



## **Filing Receipt**

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**Item Number - 74**

**SOAH DOCKET NO. 473-24-13127**  
**PUC DOCKET NO. 54617**

<b>APPLICATION OF TEXAS WATER</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>UTILITIES, L.P. AND SOUTHERN</b>	<b>§</b>	
<b>HORIZONS DEVELOPMENT, INC.</b>	<b>§</b>	
<b>FOR SALE, TRANSFER, OR MERGER</b>	<b>§</b>	<b>OF</b>
<b>OF FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN LIBERTY AND</b>	<b>§</b>	
<b>MONTGOMERY COUNTIES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**OFFICE OF PUBLIC UTILITY COUNSEL’S PROPOSED PROCEDURAL SCHEDULE**

The Office of Public Utility Counsel (“OPUC”), representing the interests of residential and small commercial consumers, files this response to Order No. 2 directing the parties to file competing schedules if they are not able to agree on a joint proposed procedural schedule.<sup>1</sup> Pursuant to Order No. 2, the deadline for the parties to submit a proposed procedural schedule is April 1, 2024.<sup>2</sup> Therefore, this response is timely filed.

**I. RESPONSE**

OPUC participated in good faith in negotiations of an agreed procedural schedule with all the parties. The parties were not able to agree to a procedural schedule. OPUC generally prefers that Statements of Position are due in accordance with 16 Texas Administrative Code (“TAC”) § 22.124, as the three working days before the hearing generally does not add unjustified burden and expense to proceedings. However, OPUC can agree to the proposed June 5, 2024, deadline as discussed by the parties because this is a smaller sale, transfer, or merger proceeding. Conversely, OPUC cannot agree to the parties’ proposed term of, “Any party that does not file Direct Testimony or a Statement of Position by the deadline established in the procedural schedule will be stricken as a party.” OPUC believes that this term does not comply with 16 TAC § 22.124(a) because only the presiding officer may implement sanctions. It is not within the power of the parties to agree to enforce a future sanction.

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<sup>1</sup> *Application of Texas Water Utilities, LP and Southern Horizons Development, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Liberty and Montgomery Counties*, Docket No. 54617, SOAH Order No. 2 (Mar. 21, 2024).

<sup>2</sup> *Id.*

Additionally, agreeing to this provision could potentially unfairly prejudice the unrepresented, ratepayer parties in this proceeding. The unrepresented intervenors like we have in this case are generally not sophisticated enough to navigate the intricacies of the Commission and SOAH rules relating to contested administrative proceedings. Striking intervenors from a proceeding is a “nuclear” sanction that the ALJ or the Commission should exercise with caution. This sanction should not be determined in a procedural schedule by the applicant. Even when they fail to file testimony or statement of position some intervenors do participate in settlement conference or mediation. In this case, all the parties agree to a deadline of June 5, 2024, for statement of position; and a deadline of June 11, 2024, for a settlement conference.

As a compromise in this case, OPUC recommends that if an unrepresented intervenor fails to file direct testimony or statement of position, but participates in the settlement conference, the intervenor should not be stricken and must be allowed to participate in this proceeding. However, if an intervenor fails to file direct testimony, or statement of position and fails to participate in the settlement conference, the intervenor should be stricken after a motion to strike is filed and the ALJ determines that such intervenor should be stricken.

Therefore, OPUC would like to propose the following procedural schedule:

<b>Event</b>	<b>Date</b>
Applicants’ Direct Testimony	April 18, 2024
Objections to Applicants’ Direct Testimony	April 25, 2024
Response to Objections to Applicants’ Direct Testimony	May 2, 2024
Intervenor Direct Testimony	May 9, 2024
Deadline for Discovery on Applicants’ Direct Testimony	May 9, 2024
Objections to Intervenor Direct Testimony	May 16, 2024
Response to Objections to Intervenor Direct Testimony	May 23, 2024
Staff Direct Testimony	May 30, 2024
Statements of Position	June 5, 2024
Objections to Staff Direct Testimony	June 6, 2024
Settlement Conference	June 11, 2024
Response to Objections to Staff Direct Testimony	June 13, 2024
Deadline for discovery on Intervenor and Staff Direct Testimony	June 20, 2024
Applicants’ Rebuttal Testimony Cross-Rebuttal Testimony	June 20, 2024

Objections to Applicants' Rebuttal Testimony Objections to Cross-Rebuttal Testimony	July 2, 2024
Response to Objections to Applicants' Rebuttal Testimony Response to Objections to Cross-Rebuttal Testimony	July 8, 2024
Hearing on the Merits	July 11-12, 2024; July 16-17, 2024; or July 23-24, 2024

In addition to the proposed schedule, OPUC can agree to the following:

1. Testimony drafts and the emails transmitting them are not discoverable.
2. Email service is a valid method of service.
3. Any party that does not file Direct Testimony may not file Cross-Rebuttal Testimony.
4. Intervenors may only file cross-rebuttal addressing Staff's Direct Testimony and the Direct Testimony of other Intervenors and Staff may only file cross-rebuttal addressing Intervenors Direct Testimony.
5. Discovery requests received after 3:00 pm are deemed to have been received the following business day.
6. For discovery requests on Intervenor Direct Testimony, Staff Direct Testimony, Applicants' Rebuttal Testimony, and Cross-Rebuttal Testimony:
  - a. Objections are due within five calendar days of the date the request is received.
  - b. Motions to compel are due within three working days of the date the objection is filed.
  - c. Responses are due within 10 calendar days of the date the request is received.

Date: April 1, 2024

Respectfully submitted,  
Courtney Hjaltman  
Chief Executive and Public Counsel  
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**ATTORNEYS FOR THE  
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**CERTIFICATE OF SERVICE**  
SOAH DOCKET NO. 473-24-13127  
PUC DOCKET NO. 54617

I hereby certify that a copy of the foregoing document was served on all parties of record in this proceeding on this 1<sup>st</sup> day of April 2024 by facsimile, electronic mail, and/or first class, U.S. Mail



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Kourtnee Jinks