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DOCKET NO. 50085

**APPLICATION OF CASTLE WATER, §
INC. DBA HORSESHOE BEND WATER §
SYSTEM AND HORSESHOE BEND §
WATER COMPANY, LLC FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN PARKER COUNTY §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

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DOCKET NO. 49759

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

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**COMMISSION STAFF'S RESPONSE TO HORSESHOE BEND WATER COMPANY
LLC'S DISAGREEMENT WITH PROPOSED TARIFF**

On July 17, 2019, Castle Water, Inc. dba Horseshoe Bend Water System (Castle Water) through its temporary manager, Mark Patterson, filed with the Public Utility Commission of Texas (Commission) a request for a temporary rate increase for Certificate of Convenience and Necessity (CCN) number 10263 under Texas Water Code (TWC) § 13.046 and 16 Texas Administrative Code (TAC) § 24.363 in Hood County, Texas. Mr. Patterson was originally appointed as temporary manager for Castle Water and its public water system number 1840002, by an order issued by the Texas Commission on Environmental Quality on July 3, 2019 and December 30, 2019, and was reappointed by the Commission on June 22, 2020.¹

On October 10, 2019, Horseshoe Bend Water Company, LLC (HBWC) and Castle Water (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Parker County, Texas, under TWC § 13.301 and the 16 TAC § 24.239. Specifically, HBWC seeks approval to transfer Castle Water's water certificate of convenience and necessity (CCN) number 10263 and to acquire the related facilities. The requested area includes approximately 1,231 total acres and 507 connections.

On February 12, 2021, a final order was filed in Docket No. 49759, which approved the temporary rates requested by Mark Patterson. However, the order approving the rates separated

¹ *Petition for an Order Appointing a Temporary Manager for Castle Water, Inc. dba Horseshoe Bend Water System*, Docket No. 50847, Order Appointing a Temporary Manager (Jun. 22, 2020).

out the Temporary Manager's Fee of \$8 per connection per month as its own line item in the tariff rather than including this \$8 in the monthly minimum charge for each meter size.² HBWC filed a response disagreeing with the tariff rates on March 3, 2021. Staff now files this timely response.³

I. STAFF'S RESPONSE

HBWC's letter of explanation that stated that "HBWC's sole objection to the Proposed Rates is the reduction of the minimum monthly charge for the smallest meter size from \$42.00 per connection per month (as fixed by the Temporary Rates) to \$34.00 per connection per month (as fixed in the Proposed Rates) to account for the hypothetical \$8.00 per connection per month temporary manager's fee."⁴ HBWC requested that the "Proposed Rates," *i.e.*, the monthly minimum charges and gallonage charge approved by the Commission,⁵ be modified to provide for a monthly minimum charge of \$42.00 per month for a 5/8" or 3/4" meter "prior to their continuation pursuant to TWC § 13.046(d) in Docket No. 50085 and that such rates be continued and expire on the first billing date after schedule completion of the Compliance Plan on October 2, 2021."⁶

Central to HBWC's disagreement is the difference in revenue generated by the \$42 monthly minimum charge requested by Mark Patterson and the \$34 monthly minimum charge approved by the Commission as a temporary rate. HBWC notes that:

The Temporary Rates put in place by Patterson with a minimum monthly charge of \$42.00 are estimated to generate approximately \$349,530 in annual revenue. However, after reduction for the hypothetical \$8.00 per connection per month temporary manager fee, the Proposed Rates are estimated to generate approximately \$301,242 in annual revenue. The reduction of the minimum monthly charge from \$42.00 to \$34.00 thus reduces projected revenue from \$349,530 (which is only \$259 higher than the amount suggested by adding estimated Repair Costs required by

² *Application of Mark Patterson for Temporary Rates for Services Provided for a Nonfunctioning Utility*, Docket No. 49759, Order at Finding of Fact No. 8 (Feb. 12, 2021).

³ Staff interprets HBWC's March 3, 2021 filing as a motion for rehearing. Under Texas Government Code § 2001.146, a reply to a motion for rehearing is timely if it is filed on or before the 40th day after the date a final order is signed. The Order in Docket No. 49759 was signed on February 12, 2021 and March 24, 2021 is the 40th day after February 12, 2021.

⁴ Docket No. 49759, HBWC's Explanation of Disagreement with Proposed Tariff at 4 (Mar. 3, 2021).

⁵ *Id.*, Order at Finding of Fact No. 8.

⁶ *Id.*, HBWC's Explanation of Disagreement with Proposed Tariff at 6-7.

the Compliance Plan to the System projected revenue under its existing tariff to \$301,242 (which is \$48,029 below the amount suggested by adding Repair Costs to the System's projected revenue under its existing tariff).⁷

Staff reads HBWC's opposition to the temporary rates not as opposition to not receiving the temporary manager fee, but rather as an opposition to the fact that it generates \$8 less per connection per month than the temporary rate noticed by Mark Patterson. There is no argument that HBWC is not entitled to the temporary manager fee, which is established to compensate the temporary manager for serving in the role of temporary manager.⁸ However, the loss of the \$8 per connection per month in revenue does appear to impact HBWC's ability to provide service and to bring the system into compliance by October 2021 per the compliance plan HBWC executed with the Texas Commission on Environmental Quality (TCEQ).⁹

Staff construes HBWC's argument as a request to restore the lost revenue in a form other than a temporary manager's fee. Given that the rates in this docket are subject to reconciliation,¹⁰ and given that HBWC has entered into a compliance agreement with the TCEQ, Staff is unopposed to HBWC's request. HBWC has provided calculations demonstrating that they would fall short of the revenue needed to cover the cost of the compliance plan without the \$8 per connection per month.¹¹ Staff therefore does not oppose granting rehearing such that the Commission can modify the approved temporary rates to increase the monthly minimum charge for a 5/8" or 3/4" meter to \$42.00 per month, subject to reconciliation.

II. CONCLUSION

Staff respectfully recommends that the Commission grant HBWC's motion for rehearing and does not oppose HBWC's request for a modification of the temporary rates to restore the monthly minimum charge of \$42.00 for a 5/8" or 3/4" meter.

⁷ *Id.*, HBWC's Explanation of Disagreement with Proposed Tariff at 5.

⁸ Docket No. 50784, Order at Ordering Paragraph No. 10.

⁹ Docket No. 49759, HBWC's Explanation of Disagreement with Proposed Tariff at 4-5, Attachment A.

¹⁰ *Id.*, Order at Ordering Paragraph Nos. 1 and 3.

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Dated: March 24, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

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/s/ John Harrison

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**DOCKET NO. 50085
DOCKET NO. 49759**

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 March 24, 2021 in accordance with the Order Suspending Rules, filed in PUC Project No. 50664.

/s/ John Harrison

John Harrison

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Dated: March 24, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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Division Director

Eleanor D'Ambrosio
Managing Attorney

/s/ John Harrison

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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 March 24, 2021 in accordance with the Order Suspending Rules, filed in PUC Project No. 50664.

/s/ John Harrison

John Harrison