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BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS

APPLICATION OF CSWR-TEXAS UTILITY OPERATING
COMPANY, LLC FOR AUTHORITY TO CHANGE RATES

SOAH ORDER NO. 3
MEMORIALIZING PREHEARING CONFERENCE; ADOPTING
PROCEDURAL SCHEDULE; ADVISORY TO DESIGNATED
REPRESENTATIVES; SCHEDULING PREHEARING CONFERENCE AND
HEARING ON THE MERITS

I. MEMORIALIZING PREHEARING CONFERENCE

On June 15, 2023, the undersigned Administrative Law Judges (ALJs) convened a prehearing conference, and CSWR-Texas Utility Operating Company, LLC (CSWR-Texas), the Office of the Public Utility Counsel (OPUC), staff (Staff) of the Public Utility Commission of Texas (Commission), and numerous intervenors

appeared and participated.¹ Various matters were discussed during the prehearing conference that are addressed in detail below.

A. GRANTING INTERVENORS

Requests to intervene by the following individuals' or entities' were **GRANTED**:²

Brenda Bermudez; Lane Transou; Michael Kammlah; James Kelly; Mike and Judy Tinsley; Patsy Warzecha; Henrietta Towery; Tim Baker; Oliver Taylor; Bob Hill; William Reimer; Heather Thompson; Gary Ney; Kevin Bender; Elaine Jones; William and Sue Fellers; Mark Durbin; Karin Smitz; Barry Wolf; Walter Sajdak; Stephen Davis; Heather Baughman; Jimmy Stevens; JoAnn Fey; the Timber Lane Loop Group;³ Sharon Odegar; Janine and Glen Pytlik; Kriston Crow; Debra and Chris Schmidt; Stan Price; Jim Reiber; Brad Thompson; Carrie Wilcoxon; Joseph Cook; Thomas and Barbara Burns; Lou Scantland; Tammy Hodges; Alison Wallin; Ronnie Steffenauer; Dan and Brenda Kohlert; Hector Narvaez; Carina Cardenas; Cindy and Chuck Roberts; Andrew Clogg; Pat and Larry Stansbury; Larry Miller; Tammy Wursthorn; Samantha Bagley; Chrissy Bentley; Christina Duajardo; Curtis Corrals; Kim Hilmer;

¹ See the transcript for a full list of appearances.

² Individuals previously admitted as a party are not listed above.

³ Individuals previously admitted as a party are not listed above.

Scott Heitshusen; Shelby Cauley; Jorge Reyes; Clarice Lowe; Nathaniel Hannan; Oscar Ahumada; and Alison Rieber.⁴

The following persons filed late motions to intervene: John Thompson (June 19, 2023) and Michael Sweat (June 26, 2023). It is ordered that CSWR-Texas **SHALL** file a motion by **June 30, 2023**, indicating its position on these late-filed motions to intervene.⁵

B. ALIGNING PARTIES

Pursuant to 16 Texas Administrative Code § (Rule) 22.105, parties may be aligned for the purposes of participating in a hearing if the parties have the same positions on issues of fact or law and the ALJs determine such alignment is necessary. Due to the approximate 340 intervenors representing approximately 50 separate water or wastewater systems protesting CSWR-Texas's application to change rates, the ALJs find that alignment is necessary to support an efficient and fair hearing. Therefore, the ALJs notified the intervenors that they would be aligned into groups based on the water or wastewater system for which they receive service from CSWR-Texas. The ALJs required CSWR-Texas to file a list of the intervenors and their applicable systems by June 21, 2023, and required the intervenors to confer with each other and file notice of the designated representatives for each system by June 22.

⁴ A majority of the intervenors identified above did not provide their contact information by the deadline set at the prehearing conference and therefore SOAH is unable to serve them with this order.

