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DOCKET NO. 51166

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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

MOTION FOR EXCEPTION OR EXTENSION OF TIME

AND

BRIEF

OF

**SWWC UTILITIES, INC.
DBA HORNSBY BEND UTILITY COMPANY, INC.**

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DBA HORNSBY BEND UTILITY COMPANY,
INC.**

APRIL 5, 2021

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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**

**SWWC UTILITIES, INC. DBA HORNSBY BEND UTILITY COMPANY, INC.'S
MOTION FOR EXCEPTION OR EXTENSION OF TIME AND
BRIEF ON COMPENSATION ISSUES**

SWWC Utilities, Inc. DBA Hornsby Bend Utility Company, Inc. (HBUC) submits this Motion for Exception or Extension of Time and Brief to address the compensation issues outlined in Order No. 8, issued on March 29, 2021.¹ Pursuant to Order No. 9, issued on March 30, 2021,² this brief is timely filed, and in support HBUC shows the following:

I. SUMMARY OF ARGUMENT

The compensation process should proceed. Both parties failed to file their reports by 3:00 p.m. on March 25. HBUC's late filing was the result of a good faith mistake in calculating the deadline, which constitutes "good cause" for granting an exception or extending the time for filing and accepting HBUC's appraisal as timely filed.³ HBUC does not object to the same relief being granted to Colorado River Project, LLC (CRP).

The deadlines in Texas Water Code § 13.2541(i) are directory, not mandatory, according to applicable case law and Public Utility Commission (Commission) precedent. The various deadlines in 16 Texas Admin. Code (TAC) § 24.245(i) have been treated as directory by the Commission. To now treat them as mandatory is inconsistent with the Legislature's intent to have directory deadlines for the orderly and prompt processing of petitions for streamlined expedited release and inconsistent with Commission precedent. The Commission has the authority to grant

¹ Order No. 8 Requiring Briefing from the Parties (Mar. 29, 2021).

² Order No. 9 Adjusting Briefing Deadline (Mar. 30, 2021).

³ See 16 TAC §§ 22.4(b) and 22.5(b); see also *Wheeler v. Green*, 157 S.W.3d 439, 442 (Tex. 2005).

a good cause exception to the 70-day deadline of 16 TAC § 24.245(i), and has previously done so.⁴

Missing the 3:00 p.m. deadline on March 25 has not unreasonably delayed the process for determining just and adequate compensation for the decertified retail public utility, nor prejudiced any party. Both parties engaged experts and filed their reports within less than 24 hours of the deadline.

Accordingly, HBUC requests that the Commission grant this exception or motion for extension of time to late file its Appraisal Report pursuant to 16 TAC §§ 22.4(b), 22.5(b), and 24.5.

II. FACTS

The relevant facts for purposes of this brief are as follows:

- The Commission entered its Order approving the release of CRP's property on January 14, 2021, which was 70 days after CRP's petition was declared administratively complete in Order No. 6 issued November 5, 2020.
- Within ten days of the Commission's January 14 Order, a representative of HBUC contacted a representative of CRP to determine whether the parties could agree on an independent appraiser. They could not agree on an appraiser.
- Both HBUC and CRP engaged their own experts.
- At 4:58 p.m. on March 25, 2021,⁵ CRP electronically filed its engineering valuation report. That report was prepared by a person who is not accredited by any appraiser association and who did not prepare the engineering valuation report in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). The hard

⁴ 16 TAC §§ 22.4(b), 22.5(b), and 24.5.

⁵ See attached Exhibit A for email received from CRP's counsel. In its corrected letter of March 28, CRP argues that 16 TAC § 22.71 does not apply to an appraisal required to be filed by 16 TAC § 24.245(i)(2)(B) because the appraisal is not a pleading as defined under 16 TAC § 22.2. HBUC disagrees. Because the appraiser report is a document to be considered by the Commission under chapter 24, it is subject to chapter 22. 16 TAC § 24.5. Therefore, CRP's report was due to be filed by 3:00 p.m. as required by 16 TAC § 22.71(h).

copy of CRP's engineering valuation report to the Commission was sent either by mail or courier.

- HBUC hand-delivered its confidential Appraisal Report to the Commission the next day—it was time stamped as received at 12:42 p.m. on March 26, 2021. HBUC's Appraisal Report was prepared by an accredited appraiser in compliance with USPAP. Because HBUC's Appraisal Report is confidential, it could not be filed electronically.
- HBUC filed the Appraisal Report on March 26, not March 25, because HBUC, acting in good faith, mistakenly calculated the deadline for March 26.⁶

III. ARGUMENT

A. HBUC has shown good cause for an exception or a one-day extension of time for filing the Appraisal Report.

Pursuant to 16 TAC §§ 22.4(b) and 22.5(b), HBUC respectfully requests a *one-day* exception or extension of time to file its Appraisal Report on March 26, 2021, or an exception to the requirement to file it by March 25, 2021. The Appraisal Report was filed before 3:00 p.m. on March 26, 2021, less than 24 hours after 3:00 p.m. on March 25, 2021, when the Appraisal Report was due. The Commission's rules allow an extension on filing of a motion "showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion."⁷ And the rules further allow "the presiding officer" to "grant exceptions to any requirement in this chapter or in a commission-prescribed form for good cause."⁸

⁶ See attached Exhibit B, the Affidavit of William A. Faulk, III.

