



Filing Receipt

Filing Date - 2023-12-04 02:33:18 PM

Control Number - 52758

Item Number - 66

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**PETITION OF MCALLEN PUBLIC
UTILITY APPEALING WHOLESALE
WATER RATE CHARGED BY HIDALGO COUNTY WATER
IMPROVEMENT DISTRICT NO. 3**

**ORDER NO. 5
REQUIRING A STATUS REPORT**

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) section 12.013. In the Petition, McAllen requested that the Public Utility Commission (the Commission) establish interim rates under TWC section 12.013(e) and 16 Texas Administrative Code (TAC) section 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 section 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 section 12.013(g); and phase two, if necessary, to allow the Commission to set just and reasonable rates. On May 2, 2022, the assigned SOAH ALJs abated this matter “until the contract dispute over whether the protested rate is part of the contract has been resolved by a court of proper jurisdiction,” pursuant to 16 TAC section 24.307(d). As of the District’s most recent status report filed August 1, 2022, and as confirmed in McAllen’s July 12, 2023 response to that status report, litigation between the parties is still pending on appeal in the Thirteenth District Court of Appeals.


In its Supplemental Preliminary Order issued November 30, 2023, the Commission determined that “an interim proposal for decision on jurisdictional matters is needed” and referred the jurisdictional matters to SOAH for an interim proposal for decision.

The parties shall confer and, **no later than December 18, 2023**, do one of the following:

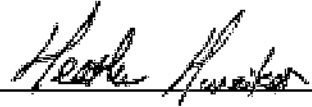
1. Jointly request a referral of the case to SOAH mediation.¹
2. Submit an agreed schedule in this case that includes (at a minimum) deadlines for: the close of all discovery; the pre-filing and pre-exchanging of exhibits and witness lists; and the pre-filing of evidentiary objections. The schedule should also include three proposed settings, in different weeks after March 2024, for the hearing (each setting should be for the number of days the parties realistically believe will be needed to hear the jurisdictional issues referred).
3. Request a prehearing conference to discuss prehearing matters, and include two proposed settings for such a conference, in different weeks after January 1, 2024. This conference will be held remotely via Zoom videoconference.

If the parties cannot reach an agreement, then each may individually submit a filing responsive to this order. If the parties fail to comply with the deadline, the ALJs will set the date of the hearing by order.

Signed December 4, 2023.



Ross Henderson,
Presiding Administrative Law Judge



Heather D. Hunziker,
Co-Presiding Administrative Law
Judge

¹ SOAH-hosted mediations are free of charge to the parties and do not preclude the parties from participating in a contested case if the mediation is unsuccessful. Additional information about SOAH mediations can be found on SOAH's website at <https://www.soah.texas.gov/mediation-alternative-dispute-resolution>.