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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 CORRECTED RESPONSE TO COLORADO RIVER
PROJECT, LLC'S APPEAL OF ORDER NO. 10**

The Staff of the Public Utility Commission of Texas (Staff) files this pleading to correct a typo in its April 21, 2021 Response to Colorado River Project, LLC's Appeal of Order No. 10. The correction is identified below by footnote 1.

I. BACKGROUND

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 p.m. on March 25, 2021¹ 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 filed² and briefing was requested in Order No. 8, which set a deadline of April 9, 2021 for Staff to file a brief

¹ Staff's original filing erroneously had the date as 4:58 p.m. on March 21, 2021. The correct date for CRP's filing is 4:58 p.m. on March 25, 2021.

² Colorado River Project's Letter Seeking Clarification (Mar. 26, 2021).

on how compensation should be decided. On April 5, 2021, Hornsby Bend filed a request for exception and extension in response to the briefing order. On April 9, 2021, Staff filed a response to the briefing order. Order No. 10 was filed on April 12, 2021 granting Hornsby Bend's request for exception and clarifying that the third appraisal report would be necessary for the further processing of this proceeding.

On April 14, 2021, CRP filed an appeal of Order No. 10, reiterating the arguments raised in its March 26, 2021 filing. Under 16 Texas Administrative Code (TAC) § 22.123(a)(4), responses to an appeal of an interim order are due within five working days of the filing of the appeal. Therefore, this pleading is timely filed.

II. RESPONSE TO CRP'S APPEAL

The arguments raised by CRP are largely duplicative of those raised in its April 5, 2021 filing. As such, Staff would respectfully request that CRP's appeal of Order No. 10 be denied for the reasons stated in its April 9, 2021 response to Order No. 8. In addition, Staff has reviewed the filings in Project No. 50664 relevant to CRP's argument regarding the Order Suspending Rules³ issued by the Commission on March 16, 2020 in Project No. 50664.⁴ The order in question states:

In light of the ongoing health crisis created by the coronavirus, and under the authority found in 16 Texas Administrative Code (TAC) § 22.5(a), the Commission finds that there exists a public emergency and imperative public necessity for suspending the following rules:...

(3) Any provision in chapters 22, 24, 25, and 26 of title 16 of the Texas Administrative Code requiring that filings be made in a certain amount of time or that the presiding office act by a certain date, unless that requirement is also found in statute.⁵

CRP notes that the order suspended the 3:00 p.m. filing deadline because it was not "found in [a] statute."⁶ Based upon this argument, CRP alleges that its appraisal report was timely filed,

³ Petitioner's Brief Regarding Compensation Issue at 2-3 (Apr. 5, 2021).

⁴ *Issues Related to the State of Disaster for the Coronavirus Disease 2019*, Project No. 50664, Order Suspending Rules (Mar. 16, 2020).

⁵ *Id.*, Order Suspending Rules at 1.

⁶ Petitioner's Brief Regarding Compensation Issue at 3.

but that Hornsby Bend's appraisal report was not timely filed. However, on July 16, 2020, the Commission issued a Second Order Suspending Rules.⁷ The original suspension of the rules had been issued as a measure to deal with the public emergency crisis caused by the COVID-19 pandemic. The Commission modified filing deadlines to operate under the limitations resulting under the state of disaster issued by Governor Abbott on March 13, 2020. In its July 16, 2020 order, the Commission determined that "[t]he abilities of the Commission and regulated entities to operate under the limitations resulting under this state of disaster and to meet the filing deadlines has improved and suspension of filing deadlines [was] no longer required."⁸

As supported by the second order, the Commission reinstated the 3:00 p.m. filing deadline before either appraisal report was filed. Consequently, both CRP's and Horseshoe Bend's appraisal reports were filed on the 71st day after the Commission's order granting CRP's petition for streamlined expedited release. Staff recommends that the good cause exception granted in Order No. 10 addresses this issue and provides a viable solution under which this docket may be processed. Staff therefore respectfully requests that the Commission deny CRP's appeal.

III. STAFF'S RENEWED 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 an appraiser to prepare the third appraisal report required by 16 TAC § 24.245(i)(2)(B). In Order No. 10, a deadline of May 12, 2021 was set for Staff to file its appraisal report. However, in light of CRP's appeal, and the addition of the appeal to the agenda for the May 6, 2021 open meeting, there again exists uncertainty as to whether or not the report will be required. Staff therefore requests the extension of Staff's deadline to file an appraiser report should the Commission deny CRP's appeal of Order No. 10.

IV. CONCLUSION

For the reasons detailed above, Staff respectfully requests that the Commission deny CRP's appeal of Order No. 10 and extend the deadline for Staff to file an appraiser's report to a date that is 30 days from the date of the order denying the appeal.

⁷ Project No. 50664, Second Order Suspending Rules (Jul. 16, 2020).

⁸ *Id.*, Second Order Suspending Rules at 1.

Dated: April 22, 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 22, 2021 in accordance with the Order Suspending Rules, filed in Project No. 50664.

/s/ John Harrison

John Harrison