⁷ 16 TAC § 22.4(b).

⁸ *Id.* § 22.5(b).

The Commission entered its Order approving the release of CRP’s property on January 14, 2021. HBUC and CRP were to file their own appraisals “within 70 calendar days after the date on which the utility commission approves the petition.”⁹ Therefore, according to Section 22.4(a), the appraisals were due before 3:00 p.m. on March 25, 2021.

As set forth in the Affidavit of William A. Faulk, III, attached as Exhibit B, HBUC miscalculated the deadline because of a mistake in calculating the time period described in Section 22.4(a). The Rule directs that “the period shall begin on the day after the act, event, or default in question.” Because the “day after” the Order was January 15, counsel put that day into a date-calculation program, which then identified March 26 as the due date. The mistake was not brought to light until the afternoon of March 26, after HBUC’s Appraisal Report was filed. As described in the Affidavit, HBUC learned of the mistake after CRP’s counsel sent a letter to the ALJ seeking clarification of the due date. CRP’s letter was sent after counsel for HBUC had a phone conversation with counsel for CRP where the timeliness of HBUC’s filing was not questioned. CRP’s engineering valuation report was also filed after the March 25 3:00 pm deadline.

Immediately after determining that its filing was late, HBUC made a request for a good cause exception to the filing deadline for both parties.¹⁰ HBUC’s intent was always to timely file the Appraisal Report—there was no bad faith or intent to ignore or disregard the rules.¹¹

HBUC has shown good cause for the extension. In other circumstances where parties have sought extensions of deadlines for good cause, the Texas Supreme Court has held that “[g]ood

⁹ Tex. Water Code § 13.2541(i); *see also* Order Nos. 6 Finding Petition Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule (Nov. 5, 2020), *and* Order No. 7 Granting Motion to Amend Procedural Schedule (Nov. 19, 2020).

¹⁰ SWWC Utilities, Inc. DBA Hornsby Bend Utility Company Inc.’s Response to Colorado River Project’s Letter Seeking Clarification (Mar. 29, 2021).

¹¹ *See* Exhibit B.

cause is established by showing the failure involved was an accident or mistake, not intentional or the result of conscious indifference.”¹² Furthermore, where a party “faces the very real prospect of summary disposition without regard to the underlying merits,” an extension of time should be granted on “a showing of (1) good cause, and (2) no undue prejudice.”¹³ Moreover, due process bars merits-preclusive sanctions, such as that HBUC faces here should the extension not be granted, “absent flagrant bad faith or callous disregard for the rules.”¹⁴ As the Supreme Court said later in following *Wheeler*, “Constitutional imperatives favor the determination of cases on their merits rather than on harmless procedural defaults.”¹⁵

HBUC has shown good cause and that the need for the extension is not caused by neglect, indifference, or lack of diligence. This is not a case where HBUC’s attorney was aware of a deadline and ignored it or repeatedly ignored deadlines or communications, as has been the case in all other cases where an attorney’s conduct reached the level of conscious indifference.¹⁶ The one-day delay in filing HBUC’s Appraisal Report was the result of an accident or mistake; it was not intentional or the result of conscious indifference. There was no flagrant bad faith or callous disregard for the rules.

An exception or extension is necessary to prevent this matter from being disposed of on harmless procedural defects rather than its merits. Without it, HBUC risks receiving no

¹² *Wheeler v. Green*, 157 S.W.3d 439, 442 (Tex. 2005) (failure to file response to summary judgment motion).

¹³ *Carpenter v. Cimarron Hydrocarbons Corp.*, 98 S.W.3d 682, 687-88 (Tex. 2002) (failure to file response to summary judgment motion).

¹⁴ *Wheeler*, 157 S.W.3d at 443.

¹⁵ *Marino v King*, 355 S.W.3d 629, 634 (Tex. 2011) (request for withdrawal of deemed admissions); *see also State Bd for Educator Certification v Tran*, No. 03-18-00855-CV, 2020 WL 6834219, at *10 (Tex. App.—Austin Nov. 20, 2020, pet. filed) (quoting *Marino*).

¹⁶ *See Cervantes v Cervantes*, No. 03-07-00381-CV, 2009 WL 3682637, at *8–9 (Tex. App.—Austin Nov. 5, 2009, no pet.) (collecting cases where attorney’s acts causing default judgment reached the level of conscious indifference).

compensation for the release granted by the Commission, despite an Appraisal Report indicating it should receive more than \$50 million.¹⁷ The one-day delay in filing the Appraisal Report caused no harm—both CRP and HBUC have hired experts and filed reports, showing an intent to follow through with the streamlined expedited release process. The appointment of the third appraiser as part of that process has not been delayed.

