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PUBLIC UTILITY COMMISSION  
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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

PUBLIC UTILITY COMMISSION

OF TEXAS

**SWWC UTILITIES, INC. D.B.A HORNSBY BEND UTILITY COMPANY, INC.'S  
MOTION FOR REHEARING**

**TO THE HONORABLE COMMISSIONERS:**

SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc. (HBUC) files this Motion for Rehearing in response to the Public Utility Commission of Texas' (Commission) Order dated January 14, 2021 (Order).<sup>1</sup> This Motion for Rehearing of the Commission's Order is timely, filed within 25 days of the date the Order was signed and dated, in compliance with Tex. Gov't Code § 2001.146(a), T.R.C.P. Rule 4, and Tex. Gov't Code § 662.003(a)(4). HBUC respectfully urges rehearing based upon the following Point of Error.

**I. INTRODUCTION**

On January 14, 2021, the Commission entered its Order in the above entitled cause, granting the Petition (the Order), which amended HBUC's water Certificate of Convenience and Necessity (CCN) No. 11978 and sewer CCN No. 20650 to remove a 1,369.833 acre tract of land (the Property). This Motion for Rehearing is timely filed pursuant to 16 Tex. Administrative Code (TAC) 22.264 and Texas Government Code § 2001.146.

HBUC respectfully requests the Commission reconsider the Order and deny Colorado River Project, LLC's (CRP) Petition. Specifically, HBUC requests the Commission reconsider the Findings of Fact and Conclusions of Law set forth below in its Point of Error. The evidence in the record demonstrated that HBUC was providing service to the area that CRP seeks to decertify.

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<sup>1</sup> Order (Jan. 14, 2021).

The Commission should deny the Petition because the streamlined expedited release (SER) requested cannot lawfully be granted under Texas Water Code (TWC) § 13.2541 and 16 TAC § 24.245. The Property is receiving service from HBUC and not eligible for SER.

HBUC urges the Commission to grant rehearing; reconsider Findings of Fact Nos. 29, 30, 36, and 37, and Conclusions of Law Nos. 9 and 10; and reverse its Order.

## II. POINT OF ERROR

The Commission erred by misapplying TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h) in Findings of Fact Nos. 29, 30, 36, and 37; and Conclusions of Law Nos. 9 and 10.

The Order incorrectly states that HBUC, as the CCN holder of the tract of land in which CRP (Petitioner) is seeking to decertify in this proceeding, has not committed or dedicated any facilities or lines, does not have any facilities or lines, and has not performed any acts for or supplied anything to the tract of land. In Findings of Fact Nos. 29 and 30, the Order includes language stating the CCN holder “has not committed or dedicated any facilities or lines” and “has not performed any act for or supplied anything” to the tract of land for water service.<sup>2</sup> Similarly, in Findings of Fact Nos. 36 and 37, the Order includes identical findings regarding sewer service.<sup>3</sup> Ultimately, in Conclusion of Law No. 9 in the Order, the Commission concludes “[t]he tract of land is not receiving water 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).”<sup>4</sup> In Conclusion of Law No. 10, the Commission concludes “[t]he tract of land is not receiving 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).”<sup>5</sup> These findings and conclusions do not accurately reflect HBUC’s activities concerning the Property as explained in the Affidavit of Timothy Williford.

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<sup>2</sup> Order at 4.

<sup>3</sup> *Id.*

<sup>4</sup> Order at 5.

<sup>5</sup> *Id.*

The Property receives water and sewer service from HBUC under any interpretation or application of the term “service” as the TWC defines it, and the Property cannot be released from HBUC’s CCNs under TWC § 13.2541.<sup>6</sup> The Water Code broadly defines “service” as:

any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties . . . to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.<sup>7</sup>

The embedded term “facilities” is defined as:

[a]ll the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.<sup>8</sup>

Actually delivering water to or collecting wastewater from a property is obviously “service,” but a property can also receive water or sewer service under the statute without a utility delivering “actual water” onto or collecting wastewater from a property.<sup>9</sup> In the *Crystal Clear* Austin Third Court of Appeals decision, the court held that facilities or lines “used” or “committed” to providing such service may cause a property to “receive service” under the statutory and regulatory definition.<sup>10</sup> But where water lines or wastewater lines are actually present within a tract and “committed” to the property in that manner, the tract is unquestionably “receiving service.” The Commission recently determined that a streamlined expedited release petition may not be granted under *Crystal Clear* and TWC § 13.2541 when such facts are present.<sup>11</sup>

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<sup>6</sup> TWC § 13.2541(b) (allowing streamlined expedited release of a tract of land that “is not receiving water or sewer service.”); *see also* 16 Tex. Admin. Code (TAC) § 24.245(h)(1)(B).

<sup>7</sup> TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

<sup>8</sup> TWC § 13.002(9); *see also* 16 TAC § 24.3(15) (same definition).

<sup>9</sup> *See Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied).

<sup>10</sup> *Id.*

<sup>11</sup> *Petition of Clay Road 628 Development, LP to Amend T&W Water Service Company’s Certificate of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 50261, Order Denying Streamlined Expedited Release at 2–4 (Apr. 29, 2020).

Here, the Petition claims, “The property in question is not receiving water or sewer service from Hornsby or any other water or sewer service provider.”<sup>12</sup> The Petition supports that statement with a self-serving affidavit from Mr. Rohan Patel, Development Manager for the Petitioner.<sup>13</sup> But HBUC has a water line adjacent to the Property that was installed specifically to provide water to the tract and has acquired water rights to provide adequate water resources to the tract and future development of the Property.<sup>14</sup>

As shown in the affidavit of Timothy Williford, Vice President of Operations of Texas Utilities for HBUC, HBUC provided evidence that: (1) HBUC’s water and wastewater facilities were originally built with the intent of serving the Property and the planned Austin Green Municipal Utility District (MUD), which would have been developed on the Property; (2) HBUC acquired water rights in the Blue Water pipeline and allocated 6,000 living unit equivalents of water capacity in that line to servicing the Property and the planned MUD; and (3) HBUC has other facilities immediately adjacent to the Property, and has performed various acts and supplied funds in furtherance of service to the Property and HBUC’s CCN area that includes the Property, as detailed in Mr. Williford’s affidavit.<sup>15</sup>

Additionally, HBUC has entered into various agreements with neighboring utilities relating to the protection of HBUC’s certificated service area and to ensure continuous and adequate service to both current and future customers, including to the Property.

The identified facilities—and the acts planning, creating, and maintaining them—are all plainly “committed” or “used” by HBUC in the performance of its duties to supply water and sewer service to the Property in the targeted CCN area. At a minimum, the water main lines located adjacent to the Property provide water service to the Property, but the Property also receives water and sewer service from HBUC through its commitments to, and its existing facilities and capacity adjacent to, the Property. Mr. Williford’s affidavit describes all the different ways HBUC has served the Property through its various service acts and funds

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<sup>12</sup> Petition at 6.

<sup>13</sup> *Id.* at 6–7.

<sup>14</sup> SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc.’s Supplemental Response to Colorado River Project, LLC’s Petition, Affidavit of Timothy Williford, at paragraphs 5-6, 8.

<sup>15</sup> *Id.*

supplied, but there should be no question that the Property receives water and sewer service from HBUC today through facilities located adjacent to the Property.<sup>16</sup> Under these facts, the Commission should deny the Petitioner's request to release the Property from HBUC's CCNs because that would violate TWC § 13.2541.

For the reasons stated above, the Commission's release CRP's tract of land from HBUC's certificated service areas is: (1) in violation of a constitutional or statutory provision; (2) in excess of the agency's statutory authority; (3) made through unlawful procedure; (4) affected by other errors of law; (5) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

WHEREFORE, PREMISES CONSIDERED, HBUC respectfully requests that the Commission grant Rehearing on the Point of Error described herein, and upon such rehearing adopt an Order that: (1) finds the tract of land is receiving water and sewer service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h); and (2) denies the Petitioner's request to release the Property from HBUC's CCNs. HBUC further requests any and all other relief to which they are justly entitled.

Respectfully submitted,

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/s/ Lambeth Townsend

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<sup>16</sup> *Id.*

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**ATTORNEYS FOR SWWC UTILITIES, INC.  
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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 February 5, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Lambeth Townsend

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LAMBETH TOWNSEND

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