



## Filing Receipt

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**DOCKET NO. 51170**

<b>APPLICATION OF THE CITY OF</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SWEETWATER TO AMEND A</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND NECESSITY IN NOLAN COUNTY</b>	<b>§</b>	

**ORDER NO. 11**  
**GRANTING MOTION FOR RECONSIDERATION AND AFFIRMING MOTION TO**  
**INTERVENE**

This Order addresses Bitter Creek Water Supply Corporation's motion to intervene filed on June 28, 2021, and the City of Sweetwater's motion to reconsider filed on July 6, 2021.

**I. Granting Motion for Reconsideration**

On June 28, 2021, Bitter Creek moved to intervene in this proceeding. In Order No. 10 filed on July 6, 2020, the administrative law judge (ALJ) granted the motion and admitted Bitter Creek as a party to this proceeding. Later that day, Sweetwater filed its response opposing Bitter Creek's motion to intervene and asking the ALJ to reconsider his order admitting Bitter Creek as a party.

Under 16 Texas Administrative Code (TAC) § 22.78(a), "a responsive pleading, if made, shall be filed by a party within five working days after receipt of the pleading to which the response is made." Five working days after June 28, 2021, is July 6, 2021.<sup>1</sup>

Based on the foregoing, the ALJ finds Sweetwater timely filed its response and grants Sweetwater's motion for reconsideration.

**II. Granting Motion to Intervene**

On August 14, 2020, Sweetwater filed an application to amend its certificate of convenience and necessity (CCN) and for dual certification with Bitter Creek. On February 10, 2021, Sweetwater supplemented its application with a contract between itself and the owner of the requested area whereby the owner contracted to receive retail water service from

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<sup>1</sup> The Commission was closed for business on July 5, 2021, in observance of Independence Day.

Sweetwater. In Order No. 6 filed on March 10, 2021, Sweetwater's request to amend its CCN and its request for dual certification were severed into separate proceedings.<sup>2</sup>

In the current proceeding, Sweetwater seeks to amend its CCN to add approximately 234 acres to its certificated service area. The 234-acre requested area is not within the certificated service area of Bitter Creek and has not been previously certificated by any other water utility. It is, however, adjacent to Bitter Creek's certificated service area. Bitter Creek alleges that it has a justiciable interest that may be adversely affected by the outcome of this proceeding. Specifically, Bitter Creek alleges it would be deprived of the financial benefit of providing water service to the requested area and has incurred expense by installing water lines adjacent to the requested area.

Sweetwater asserts that Bitter Creek's interest is limited to the area for which Sweetwater seeks dual certification, which has been severed into a separate proceeding. Additionally, Sweetwater asserts that Bitter Creek cannot prove adverse economic effects because of Sweetwater's contract for retail water service with the owner of the requested area; therefore, argues Sweetwater, there are no hypothetical profits to be lost by Bitter Creek.

Under 16 TAC § 22.103(b), "a person has standing to intervene if that person: (1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding."

In this case, Bitter Creek pled facts showing that it has a justiciable interest which may be adversely affected by the outcome of this case. While Sweetwater's contract with the owner of the requested area may aid in the Commission's analysis of whether to grant the CCN amendment sought in this case, the Commission must still conduct a thorough analysis and find that the CCN amendment is necessary for the service, accommodation, convenience, or safety of the public. Among the issues that must be considered in this case are whether the CCN amendment sought would have a negative effect "on any retail public utility of the same kind already serving the

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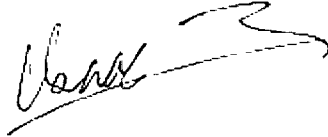
<sup>2</sup> See *Application of the City of Sweetwater for Dual Certification with Bitter Creek Water Supply Corporation in Nolan County*, Docket No. 51882 (pending).

proximate area;”<sup>3</sup> and “the feasibility of obtaining service from an adjacent retail public utility;”<sup>4</sup> In other words, Bitter Creek has identified a justiciable interest in this case.

Based on the foregoing, the ALJ affirms Order No. 10 granting Bitter Creek’s motion to intervene.

**Signed at Austin, Texas the 19th day of July 2021.**

**PUBLIC UTILITY COMMISSION OF TEXAS**



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**ISAAC TA  
ADMINISTRATIVE LAW JUDGE**

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<sup>3</sup> TWC § 13.246(c)(3).

<sup>4</sup> TWC § 13.246(c)(5).