



Control Number: 51166



Item Number: 80

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PUBLIC UTILITY COMMISSION
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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 §

**SWWC UTILITIES, INC. DBA HORNSBY BEND UTILITY COMPANY, INC.'S
RESPONSE TO COLORADO RIVER PROJECT, LLC'S REPLY**

SWWC Utilities, Inc. DBA Hornsby Bend Utility Company, Inc. (HBUC), files this Response to Colorado River Project, LLC's (CRP) Reply. In support, HBUC shows as follows:

1. Order No. 10 Properly Applies the Statute and Commission Rules.

Contrary to CRP's arguments in its appeal, Order No. 10 does not contravene statute or Public Utility Commission (Commission) rules, and the Administrative Law Judge and Commission Staff do not disregard the statute. The deadlines in Texas Water Code (TWC) § 13.2541(i) may be extended upon a showing of good cause according to the Commission rules. 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 prohibit those extensions or exceptions. 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. And as presented by HBUC previously, the Commission has treated the 70-day and 100-day deadlines in Section 13.2541(i) of the Texas Water Code as directory and granted extensions without issue.¹

¹ See SWWC Utilities, Inc. DBA Hornsby Bend Utility Company, Inc.'s Response to Colorado River Project's Appeal of Interim Order No. 10 at 15-16 (Apr. 21, 2021) (citing *Petition of Carol C. Van Alstyne AKA*

The one instance—that CRP continues to rely on—in which an extension of time to file the appraisal was not allowed, is distinguishable.² In that proceeding, the movant made no attempt whatsoever to show good cause for the requested extension, despite the rules’ requirement that it do so.³ In denying the movant’s request, the Commission did not make any determination regarding the applicability of 16 Texas Administrative Code (TAC) §§ 22.4(b), 22.5(b), or 24.2(b). Another major distinguishing factor in the Rockett proceeding is the fact that the CCN holder outright refused to file an appraisal.⁴ The facts and circumstances surrounding the Rockett proceeding provide nothing in the way of guidance for this matter.

2. CRP’s Request for Relief Pending the Determination of Just and Adequate Compensation Is Outside the Scope of the Appeal of Order No. 10.

In its Reply, CRP asks the Commission for relief outside the scope of its appeal. CRP asks 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.”⁵ This is a

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); *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); and *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)).

² See Colorado River Project, LLC’s Appeal of Interim Order No. 10 at 3 (Apr. 14, 2021) (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 (Mar. 25, 2021)).

³ 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).

⁴ Docket No. 51044, Rockett Special Utility District’s Objection and Response to the Submission of an Appraisal Report (Apr. 9, 2021).

⁵ See 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 at 2 (Apr. 28, 2021).

request for relief that is completely outside of the bounds of HBUC's and the Commission Staff's original motions for extensions of deadlines. Order No. 10 in no way addresses the requirements contained in TWC §§ 13.2541(a) and 13.254(d), mandating that another retail public utility cannot provide service to a decertified area "unless just and adequate compensation required under Subsection (g) has been paid to the decertified retail public utility."⁶ Any attempt by CRP to circumvent those requirements is inappropriate at this interim appeal stage.

The Commission's rule governing motions for relief, 16 TAC § 22.77(a), provides that unless made on the record at a hearing, a motion must be in writing, state the relief sought, state the grounds of the relief sought, and provide an affidavit if the motion is based on fact that are not a matter of record. Unless otherwise ordered by the presiding officer, parties are allowed to file a response to the motion within five working days after receipt of the motion.⁷ CRP is asking for relief that is separate from its appeal of Order No. 10, is based on alleged facts that are not a matter of record, and does not have a supporting affidavit. If CRP wishes to proceed with requesting this extreme relief, then CRP should be required to do so through the mechanisms outlined in 16 TAC § 22.77. Such a request at this stage is inappropriate and untimely

CONCLUSION AND PRAYER

HBUC respectfully requests that under 16 TAC § 22.123(a)(1), the Commission dismiss CRP's attempted appeal, that pursuant to 16 TAC §§ 22.4(b), 22.5(b), and 24.2(b), the

⁶ TWC § 13.254(d).

⁷ 16 TAC § 22.78(a).

Commission deny CRP's appeal and that the Commission deny the newly requested relief.

HBUC also seeks all and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

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**ATTORNEYS FOR SWWC UTILITIES,
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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 29, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ William A. Faulk, III

WILLIAM A. FAULK, III

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