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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

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PUBLIC UTILITY COMMISSION
OF TEXAS

FILED
JULY 15 2021
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ORDER ON APPEAL OF ORDER NO. 10

This Order addresses the Colorado River Project, LLC’s appeal of Order No. 10. The River Project objects to the administrative law judge’s retroactive grant of a one-day extension of the deadline for SWWC Utilities, Inc. to file its appraisal report to the 71st day after the Commission granted the petition for expedited release in this matter. The River Project also objects to the ALJ continuing the appraisal process after allowing the late-filed appraisal. For the reasons discussed in this Order, the Commission grants the appeal.

I. Background

The River Project filed a petition requesting the streamlined expedited release of a tract of land from the certificated service areas of SWWC, which does business as Hornsby Bend Utility Company. The Commission approved the River Project’s request for streamlined expedited release on January 14, 2021 and commenced phase two of this proceeding to determine what amount of compensation, if any, should be awarded.¹

After the Commission grants a petition for streamlined expedited release, it “may require an award of compensation by the petitioner to the certificate holder in the manner provided by [Texas Water Code § 13.2541].”² Under that section, if the certificate holder cannot agree on an appraiser within 10 days after the Commission approves a petition for streamlined expedited release, each must engage its own appraiser and submit each appraisal report to the Commission within 70 days of the approval.³ In this case, the 70th day after approval was March 25, 2021.

¹ Order, Ordering Paragraphs No. 1, 2, 8 (Jan. 14, 2021).

² Tex. Water Code § 13.2541(f).

³ *Id.* § 13.2541(i); 16 Tex. Admin. Code (TAC) § 24.245(i)(2)(B).

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After receiving these two appraisals, the Commission appoints a third appraiser who then determines that amount of compensation within 100 days of the approval.⁴ The Commission must determine the amount of compensation not later than the 60th day after the date it receives the third appraisal and must ensure that the landowner pays the compensation not later than the 90th day after it determines the amount of compensation.⁵ If the certificate holder fails to “file an appraisal within the timeframes required,” then “the amount of compensation to be paid will be deemed to be zero” by Commission rule.⁶

The River Project and SWWC did not agree on an independent appraiser,⁷ and each engaged their own appraiser and filed an appraisal report. SWWC filed its appraisal report on March 26, 2021, the 71st day after the Commission approved the streamlined expedited release. Subsequently, on April 5, 2021, SWWC filed a motion for a one-day extension of time or good cause exception for the deadline to file its appraisal. SWWC stated that it miscalculated the deadline to file its appraisal report, but argued that its motion should be granted because the various deadlines in 16 Texas Administrative Code § 24.245(i) have been treated as directory and not mandatory, the Commission has the authority to grant a good cause exception to the appraisal filing deadline, and good cause exists in this proceeding because SWWC did not intentionally miss the deadline or unreasonably delay the proceeding.⁸

The ALJ found “good cause exists to make exceptions to the 70-day deadline,”⁹ and granted SWWC’s motion for a one-day extension to file its appraisal report.¹⁰ The ALJ found that the late-filed appraisal had not unreasonably delayed the process to determine compensation, had not prejudiced a party, and was not intentional or due to neglect or conscious indifference.¹¹

⁴ Tex. Water Code § 13.2541(i); 16 TAC § 24.245(i)(2)(B).

⁵ Tex. Water Code § 13.2541(i); 16 TAC § 24.245(i)(5), (6).

⁶ 16 TAC § 24.245(i)(4).

⁷ SWWC Utilities, Inc.’s Motion for Exception or Extension of Time and Brief on Compensation Issues at 4 (Apr. 5, 2021).

⁸ SWWC Utilities, Inc. DBA Hornsby Bend Utility Company, Inc.’s Motion for Exception or Extension of Time and Brief on Compensation Issues at 314 (Apr. 5, 2021).

⁹ Order No. 10 at 1 (Apr. 12, 2021).

¹⁰ Order No. 10 at 2.

¹¹ *Id.* at 1–2.

In its appeal of Order No. 10, the River Project argued that the 70-day deadline to file an appraisal is mandated by statute and therefore a good cause exception cannot be granted.¹² It also asserted that no Commission procedural rule allows a request to extend a deadline after the deadline has passed,¹³ and that the miscalculation of a deadline does not constitute good cause for missing the applicable deadline.¹⁴ In response, SWWC argued that the order is not appealable,¹⁵ the Commission has authority to excuse compliance with the 70-day deadline,¹⁶ and there is good cause to excuse compliance with the 70-day deadline.¹⁷

II. Discussion

The Commission may make exceptions to the requirements found in chapter 24 of its rules for good cause,¹⁸ but not if the requirement is prescribed by statute. Because the 70-day deadline for filing an appraisal found in the Commission's rule is prescribed by statute,¹⁹ the Commission has no authority to grant an exception to or extend that deadline.

And while the Texas Water Code does not specify a consequence for missing the 70-day deadline, the Commission's rule does²⁰—and for good reason. The Commission is directed by statute to complete the compensation process after a streamlined expedited release in a specified time period.²¹ This obligation cannot be met unless all deadlines in this compensation process are met. To allow the Commission to meet its obligation to complete the compensation process, the Commission's rule sets out the statutory deadlines for that process and specifies the consequence for failing to meet those deadlines.²²

¹² Colorado River Project, LLC's Appeal of Interim Order No. 10 at 3–6, 6–7 (Apr. 14, 2021).

¹³ *Id.* at 6.

¹⁴ *Id.* at 7–8.

¹⁵ SWWC Utilities' Response to Colorado River Project, LLC's Appeal of Interim Order No. 10 at 7–10 (Apr. 21, 2021).

¹⁶ *Id.* at 10–20.

¹⁷ *Id.* at 20–24.

¹⁸ 16 TAC § 24.2(b).

¹⁹ Tex. Water Code § 13.2541(i).

²⁰ 16 TAC § 24.245(i)(4).

²¹ Tex. Water Code § 13.2541(j).

²² 16 TAC § 24.245(i).

The ALJ concluded that, because SWWC's error in calculating the due date for its appraisal report was "made in good faith" and was not "intentional or due to neglect or conscious indifference," there was good cause to excuse that deadline and extend it one day. The Commission disagrees that good cause was shown here to allow an exception to the Commission's rule. Because of this decision, the Commission does not need to address whether an exception to its rules can be granted retroactively.

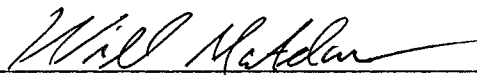
For the reasons discussed in this Order, the Commission grants the Colorado River Project's appeal of Order No. 10.

Signed at Austin, Texas the 13th day of May 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER