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DOCKET NO. 49759

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APPLICATION OF MARK
PATTERSON FOR TEMPORARY
RATES FOR SERVICES PROVIDED
FOR A NONFUNCTIONING UTILITY

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PUBLIC UTILITY COMMISSION
BEFORE THE FILING CLERK

PUBLIC UTILITY COMMISSION

OF TEXAS

STATEMENT OF INTEREST

COMES NOW, Horseshoe Bend Water Company LLC ("**HBWC**"), and files this Statement of Interest with respect to Docket No. 49759.

I. EXPLANATORY NOTE

HBWC has not been admitted as a party in this proceeding but is a party in Docket No. 50085 before the Public Utility Commission ("**Commission**") under Texas Water Code §13.301 (Report of Sale, Merger, Etc.), pursuant to which HBWC has acquired the System (hereinafter defined) which is the subject of this proceeding. Pursuant to Texas Water Code §13.046(d), the temporary rates determined pursuant to this proceeding may be applied for a "reasonable period" after the acquisition of a nonfunctioning retail water utility and thus HBWC has an interest in this proceeding.

II. BACKGROUND

On July 3, 2019, the Executive Director of the Texas Commission on Environmental Quality (the "**TCEQ**") issued an Emergency Order, TCEQ Docket No. 2018-0923-UCR-E (the "**Emergency Order**") pursuant to Tex. Water Code Chapters 5, 13 and 26 and 30 Tex. Admin Code Chapters 35, 291 and 307 with respect to Castle Water Inc., and the Emergency Order

appointed Mark Patterson (“**Patterson**”) as temporary manager of the public water system No. 1840002 (the “**System**”).

On July 17, 2019, Mark Patterson filed with the Public Utility Commission (the “**Commission**”) a request for a temporary rate increase for Certificate of Convenience and Necessity (CCN) No. 10263 pursuant to Texas Water Code §13.046 and 16 Texas Administrative Code §24.363 because such rates were necessary to provide continuous and adequate service and requested that such emergency rates “remain in effect until this utility is in compliance with PUC and TCEQ rules.”¹ The temporary rates requested by Patterson were as follows:

Meter Size	Minimum Monthly Charge
3/4”	\$42.00
1”	\$57.00
2”	\$175.00
Volumetric Charge (for all usage)	\$4.00 per 1,000 gallons

The above rates requested by Patterson pursuant to Case No. 49759-1 are referenced herein as the “**Temporary Rates**.”²

After a number of interim filings by the staff of the Commission (the “**Staff**”) and Patterson pursuant to Docket No. 49759, on July 24, 2020, the staff of the PUC filed the Commission Staff’s Amended Recommendation on Final Disposition which recommended certain temporary rate and gallonage rates as set forth below (the “**Proposed Rates**”):

Meter Size	Minimum Monthly Charge
5/8”	\$17.36
3/4”	\$26.03
1”	\$54.00
2”	\$192.00

¹ Application of Mark Patterson for Temporary Rates for Services Provided for a Nonfunctioning Utility, Docket No. 49759, Application at 1 (July 17, 2019).

² Though the Temporary Rates contemplate rates for 3/4” meters, the majority of the meters in the System are actually 5/8” X 3/4”.

Volumetric Charge (for all usage)	\$3.10 per 1,000 gallons
Pass-through Charge for Upper Trinity GCD	\$0.22 per gallon
Surcharge noticed and billed to customers from October 2019 through December 2019 to replace stolen well parts	\$2.93 per connection per month
Surcharge to recover new account fees, parts, and equipment use fees to be collected for four months	\$2.22 per connection per month

The Proposed Rates are supported by the memorandums of Patricia Garcia of the Commission's Infrastructure Division as well as Debi Loockerman of the Commission's Rate Regulation Division attached thereto (collectively, the "**PUC Memo**").

In connection with the closing of the transaction contemplated by Docket No. 50085, HBWC has agreed in substance to a compliance plan (the "**Compliance Plan**") with the Texas Commission on Environmental Quality (the "**TCEQ**") to bring the System into compliance with TCEQ rules over a one-year period ending October 2, 2021.

