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JACOB AND JENNIE HILBIG'S	§	PUBLIC UTILITY COMMISSION
APPEAL OF THE COST OF	§	
OBTAINING SERVICE FROM AQUA	§	OF TEXAS
WATER SUPPLY CORPORATION	§	

**COMMISSION STAFF'S RESPONSE TO AQUA WATER SUPPLY CORPORATION'S
MOTION TO DISMISS JACOB AND JENNIE HILBIG'S APPEAL FO THE COST TO
OBTAIN SERVICE**

On February 3, 2022, Jacob and Jennie Hilbig (Appellants) filed an appeal of the cost of obtaining service from Aqua Water Supply Corporation (Aqua WSC) under Texas Water Code (TWC) § 13.043(g) and 16 Texas Administrative Code (TAC) § 24.101(g).

On April 11, 2022, Aqua WSC filed a Response and Motion to Dismiss for lack of jurisdiction under 16 TAC § 22.181(d)(1). According to 16 TAC § 22.78(a), parties have five working days after receipt of the pleading to file a response. As the Public Utility Commission of Texas (Commission) was closed on April 15, 2022,¹ five working days from April 11, 2022, is April 19, 2022. Therefore, this pleading is timely filed.

**I. RESPONSE TO AQUA WATER SUPPLY CORPORATION'S MOTION TO
DISMISS**

In its motion to dismiss, Aqua WSC argues that the Appellants' complaint should be dismissed for lack of jurisdiction under 16 TAC § 22.181(d)(1), because Appellants failed to file an appeal within 90 days of receiving written notice of the amount to be paid to obtain service, as required by TWC § 13.043(g) and 16 TAC § 24.101(g).² Specifically, Aqua WSC points to its July 8, 2021 letter to Dustin Wilhelm and Jacob Hilbig where Aqua WSC provided written notice of the amount to be paid to obtain service in response to Mr. Wilhelm and Mr. Hilbig's request for a joint feasibility study for their adjoining properties.³ Aqua WSC argues that the July 8, 2021 letter should serve as the written response used to calculate the 90-day deadline, since that letter was

¹ PUC Calendar, available at <https://www.puc.texas.gov/agency/calendar/Default.aspx> (last accessed Apr. 13, 2022).

² Motion to Dismiss at 2-3 (Apr. 11, 2022).

³ *Id.* at 2-3 and Exhibit B.

responding to what Aqua WSC argues was the applicant's initial request.⁴ The Staff (Staff) of the Commission disagrees.

While Aqua WSC did provide written notice of the amount to be paid for service to Mr. Wilhelm and Mr. Hilbig on July 8, 2021, this is not the only time Aqua WSC responded to a request for feasibility study. On December 8, 2021, Jacob and Jennie Hilbig submitted another request for feasibility study for their property alone.⁵ Aqua WSC sent the Hilbigs its response on December 20, 2021. This December 20, 2021 notice is completely different from the notice Aqua WSC provided on July 8, 2021. For example, the December 20, 2021 written notice contains different item quantities, unit prices, estimated costs, and line items from the written notice provided on July 8, 2021.⁶ The December 20, 2021 notice is also for one property, as opposed to two adjoining properties. The requests for service are also different. On May 11, 2021, Mr. Hilbig joined Mr. Wilhelm to request a joint estimate of the cost of service for their adjoining properties.⁷ As mentioned above, Mr. and Mrs. Hilbig subsequently submitted another request to Aqua for an estimate of the cost of service for their property alone.⁸ These two requests involve different parties for different properties and generated two different estimates from Aqua WSC. Accordingly, Staff contends that the two notices from Aqua WSC are completely different and should be treated as such in calculating the 90-day deadline.

Even if the requests had been similar, Commission precedent demonstrates that two similar requests should nonetheless be treated as two different requests in calculating the 90-day deadline under TWC § 13.043(g) and 16 TAC § 24.101(g). In Docket No. 52166, Robert Wynne initially requested service and received written notice of the amount to be paid to obtain service on December 11, 2020, which he did not appeal.⁹ Mr. Wynne requested service again on April 12, 2021, and received an estimate that was appealed.¹⁰ The water supply corporation in this case made a similar argument to Aqua WSC's argument that the December 11, 2020 written notice should be

⁴ *Id.* at 2-3.

⁵ *Id.* at Exhibit D.

⁶ *Compare* Motion to Dismiss, Exhibit B at 11, *and* Motion to Dismiss, Exhibit E at 18.

⁷ Motion to Dismiss at Exhibit A.

⁸ *Id.* at Exhibit D.

⁹ *Appeal of Robert Wynne of the Cost of Obtaining Service from El Oso Water Supply Corporation*, Docket No. 52166, Original Response at 5 (Jun. 3, 2022) (Wynne Response).

¹⁰ Docket No. 52166, Appeal of Robert Wynne (May 27, 2021).

used to calculate the 90-day deadline.¹¹ Despite the fact that Mr. Wynne's April request involved the same property for the same party requesting the same initial service as the December request, the administrative law judge in that docket still found that the appeal application and notice was sufficient and declined to dismiss the case for failing to abide by the 90-day deadline.¹²

Considering the foregoing Commission precedent and the fact that the two requests and responses were so different, Staff contends that the 90-day deadline should be calculated from December 20, 2021, the date Aqua WSC responded to the Hilbig's December 8, 2021 request for service. Accordingly, Staff stands by its recommendation that the appeal petition is administratively complete¹³ and does not agree that the petition should be dismissed for lack of jurisdiction.

II. CONCLUSION

For the reasons detailed above, Staff respectfully requests that an order be issued consistent with this response and that Aqua WSC's motion to dismiss be denied.

¹¹ Wynne Response at 5.

¹² Docket No. 52166, Order Nos. 3 and 4 (Jul. 20, 2021 and Aug. 16, 2021, respectively).

¹³ Commission Staff's Recommendation on Administrative Completeness of the Petition and Notice (Mar. 7, 2022).

Dated: April 19, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on April 19, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch