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**SOAH DOCKET NO. 473-22-1659.WS
PUC DOCKET NO. 52758**

PETITION OF MCALLEN PUBLIC	§	BEFORE THE
UTILITY APPEALING WHOLESALE	§	
WATER RATES CHARGED BY	§	
HIDALGO COUNTY WATER	§	STATE OFFICE OF
IMPROVEMENT DISTRICT NO. 3 IN	§	
HIDALGO COUNTY, TEXAS	§	ADMINISTRATIVE HEARRINGS

**MOTION FOR REMAND AND
ALTERNATIVE REQUEST FOR CERTIFIED ISSUE**

McAllen Public Utility (“MPU” or “McAllen”) files with the State Office of Administrative Hearings (“SOAH”) this Motion for Remand of this docket to the Public Utility Commission of Texas (“PUC”) for reconsideration of the Preliminary Order. This motion and alternative request for certified issue is filed pursuant to 16 Tex. Admin. Code §§ 22.77 and 22.127 (“TAC”). It is timely.

I. BACKGROUND AND LEGAL AUTHORITY

Commission rules require the following with respect to whether the protested rate is charged pursuant to a written contract:

(b) For a petition or appeal to review a rate that is charged pursuant to a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on public interest.

(c) For a petition or appeal to review a rate that is not charged pursuant to a written contract, the commission will forward the petition or appeal to the State Office of Administrative Hearings to conduct an evidentiary hearing on the rate.¹

MPU was unaware of all relevant facts at the time it filed the Original Petition in this matter, which sought a public interest review. The Preliminary Order, therefore, includes only issues related to a public interest review under 16 TAC § 24.309-.313 and directs SOAH to conduct an evidentiary hearing on public interest.²

MPU became aware that the respondent, Hidalgo County Water Improvement District No. 3 (“HCWID 3”), is not charging the protested rate pursuant to a written contract during

¹ 16 TAC § 24.307(b) and (c).

² Preliminary Order on Phase I Issues at 1-6 (Feb. 11, 2022).

review of discovery responses provided by HCWID 3.³ On April 19, 2022, McAllen amended its petition in this matter to contend that HCWID 3 is not charging the protested rate pursuant to a written contract.

II. MOTION FOR REMAND

If the Commission determines that HCWID 3 is not charging the protested rate pursuant to a written contract, then Commission rules require that this docket proceed directly to an evidentiary hearing on the rate. Accordingly, MPU hereby moves for remand of this proceeding to the Commission so that the Commission can issue a revised Preliminary Order establishing issues to be considered by the Administrative Law Judges (“ALJs”) in an evidentiary hearing on the rate. In the alternative, MPU respectfully requests that the ALJs certify to the Commission the issue of whether HCWID 3 is charging the protested rate pursuant to a written contract.

III. ALTERNATIVE REQUEST FOR CERTIFIED ISSUE

Under 16 TAC § 22.127, the presiding officer may certify to the commission an issue that involves an ultimate finding of satisfaction of a statutory standard committed by law to the judgement of the Commission. Issues eligible for certification include the Commission’s interpretation of its rules and which rules are applicable to a proceeding. The issue now presented by the petition in this matter is whether 16 TAC § 24.307(b) or (c) applies to this proceeding. Accordingly, this issue is eligible for certification to the Commission under the applicable rule. MPU respectfully requests, if the ALJs decline to remand this proceeding as requested herein, that the ALJs alternatively certify the following issue to the Commission under 16 TAC § 22.127:

1. Does 16 TAC § 24.307(c) apply to this proceeding?
2. If so, should the Commission forward the First Amended Petition to the State Office of Administrative Hearings to conduct an evidentiary hearing on the rate?

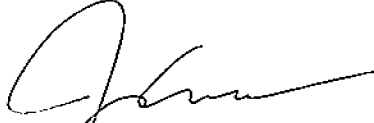
IV. CONCLUSION & PRAYER

For the foregoing reasons, MPU respectfully requests that the Commission (1) remand this proceeding to the Commission for reconsideration of the Preliminary Order, or in the alternative (2) certify the above-listed issues to the Commission. MPU further prays for all legal and equitable relief to which it is entitled.

³ Exhibit A, Affidavit of James Aldredge at 1.

Respectfully submitted,

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ROCHELLE & TOWNSEND, P.C.
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Austin, Texas 787012
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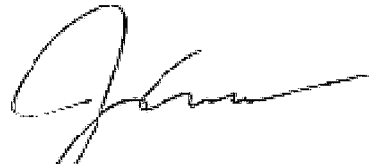


JAMES ALDREDGE
State Bar No. 24058514

ATTORNEY FOR
McALLEN PUBLIC UTILITY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by first class mail on this the 19th day of April, 2022 to all parties to this proceeding, in accordance with 16 TAC §§ 22.74.



JAMES ALDREDGE

Exhibit A

Affidavit of James Aldredge

**SOAH DOCKET NO. 473-22-1659.WS
PUC DOCKET NO. 52758**

PETITION OF MCALLEN PUBLIC UTILITY APPEALING WHOLESALE WATER RATES CHARGED BY HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3 IN HIDALGO COUNTY, TEXAS	§ § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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AFFIDAVIT OF JAMES ALDREDGE

On this day, appeared before me, the undersigned notary public, James Aldredge, attorney for McAllen Public Utility, and after I administered an oath to him, upon his oath, he said:

“My name is James Aldredge. I am the attorney of record in this proceeding for McAllen Public Utility (“MPU”). I am more than twenty-one (21) years of age and capable of making this affidavit. I have personal knowledge of the facts stated herein, which are true and correct.

1. On March 30, 2022, respondent in this docket, Hidalgo County Water Improvement District No. 3 (HCWID 3), served voluminous documents on MPU in response to MPU’s first RFIs filed in this docket on March 10, 2022.
2. During its review of HCWID 3’s document production and discovery responses, MPU discovered that HCWID 3’s Board of Directors adopted a rate for water service that is not authorized by any written contract between the parties. MPU became aware of that fact on April 15, 2022.”

FURTHER AFFIANT SAYETH NOT.

Signature Page Follows



James Aldredge
Attorney for McAllen Public Utility

STATE OF TEXAS

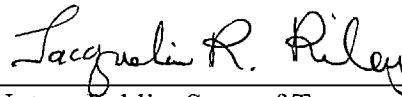
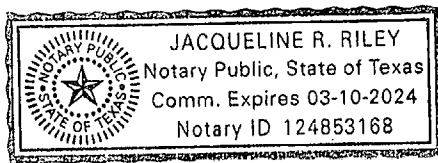
§

§

COUNTY OF TRAVIS

§

Sworn to and subscribed before me the undersigned authority on this the 19th day
of April, 2022.



Notary Public, State of Texas