⁵ The deadline to request intervention was at the June 15 prehearing conference. *See* SOAH Order No. 1

On June 21, CSWR-Texas filed a motion (1) requesting that the intervenors be aligned by tariff rather than by system,⁶ (2) requesting that the ALJs limit the number of representatives of aligned parties who may conduct cross examination and impose reasonable time limits for the hearing on the merits, and (3) providing a list of the intervenors that they had information for and noting their corresponding systems.⁷ CSWR-Texas argues that alignment is appropriate in this proceeding because customers being served under the same tariff are similarly affected by its proposed rate change and that it will avoid duplication of effort, thereby effectuating administrative efficiency and mitigating rate case expenses borne by all parties. As noted in its motion, CSWR-Texas may request and may be entitled to recover the reasonable and necessary expenses it incurs in presenting this case through a surcharge to ratepayers as outlined in Rule 24.22.⁸

CSWR-Texas's motion is **GRANTED IN PART and DENIED IN PART**. As ordered at the prehearing conference, the intervenors shall be aligned by system, not tariff. The ALJs agree that the number of individuals who may conduct cross-examination must be limited. Therefore, each system's designated representative shall be the sole individual authorized to conduct cross-examination at the hearing. The ALJs withhold setting time limits for the hearing at this time but will impose such limits at the hearing if necessary.

⁶ CSWR-Texas indicates the intervenors are served under approximately 30 different tariffs.

⁷ SWR-Texas supplemented that list the following day. The lists of intervenors and their corresponding systems/tariffs are included in CSWR-Texas's initial and supplemental motions to align filed on June 21 and 22, 2023, respectively.

⁸ The rate case expenses that CSWR-Texas may request to recover from ratepayers could include the expenses it incurs for attorney fees; expert witness fees; and other miscellaneous costs to file its application, respond to discovery, and otherwise participate in the adjudication of this proceeding. See 16 Tex. Admin. Code § 24.44(a)-(b).

The effect of designating a representative for each system will be that all intervenors except the designated representatives shall be removed from the service list and the designed representatives shall accept all pleadings and correspondence relating to this proceeding and forward that information to the other intervenors with whom he or she is aligned.⁹ The designated representative shall also be responsible for filing any pleadings or other correspondence, including a statement of position or testimony (the designated representative can compile multiple intervenors' direct testimony in one filing) on behalf of their aligned group.

As of June 26, 2023, only four systems have designated a representative:

System	Designated Representative
TX-Lake Limestone Cove	David Lagerlef
TX-Leon Springs	Ron Moss, on behalf of Dominion Home Owners Association
TX-Timberlane	Lauri Moore
TX-Treetop	Heather Thompson

The deadline to file a motion designating a representative for the remaining systems is extended to June 30, 2023. Failure to timely name a designated representative by that deadline will result in the following individuals being designated as the representative for the following systems:¹⁰

⁹ All intervenors may access the filings in this proceeding on the Commission's Interchange Database. The instructions for searching for and accessing such files are detailed in SOAH Order No. 1.

¹⁰ The intervenors identified in the table represent the first named party for each system indicated in CSWR-Texas's list of intervenors.

System	Designated Representative
Abraxas	Willie Evans
Aero Valley	Stan Price
Woodland Harbor	Barnie Stevens
Amberwood	Kertecia Hampton
Aransas Bay	Andrew Duncan
Big Woods Springs	Richard Hodges
Willow	Jamie Rose
Emerald Forest Company	Jennifer Washburn
Grande Casa	Carolyn Newhall
Lakeview Ranchettes	Randal G. Murphy
Red Oak	Sunny Akhigbe
Spanish Grant	Steven Stacks
Chaparral Water	Zenadia Arias
Coleto	Regina Johnston
Copano Cove	Don Clark
Copano Ridge	Joan Joslin
Copano Heights	Jay Carroll
Council Creek	Yanch Hu
South Council Creek	David Cardiff
South Silver Creek	Roy Salinas
Quiet Village	Ken Baker
Freemont Water	Fred Gregory
Waterco	Judy Bolduc
Laguna Tres	Richard Doerr
Laguna Vista	David Calton
Oak Hills Ranch	Mary Levensailor
Country Squire	Stuart Greer
Longford Place	Joseph Cook
Mangum Estates	Rose Adkinson
North Victoria	John Wallace
Lakeside Estates	Nolana Jalowy
Meadowview Estates	Jerod Harbes
Settlers Crossing	Elizabeth Zubik
Settlers Estates	Barry Wolf
Settlers Meadows	Keith Answorth

Woodlands (Rocket)	Samantha Bagley
Arrowhead	Kheirabadi Bijan
Hickory Hill	Janet Greenwood
Shady Oaks	James Bowles
La Playa	Lane Transou
Goode City	Edgar Torres
Pelican Isle	Larry Erick
Tri County 2	Danny Kohlert
Tri County 3	John Kittlesen
Tri County 4	Gail Mayer
TX-Walnut Bend	Terry C. Trevathan, Jr.

II. ADOPTING PROCEDURAL SCHEDULE

On June 16, 2023, CSWR-Texas filed a joint proposed procedural schedule on behalf of itself, Staff, and OPUC. No objections were filed.

The proposed procedural schedule does not provide for sufficient time for post-hearing briefing, 60 days for the ALJs' to write the proposal for decision (PFD), exceptions and replies to exceptions, and the Commission's review of the PFD prior to the November 30, 2023 effective date.¹¹ Accordingly, the ALJs have modified the schedule to include deadlines for post-hearing briefing and a deadline for CSWR-Texas to file a motion notifying the Commission as to whether it will extend the effective date to accommodate sufficient time for exceptions, replies to exceptions, and review of the PFD by the Commission before November 30. Accordingly, the

¹¹ Based on the ALJs' estimation, to provide sufficient timing for the events described prior to the current effective date, a hearing would need to occur August 11-12, 2023, approximately. These hearing dates would allow for 2 weeks for post-hearing briefing, 60 days for the PFD, 2 weeks for exceptions and replies to exceptions, and 3 weeks for the Commission to review the PFD prior to issuing a final order at the November 30, 2023 open meeting.

proposed schedule, as modified below, is **ADOPTED** and shall govern this proceeding:

Event	Date
Discovery ends on CSWR-Texas's Direct Testimony	June 29, 2023
Objections to CSWR-Texas's Direct Testimony	June 30, 2023
Intervenors' Direct Testimony or Statement of Position	July 14, 2023¹²
Objections to Intervenors' Direct Testimony	July 21, 2023
Staff's Direct Testimony	August 4, 2023
Objections to Staff's Direct Testimony	August 11, 2023
Settlement Conference ¹³	August 18, 2023
Discovery Ends on Intervenors' /Staff's Direct Testimony	August 18, 2023
CS-WR-Texas's Rebuttal Testimony	August 25, 2023
Intervenors' and Staff's Cross-Rebuttal Testimony	August 25, 2023
Discovery Ends on Rebuttal and Cross-Rebuttal Testimony	September 1, 2023
Prehearing Conference and Submission of Exhibits, as described below	September 5, 2023
Hearing on the Merits	September 7-8, 2023
Post-Hearing Initial Briefs	September 15, 2023
Post-Hearing Reply Briefs	September 22, 2023
Issuance of Proposal for Decision	November 21, 2023
Deadline for CSWR-Texas to Notify Commission of Any Extension to the November 30, 2023 Effective Date	November 22, 2023
Open Meeting	November 30, 2023
Effective Date	November 30, 2023

¹² See below for advisory to the designated representatives regarding this deadline.

¹³ The settlement conference will begin at 10:00 a.m. (CT). CSWR-Texas shall provide the designated representatives, Staff, and OPUC with the call-in information closer to the date of the conference.

If CSWR-Texas, Staff, and OPUC choose to propose an alternative joint procedural schedule, they may do so **no later than June 29, 2023**. If an alternative schedule is proposed, designated representatives may file objections to that schedule **by July 5, 2023**.

The parties **SHALL** comply with the following prehearing requirements and deadlines regarding prefiling exhibits and witness identification. **No later than September 5, 2023:**

1. Each party **SHALL** file a witness list identifying all witnesses the party expects to call to testify during the hearing. The party shall also identify its witnesses, if any, for whom all other parties have waived cross-examination.
2. Each party **SHALL** file a list of all exhibits it intends to offer at the hearing (including, for example, on cross-examination).
3. The parties **SHALL** deliver:
 - a. Judges copy: Two hard copies of all exhibits the party intends to offer at hearing to State Office of Administrative Hearings (SOAH), Room 504, 5th Floor, William P. Clements Building, 300 West 15th Street, Austin, Texas 78701; and
 - b. Record copy: An electronic copy (USB) of all exhibits the party intends to offer along with a copy of the party's witness list and exhibit list to the court reporter to be maintained as the record copy. The parties shall coordinate with the court reporter on where to send their exhibits.¹⁴

¹⁴ Designated representatives may contact CSWR-Texas's representatives for information regarding the court reporter that will be retained for the hearing on the merits.