Furthermore, HBUC asks the Commission to deem that this Motion for Exception or Extension of Time was filed timely so that HBUC’s substantive rights can be protected. HBUC was not able to file this Motion for Exception or Extension before the deadline as the procedural rule envisions because HBUC believed in good faith that its Appraisal Report was being filed timely.¹⁸

B. The Commission can extend the deadlines in Texas Water Code § 13.2541 because they are directory, not mandatory.

All deadlines but mandatory deadlines can be extended. Whether a statutory provision is mandatory or directory is a question of law.¹⁹ A mandatory provision in a statute requires an action be done within a certain time *and* states the consequences for failing to complete the action within the specified time. A directory provision in a statute is not the essence of the thing to be done but is included to promote the proper, orderly, and prompt completion of the action required. All statutory deadlines in Texas Water Code § 13.2541, including the deadline for filing appraisals in this case, are directory, not mandatory.

An absolute test for determining whether a statutory provision is mandatory or directory does not exist. “The fundamental rule is to ascertain and give effect to the legislative intent.”²⁰

¹⁷ See 16 TAC § 24.245(i).

¹⁸ See *Verburgt v Dorner*, 959 S.W.2d 615, 617 (Tex. 1997) (holding that “a motion to extend time is necessarily implied when an appellant acting in good faith” perfects appeal after deadline).

¹⁹ *Tex Dep’t of Public Safety v. Guerra*, 970 S.W.2d 645, 648 (Tex. App.—Austin 1998, pet. denied).

²⁰ *Chisholm v. Bewley Mills*, 287 S.W.2d 943, 945 (Tex. 1956).

To determine whether the Legislature intended the particular provision to be mandatory or merely directory, the entire act should be considered.²¹ “Provisions which are not of the essence of the thing to be done, but which are included for the purpose of promoting the proper, orderly and prompt conduct of business, are not generally regarded as mandatory.”²² “[The issue] is not whether ‘shall’ [or ‘must’] is mandatory, but what consequences follow a failure to comply.”²³ Whether the statute contains a noncompliance penalty is important in determining whether a timing provision is mandatory or directory.²⁴ A timing provision that requires performing an act within a certain time but does not specify the consequences for noncompliance is construed as directory.²⁵

In *AC Interests*, the plaintiff timely filed suit to review a TCEQ order but failed to serve citation within 30 days as the statute said “must” be done. The Supreme Court held that the statute was “directory” rather than “mandatory.”²⁶ The Court reasoned that “because the Legislature expressed no particular consequence for failing to meet that deadline and none is logically necessary, the presumption is the Legislature intended the requirement to be directory rather than mandatory and that the Legislature did not intend for late service to result in the automatic dismissal of the plaintiff’s appeal.”²⁷

The lack of a stated consequence cannot, of course, be interpreted to defeat the statute’s essential purpose.²⁸ But the Supreme Court in *AC Interests* stressed that a statutory deadline whose purpose is merely to expedite the process is generally not part of the statute’s “essential purpose”: “We should be careful not to confuse incrementally promoting a purpose with being fundamentally

²¹ *Id.*

²² *Id.*

²³ *AC Interests, L.P. v Texas Commission on Environmental Quality*, 543 S.W.3d 703, 709 (Tex. 2018) (quoting *State v. \$435,000*, 842 S.W.2d 642, 644 (Tex. 1992)).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 714.

²⁷ *Id.*

²⁸ *Id.*

required by it—i.e., just because ‘expediency’ is a purpose does not mean that being less-expedient requires dismissal.”²⁹

The provision in question here, Tex. Water Code § 13.2541(i), provides as follows:

If the petitioner and the certificate holder cannot agree on an independent appraiser within 10 calendar days after the date on which the utility commission approves the petition, the petitioner and the certificate holder shall each engage its own appraiser at its own expense, and each appraisal shall be submitted to the utility commission within 70 calendar days after the date on which the utility commission approves the petition. After receiving the appraisals, the utility commission shall appoint a third appraiser who shall make a determination of the compensation within 100 days after the date on which the utility commission approves the petition. The determination may not be less than the lower appraisal or more than the higher appraisal. The petitioner and the certificate holder shall each pay half the cost of the third appraisal.

As in *AC Interests*, this provision has no express consequence for failing to meet the 70-day deadline, which supports the conclusion that the Legislature intended the requirement to be directory rather than mandatory. The consequences of a mandatory construction would frustrate the legislative intent that the retail public utility receive just and adequate compensation as determined through the appraisal process. The 70-day timeline is “for the purpose of promoting the proper, orderly, and prompt” process of determining the just and adequate compensation for the decertified retail public utility. It is not part of the statute’s “essential purpose.”

C. The Commission has treated the various time deadlines in Texas Water Code § 13.2541(i) and its predecessor as directory.

All of the streamlined expedited release proceeding deadlines use the word “shall.” Section 13.2541 of the Texas Water Code includes “shall” in setting out the 60-day deadline for the Commission to grant the petition and the 70-day deadline for the appraisal to be submitted. Section 13.2541(c) provides “[t]he utility commission shall grant the petition not later than the 60th day after the date the landowner files the petition.” Section 13.2541(i) provides, in part, “each

²⁹ *Id.* at 713.

appraisal shall be submitted . . . within 70 calendar days after . . . the [commission] approves the petition.”

Nevertheless, since the Tex. Water Code was amended in 2013 to transfer jurisdiction over retail water and sewer utilities to the Commission, the Commission has treated the various deadlines in the streamlined expedited release process, including the determination of just and adequate compensation, as directory. In fact, in Docket No. 45679,³⁰ when considering how best to complete the compensation determination process and faced with the tension between the deadlines and an orderly process to do all things required of the Commission in a streamlined expedited release proceeding, Chairman Nelson sent a memorandum to the two other commissioners stating her opinion “that the 90-day *directory* deadline [to complete the process] should not control our decision to the point of improper application of the rest of the statute.”³¹

Although the Commission strives to follow all of the deadlines in streamlined expedited release proceedings, the deadlines have been treated as directory and the Commission routinely acts after the deadlines have expired. For example, the 60-day deadline³² for the Commission to grant the petition in a streamlined expedited release proceeding is regularly missed, as happened in this proceeding. Attached as Exhibit C to the brief are examples of the Commission acting on petitions beyond the 60-day deadline identified in the statute.

The Commission has also treated the 70-day and 100-day deadlines in Section 13.2541(i) of the Texas Water Code as directory and granted extensions:

- In Docket No. 50109, the petitioner requested a final order declaring it owed \$0 to Aqua Texas after petitioner was the only party to file an appraisal report within the

³⁰ *Zipp Road Utility Company LLC's Notice of Intent to Provide Sewer Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County*, Docket No. 45679 (Feb. 21, 2017).

³¹ Public Utility Commission of Texas Open Meeting, June 29, 2016, Agenda Item No. 26, Memo from Chairman Nelson (Jun. 28, 2016) (emphasis added).

³² TWC § 13.2541(c).

70-day deadline.³³ Aqua Texas had not intervened in the proceeding at that point.³⁴ The Commission granted Aqua Texas's motion to intervene and restarted the entire compensation phase of the proceeding.³⁵

- In Docket No. 50495,³⁶ the 70-day deadline was February 25, 2021. The petitioner filed a motion to extend time for filing the appraisal on February 26. Order No. 5 gave petitioner an additional week to submit its appraisal for good cause due to power outages, etc. from the week of February 15–19, 2021.
- In Docket No. 50787, Order No. 7 granted the Commission Staff a good cause extension of the time to file the Commission-appointed third appraiser's report.³⁷ In that docket, the CCN holder alleged that the valuation report filed by the landowner was not an appraisal as required by the statute because it was not prepared by an accredited appraiser.³⁸ Based on its position, the CCN holder would not sign the Commission Staff's engagement letter for the third appraiser acknowledging that the CCN holder agreed to pay half of the cost of the third appraiser.³⁹

³³ *Petition of Carol C. Van Alstyne AKA Wanda Carol Calfee Van Alstyne to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 50109, Motion for Proposed Final Order Deeming Compensation to be Zero (May 15, 2020).

³⁴ Docket No. 50109, Aqua Texas, Inc.'s Motion to Intervene, Response to Staff's Request for Extension, Reply to Petitioner's Response and Objection to Staff's Request, and Request for New Compensation Phase Deadlines (Jun. 5, 2020).

³⁵ Docket No. 50109, Order No. 7 Ruling on Pending Motions and Adopting a New Procedural Schedule for the Compensation Phase (Jun. 16, 2020).

³⁶ *Petition of the Sanctuary Texas LLC to Amend the City of Lakewood Village's Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 50495 (Mar. 23, 2021).

³⁷ *Petition of Tyler Oak Creek Development, LLC to Amend Liberty Utilities (Tall Timbers Sewer) Corp.'s Certificate of Convenience and Necessity in Smith County by Expedited Release*, Docket No. 50787, Order No. 7 Granting Extension (Mar. 23, 2021).

³⁸ Liberty Tall Timbers' Objections to and Motion to Strike Compensation Determination Filed by Tyler Oak Creek Development, LLC (Mar. 3, 2021).

³⁹ Commission Staff's Motion for Extension and to Require Payment for Third Appraiser's Report (Mar. 18, 2021).

The only instance in which an extension of time to file the appraisal was not allowed was when the movant made no attempt whatsoever to show good cause, despite the rules' requirement that it do so.⁴⁰ Of course, that case is distinguishable from this case because HBUC has shown good cause why its filing was delayed.⁴¹ Also, because both parties have filed their reports—albeit after the 3:00 p.m. deadline on March 25—the compensation process can continue without delay and without prejudice to any party.

