



Control Number: 51166



Item Number: 75

Addendum StartPage: 0

RECEIVED

2021 APR 21 PM 2:39

DOCKET NO. 51166

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

SWWC UTILITIES, INC. D.B.A. HORNSBY BEND UTILITY COMPANY, INC.'S

RESPONSE TO COLORADO RIVER PROJECT, LLC'S

APPEAL OF INTERIM ORDER NO. 10

LAMBETH TOWNSEND
ltownsend@lglawfirm.com
 State Bar No. 20167500

WILLIAM A. FAULK, III
cfaulk@lglawfirm.com
 State Bar No. 24075674

REID BARNES
rbarnes@lglawfirm.com
 State Bar No. 24101487

LLOYD GOSSELINK
 ROCHELLE & TOWNSEND, P.C.
 816 Congress Avenue, Suite 1900
 Austin, Texas 78701
 (512) 322-5800
 Fax: (512) 472-0532

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

APRIL 21, 2021

TABLE OF CONTENTS

	Page
I. EXECUTIVE SUMMARY	3
II. PROCEDURAL BACKGROUND.....	4
III. ARGUMENTS AND AUTHORITIES.....	6
A. Order No. 10 is not subject to appeal under 16 TAC § 22.123(a)(1).	7
1. The ALJ’s ruling does not immediately prejudice “a substantial or material right” of CRP.	7
2. The ALJ’s ruling is evidentiary and does not “materially affect the course of the hearing.”	8
B. The Commission has the power to allow extensions and exceptions.	10
1. The deadlines in Texas Water Code § 13.2541 are directory, not mandatory.	10
2. The consequence for late filing added by 16 TAC § 24.245(i)(4) does not make the deadline mandatory.	13
3. The Commission has treated the various time deadlines in Texas Water Code § 13.2541(i) and its predecessor as directory.	14
4. The Commission has broad authority to grant exceptions and extensions in adjudicative proceedings.....	17
5. The Commission has formally adopted rules allowing exceptions and extensions for good cause; CRP’s reliance on Rodriguez v. Service Lloyds Ins. Co. is misplaced.	19
C. Order No. 10 correctly granted the exception and extension under 16 TAC §§ 22.4(b), 22.5(b), and 24.2(b).....	20
1. HBUC has established good cause for a one-day extension or exception to the filing deadline.....	20
2. The strict good cause test of Alvarado v. Farah Mfg. Co., Inc. has no application here.....	23
IV. CONCLUSION.....	24
Exhibit A Affidavit of William A. Faulk, III	
Exhibit B Examples of the Commission acting on petitions beyond the 60 day deadline in the statute	

DOCKET NO. 51166

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

**SWWC UTILITIES, INC. D.B.A. HORNSBY BEND UTILITY COMPANY, INC.’S
RESPONSE TO COLORADO RIVER PROJECT, LLC’S
APPEAL OF INTERIM ORDER NO. 10**

SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc. (HBUC), files this Response to Colorado River Project, LLC’s (CRP) Appeal of Interim Order No. 10, issued on April 12, 2021.¹ Pursuant to 16 Tex. Administrative Code (TAC) § 22.123(a)(4), “[a]ny response to an appeal shall be filed within five working days of the filing of the appeal,” therefore this response is timely filed. In support, HBUC shows as follows:

I. EXECUTIVE SUMMARY

Contrary to CRP’s arguments in its appeal, the administrative law judge’s (ALJ) Order No. 10 should be upheld.

First, CRP’s attempted appeal of Order No. 10 is prohibited under 16 TAC § 22.123(a)(1). CRP has suffered no immediate prejudice to a substantial or material right as it can obtain the same relief it seeks here through the ordinary appeals process. Moreover, Order No. 10 is merely an evidentiary ruling that does not materially affect the course of the hearing.

Furthermore, if Order No. 10 is subject to appeal, it should be upheld on its merits because the exceptions and extension granted in Order No. 10 are authorized by Public Utility Commission

¹ Order No. 10 Addressing Pending Motions (Apr. 12, 2021).

(Commission) rule, applicable case law, and Commission precedent. The deadlines in Texas Water Code (TWC) § 13.2541(i) may be extended because those deadlines are directory, not mandatory, and the Legislature has delegated to the Commission broad authority to conduct proceedings, including the authority to grant extensions or exceptions to statutory deadlines that do not expressly authorize those extensions or exceptions. Commission rules that allow for exceptions and extensions upon a showing of good cause are valid because the Commission adopted them under its formal notice-and-comment rulemaking process; therefore, *Rodriguez v. Serv. Lloyds Ins. Co.* is inapplicable.² The ALJ correctly determined that HBUC established good cause under the appropriate standard for a one-day extension or exception to the filing deadline; the strict good cause test of *Alvarado v. Farah Mfg. Co., Inc.* proposed by CRP has no application here.³

II. PROCEDURAL BACKGROUND

CRP filed a petition to amend HBUC's certificates of convenience and necessity (CCNs) in Travis County by streamlined expedited release (SER) in August 2020. CRP sought the expedited release of the portion of CRP's properties that lie within the boundaries of HBUC's water CCN No. 11978 and sewer CCN No. 20650. After amending and filing several supplements to its petition, CRP's petition was declared administratively complete on November 5, 2020.⁴

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. Within ten

² *Rodriguez v. Serv. Lloyds Ins. Co.*, 997 S.W.2d 248 (Tex. 1999).

³ *Alvarado v. Farah Mfg. Co., Inc.*, 830 S.W.2d 911 (Tex. 1992).

⁴ Order No. 6 Finding Petition Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule (Apr. 16, 2021).

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, after the 3:00 p.m. deadline,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 Commission received the hard copy of CRP's engineering valuation report the next day, March 26, 2021.

HBUC filed its confidential Appraisal Report, prepared by an accredited appraiser in compliance with USPAP, by hand-delivery to the Commission the on March 26, 2021, at 12:42 p.m. 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

After the reports were filed, CRP filed a request for clarification claiming that because HBUC's Appraisal Report was filed one day late, HBUC was not entitled to any compensation. CRP sought clarification concerning the deadline and invoked the zero-compensation consequence

⁵ CRP argued in its brief to the ALJ that 16 TAC § 22.71 did 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. CRP also argued that the 3:00 p. m. deadline was suspended by the Commission's March 16, 2020 Order Suspending Rules in Project No. 50664. While the 3:00 p.m. deadline was arguably suspended for a time as a result of that order, CRP failed to acknowledge that the suspension was subsequently revoked by the Second Order Suspending Rules issued on July 16, 2020. Therefore, CRP's report was due to be filed by 3:00 p.m. as required by 16 TAC § 22.71(h).

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

for the failure to file a report. In response, the ALJ⁷ required the parties to file briefing on compensation issues.⁸ HBUC sought an exception or extension pursuant to 16 TAC §§ 22.4(b), 22.5(b), and 24.2(b). After HBUC, CRP, and the Commission Staff filed their briefs, the ALJ issued Order No. 10,⁹ finding that under 16 TAC § 24.2(b), “good cause exists to make exceptions to: the 70-day deadline specified in 16 TAC § 24.245(i)(2)(B) by which [HBUC] was required to file its appraisal report; and the consequence for [HBUC’s] failure to file its appraisal report within 70 days specified in 16 TAC § 24.245(i)(4).” The ALJ granted HBUC’s motion for a one-day extension and also extended the deadline for the Commission Staff to file its third-party appraiser report to May 12, 2021, 30 days from the date of Order No. 10. CRP filed its Appeal of Order No. 10¹⁰ two days after it was issued.

III. ARGUMENTS AND AUTHORITIES

A presiding officer is required to issue “interim orders” that “may aid in the conduct of the hearing and the efficient and *fair* disposition of the proceeding.”¹¹ The ALJ’s Order No. 10 was an interim order designed to allow for a fair disposition of the proceeding by finding good cause to allow an exception to the 70-day deadline specified in 16 TAC § 24.245(i)(2)(B) and to the consequence for HBUC’s failure to file its appraisal report within 70 days specified in 16 TAC § 24.245(i)(4). It also granted HBUC its requested one-day extension. Order No. 10 is consistent

⁷ Order No. 8 Requiring Briefing from the Parties (Mar. 29, 2021).

⁸ *Id.*; see also Order No. 9 Adjusting Briefing Deadline (Mar. 30, 2021).

⁹ Order No. 10 Addressing Pending Motions (Apr. 12, 2021).

¹⁰ Colorado River Project, LLC’s Appeal of Interim Order No. 10 (Apr. 14, 2021) (CRP’s Appeal).

¹¹ 16 TAC § 22.122(a) (emphasis added).

with the Commission’s rules and precedent, the TWC, case law, and the need for a fair disposition of the proceeding.

A. Order No. 10 is not subject to appeal under 16 TAC § 22.123(a)(1).

According to 16 TAC § 22.123, “[a]ppeals are available for any order of the presiding officer that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings.”¹² Thus, this process is purposefully limited to orders that deprive parties of substantial rights that cannot be remedied through the ordinary appeals process. CRP is not entitled to an appeal of Order No. 10 because it fails on all fronts: (1) CRP suffers no immediate prejudice to a substantial or material right because it can obtain the same relief by ordinary appeal after the compensation order is issued, and (2) Order No. 10 does not affect the course of the hearing, and the ruling on whether HBUC’s appraisal can be admitted is evidentiary. Thus, its appeal should be dismissed.

1. The ALJ’s ruling does not immediately prejudice “a substantial or material right” of CRP.

CRP complains that it suffers immediate prejudice because Order No. 10 accepting HBUC’s filing has deprived it the benefit of the harshest of procedural consequences—summary disposition of the proceeding without regard to the merits. But CRP suffers no *immediate* prejudice as envisioned by 16 TAC § 22.123 because CRP can appeal the exception and extension granted in Order No. 10 through the ordinary appellate process and obtain exactly the same relief that it seeks here, but on a full record. After the third appraiser is appointed and makes a determination as to compensation, CRP may challenge the substance of Order No. 10 by appeal to this

¹² 16 TAC § 22.123(a)(1).

Commission, to the district court, to the court of appeals, and to the Texas Supreme Court. If CRP is correct, any compensation ordered after the SER process is complete can be reversed. In no way can it be said that CRP has suffered an immediate prejudice to a substantial or material right, because no right has been taken away from it.

Furthermore, the rights CRP claims to have lost are merely procedural, not “substantial or material” as the rule requires. CRP claims that it has some sort of vested or property right in the application of 16 TAC § 24.245(i)(4). But procedural rules that are subject to good cause exception, including 16 TAC § 24.245(i)(4), do not guarantee any party a substantial or material right, certainly no *immediate* right. CRP does not have a “substantial or material” right to the consequences contained in § 24.245(i)(4) because under 16 TAC § 24.2(b), the Commission can make exceptions to any provision in Chapter 24. Both parties have complied with the requirements of 16 TAC § 24.245(i)(2)—they conferred but could not agree on an independent appraiser, they each hired an expert, and they filed the reports of their experts. Order No. 10 provides CRP and HBUC the procedural rights the statute and the rule envision—an opportunity for a third appraiser to make a determination of compensation. It cannot be seriously argued that the extensions the ALJ ordered would materially infringe upon a material or substantial right of CRP in this process.

2. The ALJ’s ruling is evidentiary and does not “materially affect the course of the hearing.”

The Commission has made clear, “[u]nder 16 [TAC] § 22.123(a)(1), appeals of evidentiary rulings are not available to parties.”¹³ The decision whether to exclude HBUC’s Appraisal Report is evidentiary because it determined what is and what is not in the record. If the ALJ had denied

¹³ *Application of Woodland Hills Water, LLC for Authority to Change Rates*, Docket No. 49337, Memorandum from Chairman Walker to Commissioner D’Andrea and Commissioner Botkin at 1 (Sept. 9, 2020).

HBUC's requested exception and instead enforced 16 TAC § 24.245(i)(4), the end result would be HBUC's Appraisal Report being struck, not being considered in the compensation phase, and not serving as an evidentiary basis for the Commission's ultimate order. Because HBUC's Appraisal Report is evidence to be considered in the compensation phase of a streamlined expedited release proceeding, Order No. 10 is unambiguously an evidentiary ruling. Under the Commission's rules, evidentiary rulings like Order No. 10 are not subject to appeal.

Nor does Order No. 10 otherwise "materially affect the course of the hearing." CRP claims it does so "by further delaying the completion of the facility and substantially changing the amount of compensation potentially owed to Hornsby Bend." But CRP never before complained of delays. It did not contest previous extensions,¹⁴ nor did it object when the Commission failed to act on its petition within the statutory 60-day timeline. And CRP does not have a right to the severe consequence contained in 16 TAC § 24.245(i)(4) because it is subject to a good cause exception as explained above.

Under the process outlined in 16 TAC § 24.245(i), no additional action is required of CRP—it is not required to respond to the CCN holder's appraisal. Instead, it is Commission Staff that bears the next procedural burden, hiring the third appraiser.¹⁵ But Commission Staff supported HBUC's requested extension and sought and was granted its own extension of the administrative and statutory deadlines.¹⁶

Commission Staff already has retained the third appraiser who was ready to go to work soon after the reports were filed. The third appraiser could not do so, however, "as a result of the

¹⁴ See Agreed Motion To Amend Procedural Schedule (Nov. 19, 2020).

¹⁵ 16 TAC § 24.245(i)(2)(b).

¹⁶ Commission Staff's Response to HBUC's Request for Extension at 3 (Apr. 6, 2021) (Staff's Response).

timing issue raised by CRP.”¹⁷ The ALJ granted Commission Staff’s extension because of this “uncertainty.”¹⁸ Thus, the 16 day delay in the process was primarily the result of CRP’s raising its needless complaint about HBUC’s inadvertent one-day delay in filing. CRP’s continued effort to bar a short extension of time is merely an attempt at a procedural “gotcha.”

Accordingly, Order No. 10 is not subject to appeal.

B. The Commission has the power to allow extensions and exceptions.

1. The deadlines in Texas Water Code § 13.2541 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 that an action be done within a specified time *and* states the consequences for failing to complete the action within that time. A directory provision in a statute is not the essence of the thing to be done if it 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.

There is no absolute test for determining whether a statutory provision is mandatory or directory. Instead, as the Texas Supreme Court held in *Chisholm v. Bewley Mills*, “The fundamental rule is to ascertain and give effect to the legislative intent.”²⁰ To determine whether the Legislature intended the particular provision to be mandatory or merely directory, the entire

¹⁷ *Id.*

¹⁸ Order No. 10 Addressing Pending Motions at 2.

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).

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*, for example, 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. Notwithstanding the statute’s use of the term “must,” 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

²¹ *Id.*

²² *Id.*

²³ *AC Interests, L.P. v. Tex. Comm’n on Env’tl. 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.*

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 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. 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

²⁸ *Id.*

²⁹ *Id.* at 713.

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.”

2. The consequence for late filing added by 16 TAC § 24.245(i)(4) does not make the deadline mandatory.

Despite the directory nature of Section 13.2541(i) of the Texas Water Code, the Commission inserted a harsh consequence if the CCN holder misses the 70-day deadline when it restated the deadline in 16 TAC § 24.245(i). This severe consequence was added to only one of the several deadlines contained in the statute, the CCN holder’s compliance with the 70-day deadline for filing an appraisal in the compensation process. Thus, CRP argues that by adding such a consequence, the Commission transformed a directory statute into an apparently mandatory one.

But the addition of a mandatory consequence to the 70-day deadline is inconsistent with the Legislature’s language and intent that the deadline be directory. As the Third Court of Appeals has held, “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.”³⁰ If the consequence were interpreted to make the rule mandatory, it would impose “additional burdens, conditions, or restrictions in excess of or inconsistent with” section 13.2541(i) of the Water Code and thus exceed the Commission’s statutory authority.³¹

But the Commission’s other rules reveal that 16 TAC § 24.245(i) is itself directory as the Commission expressly provided for extensions of time and exceptions to its rules upon a showing

³⁰ *Harlingen Family Dentistry, P.C. v. Tex. Health & Human Services Comm’n*, 452 S.W.3d 479, 486 (Tex. App.—Austin 2014, pet. dismissed).

³¹ See generally *Tex. State Bd. of Examiners of Marriage & Family Therapists v. Tex. Med. Ass’n*, 511 S.W.3d 28, 33 (Tex. 2017).

of good cause pursuant to 16 TAC §§ 22.4(b), 22.5(b), and 24.2(b). Therefore, the deadlines in both the statute and the rule are directory, not mandatory.

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

The use of the word “shall” does not make the deadlines mandatory. All of the streamlined expedited release proceeding deadlines use the word “shall.” Section 13.2541 of the TWC 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 appraisal shall be submitted . . . within 70 calendar days after . . . the [commission] approves the petition.”

Nevertheless, since the TWC 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 subject to exception and extension. In fact, in Docket No. 45679,³² 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

³² *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).

process] should not control our decision to the point of improper application of the rest of the statute.”³³

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 deadline³⁴ for the Commission to grant the petition in a streamlined expedited release proceeding is regularly missed, as happened in this proceeding. Attached as Exhibit B to this Response 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 70-day deadline.³⁵ Aqua Texas had not intervened in the proceeding at that point.³⁶ The Commission granted Aqua Texas’s motion to intervene and restarted the entire compensation phase of the proceeding.³⁷

³³ Public Utility Commission of Texas Open Meeting, June 29, 2016, Agenda Item No. 26, Memorandum from Chairman Nelson (Jun. 28, 2016) (emphasis added).

³⁴ TWC § 13.2541(c).

³⁵ *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).

³⁶ 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).

³⁷ Docket No. 50109, Order No. 7 Ruling on Pending Motions and Adopting a New Procedural Schedule for the Compensation Phase (Jun. 16, 2020).

- In Docket No. 50495,³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹

There is only one instance in which an extension of time to file the appraisal was not allowed, and CRP relies on it in its Appeal.⁴² But that ruling is easily distinguished, because the movant made no attempt whatsoever to show good cause, despite the rules’ requirement that it do

³⁸ *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).

³⁹ *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).

⁴⁰ Docket No. 50787, Liberty Tall Timbers’ Objections to and Motion to Strike Compensation Determination Filed by Tyler Oak Creek Development, LLC (Mar. 3, 2021).

⁴¹ Docket No. 50787, Commission Staff’s Motion for Extension and to Require Payment for Third Appraiser’s Report (Mar. 18, 2021).

⁴² See CRP’s Appeal at 3 (citing to *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, Order No. 8 Denying Motion for Extensions (March 25, 2021)).

so.⁴³ Here HBUC has shown good cause why its filing was delayed.⁴⁴ Furthermore, because both parties already have filed their reports, the Commission Staff is ready to proceed with the compensation process without delay.

4. The Commission has broad authority to grant exceptions and extensions in adjudicative proceedings.

The Third Court of Appeals has held that the broad authority of the Commission includes the power to grant exceptions and extensions.⁴⁵ In addressing the Public Utility Regulatory Act (PURA),⁴⁶ the court concluded:

A delegation of power to an administrative agency, in such broad and general terms, implies a legislative judgment that the agency should have the widest discretion in conducting its adjudicative proceedings, including a discretion to make ad hoc rulings in specific instances, within the bounds of relevant statutes and the fundamentals of *fair play*. Within those limits and without express statutory authority, it has been held that an agency's power to conduct adjudicative proceedings necessarily includes an attendant power to consolidate proceedings, allow intervention by strangers to the litigation, and *grant continuances*. An agency must have the flexibility necessary to

⁴³ 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).

⁴⁴ See Exhibit A.

⁴⁵ *Pub. Util. Comm'n of Tex. v. Sw. Bell Tel. Co.*, 960 S.W.2d 116 (Tex. App.—Austin 1997, no pet.).

⁴⁶ The statute included the power “to do all things, whether specifically designated in [PURA] or implied herein, necessary and convenient to the exercise of [the Commission’s] power and jurisdiction.” PURA § 16. The delegated power also includes an express power to conduct adjudicative proceedings “with respect to administering the provisions of [PURA] or the rules, orders, or other actions of the commission.” *Id.* (emphasis added). The language of the previous PURA § 16 is mirrored in its current iteration in Tex. Utilities Code § 14.001: “The commission has the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction.”

adjust to the variety of incidents encountered in particular contested cases.⁴⁷

The same delegation of power, “expressed in the broadest possible terms,” appears in TWC § 13.041(a), regarding water and sewer utilities.⁴⁸ Accordingly, while TWC § 13.2541(i) does not expressly authorize extensions and exceptions, it does not prohibit them—thus, the authority to allow them “within the bounds of . . . fair play” is necessarily inferred.

Many Texas agencies have similar authority to suspend the application of rules, including extending deadlines, in instances when they would result in injustice or conflict with public necessity.⁴⁹ Such administrative authority exists throughout Texas, and the Commission’s exercise of such authority in this case is prudent. Therefore, the Commission has the authority to grant HBUC’s requested relief.

The need for flexibility is especially true for the streamlined expedited release proceeding, which by its very nature limits a CCN holder’s ability to fully contest the petitioner’s requested relief.⁵⁰ Therefore, “fair play” certainly would dictate allowing all reasonable opportunities for a

⁴⁷ *Pub. Util. Comm’n of Tex. v. Sw. Bell Tel. Co.*, 960 S.W.2d 116, 119 (Tex. App.—Austin 1997, no pet.) (citations omitted) (emphasis added).

⁴⁸ The statute says: “The [Public] utility commission and the commission [on Environmental Quality] may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers and jurisdiction...”

⁴⁹ See 28 TAC § 41.5 (2021) (Texas Department of Insurance, Division of Workers' Compensation); 1 TAC § 61.1 (2021) (Crime Victims Compensation); 16 TAC § 1.3 (2021) (Railroad Commission of Texas, allowing suspension of rules for “public emergency or imperative public necessity”); 4 TAC § 1.49 (2021) (Texas Dept. of Agriculture); 22 TAC § 131.85(d) (2002) (Texas Board of Professional Engineers and Land Surveyors); 22 TAC § 509.2 (2002) (Texas State Board of Public Accountancy).

⁵⁰ 16 TAC § 24.245(h)(7) (“The commission will issue a decision on a petition filed under this subsection no later than 60 calendar days after the presiding officer by order determines that the petition is administratively complete. The commission will base its decision on the information filed by the landowner, the current CCN holder, and commission staff. *No hearing will be held.*”) (emphasis added).

party to be heard, and not unnecessarily restricting any opportunity to present information.⁵¹ “Fair play” requires that the Commission have discretion to avoid the dire consequences of 16 TAC § 24.245(i)(4), and allow the Commission’s third-party appraiser to consider HBUC’s appraisal.

5. The Commission has formally adopted rules allowing exceptions and extensions for good cause; CRP’s reliance on *Rodriguez v. Service Lloyds Ins. Co.* is misplaced.

CRP claims *Rodriguez v. Service Lloyds Ins. Co.* prohibits the Commission to grant extensions or exceptions to its rules.⁵² But *Rodriguez* does not apply here—in issuing Order No. 10, the ALJ acted pursuant to the Commission’s rules allowing exceptions and extensions for “good cause,” adopted pursuant to the formal rule-making process.

Rodriguez did not involve rules adopted after a formal rule-making process. It involved a case of ad hoc rulemaking (sometimes referred to as “adjudicative rulemaking”), in which “exceptions” to a statutory deadline had been recognized and adopted by the agency in the course of contested-case proceedings. The Supreme Court placed stringent limitations on such ad hoc rulemaking, emphasizing the importance of requiring agencies to adhere to the notice-and-comment rulemaking procedures mandated by the Administrative Procedure Act (APA).⁵³ In other words, *Rodriguez* did not condemn exceptions or extensions of time per se, but only those improperly adopted using ad hoc rulemaking.⁵⁴

⁵¹ *State v. Crank*, 666 S.W.2d 91, 94 (Tex. 1984), *cert. denied*, 469 U.S. 833, (1984) (“[T]he ultimate test of due process of law in an administrative hearing is the presence or absence of rudiments of fair play.”) and *Ray v. Tex. State Bd. of Pub. Accountancy*, 4 S.W.3d 429, 433 (Tex. App.—Austin 1999, no pet.) (“Texas courts have also defined the minimum as requiring the presence of the ‘rudiments of fair play.’”) (citing *Crank*, 666 S.W.2d at 94).

⁵² CRP’s Appeal at 6.

⁵³ Administrative Procedure Act, Tex. Gov’t Code Ann. §§ 2001.001–.902.

⁵⁴ See *Tex. State Bd. of Pharmacy v. Witcher*, 447 S.W.3d 520, 536–38 (Tex. App.—Austin 2014, pet. denied) (discussing *Rodriguez* in depth).

In this case, the Commission properly used the APA notice-and-comment rulemaking process to adopt 16 TAC § 22.4(b), which allows extensions of time for “any documents.”⁵⁵ The Commission also properly used the APA notice-and-comment rulemaking process to adopt 16 TAC § 22.5(b) and 16 TAC § 24.2(b), which allow exceptions to any requirements contained in Chapters 22 and 24 for good cause.⁵⁶ Therefore, these rules expressly and directly allow the Commission, for good cause, to grant an exception and extension to the 70-day deadline and an exception to the consequence for failing to meet that deadline. The ALJ properly exercised the Commission’s authority in Order No. 10.

Accordingly, *Rodriguez* is not applicable.

C. Order No. 10 correctly granted the exception and extension under 16 TAC §§ 22.4(b), 22.5(b), and 24.2(b).

1. HBUC has established good cause for a one-day extension or exception to the filing deadline.

The ALJ correctly found good cause based on the evidence submitted by HBUC. As set forth in the Affidavit of William A. Faulk, III, attached as Exhibit A, 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

⁵⁵ 16 TAC § 22.4(b) provides: “Extensions. Unless otherwise provided by statute, the time for filing any documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, 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.”

⁵⁶ 16 TAC § 22.5(b) provides: “Good Cause Exception. Notwithstanding any other provision of this chapter, the presiding officer may grant exceptions to any requirement in this chapter or in a commission-prescribed form for good cause.” 16 TAC § 24.2(b) provides: “The commission can make exceptions to this chapter for good cause.”

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 p.m. 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.⁵⁷ HBUC's intent was always to timely file the Appraisal Report—there was no bad faith or intent to ignore or disregard the rules.⁵⁸

The ALJ correctly found that HBUC had 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 cause is established by showing the failure involved was an accident or mistake, not intentional or the result of conscious indifference.”⁵⁹ 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.”⁶⁰ 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

⁵⁷ SWWC Utilities, Inc. DBA Hornsby Bend Utility Company, Inc.'s Response to Colorado River Project's Letter Seeking Clarification (Mar. 29, 2021).

⁵⁸ See Exhibit A.

⁵⁹ *Wheeler v. Green*, 157 S.W.3d 439, 442 (Tex. 2005) (failure to file response to summary judgment motion).

⁶⁰ *Carpenter v. Cimarron Hydrocarbons Corp.*, 98 S.W.3d 682, 687-88 (Tex. 2002) (failure to file response to summary judgment motion).

rules.”⁶¹ 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.”⁶²

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.⁶³ 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 was necessary to prevent this matter from being disposed of on harmless procedural defects rather than its merits. Without it, HBUC risked receiving no compensation for the release granted by the Commission, despite an Appraisal Report indicating it should receive more than \$50 million.⁶⁴ 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. Furthermore, the Commission Staff’s

⁶¹ *Wheeler*, 157 S.W.3d at 443.

⁶² *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*).

⁶³ 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).

⁶⁴ See 16 TAC § 24.245(i).

Response supported HBUC’s request for relief not only because HBUC had shown good cause, but also because it serves the “public interest,” which Commission Staff oversees.⁶⁵

2. The strict good cause test of *Alvarado v. Farah Mfg. Co., Inc.* has no application here.

CRP claims that HBUC has not satisfied the rules’ “good cause” standard, seeking application of the extremely stringent test found in *Alvarado v. Farah Mfg. Co., Inc.*,⁶⁶ and *Sharp v. Broadway Nat’l Bank*.⁶⁷ But the test articulated in *Alvarado* and *Sharp* is inapplicable here.

As the Texas Supreme Court has explained, the *Alvarado* test applied to a sanction for failure to supplement discovery responses,⁶⁸ not the inadvertent failure to meet a filing deadline such as presented here. In *Carpenter v. Cimarron Hydrocarbons Corp.*,⁶⁹ the Supreme Court refused to apply the *Alvarado* test to a failure to timely file a response to a motion for summary judgment for several reasons:

First, because our rules do not mandate a summary-judgment response, a party that fails to timely file one has breached no legal duty. In contrast, our rules of procedure require litigants to supplement discovery responses. TEX. R. CIV. P. 193.5(a), 195.6. And a party’s failure to disclose relevant evidence until the eve of trial may significantly hamper the opposing litigant’s trial preparation, a consideration not present here. Finally, the consequences to a party that inadvertently fails to timely respond to a summary-judgment motion are often similar to those faced

⁶⁵ See Staff’s Response at 2–3 (“allowing the third, independent appraisal to proceed is the best means by which to fulfill the intent of TWC § 13.2541”).

⁶⁶ See *Alvarado* at 911, 915 (Tex. 1992).

⁶⁷ *Sharp v. Broadway Nat’l Bank*, 784, S.W.2d 669, 672 (Tex. 1990). This issue is purely a question of Texas and Commission procedural law. United States Supreme Court opinions concerning equitable tolling of a limitations period or late filing of a notice of appeal in a habeas corpus action have no applicability here. See CRP’s Appeal at 5 (Apr. 14, 2021) (citing United States Supreme Court opinions).

⁶⁸ The *Alvarado* good cause standard is no longer determinative even in the discovery context—since 1999, a party may avoid sanctions for failure to timely respond by establishing no unfair surprise or prejudice regardless of “good cause.” See TEX. R. CIV. P. 193.6 (a) (as amended Nov. 9, 1999).

⁶⁹ *Carpenter v. Cimarron Hydrocarbons Corp.*, 98 S.W.3d 682 (Tex. 2002).

by a party that would otherwise be bound by erroneous or deemed admissions. Each faces the very real prospect of summary disposition without regard to the underlying merits. The standard that applies to the withdrawal of admissions fairly balances the parties' interests and furthers the policies our rules are intended to serve.⁷⁰

Here, as in *Carpenter's* summary judgment response situation, HBUC had no legal duty to file its appraiser report, although it chose to do so to obtain compensation for the Commission's release of CRP's property. Likewise, there is no concern about hampering CRP's trial preparation—there is no trial or other adversarial process here. And the consequences to HBUC are potentially dire—without the extension HBUC faces the possibility of recovering “zero” without regard to the underlying merits of its claim. *Alvarado* does not apply here.

IV. CONCLUSION

Based on the legal and equitable arguments presented, HBUC respectfully requests that, under 16 TAC § 22.123(a)(1), the Commission dismiss CRP's attempted appeal; in the alternative, HBUC also respectfully requests that, pursuant to 16 TAC §§ 22.4(b), 22.5(b), and 24.2(b), that the Commission deny CRP's appeal. HBUC also seeks all and further relief to which it may be justly entitled at law or in equity.

⁷⁰ *Carpenter*, 98 S.W.3d at 687–88.

Respectfully submitted,
LLOYD, GOSSELINK,
ROCHELLE & TOWNSEND, P.C.
816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5830
Facsimile: (512) 472-0532

/s/ William A. Faulk, III

LAMBETH TOWNSEND
State Bar No. 2016750
ltownsend@lglawfirm.com

WILLIAM A. FAULK, III
State Bar No. 24075674
cfaulk@lglawfirm.com

REID BARNES
State Bar No. 24101487
rbarnes@lglawfirm.com

**ATTORNEYS FOR SWWC UTILITIES, INC.
D.B.A. HORNSBY BEND UTILITY
COMPANY, INC.**

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 21, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ William A. Faulk, III

WILLIAM A. FAULK, III

EXHIBIT A

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 §

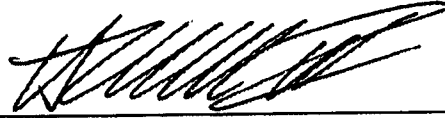
On this date, William A. Faulk, III, personally appeared before me, the undersigned Notary Public, and after being duly sworn stated the following under oath:

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.

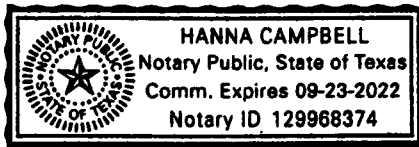
4. On the morning of March 26, I saw an email from counsel for Petitioner to Lambeth Townsend, sent at 7:06 pm on March 25, 2021, notifying us that Petitioner had electronically filed their evaluation report around 5:00 pm that day. While the Petitioner did file on March 25, the filing after 3:00 pm 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 B

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. There is no discussion of how the deadline was calculated.

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