4. The parties **SHALL** exchange with each other a marked copy of all exhibits they intend to offer.¹⁵
5. If the parties plan to use a file-sharing site to exchange exhibits with each other, the party that will host the site shall email the name of the file-sharing site to be used to the ALJ's administrative assistant Erin Hurley at erin.hurley@soah.texas.gov, **as soon as practicable, but no later than September 5, 2023**, so that SOAH's IT personnel can determine whether it meets SOAH's security requirements so that the ALJs can utilize the file-sharing site as well.

All Exhibits **SHALL** be marked with the offering party's name and the exhibit number. Exhibits should be numbered sequentially, and multipage documents shall be paginated or Bates-stamped. Exhibits not meeting a requirement in this order may not be admitted into the record absent good cause.

Prior to the hearing, the parties **SHALL** provide to witnesses all documents necessary for their effective participation in the hearing. Parties should also speak to the witnesses they intend to call to testify and provide the necessary videoconferencing information.

III. ADVISORY REGARDING STATEMENTS OF POSITION/PREFILED TESTIMONY

Pursuant to Rule 22.124(a), parties will be required to file either written testimony or a statement of position in this case. **A request to intervene is not a statement of position or direct testimony.**

¹⁵ The parties may agree among themselves on the method of delivery to each other and may agree to forego delivery of marked copies of exhibits they have already received, relying on the exhibit lists to identify the offering party and exhibit number.

A statement of position clarifies a party's position but is not sworn-to, is not evidence, and is not subject to cross-examination. Prefiled direct testimony, on the other hand, is sworn-to, is evidence, and is subject to cross-examination. As addressed above, the deadline for the designated representatives (on behalf of their entire aligned group) to file either a statement of position or direct testimony is July 14, 2023. **Failure to timely file either written direct testimony or a position statement will result in dismissal as a party from this proceeding and prohibition from participating in the hearing on the merits and briefing, in accordance with Rules 22.124 and 22.161.**

Intervenors are encouraged to review the guidance document attached to this Order titled "Information for Unrepresented Parties" that provides an overview of the contested case process.

CSWR-Texas **SHALL file no later than July 28, 2023**, a list of the designated representatives that did not file written testimony or a statement of position by July 14 and therefore which aligned groups should be dismissed from the proceeding.

IV. SCHEDULING PREHEARING CONFERENCE

A prehearing conference will convene at **10:00 a.m. (CT) on September 5, 2023**, remotely via Zoom videoconference. The parties may attend in one of these ways:

To join by computer or smart device, go to <https://soah-texas.zoomgov.com> and enter:

Meeting ID: 160 112 2526
Video Passcode: PUC885


To join by telephone (audio only), call +1 669 254 5252, and enter:

Meeting ID: 160 112 2526
Telephone Passcode: 622464

V. SCHEDULING HEARING ON THE MERITS

A hearing will be held at **9:00 a.m. (CT) on September 7, 2023**, remotely via Zoom videoconference. The hearing is expected to last two-days. CSWR-Texas shall retain a court reporter to transcribe the hearing and it will be the official record of the proceeding. The parties may attend the hearing using the same information as the prehearing conference.

Signed June 27, 2023



Meaghan Bailey,
Administrative Law Judge



Christiaan Siano,
Administrative Law Judge

INFORMATION FOR UNREPRESENTED PARTIES

Overview of Contested Case Process

- This contested case hearing will proceed like a trial – with witnesses testifying under oath, subject to cross-examination.
- The administrative law judges (ALJs) preside over this hearing process. The ALJs work for the State Office of Administrative Hearings (SOAH). SOAH is a state agency that provides impartial judges to preside over contested case hearings. SOAH is separate from all other state agencies, including the Public Utility Commission of Texas (PUC or Commission).
- At the end of the hearing process, the ALJs will make a written recommendation to the Commission about CSWR-Texas's proposed rate change. This is called a Proposal for Decision (PFD).
- The final decision maker will be the five-member Commission.
- The staff of the PUC (Staff) participates in the hearing as a party. Staff is distinct from the five-member Commission that will ultimately decide this case.

