

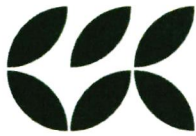


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PUBLIC UTILITY COMMISSION
FILING CLERK

March 28, 2021

VIA E-FILING

The Honorable Hunter Burkhalter
Administrative Law Judge
Public Utility Commission
1701 N. Congress Ave.
Austin, Texas 78711-3326

Re: *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*, PUC Docket No. 51166

Dear Judge Burkhalter:

The Texas Water Code §13.2541 sets forth the statutory deadlines governing a Streamlined Expedited Release ("SER"). Specifically, the relevant dates at issue in this matter start from the Commission's order granting the release January 14, 2021. From that time, the statute mandates that the parties have 70 calendar days to file an appraisal at the PUC. Tex. Water Code §13.2541(i). That date was March 25, 2021. "If the former CCN holder fails to make a filing with the commission about the amount of agreed compensation or engage an appraiser or file an appraisal within the timeframes required by this subsection, the amount of compensation to be paid will be deemed to be zero." 16 Tex. Admin. Code § 24.245(i)(4). (Petitioner's appraiser in the present case, found no compensation was due the former CCN holder other than \$10,000.00 for professional fees.)

The former CCN holder contends that appraisals are subject to 16 Tex. Admin. Code §22.71. For at least two reasons, they are wrong. The first is that appraisals are not identified as a pleading defined under 16 Tex. Admin. Code § 22.2 nor a document as defined by §22.71(a). Secondly, §22.71 specifically also deals with the physical filing of documents at PUC's Central Records location. The PUC specifically abated the physical filing of all documents under section 22 pursuant to its Order Suspending Rules. PUC Docket 50664 (March 16, 2020). (This includes having filed or being in line to file at Central Records by 3 p.m.)

The former CCN holder's position, if accepted, would reduce the clear statutory timeline to less than 70 calendar days for Petitioner and expand to 71 days for the former CCN holder. Both would result in failing to follow the clear legislative intent. Tex. Gov't Code §312.005 Vernon's 2019). As the Texas Supreme Court stated:

The goal of statutory construction is to give effect to the intent of the legislature. *Harris County Dist. Attorney's Office v. J.T.S.*, 807 S.W.2d 572, 574 (Tex.1991). "Where language in a statute is unambiguous, this court must seek the intent of the legislature as found in the plain and common meaning of the words

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and terms used.” *Moreno v. Sterling Drug, Inc.*, 787 S.W.2d 348, 352 (Tex.1990); *RepublicBank Dallas, N.A. v. Interkal, Inc.*, 691 S.W.2d 605, 607 (Tex.1985). When the legislature has failed to define a word or term, courts will apply its ordinary meaning. *Geters v. Eagle Ins. Co.*, 834 S.W.2d 49, 50 (Tex.1992); *Hopkins v. Spring Indep. School Dist.*, 736 S.W.2d 617, 619 (Tex.1987). When applying the ordinary meaning, courts “may not by implication enlarge the meaning of any word in the statute beyond its ordinary meaning, and implications from any statutory passage or word are *forbidden* when the legislative intent may be gathered from a reasonable interpretation of the statute *as it is written*.” *Sexton v. Mount Olivet Cemetery Ass'n*, 720 S.W.2d 129, 138 (Tex.App.—Austin 1986, writ ref'd n.r.e.); *Commonwealth of Mass. v. United N. & S. Dev. Co.*, 140 Tex. 417, 168 S.W.2d 226, 229 (1942).

Monsanto Co. v. Cornerstones Mun. Util. Dist., 865 S.W.2d 937, 939 (Tex. 1993).

The legislative intent of Texas Water Code §13.2541 is that competing appraisals need be filed within 70 calendar days, and are required before any further action by the PUC appointing a third appraiser may be done. In the present case, no further procedural requirements exist because no compensation is owed pursuant to PUC’s own rules. The SER granted by the PUC on January 14, 2021, together with no need for a third appraiser, nor any compensation being owed, terminates this matter. The Petitioner may move forward with securing water and wastewater service on the released property. There simply exist no view of the language of §13.2541 that would allow for a late filed appraisal. Petitioner seeks clarification that no other acts need be done and that this matter is concluded.

Respectfully,



John Scott