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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

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BEFORE THE  
  
PUBLIC UTILITY COMMISSION  
  
OF TEXAS

**COLORADO RIVER PROJECT, LLC'S  
REPLY TO SWWC UTILITIES, INC. DBA HORNSBY BEND UTILITY COMPANY,  
INC. AND COMMISSION STAFF'S RESPONSE TO COLORADO RIVER PROJECT,  
LLC'S APPEAL OF ORDER NO. 10**

**TO THE PUBLIC UTILITY COMMISSION OF TEXAS:**

Colorado River Project, LLC ("CRP") files its Reply to SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. ("Hornsby Bend") and Commission Staff's ("Commission Staff") Response to CRP's Appeal of Order No. 10 ("CRP's Appeal") and in support thereof shows as follows:

**1. Order No. 10 Is Immediately Prejudicial**

Order No. 10 is immediately prejudicial because it imposes an obligation on CRP to participate in a third-party appraisal process when, by statute and by the PUC's own rules, CRP is deemed to owe zero dollars to Hornsby Bend and need not proceed with the appraisal process. Further, Order No. 10 is materially prejudicial to CRP's ability to proceed with obtaining water and sewer service to a facility that will employ thousands of employees in Travis County, Texas. CRP has expended substantial sums of money to transport these services into its Texas facility.

Order No. 10 also represents a culmination of the presiding officer and Commission Staff's disregard of the mandatory deadlines contained in Section 13.2541 of the Texas Water Code. To

be sure, on March 25, 2021, the same day that CRP and Hornsby Bend's appraisals were due, the presiding officer issued an order in another streamlined expedited release proceeding and held that the "70-day deadline [under Texas Water Code § 13.2541(i)] is *statutory and mandatory*" and that the "*statute gives no indication that extension can be granted.*"<sup>1</sup> And yet, just three weeks later, in this case, the presiding officer reversed course while making no mention of Section 13.2541 of the Texas Water Code when he used only PUC rules to trump the statutory deadline mandate.<sup>2</sup>

The presiding officer and Commission Staff's disregard for the mandatory language of Section 13.2541 has caused enormous confusion as to how the streamlined expedited release proceedings must proceed. This is both immediately and materially prejudicial to CRP's right to a *streamlined expedited* release of the subject property which, as the presiding officer pointed out a month ago, "is supposed to happen expeditiously."<sup>3</sup>

**2. If the Commission Orders the Third Appraisal, CRP Requests to Move Forward With Connecting Water and Sewer Service While Proceeding With Third Party Appraisal**

Conditionally, CRP respectfully requests that should the Commission order the third appraisal, the Commission also order that CRP may move forward with connecting water and sewer service to its facility. The presiding officer and Commission Staff's interpretation of Section 13.2541 of the Texas Water Code is unprecedented. Since the presiding officer and Commission Staff have opted to interpret the statute as directory and permissive, then it is fully within the

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<sup>1</sup> *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) (emphasis added).

<sup>2</sup> Order No. 10 Addressing Pending Motions (Apr. 12, 2021).

<sup>3</sup> *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) (emphasis added).

Commission's discretion to go forward with allowing CRP to obtain water and sewer service at its property.

### **CONCLUSION AND PRAYER**

For the reasons stated herein, CRP respectfully requests the Commission order that no compensation is owed to Hornsby Bend by CRP as a result of the release in the afore referenced case and that CRP may proceed with obtaining water and sewer service at the released location.

Respectfully submitted.

/s/ John B. Scott

John B. Scott  
State Bar No. 17901500  
Franklin Scott Conway LLP  
405 West 14<sup>th</sup> Street  
Austin, Texas 78701  
(512) 690-6976 (phone)  
(512) 808-0838 (fax)  
jscott@fsc.legal

*Counsel for Petitioner*  
*Colorado River Project, LLC*

Dated: April 28, 2021

### **CERTIFICATE OF SERVICE**

I hereby 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 28, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ John B. Scott  
JOHN B. SCOTT