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DOCKET NO. 50543

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

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BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

SP UTILITY COMPANY, INC.'s
RESPONSE TO SAN JACINTO RIVER AUTHORITY'S MOTION TO INTERVENE
AND REQUEST FOR HEARING

COMES NOW, SP Utility Company, Inc. ("SP Utility") and submits this Response to the San Jacinto River Authority's ("SJRA") Motion to Intervene and Request for Hearing and would respectfully show the following:

I. BACKGROUND

On February 12, 2020, SP Utility filed an application to amend its water Certificate of Convenience and Necessity ("CCN") No. 12978 and for dual certification with Drew T. Spencer d/b/a Cypresswood Estates Water System ("CWE") in Montgomery County, Texas. On October 2, 2020, after deadline extensions to provide Staff of the Public Utility Commission of Texas ("Commission") additional requested information, Commission Staff filed its Second Supplemental Recommendation on Administrative Completeness and Proposed Procedural Schedule. Thereafter on October 5, 2020, the Commission Administrative Law Judge ("ALJ") issued Order No. 6 finding the application to be administratively complete, requiring notice, and establishing a procedural schedule. On October 9, 2020, Commission Staff amended its recommendation revising the list of entities to be notified. Order No. 7, issued on October 12, 2020, required notice to the revised list of entities but otherwise maintained the procedural schedule. Consistent with Order Nos. 6 and 7 and Title 16 Tex. Admin. Code ("TAC") § 24.235(b)(1)(A), SP Utility provided mailed and published notice on October 13, October 21, and October 28, 2020. On November 24, 2020, SJRA filed a Motion to Intervene and Request for Hearing ("Motion to Intervene") in this case. Section 22.78 requires a party to respond to opposing

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motions within five working days. As the Commission was closed on November 25 and 27, 2020 for the Thanksgiving holiday, SP Utility has replied timely.

II. RESPONSE TO MOTION TO INTERVENE

SJRA's Motion to Intervene makes baseless defamatory accusations against SP Utility and its owner that are largely beside the point. SJRA has no justiciable interest in this docket. SJRA is not a retail public utility that provides the same utility service within two miles of the Cypresswood Estates Subdivision or Garden West, the two (2) residential neighborhoods served by CWE with which SP Utility is seeking dual certification. SJRA has stated neither a desire nor identified infrastructure to serve the customers of Cypresswood Estates or Garden West in place of SP Utility, because none exists. SJRA failed to raise any financial, managerial, or technical failings of SP Utility that would cause the Commission to deny issuance of a CCN amendment to SP Utility. In fact, the Motion failed to address any of the Texas Water Code ("TWC") § 13.246(c) criteria for issuance of a new or amended CCN, such as adequacy, need, ability, environmental integrity, probable improvement, etc. SJRA's sole interest in this docket is an attempt to collect back fees allegedly owed by CWE's owner and former operator, not SP Utility.

SJRA seeks to impose its Groundwater Reduction Plan ("GRP") contract on SP Utility, which has no contractual relationship with SJRA and is not a successor in interest to CWE. The proper venue for SJRA to litigate any contract claims is in district court, not before the Commission. SJRA's Motion is nothing more than a continued attempt to prevent SP Utility from providing a permanent solution - from providing continuous and adequate water service to the people that live in Cypresswood Estates and Garden West. If SJRA is allowed to intervene and prevent SP Utility from obtaining and operating a utility system under a CCN, then the Commission will prevent these residents from acquiring continuous and adequate water service from a reputable water provider.

A. SJRA's "Factual Background" is Factually Incorrect

SJRA states that this dual certification proceeding is "unusual" and a non-traditional "maneuver," because Drew T. Spencer is deceased and cannot consent.¹ SJRA is wrong. Either Mr. Spencer's CCN expired when the sole proprietor expired so that there is not a competing CCN, or the CCN continued with Mr. Spencer's heirs who have an ability to respond (and did respond) to SP Utility's request for dual certification. Either way, SJRA is wrong.

Drew T. Spencer owned the Drew T. Spencer d/b/a Cypresswood Estates Water System as a sole proprietorship from 1991 to 2005, which was operated under CCN No. 12498. Upon his death in 2005, the assets of the water system were bequeathed to his nephew, Brent Davis d/b/a Davis Irrigation Services. In multiple dockets related to the CWE system, the Commission has consistently found that CWE continues to hold CCN No. 12498.² The Commission did not take the position that the CCN was terminated upon Mr. Spencer's death. However, the Commission did hold Mr. Davis responsible for the operations and compliance of the water system. On April 10, 2020, in response to Commission Staff's March 12, 2020 Recommendation on Administrative Completeness, Applicants submitted Mr. Davis' sworn affidavit consenting to the dual certification of SP Utility. Brent Davis, on behalf of the CWE water system, has explicitly consented to the dual certification of SP Utility.³

Had the Commission held that CCN No. 12498 terminated with the death of Mr. Spencer, SP Utility would have simply applied for a *new* CCN for the Cypresswood Estates and Garden West subdivision areas. However, the Commission's position that the CCN remains active, even though it also found CWE had abandoned the operations of its facilities under TWC § 13.412 and 16 TAC § 24.355, necessitated this outcome that SP Utility file an application for dual certification.

¹ Motion to Intervene at 1-2 (Nov. 24, 2020).

² *Application of Cypresswood Estates Water System for a Pass-Through Rate Change*, Docket No. 47625, Finding of Fact No. 4 (May 11, 2018); *Request for an Emergency Order Appointing a Temporary Manager to Drew T. Spencer d/b/a Cypresswood Estates Water System Without a Hearing*, Docket No. 50303, Finding of Fact No. 2 (Feb. 4, 2020); *Application of Harrison Williams for Temporary Rates for Services Provided for a Nonfunctioning Utility*, Docket No. 50407, Finding of Fact No. 1 (Sept. 10, 2020), and, *Commission Staff's Petition for an Order Appointing a Temporary Manager to Drew T. Spencer d/b/a Cypresswood Estates Water System*, Docket No. 51113, Finding of Fact No. 2 (Sept. 16, 2020).

³ See Attachment A, Affidavit of Brent Davis.

Far from being a “roundabout effort” to undermine the Commission’s orders, SP Utility openly discussed this approach with Commission Staff throughout the application process. SP Utility’s seeking a dual certification was the only practical way to serve the Cypresswood Estates and Garden West customers where CCN No. 12498 was still “on the books” but the CWE owner was unable to provide service. Harrison Williams could only serve as Temporary Manager for 180-days or until the Commission orders otherwise. Thus, the Commission is well aware of the situation. Both the Commission and the CWE customers support⁴ Harrison Williams’ temporary management of the CWE system until such times as a permanent water provider could serve the area – SP Utility is that permanent provider.

B. Existing Customers Will Be Well-Served

SJRA’s complaints about whether existing CWE customers will be well served is a complaint of the general public and not by an entity with any justiciable interest. SJRA failed to show how it will be uniquely and adversely affected by SP Utility’s CCN amendment application in a manner different than the general public. Unlike a customer, SJRA will not be impacted by SP Utility’s provision of water service and SJRA does not have a competing water utility within two miles of the area.

SJRA is also mistaken that the needs of the existing system will be disregarded, public interest subverted, or ratepayers harmed by the Commission’s issuance of a CCN amendment to SP Utility.⁵ On the contrary, SP Utility has spent thousands of dollars on engineering a system to provide superior service to the customers of Cypresswood Estates and Garden West. As the ALJ knows based on its previous requests for extension, SP Utility has made significant efforts to retain engineers, prepare plans and specifications, and submit those plans to the Texas Commission on Environmental Quality (“TCEQ”) for its review and approval of an entirely new water system, which itself will cost approximately \$250,000.⁶ The reason the Commission put CWE into temporary management in the first place is because the system suffered electrical fires,

⁴ See Attachment B, letter from CWE customer Robert Panuski

⁵ Motion to Intervene at 3 (Nov. 24, 2020).

⁶ See Notice of Plans and Specifications Submittal (Sept. 9, 2020) and TCEQ Plans and Specifications Approval (Nov. 6, 2020).

experienced service interruptions, received customer complaints, and the electric provider threatened disconnection of the system for failure to pay electric bills.⁷ Contrary to SJRA's assertion that there will be "uneconomic duplication of facilities," there will be no duplication once the Commission issues a CCN amendment to SP Utility. SP Utility will install a new water system to replace the old CWE system.⁸ The wholly new water plant will provide the customers with the continuous and adequate service that the existing CWE system cannot provide. Importantly, not one retail public utility – within two miles or further and certainly not SJRA – has stepped up to provide service to the CWE customers. SP Utility is an existing utility that can provide superior service and has an existing customer base. The Commission's issuance of a CCN amendment to SP Utility can also lower the rates for current CWE system customers who are currently subject to a higher temporary rate.

SJRA provided no record of complaints or other evidentiary support for its claim that the maintenance of the abandoned CWE system would be "undercut" by the Commission's issuance of a CCN amendment to SP Utility. As temporary manager, Harrison Williams is operating a system that the Commission already found abandoned because of fire and other problems. Unfortunately, as the temporary manager collecting a temporary rate of \$8 per connection for the old CWE system, he is not required to make capital improvements to completely overhaul it. At such time that the Commission issues a CCN amendment to SP Utility, SP Utility will construct the new system, and the CWE customers will receive continuous and adequate service from the new system.

C. SJRA Lacks Standing

SJRA lacks a justiciable interest or standing⁹ in this docket. SJRA failed to show how it will be uniquely and adversely affected by SP Utility's application for dual certification, in a

⁷ *Request for an Emergency Order Appointing a Temporary Manager to Drew T. Spencer d/b/a Cypresswood Estates Water System Without a Hearing*, Docket No. 50303, Finding of Fact Nos. 6, 7 and 8 (Feb. 4, 2020).

⁸ Among other things, the unmetered CWE system is so dilapidated it uses 15-plus year old galvanized steel pressure tanks for storage tanks that have no foundation (sitting on wood beams) and are connected with 2" PVC pipe; its ground storage tank is effectively laid on its side with no foundation, and, the unlabeled electrical panels are improperly wired creating a safety hazard.

⁹ 16 TAC § 22.103(b).

manner different than the general public. Unlike a customer, SJRA will not be impacted by the manner or cost of SP Utility's provision of water service. SJRA does not have a competing water utility within two miles of the area. SJRA's sole basis for intervention is an attempt to collect on outstanding fees allegedly owed Brent Davis on behalf of CWE. In Docket No. 50407, the Commission ALJ denied SJRA's motion to intervene, correctly finding that SJRA's contract concerns did not provide it a justiciable interest:

...[B]ecause the nature of SJRA's concerns stems from a contract claim which is outside the jurisdiction of the Commission, SJRA has not established a justiciable interest in this case. Accordingly, SJRA lacks standing to intervene under 16 Texas Administrative Code (TAC) § 22.103."¹⁰

The Commission ALJ's rationale for denial in Docket No. 50407 is applicable here, because SJRA is repeating the same old arguments. SJRA has attempted to intervene in a contract dispute with the CWE water system owner dressed up like a CCN proceeding. The Commission lacks jurisdiction to construe this contract.¹¹ Not only does the Commission lack jurisdiction to construe the contract with the CWE water system owner, but the validity of the contracts generally is already the subject of civil litigation in multiple venues in state and federal court.¹²

III. CONCLUSION

SJRA lacks a justiciable interest related to a unique legal right, duty, or interest, and it is not an affected person under any definition of the term in SP Utility's CCN amendment application. The sole basis for its intervention here – the GRP contract with the CWE water system owner – is wholly inapplicable to SP Utility, is outside the Commission's jurisdiction and the issue

¹⁰ *Application of Harrison Williams for Temporary Rates for Services Provided for a Nonfunctioning Utility*, Docket No. 50407, Order No. 3 at 1 (Mar. 31, 2020).

¹¹ *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332 (Tex. App. – Austin 1994).

¹² See *City of Conroe v. Lone Star Groundwater Conservation District*, No. 15-08-08942 (284th Dist. Ct., Montgomery County, Tex. May 17, 2019); *City of Conroe v. San Jacinto River Auth.*, 602 S.W.3d 444 (Tex. 2020); *Quadvest, L.P. d/b/a Quadvest Water and Sewer Utility et al v. San Jacinto River Auth.*, No. 19-09-12611 (284th Dist. Ct., Montgomery County, Tex. July 10, 2020); *San Jacinto River Auth. v. City of Conroe*, No. 09-20-00180-CV (Tex. App. – Beaumont filed July 16, 2020); and, *Quadvest, L.P. et al v. San Jacinto River Auth.*, No. 19-CV-4508 (S.D. Tex. filed Nov. 15, 2019).

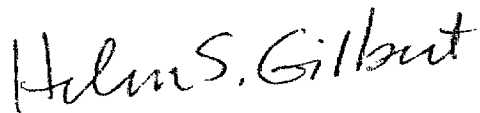
is already being litigated in appropriate courts. The Commission should deny SJRA's Motion to Intervene.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, SP Utility Company, Inc. respectfully prays that the Commission deny SJRA's Motion to Intervene and Request for Hearing.

Respectfully submitted,

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By: 

Helen S. Gilbert

**ATTORNEYS FOR SP UTILITY
COMPANY, INC.**

CERTIFICATE OF SERVICE

I hereby certify that I have or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on the 2nd of December 2020.



