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

PETITION OF MCALLEN PUBLIC	§	BEFORE THE STATE OFFICE
UTILITY APPEALING WHOLESALE	§	
WATER RATE CHARGED BY	§	OF
HIDALGO COUNTY WATER	§	
IMPROVEMENT DISTRICT NO. 3	§	ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 4
DENYING MCALLEN’S MOTION FOR REMAND AND
REQUEST FOR CERTIFIED ISSUE;
ABATING CASE; REQUIRING STATUS UPDATE; AND
ADDRESSING HIDALGO CO. WID NO. 3’S MOTION TO COMPEL**

I. PROCEDURAL HISTORY

On October 27, 2021, McAllen Public Utility (McAllen) filed a petition (the Petition) appealing the July 2021 decision of Hidalgo County Water Improvement District No. 3 (the District) to increase its rates for wholesale water service under Texas Water Code (TWC) § 12.013. In the Petition, McAllen requested that the Public Utility Commission (the Commission) establish interim rates under TWC § 12.013(e) and 16 Texas Administrative Code (TAC) § 24.307 to be in effect until such time as the Commission makes a final decision regarding this appeal, and compel the District to continue wholesaling water to McAllen under TWC § 12.013(e).

The Commission found the Petition was sufficient for further processing and referred it to the State Office of Administrative Hearings (SOAH) requesting assignment of an Administrative Law Judge (ALJ) to conduct a hearing and to issue a proposal for decision, if necessary. The Commission issued a preliminary order on February 11, 2022, in which the Commission determined that it was appropriate to proceed in two phases—phase one to allow the Commission to determine whether the appealed rates harm the public interest under TWC § 12.013(g); and phase two, if necessary, to allow the Commission to set just and reasonable rates. After a preliminary hearing was held on March 7, 2022, the ALJs issued SOAH Order No. 2 adopting the parties’ agreed procedural schedule, which included dates for, among other things, a preliminary hearing on interim rates and a hearing on the merits.

On April 19, 2022, McAllen filed an amended petition (the Amended Petition) alleging that the District's delivery charge originally appealed was not made "pursuant to a written contract."¹ The Amended Petition states that the matter should have been referred under 16 TAC § 24.307(c), which would proceed directly to an evidentiary hearing on the rate, rather than begin with a phase one hearing on the public interest. In the Amended Petition, McAllen also withdrew its request for interim rates and instead seeks a refund of the difference between rates actually charged and the rates fixed by the Commission. Concomitant to its filing of the Amended Petition, McAllen filed a Motion for Remand and Alternative Request for Certified Issue. Days later, on April 21, 2022, McAllen filed a Motion to Abate this matter pending ruling on its motions and resolution on them by the Commission. The District timely filed a response to the Amended Petition and McAllen's various motions on April 26, 2022, requesting that McAllen's motions be denied. On April 27, 2022, the District subsequently filed its own Motion to Compel discovery responses from McAllen, who the District alleges has improperly withheld responses pending a ruling on the Motion to Abate.

II. DENYING MCALLEN'S MOTIONS AND ABATING CASE

McAllen's Motions and the District's response to those motions cover a lot of history and particulars regarding the provision of water from McAllen to the District. There is also much made about the semantic differences between the phrases "pursuant to a contract," "under a contract," and "part of" a contract. However, the dispute can be distilled to its simplest form by McAllen's statement that "[the District] is not charging the protested rate pursuant to a written contract" and the District's response, which together show that there is an underlying dispute about whether there is a contract that governs this dispute or a dispute about the interpretation of the provisions of the contract. Neither question is appropriate for SOAH or the Commission to resolve. Hence, the Commission has adopted 16 TAC § 24.307(d), which states that "if the seller and buyer do not agree that the protested rate is charged pursuant to a written contract, the ALJ shall abate the proceedings until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction." The ALJs are not persuaded by the District's

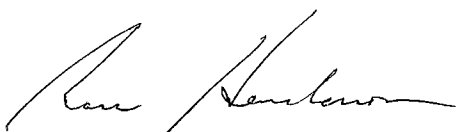
¹ McAllen Public Utility's First Amended Petition at 1 (Apr. 19, 2022).

assertion that the provision is inapplicable because there is a plain disagreement between the parties about whether rates were raised pursuant to a contract. Therefore, McAllen's Motion for Remand and Alternative Request for Certified Question and Motion to Abate are **DENIED**. Although abatement is denied for the reasons and purposes requested by McAllen, 16 TAC § 24.307(d) requires, and it is **ORDERED**, that this matter is **ABATED**, "until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction." Accordingly, **no later than August 1, 2022**, the parties are **FURTHER ORDERED** to confer and submit a status update that indicates whether the contract dispute over whether the protested rate is part of the contract has been resolved.

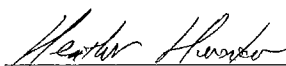
III. ADDRESSING THE DISTRICT'S MOTION TO COMPEL

Because the procedural schedule and all associated filing deadlines and hearings have been abated, the ALJs will defer ruling on the District's Motion to Compel until abatement has been lifted.

SIGNED May 2, 2022.



ROSS HENDERSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



HEATHER HUNZIKER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS