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APPLICATION OF SP UTILITY
COMPANY, INC. TO AMEND ITS
CERTIFICATE OF CONVENIENCE
AND NECESSITY AND FOR DUAL
CERTIFICATION WITH DREW T.
SPENCER DBA CYPRESSWOOD
ESTATES IN MONTGOMERY
COUNTY

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BEFORE THE
PUBLIC UTILITY COMMISSION
OF TEXAS
PUBLIC UTILITY COMMISSION
FILING CLERK

MOTION TO INTERVENE AND REQUEST FOR HEARING

COMES NOW, the San Jacinto River Authority (SJRA) and files this Motion to Intervene and Request for Hearing.¹ In support hereof, SJRA shows as follows:

I. FACTUAL BACKGROUND

The Applicant in this docket, SP Utility Company, Inc. (SP Utility), is owned and controlled by James Harrison Williams (Williams).² Mr. Harrison Williams is also the current temporary manager for the Cypresswood Estates system (CWE or Existing System), being originally appointed same in Docket No. 50303, and reappointed in Docket No. 51113.

The CCN application in this docket (Application) is unusual in that it does not seek a traditional dual certification wherein neighboring entities either compete for overlapping customer needs or agree to jointly meet those needs. Instead, the Application in this docket seeks to completely overlay the CCN area of a non-functioning utility whose owner is deceased, but is being managed by the owner of the competing utility. The Public Utility Commission (Commission) has rarely approved dual certifications in the absence of consent of both CCN holders, due to the potential for uneconomic duplication of facilities. In this docket, one CCN holder is completely unable to either consent or protest the Application, and the party that is

¹ SJRA is a conservation and reclamation district, body politic, and corporate and governmental agency of the State of Texas created under the provisions of Chapter 426, Acts of the 45th Texas Legislature, Regular Session, 1937, as now or hereafter amended, enacted pursuant to the provisions of Article 16, Section 59 of the Texas Constitution. SJRA's address is 1577 Dam Site Road, Conroe, Texas 77304.

² See Public Information Report, attached to the Application at page 17.

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acting in the deceased owner's stead is the same party that seeks to take over the service area through a fiction of dual certification.³

The instant Application is not intended to give the customers a choice of water purveyors, but is a roundabout effort to take over the service area completely. In fact, the CCN Application is the latest move in a series of thus far unsuccessful maneuvers by Williams to obtain ownership of the CWE system and thereby avoid collecting and paying a Commission-mandated rate tied to that system. Multiple dockets have addressed the underlying issue (see Docket Nos. 49464, 47625, 50303, 51113), and are summarized below.

On June 31, 2011, SJRA and CWE entered into a "Contract for Groundwater Reduction Planning, Alternative Water Supply, and Related Goods and Services by and between the San Jacinto River Authority and CWE Utilities, L.L.C.," (GRP Contract), pursuant to which certain retail water systems owned and operated by CWE have been included in SJRA's groundwater reduction plan and are subject to compliance with the GRP Contract itself, as well as certain groundwater regulations imposed by the Lone Star Groundwater Conservation District. Section 6.02 of the GRP Contract requires CWE to make payments to SJRA for participation in SJRA's Groundwater Reduction Plan. CWE received authorization from the Commission to implement surcharges on its customers in order to make past-due and future payments due to SJRA under the GRP Contract.⁴

On April 18, 2019, Williams filed a Sale, Transfer, and Merger Application (STM Application) for Williams' other company, South Coast Utilities, LLC (South Coast), to purchase the water assets of CWE and to transfer the CCN from CWE to South Coast without

³ The holder of the CCN for the CWE system is stated in the Application to be deceased. SP Utility has attempted to provide the CCN holder's "consent" to the Application through an affidavit of an individual who claims to have inherited the system, but who has never held the CCN for the CWE system and has willingly abdicated operational responsibilities to Mr. Williams as temporary manager. See letter from Ms. Gilbert dated April 10, 2020, with attached affidavit from Brent Davis (filed Apr. 9, 2020)

⁴ *Application of Cypress Wood Estates Water System for a Pass-Through Rate Change*, Docket No. 47625, Order (May 11, 2018).

extending the service area of the Existing System.⁵ SJRA intervened in that docket to protect its rights under the Commission's prior order to receive amounts due and owing to it under CWE's tariff.⁶ SJRA's basis for intervening in Docket No. 49464 was premised on the belief that CWE planned to transfer the Existing System to Williams without transferring the GRP Contract, or developing a plan for repaying SJRA the amounts in arrears.⁷ On November 1, 2019, Commission Staff requested a hearing on the issue of the assignment of the GRP Contract rights and obligations and on CWE's indebtedness to SJRA.⁸ However, on February 12, 2020, South Coast withdrew the STM Application and the case was dismissed on that basis.⁹

On the same day that Williams withdrew the STM Application, Williams submitted the CCN Application in this docket to amend the SP Utility CCN and to obtain dual certification with CWE.¹⁰ As a result, if the CCN dual certification is granted, Williams and his company are poised to undermine Commission Orders and ignore existing obligations to SJRA. As shown below, such actions serve to disregard the needs of the Existing System and its ratepayers and would subvert the public interest as a result.

II. MOTION TO INTERVENE IS TIMELY FILED

This Motion is timely filed in compliance with Commission rules.¹¹ Harrison Williams, the President of SP Utility (Williams), attests that he mailed notice to SJRA, among other

⁵ *Application of Drew T. Spencer DBA Cypresswood Estates Water System and South Coast Utilities, LLC for the Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County*, Docket No. 49464, Application (Apr. 18, 2019).

⁶ Docket No. 49464, Order 6 at 1 (Oct. 9, 2019).

⁷ Docket No. 49464, Motion to Intervene at 2 (Aug. 29, 2019). Amounts due under the CWE have continued to be unpaid; as of Nov. 23, 2020, in excess of \$238,000 is due and owed to SJRA.

⁸ Docket No. 49464, Commission Staff's Request for Hearing at 2 (Nov. 1, 2019).

⁹ Docket No. 49464, Order 3 at 1 (Feb. 14, 2020).

¹⁰ *Application of SP Utility Company, Inc. to Amend its Certificate of Convenience and Necessity and for Dual Certification with Drew T. Spencer DBA Cypresswood Estates in Montgomery County*, Docket No. 50543 (Feb. 12, 2020).

¹¹ 16 TAC § 22.104(d) ("A motion to intervene that was not timely filed may be granted. In acting on a late filed motion to intervene, the presiding officer shall consider: . . . (B) whether the movant had good cause for failing to file the motion within the time prescribed. . . (E) whether the public interest is likely to be served by allowing the

recipients, on October 13, 2020. However, SJRA did not receive notice from Williams and was not aware notice had been issued until a copy of the notice was filed on November 18, 2020.¹² SJRA provides as **Exhibit A** the affidavit of Ms. Kristina Felkai attesting to the SJRA's non-receipt of notice from the Applicant. SJRA has good cause for its intervention and should not be prejudiced by Williams' apparent failure to submit required notice to SJRA.

III. STANDING TO INTERVENE

Pursuant to 16 TAC § 22.103, SJRA has standing to intervene. The definition of a "person" includes governmental subdivisions.¹³ SJRA is a "person" pursuant to 16 TAC § 22.2(31) because SJRA is a conservation and reclamation district created under the provisions of Chapter 426, Acts of the 45th Texas Legislature.

A governmental subdivision has standing to intervene if it "(1) [has] a right to participate which is expressly conferred by statute, commission rule or order or other law; or (2) [has] or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding."¹⁴ SJRA has an interest that may be adversely impacted by the outcome of this proceeding. If the CCN Application is granted, SP Utility will apply its tariff to the CWE system, and will transfer the customers of the CWE system to itself. CWE's tariff does not contain a fee payable to the SJRA for the GRP. And, the temporary manager of the CWE system will have no incentive to maintain that customer base. Thus, SJRA will lose the amounts owed to SJRA and mandated by Commission Order in Docket No. 47625. SJRA will thus be adversely impacted by the action requested by Williams.

intervention") See also *Application of the City of Kemp to Amend a Sewer Certificate of Convenience & Necessity in Kaufman County*, Docket No. 48446, Order 6 at 1 (Jan. 9, 2019) (order authorizing late intervention because a party with a justiciable interest "did not receive notice of the filing and was not aware of the proceeding until after the intervention deadline passed") See also *Application of Northshore Harbor Sewer, LLD to Obtain a Certificate of Convenience and Necessity in Navarro County*, Docket No. 45823, Order 6 at 1 (Apr. 8, 2016) (deeming notice of a CCN application "insufficient" when a utility "did not receive notice" and providing new deadlines to cure the issue).

¹² Affidavit of Kristina Felkai at ¶¶ 3-6, attached as Exhibit A.

¹³ 16 TAC § 22.2

¹⁴ 16 TAC § 22.103(b)

IV. THE APPLICATION IS ADVERSE TO THE PUBLIC INTEREST

Williams' CCN Application is adverse to the public interest. As temporary manager of CWE, Williams is obligated to act in the best interests of that system and its customers. He has been ordered by the Commission to exercise "all the powers and duties necessary to *ensure the continued operation of the utility* and the provision of continuous and adequate service to customers, including but not limited to reading meters, billing for utility service, collecting revenues, disbursing funds, requesting rate increases if needed, accessing all system components, conducting required sampling, making necessary repairs, and *performing other acts necessary to assure continuous and adequate utility service* as authorized by the Commission under 16 TAC § 24.357."¹⁵

As temporary manager of CWE, Williams has a duty to ensure the continued operation of the utility for the benefit of its customers. However, the CCN Application is not requesting dual certification in order to address competing needs of different entities and customers; instead, it is an attempt to circumvent Commission rules and undercut the maintenance of the system that is under temporary management. Mr. Williams, as temporary manager of CWE, is unable to adequately assess the impact of the dual certification he himself is requesting. This arrangement smacks of self-dealing and an attempt to circumvent the public interest inquiry that is statutorily required in an STM application.

Although the CCN Application makes reference to a deceased owner of the Existing System,¹⁶ it omits reference to the fact that Williams has himself been acting as Temporary Manager over that very Existing System for nearly a year. When seen in the context of the procedural juggling across multiple Commission dockets, the strategy emerges clearly: (a) withdraw a previously-filed STM Application in response to the Commission's requirement that the proposed new order collect/pay Commission-mandated rates; (b) continue serving as temporary manager of the Existing System, while failing to collect/pay the Commission-

¹⁵ Docket No. 50303, Order, Conclusion of Law No. 6 (Feb. 4, 2020) emphasis added.

¹⁶ Application at 4 (Feb. 12, 2020).

mandated rates due to SJRA; (c) file the CCN Application under a different Williams-owned entity for the Existing System; and (d) if approved, operate the Existing System under the new entity, avoiding a need to follow the STM process, and ignoring its obligations to SJRA as a result. The public interest is harmed if Williams is able to evade long-standing Commission requirements for new ownership/operation, and SJRA's intervention is critical to expose such harm.

Customers on the Existing System will also be adversely affected by the CCN Application. The temporary manager is required to "collect the assets and carry on the business of the utility and [to] use the revenues and assets of the utility *in the best interests of the customers* to ensure that continuous and adequate utility service is provided."¹⁷ As temporary manager, Williams is charged with "the provision of continuous and adequate service to [the Existing System's] customers."¹⁸ By requesting dual certification Williams has cast aside such obligations, and is ignoring his pre-existing duty to the customers of the Existing System and his obligation to ensure the continued operation of the Existing System. The Existing System's customers will bear the costs of providing new and unnecessary duplicative facilities necessary to implement the dual CCN.¹⁹ SJRA's intervention would assist in protecting the integrity of a rate structure already approved and reaffirmed by the Commission.

V. CONCLUSION AND REQUEST FOR HEARING

SJRA has shown itself to be a party in interest in this Application, and has demonstrated good cause for its late-filed request to intervene. In light of the described adverse impact both to SJRA and to the public interest, SJRA requests that this Application be referred to the State Office of Administrative Hearings so that a hearing can be held on the merits of the Application.

¹⁷ 16 Tex. Admin. Code § 24.357(g) (emphasis added).

¹⁸ *Commission Staff's Petition for an Order Appointing a Temporary Manager to Drew T. Spencer DBA Cypresswood Estates Water System*, Docket No. 51113, Final Order at 6 (Sept. 9, 2020).

¹⁹ *See*, letter dated April 10, 2020, from counsel for SP Utility (filed on Apr. 9, 2020), in which she states: "please further note that SP Utility intends to replace the entire Cypresswood Water System with its own system..."

WHEREFORE, PREMISES CONSIDERED, SJRA requests that its Motion to Intervene be granted, that it be afforded party status in this proceeding, and that a hearing be held on the Application. SJRA requests such other and further relief as it is justly entitled.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE
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**ATTORNEYS FOR SAN JACINTO RIVER
AUTHORITY**

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 November 24, 2020, in accordance with the Order Suspending Rules, issued in Docket No. 50543.



GEORGIA N. CRUMP

EXHIBIT A

STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

AFFIDAVIT OF KRISTINA FELKAI

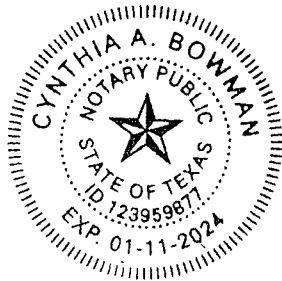
Before me, the undersigned authority, on this day personally appeared Kristina Felkai, who being by me duly sworn, deposes and says the following:

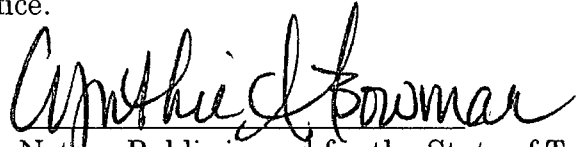
1. My name is Kristina Felkai. I am over twenty one years of age and of sound mind, competent, and capable of making this affidavit.
2. I am the Customer Service and Compliance Supervisor for the San Jacinto River Authority (SJRA) and the SJRA Groundwater Reduction Planning (GRP) Division. My business address is 11998 Pine Valley Drive, Conroe, Texas 77304. I have personal knowledge of the facts set forth in this affidavit.
3. I am responsible for receiving and reviewing notices mailed to SJRA regarding all Public Utility Commission of Texas (PUC) matters, and my regular job responsibilities include providing such notices as they are received to appropriate individuals at SJRA, as well as legal counsel, when necessary.
4. On November 23, 2020, legal counsel for SJRA inquired of me and other employees of SJRA to determine if SJRA received a mailing entitled "Notice to Neighboring Systems, Landowners, Customers and Cities NOTICE OF APPLICATION TO AMEND A CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WATER UTILITY SERVICE AND FOR DUAL CERTIFICATION WITH CYPRESSWOOD ESTATES IN MONTGOMERY COUNTY, TEXAS" (the "Notice"). The Notice purportedly was mailed on October 13, 2020, according to an Affidavit of Notice under the same PUC Document No. 50543.
5. If the Notice had been mailed to SJRA, I would have seen it. I have never seen such Notice.
6. I have diligently searched SJRA files and information to determine if the Notice was received, and have made inquiries with other employees who might have reviewed mail received by SJRA. However, after such diligent search, and finding no evidence that the Notice had arrived at the offices of SJRA, I conclude that SJRA never received the Notice.

[Signature Page Follows]


Kristina Felkai

Subscribed and sworn to before me this 23rd day of November, 2020, to certify
which witness my hand and seal of office.




Notary Public in and for the State of Texas