On August 27, 2020 HBWC filed under Docket No. 50085 a request for clarification regarding the Temporary Rates and whether such Temporary Rates will remain in effect for the duration of the Compliance Plan in order to allow HBWC to bring the System into compliance with TCEQ rules.

Texas Water Code §13.046(d) requires the Commission (1) "determine the duration of the temporary rates for the retail public utility, *which must be for a reasonable period*" (emphasis added) and (2) rule on the reasonableness of the temporary rates under subsection (b) if the Commission did not make a ruling before the §13.301 application was filed. As no rulings were made by the Commission under Docket No. 49759 before the §13.301 application was filed in Docket No. 50085, HBWC believes these determinations will be required on the date the final notice of approval is issued under Docket No. 50085.

III. HBWC STATEMENT IN SUPPORT OF EXISTING TEMPORARY RATES AND IN OPPOSITION TO PROPOSED RATES

As a threshold matter, §13.046(b) of the Texas Water Code provides that the process for setting temporary rates “must allow for adequate consideration of costs for interconnection or other costs incurred in making services available and of the costs that may necessarily be incurred to bring the nonfunctioning system into compliance with utility commission and commission rules.” According to HBWC’s projections, the Proposed Rates would produce less revenue than the System’s existing tariff and cause the System to operate at a loss without even taking into consideration the costs of bringing the System back into compliance. The Proposed Rates would thus be inconsistent with the regulatory design of the Texas Water Code, which envisions a temporary increase in rates designed to facilitate the System’s return to compliance. Approval of the Proposed Rates would decrease the System’s revenue and place an additional burden on the System, which is already suffering from years of deferred maintenance and neglect.

The Proposed Rates are effectively moot as a result of acquisition of the System by HBWC and would not generate sufficient revenue to provide continuous and adequate service or to implement the Compliance Plan

Now that the parties have closed the acquisition of the System under §13.301 (report of Sale, Merger Etc.), the Proposed Rates recommended by the PUC Memo on July 24, 2020 under Docket No. 47959 are effectively moot. Those rates contemplated an \$8.00 charge per connection per month to be paid to the temporary manager in addition to the monthly minimum charge. HBWC will not collect this charge and thus, due to the change in ownership, the Proposed Rates would not generate the revenue envisioned by the Staff when they formulated the Proposed Rates. Also, probably due to lack of reliable data regarding the System, the Proposed

Rates are based upon an assumption of the System having 3/4" meters (which would have a minimum monthly charge of \$26.03 under the Proposed Rates) when in fact almost all of the System's meters are 5/8" x 3/4" (which would have a minimum monthly charge of \$17.36 under the Proposed Rates).³ Even assuming the monthly minimum charge of \$26.03 but without the \$8.00 charge per connection per month, HBWC projects that the revenue generated per customer would be lower than under the existing tariff, and the System would operate at a slight loss.⁴ Assuming the monthly minimum charge of \$17.36, HBWC projects that the revenue generated per customer would be much lower than under the existing tariff, and the System would operate at a significant loss and would not allow HWC to provide continuous and adequate service.⁵ Moreover, this analysis does not even factor in the cost to implement the Compliance Plan. The Proposed Rates do not reflect "other costs incurred in making services available and of the costs that may necessarily be incurred to bring the nonfunctioning system into compliance with utility commission and commission rules" as required by Texas Water Code §13.046(b) because the Proposed Rates do not contemplate any costs or expenses necessary to implement the Compliance Plan. As such, HBWC believes the Proposed Rates would not be sufficient to provide continuous and adequate service or implement the Compliance Plan and are therefore not consistent with Texas Water Code §13.046(b)'s mandate that "adequate consideration of costs ... that may necessarily be incurred to bring the nonfunctioning system into compliance" must be given. The Proposed Rates would therefore impose additional burdens on a water system already suffering from years of underinvestment and neglect.

³ Patterson reported the meters as 3/4" in Docket No. 45979 Item 7 subparagraph e) and the Staff of the PUC evidently relied upon this report in formulating the rates proposed by the PUC Memo.

⁴ HBWC projects revenue of approximately \$19,900 per month under its existing tariff and projects revenue of approximately \$19,500 per month under the Proposed Rates assuming a monthly minimum charge of \$26.03.

⁵ HBWC projects revenue of approximately \$19,900 per month under its existing tariff and projects revenue of approximately \$15,250 per month under the Proposed Rates assuming a monthly minimum charge of \$17.36.

Reasonableness of Temporary Rates set by Patterson

The Temporary Rates were established in good faith by Patterson based upon his evaluation of the System and his estimates of the costs to operate the System and to restore the System into full compliance with TCEQ rules.

Texas Water Code §13.046(b) mandates consideration of “costs that may necessarily be incurred in making services available *and of the costs that may be incurred to bring the nonfunctioning system into compliance with utility commission and commission rules*” (emphasis added). The Temporary Rates established by Patterson are based upon his good faith estimates and experience both as a licensed operator and as temporary manager of the System. Given the lack of complete operating data for the System, there is no basis upon which the reasonableness of the Temporary Rates can be meaningfully evaluated.

HBWC has prepared an estimate of the costs associated with the Compliance Plan at approximately \$103,281 and has attached the estimate as **Exhibit A**. This work is expected to be completed in approximately 10 months, meaning the rates fixed during the Compliance Plan will be in place for a short period. Given the paucity of reliable data regarding the System and the short 10-month period projected for the continued efficacy of these temporary rates, HBWC sees no reason to modify the existing Temporary Rates fixed by Patterson.

The System’s Customers appear satisfied with the Temporary Rates

There is ample evidence in the record that the System’s customers are very satisfied by the service delivered by Patterson.⁶ In contrast, there is no record of customer complaints

⁶ See generally Petition to be heard Horseshoe Bend Community filed March 9, 2020 as Item 13 on Docket No. 50085. Comments made by customers include “very happy with Mark Patterson in which he has given that trust back to us”, “We are very happy with current provider Patterson water supply!”, “with Mr. Patterson our water system has been the best its ever been”, “Patterson water has taken very good care of us”, “our community is more than happy with [Patterson’s] immediate attention to broken pipes, communication with our community, clean potable water, constant water.”

regarding the Temporary Rates established by Patterson.⁷ High levels of customer satisfaction and a desire to maintain stability and minimize disruptions were the primary determining factors in HBWC's decision to retain Patterson as the licensed operator for the System. HBWC has entered into a contract with Patterson and Patterson continues to operate the System.⁸

Duration of Temporary Rates

HBWC believes a "reasonable period" for the continuation of the Temporary Rates, if approved pursuant to Docket No. 49759 would be approximately 10 months. The System remains out of compliance with TCEQ rules and the Compliance Plan allows until October 2, 2021 to return the System to compliance. Moreover, there are not complete or reliable historical records regarding the true operating costs of the System⁹ and this short 10 month continuation period ending October 2, 2021 would allow HBWC to gather reliable operating data while HBWC works to bring the System into compliance. Continuation of the Temporary Rates established by Patterson would also minimize customer confusion and disruption brought on by multiple changes to rates and customer billing practices. Upon the expiration of the Temporary Rates on October 2, 2021, the System would revert to the established tariff.

Public policy supports retention of the Temporary Rates established by Patterson

The interests of customers are best served by providing stability and predictability to investor owned utilities that consider acquiring nonfunctioning water systems such as the System. Acquisition of nonfunctioning systems by responsible and financially sound operators

⁷ There are no comments reflecting dissatisfaction with the Temporary Rates in the Petition to be heard Horseshoe Bend Community filed March 9, 2020 as Item 13 on Docket No. 50085.

⁸ HBWC has hired Patterson to operate the System. However, at the time Patterson set the Temporary Rates he had no affiliation or communication with HBWC.

⁹ In his initial notice of temporary rates filed July 17, 2019, Patterson noted that "[t]here were no records transferred with this system therefore no data is available" and estimated "approximately \$231,590 in repairs that need to occur to bring the system into full compliance." The operating data developed by Patterson as Temporary Manager does not reflect the actual costs of restoring and maintaining the System in compliance with PUC and TCEQ rules because System revenues were not sufficient to make the required investments..

such as HBWC is the optimum regulatory outcome because it reduces regulatory burdens and serves the long term interests of customers by establishing a consistent provider of continuous and adequate service.