The Prehearing Phase

- Two primary things happen before hearing: (1) discovery, and (2) filing of direct testimony and/or position statements. Deadlines for these activities will be established either at the prehearing or shortly thereafter by an order from the ALJs.
- Discovery is the formalized exchange of information among parties.
- Unlike some trials in district court, every witness's direct testimony will be written down and filed prior to the hearing. At the hearing, each witness will take the stand and be sworn in, and the witness's direct testimony will be offered as evidence. The witness will then be subject to cross-examination by the parties. (Sometimes, parties will waive cross-examination of a witness.)
- Every party in this case must file either testimony or a statement of position by the deadline established in the procedural schedule. Parties failing to do so will be dismissed and not allowed to participate further.
- Testimony is evidence and includes assertions of fact (for example, about current rates, prior rate increases or equipment upgrades for their system, the history and use of property, etc.). A position statement is argument, not evidence. There will be no cross-examination at the hearing of a party who has only filed a position statement. Assertions of fact in a position statement cannot be considered by the ALJs unless they are in some other document or testimony admitted in evidence. A party filing a position statement may ask questions of testifying witnesses.¹
- The designated representatives for each system are responsible for filing a statement of position or direct testimony (can be the testimonies from multiple intervenors within their aligned group) on behalf of their aligned group.

The Hearing

- The hearing will be convened through the Zoom videoconferencing platform.
- All witnesses who prefiled testimony must appear at the hearing unless all parties waive cross examination for them.
- Prefiled testimony will be admitted (subject to objections based on the rules of evidence), and witnesses will be cross-examined. Testimony not admitted because the witness failed to appear will be treated as a statement of position.

¹ Only the designated representatives are authorized to cross-examine testifying witnesses.

The Post-Hearing Phase

- After the hearing, parties will file written closing arguments (briefs) according to the deadlines established in the schedule.
- The ALJs will make recommendations to the Commission in their PFD.
- The ALJs' recommendation will be based on the facts (established through evidence introduced in the hearing) and the applicable law.
- Parties who disagree with the ALJs' recommendation will be able to file written objections (exceptions) to the PFD.
- The Commission will make a final decision at a meeting open to the public. The Commission can adopt or reject the ALJs' recommendation.
- The effective date of CSWR-Texas's proposed rate change was suspended to November 30, 2023. *See Texas Water Code section 13.1871(g).*

Filing and Serving Documents in the Case

- Whenever any party formally files any document in this case (such as a motion, request for discovery, response to discovery, testimony, or statement of position), it must file the document with the PUC.
- Filings at the Commission shall occur by 3:00 p.m. on the date in question unless otherwise specified.
- Under the Commission's Second Order entered in Docket No. 50664, all parties must file any pleading or document with the Commission solely through the Interchange on the Commission's website (<https://interchange.puc.texas.gov/filer>) and provide notice, by e-mail, to all other parties that the pleading or document has been filed with the Commission, unless otherwise ordered by the ALJ. It will be incumbent upon all other parties to obtain a copy of the pleading or document by accessing the Interchange. Filings should not be made at SOAH. All filings must contain both the SOAH and PUC docket numbers. (See the top of the first page of this information sheet.)
- At the same time a party files a motion, testimony, or a statement of position with the PUC, **the party must also serve all other parties in the case by sending them a copy of the document.** The designated representatives may contact the ALJs' administrative assistant Erin Hurley at erin.hurley@soah.texas.gov to obtain the service list, setting out each party and the party's address (and e-mail address, if available).
- Discovery requests and responses must be filed with the PUC, but only have to be served on the party to whom the request or response is directed.
- The PUC has an on-line document interchange that is a convenient way of keeping track of documents filed in a case. All PUC filings are available for viewing and downloading from the Commission's website at <http://interchange.puc.texas.gov>. Once there, type in the control number and press "enter." A list of documents filed in this case will appear and you may access those documents by clicking on the document number, provided that the document number is underlined and in blue font.