D. The Commission should proceed with the compensation process and appoint a third appraiser.

As discussed above, the statutory deadlines applicable to the streamlined expedited release process are directory. The Commission has customarily treated them as such. However, when the Commission adopted the amendments to 16 TAC § 24.245(i), it added severe consequences to just one deadline, the 70-day deadline for filing appraisals in the compensation process.⁴² Adding those consequences is inconsistent with the Legislature's intent that the deadline be directory. By promulgating a rule that contained such consequences, the Commission sought to impose additional burdens, conditions, or restrictions in excess of or inconsistent with the relevant statutory provisions and thus exceeded its statutory authority.⁴³

However, resolution of that question is not necessary at this time because the Commission also gave itself the discretion to grant an extension of time to file the appraisal and to grant a good cause exception to those consequences, pursuant to 16 TAC §§ 22.4(b), 22.5(b), and 24.5. Both parties have complied with the requirements of 16 TAC § 24.245(i)(2)—they have conferred but

⁴⁰ See *Petition of FCS Lancaster, Ltd. To Amend Rockett Special Utility District's Certificate of Convenience and Necessity in Dallas County by Expedited Release*, Docket No. 51044 (pending) (The special utility district filed an unopposed motion for extension for time to file the appraisal without giving any reason for needing the extension).

⁴¹ See Exhibit B.

⁴² 16 TAC § 24.245(i) is silent regarding a situation in which both parties failed to file within 70 days.

⁴³ See, e.g., *Harlingen Family Dentistry, P C v. Tex Health & Human Services Comm'n*, 452 S.W.3d 479, 486 (Tex. App.—Austin 2014, pet. dism'd) (“For an administrative rule to be ‘in harmony’ with legislative objectives, it must not impose additional burdens, conditions, or restrictions in excess of or inconsistent with relevant statutory provisions.”); see generally *Texas State Board of Examiners of Marriage and Family Therapists v. Texas Medical Ass'n*, 511 S.W.3d 28, 33 (Tex. 2017).

could not agree on an independent appraiser, they have each hired an expert, and they have filed the reports of their experts, albeit not by 3:00 p.m. on March 25. The statute gives the third appraiser 30 days to make a determination of compensation. It cannot be seriously argued that 29 days (instead of 30) would materially restrict the third appraiser's ability to make this determination. Also, the Commission has the discretion to extend the time for filing the third appraisal so that the independent appraiser has a full 30 days to complete the appraisal.

No claim of prejudice has been made here, either to CRP or to the process in general, from HBUC's unintentional minor delay in filing. Failing to complete the compensation process would be unjust. The streamlined expedited release proceeding should proceed.

IV. CONCLUSION AND PRAYER

Based on the legal and equitable arguments presented, HBUC respectfully requests that, pursuant to 16 TAC §§ 22.4(b), 22.5(b), and 24.5, the ALJ issue an order granting HBUC a one-day extension of time or a good cause exception for filing appraisals in 16 TAC § 24.245(i)(2)(B), and that an order be issued to proceed with the compensation process, and for the Commission to appoint an accredited appraiser to prepare a third appraisal in compliance with the Uniform Standards of Professional Appraisal Practice, and grant such other relief that preserves HBUC's substantive rights and to which HBUC has shown itself entitled.

Respectfully submitted,

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**ATTORNEYS FOR SWWC UTILITIES, INC.
DBA HORNSBY BEND UTILITY COMPANY,
INC.**

CERTIFICATE OF SERVICE

I hereby certify that notice of the filing of this document was provided to all parties of record via electronic mail on April 5, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Lambeth Townsend

LAMBETH TOWNSEND

EXHIBIT A

Hanna Campbell

From: John Scott <jscott@fsc.legal>
Sent: Thursday, March 25, 2021 7:06 PM
To: Lambeth Townsend
Subject: Fwd: 51166 Appraisal

For your records.

Begin forwarded message:

From: John Scott <john.scott@scottpllc.net>
Date: March 25, 2021 at 4:58:24 PM CDT
To: CentralRecords@puc.texas.gov
Subject: 51166 Appraisal

Attachment available until Apr 24, 2021

[Click to Download](#)

DGRA FINAL VALUATION REPORT PUC DOCKET NO 51166 03252021.pdf
45.2 MB

EXHIBIT B

DOCKET NO. 51166

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

AFFIDAVIT OF WILLIAM A. FAULK, III
IN SUPPORT OF MOTION FOR EXCEPTION OR EXTENSION OF TIME

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

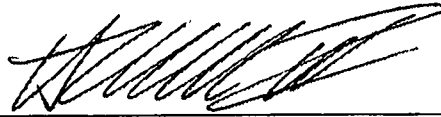
On this date, William A. Faulk, III, personally appeared before me, the undersigned Notary Public, and after being duly sworn stated the following under oath:

1. My name is William A. Faulk, III. I am an attorney at Lloyd Gosselink Rochelle & Townsend, P.C. in Austin, Texas. I am one of the attorneys at the firm representing SWWC Utilities, Inc. DBA Hornsby Bend Utility Company, Inc. (HBUC) in the above-entitled matter.
2. In this case, the Administrative Law Judge (ALJ) issued Order Nos. 6 and 7, which placed the deadline for the parties to file their appraiser reports “Within 70 days after the Commission approves expedited release.” It was, therefore, left to the parties to calculate the due date.
3. I was responsible for calculating and calendaring the 70-day deadline for HBUC to file its appraiser report with the Commission. I looked at Section 22.4(a), the Commission’s rule governing counting days for the computation of time. The Rule directs that “the period shall begin on the day after the act, event, or default in question.” Because the “day after” the Order was January 15, I put that day into a date-calculation program as the starting date. The

program identified March 26 as the due date. HBUC filed its appraiser report with the Commission before 3:00 pm on March 26, 2021.

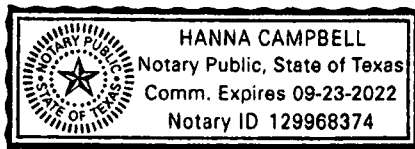
4. On the morning of March 26, I saw an email from counsel for Petitioner to Lambeth Townsend, sent at 7:06 pm on March 25, 2021, notifying us that Petitioner had electronically filed their evaluation report around 5:00 pm that day. While the Petitioner did file on March 25, the filing after 3:00 pm led me to believe that the Petitioner had calculated March 26 as the deadline as well, as any filings at the Commission are treated as being filed the next day if filed after 3:00 pm.
5. I spoke to counsel for Petitioner at around 9:00 am on March 26 regarding potential confidential material being included in its filing. Counsel for Petitioner asked me when we would be filing our appraiser report and I told him we would be filing it shortly as this was the day I calculated as the due date. During that conversation, counsel for Petitioner raised no objection to the HBUC filing on March 26, but only stated that he would like a copy of the report as soon as possible. Later that day, after HBUC had filed its appraiser report with the Commission, I read a letter the Petitioner's counsel sent to the ALJ, seeking clarification concerning the deadline. That letter was filed at 3:34 pm on March 26, but was not served on our office. I then conferred with my co-counsel and upon reexamination of the deadline determined that my initial calculation was incorrect. That is when we realized that HBUC and the Petitioner both filed their reports after the 3:00 pm deadline on March 25.
6. We immediately drafted a request to the ALJ for a good cause exception to the filing deadline for both parties, pursuant to 16 Tex. Admin. Code §§ 22.5(b) and 24.5. It was electronically transmitted to the Commission and served on all parties on Friday evening, and officially filed by the Commission's Central Records at 9:16 am on Monday, March 29, 2021.
7. It was always my intent and HBUC's intent to timely file the appraiser report consistent with the Commission's rules. I did not act in bad faith, or with conscious indifference. I did not willfully disregard the Commission's rules. The late filing was the result of an accident or mistake. It was an honest miscalculation.

FURTHER, AFFIANT SAYETH NOT.



William A. Faulk, III

SUBSCRIBED AND SWORN TO BEFORE ME on this 4th day of April,
2021, to certify which witness my hand and seal of office.



Notary Public in and for the State of Texas

EXHIBIT C

Docket No. 48397: *Petition of Stoecker Corporation to Amend the City of Cut And Shoot's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

- Sixty-day administrative approval = September 14, 2018
- Notice of Approval = September 21, 2018

Docket No. 48484: *Petition of EQK Bridgeview Plaza, LLC to Amend High Point Water Supply Corporation's Certificate of Convenience and Necessity in Kaufman County by Expedited Release*

- Sixty-day administrative approval = September 24, 2018
- Notice of Approval = September 27, 2018

Docket No. 48587: *Petition of Raymond Martin to Amend High Point Water Supply Corporation's Certificate of Convenience and Necessity in Rockwall County by Expedited Release*

- Sixty-day administrative approval = January 11, 2019
- Notice of Approval = January 22, 2019

Docket No. 48590: *Petition of Dennis Wilkerson, Trustee to Amend the Town of Cut And Shoot's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

- Sixty-day administrative approval = January 7, 2019
- Notice of Approval = January 22, 2019

Docket No. 48603: *Petition of Stoecker Corporation to Amend Town of Cut And Shoot's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

- Sixty-day administrative approval = November 12, 2018
- Notice of Approval = November 29, 2018

Docket No. 48742: *Petition of Tonkawa Farms, L.P. to Amend Pattison Water Supply Corporation's Water Certificate of Convenience and Necessity in Waller County by Expedited Release*

- Sixty-day administrative approval = January 7, 2019
- Notice of Approval = January 22, 2019

Docket No. 48801: *Petition of T.J. Bradshaw Construction, Ltd. to Amend Jonah Special Utility District's Certificates of Convenience and Necessity in Williamson County by Expedited Release*

- Sixty-day administrative approval = January 25, 2019
- Petitioners withdrew Petition = November 8, 2019

Docket No. 48824: *Petition of Tejas Creek, Ltd. to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Montgomery County by Expedited Release*

- Sixty-day administrative approval = February 10, 2019
- Final Order = March 1, 2019
 - In a memorandum dated February 11, 2019, OPDM said: “The need to have Tejas Creek’s petition considered within the 60-day timeline set forth in TWC § 13.254(a-6) serves as good cause to waive the 20-day requirement in 16 Texas Administrative Code (TAC) § 22.35 and have the petition considered at the next regularly scheduled open meeting.” This good cause exception was filed one day after the administrative deadline had already passed.

Docket No. 48935: *Petition of AIRW 2017-7, LP to Amend the City of McKinney’s Certificate of Convenience and Necessity in Collin County by Expedited Release*

- Sixty-day administrative approval = March 5, 2019
- Petitioners withdrew Petition = April 4, 2019
 - On February 25, 2019, Petitioner asked for “motion to continue final action,” essentially asking for an extension of the sixty-day deadline. The Commission did not grant or deny the extension request, but notably did not file its approval within the sixty days, so impliedly, the extension was granted. The motion for extension of time can be found here:
http://interchange.puc.texas.gov/Documents/48935_13_1009293.PDF

Docket No. 49167: *Petition of Julie and Brad Dubros to Amend the City of Cut And Shoot’s Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

- Sixty-day administrative approval = June 1, 2019
- Notice of Approval = June 3, 2019
 - However, June 1 was a Saturday, so next business day was June 3.

Docket No. 49168: *Petition of FM Properties to Amend the City of Cut And Shoot’s Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

- Sixty-day administrative approval = June 1, 2019
- Notice of Approval = June 3, 2019
 - However, June 1 was a Saturday, so next business day was June 3.

Docket No. 49259: *Application of Presnall Construction, LLC, Gwendolyn Welch Tye, Carolyn Presnall Simpson, Joe A. Presnall Sullivan, and Stephen B. Cox, Trustee to Amend Aqua Texas, Inc.’s Water Certificate of Convenience and Necessity in Chambers County by Expedited Release*

- Sixty-day administrative approval = May 27, 2019
- Notice of Approval = July 26, 2019
 - Commission granted petitioner extension to cure ownership issue and found error in initial filing, so found extension would also allow petitioner time to cure notarized affidavit requirement.

Docket No. 49280: *Petition of Previllage, LLC to Amend HMW Special Utility District's Water Certificate of Convenience and Necessity in Harris County by Expedited Release*

- Sixty-day administrative approval = November 4, 2019
- Final Order = December 13, 2019

Docket No. 49360: *Petition of John Kimbro to Amend Monarch Utilities I, LP's Certificate of Convenience and Necessity in Hays County by Expedited Release*

- Sixty-day administrative approval = July 15, 2019
- Order = September 27, 2019
 - On August 30, 2019, Petitioner filed "Request for Action on Application," stating, "the Commission has not granted the Petition within the time period required by TEXAS WATER CODE § 13.254(a-5)—(a-6) and 16 TEX. ADMIN. CODE § 24.245(1). Therefore, Petitioner respectfully requests that the Commission either act to grant the Petition through its presiding ALJ immediately or schedule this matter for a Commission open meeting no later than September 12, 2019 so that Petitioner's Property is released as requested from Monarch Utilities I, LP's water CCN No. 12983."

Docket No. 49366: *Petition of Frost Bank National Bank, as Trustee of the Freeman Educational Foundation to Amend the City of San Marcos' Water Certificate of Convenience and Necessity in Hays County by Expedited Release*

- Sixty-day administrative approval = November 12, 2019
- Final Order = December 13, 2019

Docket No. 49385: *Petition of Sherry B. Dill to Amend Aqua Water Supply Corporation's Sewer Certificate of Convenience and Necessity in Bastrop County by Expedited Release*

- Sixty-day administrative approval = August 26, 2019
- Notice of Approval = August 31, 2019

Docket No. 49433: *Petition of LGI Homes - Texas, LLC, Big Sky LLC, and Mindy L. Koehne (Trustee) to Amend Bolivar Water Supply Corporation's Water Certificate of Convenience and Necessity in Denton County by Expedited Release*

- Sixty-day administrative approval = November 25, 2019
- Final Order = March 2, 2020

Docket No. 49460: *Petition of Tyler Oak Springs Development, LLC to Amend Liberty Utilities (Tall Timber Sewer) Corp.'s Sewer Certificate of Convenience and Necessity in Smith County by Expedited Release*

- Sixty-day administrative approval = July 29, 2019
- Final Order = September 27, 2019

Docket No. 49564: *Petition of Sunbelt Estates, LLC to Amend the City of Elmendorf's Water Certificate of Convenience and Necessity in Bexar and Wilson Counties by Expedited Release*

- Sixty-day administrative approval = August 19, 2019
- Final Order = September 27, 2019

Docket No. 49863: *Petition of Alamo Mission LLC to Amend Rockett Special Utility District's Water Certificate of Convenience and Necessity in Ellis County by Expedited Release*

- Sixty-day administrative approval = January 12, 2021
- Final Order = January 14, 2021

Docket No. 49871: *Petition of the City of Red Oak Industrial Development Corporation to Amend Rockett Special Utility District's Water Certificate of Convenience and Necessity in Dallas and Ellis Counties by Expedited Release*

- Sixty-day administrative approval = January 15, 2021
- Order = March 5, 2021
 - The docket was unabated on November 10, 2020, and the deadline for approval established by the Commission was January 15, 2021, 66 days later.