HBWC is assuming significant risk of unknown expenses that may be required to bring the System into compliance with TCEQ rules and also to address operational issues caused by years of neglect and deferred maintenance. Modification of the Temporary Rates implemented by Patterson would introduce revenue uncertainty in addition to the existing cost uncertainty and could deter investor owned utilities such as HBWC from making similar acquisitions in the future. It is in the best interest of customers of nonfunctioning utilities such as the System that the PUC minimize regulatory and revenue uncertainty in order to incentivize similar acquisitions of nonfunctioning utilities.

IV. CONCLUSION

It is clear that the System requires a temporary rate which provides adequate revenues to assist in returning the System to compliance as envisioned by the Texas Water Code and that the System's customers appear satisfied with the service and Temporary Rates implemented by Patterson.

Continuation of the Temporary Rates implemented by Patterson for an additional period of approximately 10 months ending October 2, 2021 would minimize both customer disruption and the regulatory burden on all parties. HBWC hereby respectfully requests a determination that (1) that the Temporary Rates implemented by Patterson are reasonable and necessary to provide continuous and adequate service and bring the System into compliance with TCEQ rules, (2) the duration of the of the Temporary Rates implemented by Patterson for 12 months from and after October 2, 2020 (ending October 2, 2021) would be a "reasonable period" within the

meaning of §13.046(d), and (3) that on October 2, 2021 the Temporary Rates implemented by Patterson will expire and the System will revert to the System's current tariff.

Respectfully submitted,

By: 

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**ATTORNEY FOR HORSESHOE BEND
WATER COMPANY LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was transmitted by e-mail, fax, hand-delivery and/or regular, first class mail on this 6th day of August 2020, to the parties of record.

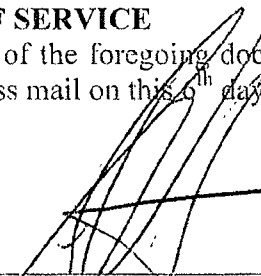

ALAN E. WRIGHT

EXHIBIT A

[see attached]

Horseshoe Bend Water System

Compliance Plan For TCEQ Enforcement Order

PWS 1840002

CCN 10263

<u>Violation</u>	<u>Citation</u>	Proposed By <u>HBWC</u>	Approved By <u>TCEQ</u>	Estimated <u>Cost</u>	
Failure to equip air compressor injection lines with filtration	290.43(d)(3)	Resolved	NA	-	
Sanitary Control Easements	290.41(c)(1)(F)	6 Months	180 Days	380	
Plant Operations Manual	290.42(l)	6 Months	180 Days	380	
Monitoring Plan	290.121(a) and (b)	6 Months	180 Days	380	
Drought Contingency Plan	288.20(a)	6 Months	90 Days	760	
Customer Service Inspections	290.46(j)	6 Months	180 Days	190	
Backflow Prevention Assembly Test & Maintenance Forms	290.44(h)	6 Months	180 Days	190	
Ground storage tank and pressure tank inspection forms	290.46(m)(1)	6 Months	90 Days	5,380	*
Well calibration	290.46(s)(1)	6 Months	90 Days	380	
Well completion data	290.46(n)(2)	6 Months	180 Days	190	
Failure to maintain the door of the gas chlorine room at both plants	290.42(e)(5)	6 Months	30 Days	2,501	
Failure to provide working well meters (Well No. 1 and Well No. 5)	290.41(c)(3)(N)	6 Months	180 Days	4,000	
Failure to provide a well casing vent on Well #5	290.41(c)(3)(K)	6 Months	90 Days	250	
Failure to provide an all weather access road to each wellsite	290.41(c)(3)(P)	12 Months	365 Days	8,000	
Failure to maintain the GST at the Lower Pump Station free of holes	290.43(m)(4)	15 Months	210 Days	37,900	^ *
Failure to provide a production capacity of 0.6 gpm per connection	290.45(b)(1)(D)(i)	18 Months	365 Days	30,000	***
Failure to provide a service pump capacity of 0.6 gpm per connection	290.45(b)(1)(D)(iii)	18 Months	365 Days	12,400	****

* Assuming will need to replace both pressure tanks

** Includes the cost to repair, coat interior, and paint exterior

*** Received an ACR on November 24, 2020 for 0.44 gpm / connection

**** ACR received on November 24, 2020 requires 1.30 gpm / connection

103,281