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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**

**COMMISSION STAFF'S RESPONSE TO HORNSBY BEND UTILITY'S REQUEST
FOR EXTENSION**

On August 13, 2020, Colorado River Project, LLC (CRP) filed a petition to amend SWWC Utilities, Inc. dba Hornsby Bend Utility's (Hornsby Bend) certificates of convenience and necessity (CCNs) in Travis County by streamlined expedited release. CRP seeks the expedited release of the portion of the 2,122.27 acres owned by CRP that lies within the boundaries of Hornsby Bend's water CCN number 11978 and sewer CCN number 20650.

An Order was filed on January 14, 2021 granting CRP's petition for streamlined expedited release. Under Texas Water Code (TWC) § 13.2541(i), the former CCN holder and the landowner must both file appraisal reports within 70 days of the date a final order is issued in a streamlined expedited release docket should they be unable to agree upon a single appraiser or agree upon a monetary amount of compensation. 70 days from January 14, 2021 was March 25, 2021. CRP filed its appraisal report at 4:58 PM on March 21, 2021 and Hornsby Bend filed its appraisal report at 12:42 PM on March 26, 2021. CRP raised a concern that Hornsby Bend's appraisal report was not timely filed and briefing was requested in Order No. 8, setting a deadline of April 9, 2021 for the Staff of the Public Utility Commission of Texas (Staff) to file a brief on how compensation should be decided. Order No. 9 affirmed this deadline. Therefore, this brief is timely filed.

WP

I. RESPONSE TO HORNSBY BEND'S REQUEST FOR EXTENSION

On March 29, 2021¹ and April 5, 2021,² Hornsby Bend file a request for a good cause exception or a one-day extension of the time for filing the Appraisal Report pursuant to 16 Texas Administrative Code (TAC) §§ 22.4(b) and 22.5(b). Hornsby Bend notes that its 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. Hornsby Bend further notes that 16 TAC § 22.4(a), the appraisal reports in this docket were due before 3:00 p.m. on March 25, 2021 and therefore both Hornsby Bend and CRP's report were filed late.³

In its April 5, 2021 brief Hornsby Bend cites a number of dockets in which an extension of the 70-day filing deadline under 16 TAC § 24.245(i) was granted.⁴ Specifically, Hornsby Bend notes Docket Nos. 50109,⁵ 50495,⁶ and 50787.⁷ Hornsby Bend asserts that in these dockets, the Commission treated the 70-day and 100-day deadlines in TWC § 13.2541(i) of the Texas Water Code as directory and granted extensions to the deadlines.⁸

None of the situations cited by Hornsby Bend exactly mirror the circumstances in the present docket; however, they stand for the general proposition that the deadlines in TWC § 13.2541(i) may be extended for good cause. As it seems that Hornsby Bend's failure to meet the 3:00 PM deadline on March 25, 2021 was unintentional, and as there is precedent for an extension to the 16 TAC § 24.245(i) deadlines, Staff supports the extension requested in this docket. Moreover, granting an extension is in the public interest. Because both parties have already gone

¹ SWWC Utilities, Inc. dba Hornsby Bend Utility Company Inc 's Response to Colorado River Project's Letter Seeking Clarification (Mar. 29, 2021).

² Motion for Exception or Extension of Time and Brief of SWWC Utilities, Inc DBA Hornsby Bend Utility Company Inc. (Apr. 5, 2021) (Hornsby Bend's Brief)

³ *Id.* at 4-5

⁴ *Id.* at 11-12.

⁵ *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, Order No. 7 Ruling on Pending Motions and Adopting a New Procedural Schedule for the Compensation Phase (Jun 16, 2020).

⁶ *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)

⁷ *Petition of Tyler Oak Creek Development, LLC to Amend Liberty Utilties (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)

⁸ Hornsby Bend's Brief at 13.

to the time and expense of having an appraiser prepare a report, and the compensation amounts recommended by CRP and Hornsby Bend range from \$10,000⁹ to more than \$50 million,¹⁰ respectively, Staff believes that allowing the third, independent appraisal to proceed is the best means by which to fulfill the intent of TWC § 13.2541. Consequently, Staff respectfully recommends that Hornsby Bend's request for extension be granted and that this docket be permitted to proceed.

II. STAFF'S REQUEST FOR EXTENSION

Under 16 TAC § 22.4(b), Staff may request that the time allowed for filing any documents be extended for good cause. Staff has retained a third appraiser to prepare the third appraisal report required by 16 TAC § 24.245(i)(2)(B); however, as a result of the timing issue raised by CRP, Staff's appraiser has yet to begin work on preparing the third appraisal report. Consequently, Staff's appraiser will require additional time to complete the appraisal report. Therefore, Staff respectfully requests the entry of an order extending the deadline for Staff to file the third appraisal report to 30 days from the date an Order is filed granting Hornsby Bend's request for an extension. If the administrative law judge denies the request for extension, Staff will file briefing on April 9, 2021 as required by Order No. 9 and renew its request to extend the deadline to file its appraiser's report in that filing.

III. CONCLUSION

For the reasons detailed above, Staff respectfully requests the entry of an order consistent with the above recommendation and requests that Staff's request for extension be granted.

⁹ Engineering Valuation of SWWC Utilities dba Hornsby Bend Utility at 8 (Mar. 26, 2021).

¹⁰ Hornsby Bend's Brief at 8

Dated: April 6, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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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 April 6, 2021 in accordance with the Order Suspending Rules, filed in Project No. 50664.

/s/ John Harrison
John Harrison