Helen S. Gilbert

DOCKET NO. 50543 - ATTACHMENT A

STATE OF TEXAS

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MONTGOMERY COUNTY

AFFADAVIT OF BRENT DAVIS

Before me, the undersigned notary, on this day personally appeared Brent Davis, a person whose identity is known to me. After I administered an oath to Brent Davis, upon his oath, he said:

"My name is Brent Davis. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

Cypresswood Estates Water System ("Cypresswood Estates Water System") was originally owned and operated by my uncle, Drew T. Spencer under Certificate of Convenience and Necessity ("CCN") No. 12498 issued in 1991. The real property as well as the water system and all equipment related to the water system were deeded to me upon my uncle Drew T. Spencer's death in 2005 which I operated until December 2, 2019, when Harrison Williams was appointed the temporary manager of the system by the Public Utility Commission of Texas ("Commission"). Mr. Williams is president of S.P. Utility Company, Inc. which has filed a request with the Commission to amend its existing water CCN No. 12978 to include the territory within CCN No. 12498. In accordance with Commission rule 16 TAC § 24.251, I consent to additional or dual certification to the area currently served under CCN No. 12498 and believe it should be granted to S.P. Utility Company, Inc., a Class D utility that can provide continuous and adequate water service to the Cypresswood Estates Water System customers. I consent to dual certification of S.P. Utility Company, Inc. for the area currently certificated under CCN No. 12498."

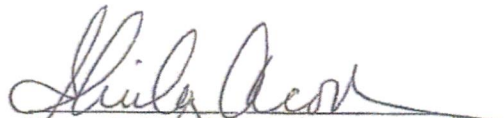
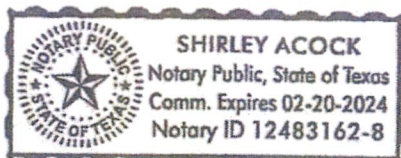
Further affiant sayeth not.



Brent Davis

Given under my hand and seal of office on February 12, 2020.

[Seal]


Notary Public, State of Texas

DOCKET NO. 50543 - ATTACHMENT B

December 2, 2020

Via Electronic Filing Only

Public Utility Commission of Texas
Office of Policy & Docket Management
P.O. Box 13326
Austin, Texas 78711-3326

Re: Docket No. 50543, Application of SP Utility Company, Inc. to Amend Its Certificate of Convenience and Necessity and for Dual Certification with Drew T. Spencer d/b/a Cypresswood Estates in Montgomery County

Dear Public Utility Commission of Texas:

My name is Robert Panuski and I reside at _24122 Spencer Blvd_ Magnolia, Texas 77355. I am a current drinking water customer of the Drew T. Spencer d/b/a/ Cypresswood Estates Water System ("CWE"). I received notice on that SP Utility Company, Inc. had applied for dual certification to include the area that is my neighborhood, Cypresswood Estates Subdivision.

Under section 22.103 of the Commission rules, I have standing to intervene in this dual certification proceeding. As a _4_ year resident of Cypresswood Estates Subdivision and current customer and ratepayer of CWE, I have a justiciable interest that may be adversely affected by the outcome of this proceeding. I support the dual certification of SP Utility.

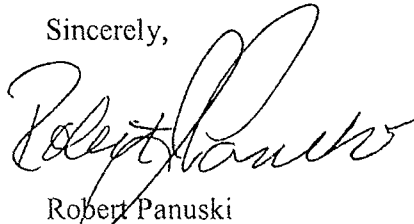
As a ratepayer, I am specifically concerned that San Jacinto River Authority – could intervene in this proceeding and oppose the granting of the CCN amendment to SP Utility. San Jacinto River Authority is not a CWE customer, does not speak for the customers, does not have our interests in mind and does not have facilities to serve our community. Instead, San Jacinto River Authority is improperly using this PUC proceeding to force payment of outstanding fees owed by the CWE owner and previous operator Brent Davis. It is my understanding that the PUC process is not designed for that kind of contract litigation. The PUC should deny San Jacinto River Authority's Motion to Intervene and Request for Hearing.

DOCKET NO. 50543 - ATTACHMENT B

I am further concerned that San Jacinto River Authority's mischief could result in no permanent water solution for my community. Just since last December when the PUC appointed Harrison Williams as Temporary Manager, I have personally experienced improvements to our water service. Prior to Mr. Williams' management, we experienced repeated service interruptions and outages. I also believe that if SP Utility is dually certified and allowed to serve my community, we will receive even better and more affordable service.

Accordingly, I request that my request to intervene be granted and that I be given party status in any dual certification case related to CWE and SP Utility. I further request that San Jacinto River Authority's Motion to Intervene be denied.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Panuski', written in a cursive style.

Robert Panuski