Docket No. 49904: *Petition of Republic Business Center LLC to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*

- Sixty-day administrative approval = December 17, 2019
- Notice of Approval = February 7, 2020

Docket No. 49924: *Petition of Maple Heights Development LLC to Amend Porter Municipal District's Sewer Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

- Sixty-day administrative approval = February 3, 2020
- Final Order = March 13, 2020

Docket No. 49939: *Petition of Big Sky LLC to Amend Bolivar Water Supply Corporation's Water Certificate of Convenience and Necessity in Denton County by Expedited Release*

- Sixty-day administrative approval = December 23, 2019
- Final Order = March 2, 2020

Docket No. 50077: *Petition of Kristen Calfee Bybee to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Montgomery County by Expedited Release*

- Sixty-day administrative approval = January 13, 2020
- Order = February 27, 2020

Docket No. 50259: *Petition of Clay Road 628 Development, LP to Amend Stanley Lake Municipal Utility District's Certificates of Convenience and Necessity in Montgomery County by Expedited Release*

- Sixty-day administrative approval = April 20, 2020
- Order = June 12, 2020
 - This is one of four dockets re: Clay Road.

Docket No. 50260: *Petition of Clay Road 628 Development, LP to Amend Simply Aquatic's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

- Sixty-day administrative approval = March 9, 2020
- Order = June 12, 2020
 - This is one of four dockets re: Clay Road.

Docket No. 50261: *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*

- Sixty-day administrative approval = March 9, 2020
- Order denying SER = April 29, 2020
 - This is one of four dockets re: Clay Road.

Docket No. 50404: *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

- Sixty-day administrative approval = August 11, 2020
- Order = Still not issued

Docket No. 50405: *Petition of The Sanctuary Texas, LLC to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release*

- Sixty-day administrative approval = September 8, 2020
- Order = October 16, 2020

Docket No. 50495: *Petition of The Sanctuary Texas, LLC to Amend the City of Lakewood Village's Certificate of Convenience and Necessity in Denton County by Expedited Release*

- Sixty-day administrative approval = June 15, 2020
- Order = December 17, 2020
 - On July 3, Petitioner filed a "Motion for Entry of Order Granting Administrative Approval."

Docket No. 50581: *Petition of Cole, Prewitt, and Rudisill, LLC to Amend Southern Utilities Company's Certificate of Convenience and Necessity in Smith County by Expedited Release*

- Sixty-day administrative approval = August 3, 2020
- Order = August 13, 2020

Docket No. 50787: *Petition of Tyler Oak Creek Development, LLC to Amend Liberty Utilities (Tall Timber Sewer) Corp.'s Certificate of Convenience and Necessity in Smith County by Expedited Release*

- Sixty-day administrative approval = September 14, 2020
- Order = December 17, 2020

Docket No. 51044: *Petition of FCS Lancaster, Ltd. to Amend Rockett Special Utility District's Certificate of Convenience and Necessity in Dallas County by Expedited Release*

- Sixty-day administrative approval = January 19, 2021
- Order = January 29, 2021

Docket No. 51114: *Petition of Imperial Heights, Ltd. to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*

- Sixty-day administrative approval = October 30, 2020
- Order = December 17, 2020

Docket No. 51150: *Petition of DJD Land Partners LLC to Amend Mountain Peak Special Utility District's Certificate of Convenience and Necessity in Johnson County by Expedited Release*

- Sixty-day administrative approval = November 9, 2020
- Order = December 17, 2020

Docket No. 51158: *Petition of Johnston & Associates, LLP and Frank Carvalho to Amend Mountain Peak Special Utility District's Certificate of Convenience and Necessity in Johnson County by Streamlined Expedited Release*

- Sixty-day administrative approval = November 30, 2020
- Order = January 29, 2021

Docket No. 51163: *Petition of Olex (United States), Inc., FKA Olex Corporation NV to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release*

- Sixty-day administrative approval = January 25, 2021
- Order = March 5, 2021

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*

- Sixty-day administrative approval = January 4, 2021
- Order = January 14, 2021

Docket No. 51249: *Petition of Crook Rose, Inc. to Amend Lindale Rural Water Supply Corporation's Certificate of Convenience and Necessity in Smith County by Expedited Release*

- Sixty-day administrative approval = December 7, 2020
- Order = Still not issued
 - Abated, but not until well after administrative deadline passed.

Docket No. 51349: *Petition of David Speer and Kevin Speer to Amend Gulf Coast Waste Disposal Authority's Sewer Certificate of Convenience and Necessity in Chambers County by Expedited Release*

- Sixty-day administrative approval = December 21, 2020
- Order = December 31, 2020

Docket No. 51352: *Petition of Carnegie Development, LLC to Amend James A. Dyche DBA Crest Water Company's Certificate of Convenience and Necessity in Johnson County by Streamlined Expedited Release*

- Sixty-day administrative approval = December 20, 2020
- Order = Still not issued

Docket No. 51355: *Petition of LDG001, LLC to Amend Mountain Peak Special Utility District's Certificate of Convenience and Necessity in Johnson County by Expedited Release*

- Sixty-day administrative approval = December 22, 2020
- Order = January 29, 2021

Docket No. 51400: *Petition of RCR Hempstead Rail, LP to Amend G&W Water Supply Company's Certificate of Convenience and Necessity in Waller County by Expedited Release*

- Sixty-day administrative approval = March 8, 2021
- Order = Still not issued

Docket No. 51492: *Petition of Denton 114 LP to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release*

- Sixty-day administrative approval = February 8, 2021
- Order = March 5, 2021