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Public Utility Commission of Texas

TO: Stephen Journey
Commission Counsel

All Parties of Record

FROM: 
Hunter Burkhalter
Chief Administrative Law Judge

RE: **Docket No. 53068** – *Application of Simply Aquatics Inc. for a Class D Rate Adjustment*

DATE: May 24, 2022

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. 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.

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DOCKET NO. 53068

**APPLICATION OF SIMPLY
AQUATICS INC. FOR A
CLASS D RATE ADJUSTMENT**

**§
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§**

**PUBLIC UTILITY COMMISSION

OF TEXAS**

PROPOSAL FOR DECISION

In this Proposal for Decision (PFD), the administrative law judge (ALJ) recommends that the Commission dismiss the application of Simply Aquatics Inc. for a Class D rate adjustment due to its failure to amend the application such that it is sufficient after repeated determinations that the application was insufficient, under 16 Texas Administrative Code (TAC) § 22.181(d)(7). The ALJ recommends that the dismissal be without prejudice.

I. Findings of Fact

The ALJ makes the following findings of fact.

1. On January 10, 2022, Simply Aquatics filed an application for a class D rate adjustment for certificate of convenience and necessity (CCN) number 13259.
2. In Order No. 3 filed on February 28, 2022, the ALJ found that the application was insufficient and ordered Simply Aquatics to, by March 9, 2022, cure the insufficiencies in the application.
3. Simply Aquatics did not attempt to cure the insufficiencies in the application by March 9, 2022, or otherwise respond to Order No. 3.
4. In Order No. 4 filed on March 28, 2022, the ALJ found that the application remained insufficient and ordered Simply Aquatics to, by April 11, 2022, cure the insufficiencies in the application.
5. Simply Aquatics did not attempt to cure the insufficiencies in the application by April 11, 2022, or otherwise respond to Order No. 4.
6. On April 25, 2022, Commission Staff filed a motion to dismiss, without prejudice, under 16 TAC § 22.181(d)(7) for failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient.

7. In Order No. 5 filed on April 27, 2022, the ALJ found that the application remained insufficient, and ordered that the deadline for Simply Aquatics to respond to the motion to dismiss was May 16, 2022.
8. Simply Aquatics did not respond to the motion to dismiss.
9. Simply Aquatics has filed nothing in this docket since its January 10, 2022 application.
10. No hearing was held on the motion to dismiss.

II. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has authority over this matter under Texas Water Code § 13.1872.
2. Under 16 TAC § 22.181(d)(7), the ALJ may recommend to the Commission that it dismiss a proceeding, with or without prejudice, for failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient.
3. Under 16 TAC § 22.181(f)(2), dismissal of a case for reasons other than those specified in 16 TAC § 22.181(g)(1) or (2) requires preparation of a PFD.
4. Simply Aquatics failed to amend its application such that it is sufficient after repeated determinations that the application is insufficient, thereby warranting dismissal of this proceeding, without prejudice, under 16 TAC § 22.181(d)(7).


III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. Commission Staff's motion to dismiss is granted.
2. The Commission dismisses, without prejudice, this application due to Simply Aquatics' failure to amend its application such that it is sufficient after repeated determinations that the application is insufficient.
3. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 24th day of May 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE