJ may recommend to the Commission that it dismiss a proceeding, with or without prejudice, for failure to prosecute and failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient, under 16 TAC § 22.181(d)(6) and (7), respectively.
3. Under 16 TAC § 22.181(f)(2), when the ALJ recommends dismissal of a case, he or she must prepare a PFD, and the Commission must then consider the PFD as soon as is practicable.
4. Under 16 TAC § 22.181(d)(6) and (d)(7), this proceeding should be dismissed from the Commission docket, without prejudice, due to the applicant's failure to prosecute and failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient.

### IV. Proposed Ordering Provisions

The ALJ recommends the following ordering paragraphs.

1. Docket No. 50552 is dismissed, without prejudice.
2. The Commission denies all other motions, and any other requests for general or special relief if not expressly granted.

**Signed at Austin, Texas the 20th day of October 2020.**

PUBLIC UTILITY COMMISSION OF TEXAS

  
HUNPER BURKHALTER  
CHIEF ADMINISTRATIVE LAW JUDGE