



Control Number: 51166



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**DeAnn T. Walker**  
Chairman  
**Arthur C. D'Andrea**  
Commissioner  
**Shelly Botkin**  
Commissioner  
**Thomas Gleeson**  
Executive Director



*Public Utility Commission of Texas*



TO: DeAnn T. Walker, Chairman  
Arthur C. D'Andrea, Commissioner  
Shelly Botkin, Commissioner

All Parties of Record

FROM: <sup>LS</sup> Hunter Burkhalter  
Chief Administrative Law Judge

RE: **Open Meeting of January 14, 2021**  
**Docket No. 51166** – *Petition of Colorado River Project, LLC to Amend SWWC Utilities, Inc. dba Hornsby Bend Utility Company Inc's Certificate of Convenience and Necessity in Travis County by Expedited Release*

DATE: December 21, 2020

**Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change**

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, January 14, 2021, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file corrections or exceptions to the Proposed Order on or before Tuesday, January 5, 2021.

**If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.**

**If there are no corrections or exceptions, no response is necessary.**

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**DOCKET NO. 51166**

**PETITION OF COLORADO RIVER PROJECT, LLC TO AMEND SWWC UTILITIES, INC. DBA HORNSBY BEND UTILITY'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN TRAVIS COUNTY BY EXPEDITED RELEASE**      §  
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**PUBLIC UTILITY COMMISSION**  
**OF TEXAS**

**PROPOSED ORDER**

This Order addresses the petition by Colorado River Project, LLC for streamlined expedited release of a tract of land in Travis County from the service area under water certificate of convenience and necessity (CCN) number 11978 and sewer CCN number 20650. SWWC Utilities, Inc. dba Hornsby Bend Utility Company Inc. is the holder of water CCN number 11978 and sewer CCN number 20650. For the reasons stated in this Order, the Commission releases the tract of land from SWWC Utilities' certificated service areas. In addition, the Commission amends SWWC Utilities' water CCN number 11978 and sewer CCN number 20650 to reflect the removal of the tract of land from the service areas.

Following entry of this Order, the Commission will determine the amount of compensation, if any, to be awarded to SWWC Utilities, which will be addressed by a separate order.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Petitioner**

1. The petitioner is a Delaware limited liability company registered with the Texas secretary of state under filing number 803624941.

**CCN Holder**

2. SWWC Utilities, Inc. is a Delaware for-profit corporation registered with the Texas secretary of state under filing number 800832416.
3. SWWC Utilities is registered to do business as Hornsby Bend Utility Company Inc. with the Texas secretary of state.

4. The petitioner holds water CCN number 11978 and sewer CCN number 20650 that obligate it to provide retail water and sewer service in its certificated service areas in Travis County.

**Petition**

5. On August 13, 2020, the petitioner filed its petition for streamlined expedited release of five separate tracts tract of land comprising, in total, approximately 2,122.27 acres, from the CCN holder's service areas under water CCN number 11978 and sewer CCN number 20650.
6. The August 13, 2020 petition includes the August 6, 2020 affidavit of Rohan Patel, authorized representative of the petitioner, with attached maps and metes-and-bounds descriptions of the tracts, a special warranty deed dated July 31, 2020, and a compact disc with mapping information.
7. On August 31, 2020, the petitioner filed supplemental maps in support of the application.
8. On September 9, 17, and 29, 2020, the petitioner filed amended maps in support of the application.
9. In Order No. 4 filed on September 30, 2020, the administrative law judge (ALJ) found the application incomplete and insufficient.
10. On October 9, 2020, the petitioner filed an amended petition. In the amended petition, the petitioner clarified that it is only seeking the release of one of its five tracts, consisting of approximately 1,369.833 acres, from water CCN number 11978 and sewer CCN number 20650.
11. The requested area to be released from the CCN holder's water CCN number 11978 consists of 1,322.36 acres.
12. The requested area to be released from the CCN holder's sewer CCN number 20650 consists of 1,331.62 acres
13. On October 29, 2020, the petitioner supplemented the amended petition with the affidavit of Mr. Patel in support of the amended petition, dated October 28, 2020.
14. In Order No. 6 filed on November 5, 2020, the ALJ found the petition administratively complete.

**Notice**

15. The petitioner sent a copy of the original petition by certified mail, return receipt requested, to the CCN holder on August 13, 2020.
16. The petitioner sent a copy of the amended petition to the CCN holder via electronic mail on October 9, 2020.
17. In Order No. 6 filed on November 5, 2020, the ALJ found the notice of the petition sufficient.

**Intervention and Response to Petition**

18. In Order No. 2 filed on September 3, 2020, the ALJ granted the CCN holder's motion to intervene.
19. The CCN holder filed a response to the amended petition on November 30, 2020.
20. The CCN holder's response includes the affidavit of Timothy Williford, the CCN holder's vice president of operations for its Texas utilities, with an attached map showing the location of the CCN holder's facilities in proximity to the tract in question, and an agreement whereby the CCN holder secured access to a supply of water adequate to provide service to its service area, including the petitioner's tract.

**The Tract of Land**

21. The tract of land for which the petitioner seeks expedited release is approximately 1,369.833 acres and is in Travis County.
22. A portion of the petitioner's tract of land is located within the CCN holder's certificated service areas.

**Ownership of the Tract of Land**

23. The petitioner acquired the tract of land in Travis County by a special warranty deed dated July 31, 2020.

**Qualifying County**

24. Travis County has a population greater than one million people.

**Water Service**

25. The tract of land is not receiving actual water service from the CCN holder.

26. The petitioner has never requested that the CCN holder provide water service to the tract of land, has never paid any fees or charges to the CCN holder to initiate or maintain water service, and there are no billing records or other documents indicating an existing account with the CCN holder for water service for the tract.
27. The CCN holder provides water service in the vicinity of, but not on, the tract of land.
28. The CCN holder has sufficient capacity to serve the tract of land and has water facilities near the tract of land, but does not have any facilities on the tract of land.
29. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
30. The CCN holder has no facilities or lines that provide water service to the tract of land.
31. The CCN holder has not performed any acts for or supplied anything to the tract of land.

**Sewer Service**

32. The tract of land is not receiving actual sewer service from the CCN holder.
33. The petitioner has never requested that the CCN holder provide sewer service to the tract of land, has never paid any fees or charges to the CCN holder to initiate or maintain sewer service, and there are no billing records or other documents indicating an existing account with the CCN holder for sewer service for the tract.
34. The CCN holder provides sewer service in the vicinity of, but not on, the tract of land.
35. The CCN holder has sufficient wastewater treatment capacity to serve the tract of land, but does not have any facilities on the tract of land.
36. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for sewer service.
37. The CCN holder has no facilities or lines that provide sewer service to the tract of land.
38. The CCN holder has not performed any acts for or supplied anything to the tract of land.

**Map and Certificate**

39. On December 14, 2020, Commission Staff filed its recommendation that included certificates and maps on which it identified the tract of land in relationship to the CCN holder's water and sewer service areas.

## II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over the petition for streamlined expedited release under Texas Water Code (TWC) §§ 13.254 and 13.2541.
2. The petitioner provided notice of the petition in compliance with 16 Texas Administrative Code (TAC) § 24.245(h)(3)(F).
3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 or 13.2541 or 16 TAC § 24.245(h)(7).
4. Petitions for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are required to submit a verified petition through a notarized affidavit, and the CCN holder may submit a response to the petition.
6. To obtain release under TWC § 13.2541(b), a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.
7. The petitioner owns the tract of land, which is at least 25 acres, for which it seeks streamlined expedited release through the petition.
8. Travis County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
9. The tract of land is not receiving water or sewer service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
10. The petitioner is entitled under TWC § 13.2541(b) to the release of its tract of land from the CCN holder's certificated service areas.
11. After the date of this Order, the CCN holder has no obligation under TWC § 13.254(h) to provide retail water service or retail sewer service to the petitioner's tract of land.

12. The Commission has no authority to decertificate any facilities or equipment owned and operated by the CCN holder to provide retail water service or retail sewer service through the streamlined-expedited-release process under Texas Water Code § 13.2541(b)
13. The Commission processed the petition in accordance with the TWC and Commission rules.
14. Under TWC § 13.257(r) and (s), the CCN holder is required to record certified copies of the approved certificates and maps, along with boundary descriptions of the service areas, in the real property records of Travis County no later than the 31st day after the date the CCN holder receives this Order.
15. A retail public utility may not under TWC § 13.254(d) provide retail water service or retail sewer service to the public within the tract of land unless just and reasonable compensation under TWC § 13.254(g) has been paid to the CCN holder.

### **III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission releases the tract of land identified in the petition from the CCN holder's service areas under water CCN number 11978 and sewer CCN number 20650.
2. The Commission does not decertificate any of the CCN holder's equipment or facilities that may lay on or under the petitioner's tract of land.
3. The Commission amends water CCN number 11978 and sewer CCN number 20650 in accordance with this Order.
4. The Commission approves the maps filed by Commission Staff on December 14, 2020.
5. The Commission approves the certificates filed by Commission Staff on December 14, 2020.
6. The CCN holder must file in this docket proof of the recording required in TWC § 13.257(r) and (s) within 45 days of the date of this Order.



7. The proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with the schedule adopted in Order No. 6. Any decision on compensation will be made by a separate order.
8. The Commission denies all other motions and any other requests for general or specific relief not expressly granted by this Order.

Signed at Austin, Texas the \_\_\_\_ day of January 2021.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**