



Control Number: 48801



Item Number: 23

Addendum StartPage: 0

DOCKET NO. 48801

PETITION OF T.J. BRADSHAW
CONSTRUCTION, LTD. TO AMEND
JONAH SPECIAL UTILITY
DISTRICT'S CERTIFICATES OF
CONVENIENCE AND NECESSITY
IN WILLIAMSON COUNTY BY
EXPEDITED RELEASE

§
§
§
§
§
§
§

PUBLIC UTILITY COMMISSION

OF TEXAS

RECEIVED

2019 JUN 12 PM 1:19

PUBLIC UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF'S RESPONSE TO JONAH WATER SPECIAL UTILITY
DISTRICT'S MOTION TO DISMISS**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff's Response to Jonah Water Special Utility District's Motion to Dismiss and would show the following:

I. BACKGROUND

On October 18, 2018, T.J. Bradshaw Construction, Ltd. (Petitioner) filed a petition with the Commission for expedited release from Jonah Special Utility District's (District) water Certificates of Convenience and Necessity (CCN) No. 10970 and sewer CCN No. 21053 pursuant to Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(l). On October 23, 2018, Petitioner amended its application.

Petitioner asserts that it owns 256.33 acres of contiguous property in Williamson County (Property), located within the boundaries of the District's water and sewer CCNs. Petitioner also asserts that the Property is not receiving water or sewer service.

On December 21, 2018 Staff filed an Amended Recommendation on Final Disposition, recommending that the Commission approve the application.

On May 24, 2019, the Office of Policy Docket Management (OPDM) ordered the District to provide proof that the District is recipient of a loan issued by the United States Department of Agriculture Rural Development Division.

On June 7, 2019, the District filed a Motion to Dismiss, providing proof that it is a recipient of a loan issued by the federal government, requesting that the Commission dismiss the Petition because TWC §13.254(a-5) is preempted by federal law, and stating that, because the Commission did not approve the application within 60 days as required by the statute, the Commission no longer possesses subject matter jurisdiction over the application.

23

On June 20, 2019, the ALJ granted Staff's request for extension and ordered Staff to file a response to the motion to dismiss on or before July 12, 2019. This pleading is therefore timely filed.

I. FEDERAL PREEMPTION

The District requests that the Commission dismiss the Petition because Texas Water Code §13.254(a-5) is preempted by federal law. Staff disagrees with the District's assertion that §13.254(a-5) is preempted by federal law. In *Green Valley Special Utility District v. Walker, D'Andrea, Botkin, et. al.*, Green Valley brought an action under 42 U.S.C. § 1983 alleging, that the Public Utility Commission (PUC) violated federal law by decertifying portions of Green Valley's Certificate of Convenience and Necessity.¹ Green Valley claimed that the PUC could not decertify land from Green Valley's CNN because Green Valley funded its operations with a federal loan obtained under 7 U.S.C. § 1926.² Section 1926 (b) states that during the term of the loan, the area served by the utility cannot be curtailed.³ The Court granted summary judgment in favor of Green Valley and held that decertification of the Green Valley Tract violated Green Valley's exclusive right to provide service under § 1926(b).⁴ Therefore, under current case law, the Commission cannot interfere with the District's exclusive right to provide service to T.J. Bradshaw under § 1926(b).

II. SUBJECT MATTER JURISDICTION

The District argues that because the Commission did not approve the application within the 60 day statutory deadline, the Commission no longer possesses subject matter jurisdiction over the application.⁶ The District presents no legal binding to support its position.

The District relies on *Comptroller v. Landsfeld*,⁷ a case from the Fort Worth Court of Appeals, to support its position that the Commission loses jurisdiction if it does not approve applications filed pursuant to TWC § 13.254(a-5) within 60 days. *Landsfeld* held that the trial court lacked

¹ *Green Valley Special Utility District v. Walker, D'Andrea, Botkin, et. al.*, Case No. AU-17-CA-00819-SS, at 6 (W.D. Tex.), Nov. 29, 2018

² *Id.*

³ *Id.* at 2.

⁴ *Id.* at 19.

⁶ *Jonah Water Special Utility District's Motion to Dismiss for Lack of Subject Matter Jurisdiction and Response to Commission Order No. 4* at 3 (June 7, 2019).

⁷ *Comptroller v. Landsfeld*, 352 S.W.3d 171, 178 (Tex. App.—Fort Worth 2011, pet. denied).

subject matter jurisdiction to adjudicate a complaint filed beyond Texas Labor Code § 21.202's 180-day deadline.⁸

Section 21.202 of the Texas Labor Code provides that "STATUTE OF LIMITATIONS. (a) A complaint under this subchapter must be filed not later than the 180th day after the date the alleged unlawful employment practice occurred. (b) The commission shall dismiss an untimely complaint."⁹ That statute states unequivocally that if a complaint is filed after the 180th day, the commission must dismiss it.

In contrast, there is no statutory corollary here. Unlike the statute at issue in *Landsfeld*, under TWC § 13.254 (a-6) does not state that the Commission must dismiss an application that is not approved within the 60 day statutory deadline. The statute is silent as to what occurs if the application is not approved within the statutory deadline.

The United States Supreme Court has made clear that an agency does not lose jurisdiction simply because it fails to act within a certain time period mandated by statute. The Supreme Court, in *Norton v. SUWA*, held that "when an agency is compelled by law to act within a certain time period . . . a court can compel the agency to act."¹⁰ Thus, the Commission does not lose jurisdiction if it fails to act within the 60 day statutory timeframe mandated by TWC § 13.254 (a-6).

III. CONCLUSION

Staff respectfully requests an Order consistent with its Motion.

⁸ *Id.*

⁹ Tex. Lab. Code Ann. § 21.202.

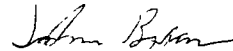
¹⁰ *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 65 (2004).

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

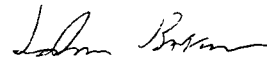
Rachelle Nicolette Robles
Managing Attorney



Joshua Adam Barron
State Bar No. 24087146
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7235
(512) 936-7268 (facsimile)
Joshua.Barron@puc.texas.gov

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on July 12, 2019 in accordance with 16 TAC § 22.74.



Joshua Adam Barron