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PUBLIC UTILITY COMMISSION
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DOCKET NO. 51249

PETITION OF CROOK ROSE, INC.	§	BEFORE THE PUBLIC UTILITY
TO AMEND LINDALE RURAL	§	
WATER SUPPLY CORPORATION'S	§	COMMISSION OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN SMITH	§	
COUNTY BE EXPEDITED RELEASE	§	

**LINDALE RURAL WATER SUPPLY CORPORATION'S MOTION TO ABATE AND
OBJECTIONS TO CROOK ROSE, INC.'S FIRST REQUESTS FOR INFORMATION**

Lindale Rural Water Supply Corporation ("LRWSC") files this Motion to Abate and Objections to Crook Rose, Inc.'s First Requests for Information. In support, LRWSC respectfully shows as follows:

I. BACKGROUND

On January 5, 2021, the presiding Honorable Administrative Law Judge ("ALJ") issued Order No. 5 Denying LRWSC's Motion to Dismiss the streamlined expedited release ("SER") petition filed by Crook Rose, Inc. ("Crook Rose") based on protections afforded under 7 U.S.C. § 1926(b).¹ The ALJ cited Texas Water Code ("TWC") § 13.2541(d) which provides that the Commission "may not deny a streamlined expedited release petition based on the fact that the certificate holder is a borrower under a federal loan program."² The ALJ also noted Staff's recommendation statement that there was "no court order enjoining the Commission from acting on a SER petition when a claim is raised under 7 U.S.C. § 1926(b)."³ On January 7, 2021, the ALJ filed a memorandum and proposed order for Commission consideration that would have

¹ Order No. 5 (Jan. 5, 2021).

² Order No. 5 (Jan. 5, 2021); TWC § 13.2541(d).

³ Order No. 5 (Jan. 5, 2021); *see also* Commission Staff's Amended Recommendation on Final Disposition (Dec. 18, 2020).

resulted in the curtailment and removal of LRWSC's water CCN area as the Crook Rose SER requests.⁴

Before the proposed order in this matter could be considered at the Commission's January 29, 2021 Commission open meeting as scheduled, LRWSC sought and received a hearing in federal court on a requested temporary restraining order ("TRO") that prevents the Commission from acting on Crook Rose's SER application while LRWSC's federal claims are litigated, including whether 7 U.S.C. § 1926(b) protection for LRWSC's water CCN service area applies. On February 3, 2021, LRWSC received the federal TRO as requested.⁵

The Commission has respected the TRO by not acting on the Crook Rose SER petition in this docket since February 3, 2021. In contrast, on February 12, 2021, Crook Rose filed and served LRWSC with sixteen requests for information ("RFIs").⁶ That action has compelled this filing.

II. ARGUMENT

The TRO provides that the Commission and its officials are enjoined from granting Crook Rose's SER petition and from curtailing LRWSC's CCN area at this time.⁷ The TRO also says that LRWSC has shown that it has substantial likelihood of success on the merits of its claims.⁸ Therefore, LRWSC should not be obligated to take any action in this Commission proceeding until the federal litigation is resolved, because the Commission cannot act. LRWSC respectfully requests the Commission abate this proceeding in the interim. LRWSC notes that the Commission has previously abated SER proceedings at the Commission pending the outcome of certain federal litigation.⁹ LRWSC requests relief from all further procedural obligations, including discovery.

⁴ Memorandum and Proposed Order (Jan. 7, 2021).

⁵ *Lindale Rural Water Supply Corporation v. Deann T. Walker, et al*, Case No. 1:21-cv-00073-LY, Order Granting Temporary Restraining Order (W.D. Tex., Feb. 2, 2021) (**Attachment A**).

⁶ Crook Rose, Inc.'s First Request for Information to Lindale Rural Water Supply Corporation (Feb. 12, 2021).

⁷ See **Attachment A**.

⁸ *Id*.

⁹ See, e.g., *Petition of MM Walden Pond, LLC to Amend High Point Water Supply Corporation's Certificate of*

Additionally, on the same basis, LRWSC objects to Crook Rose's First RFIs and requests relief from being compelled to respond to same. Crook Rose is improperly attempting to conduct discovery for federal litigation in this Commission docket in contravention of the federal TRO. The Commission should not permit such gamesmanship. LRWSC requests the ALJ use his authority to protect LRWSC from Crook Rose's discovery efforts if Crook Rose will not voluntarily comply with the TRO.¹⁰

LRWSC also objects to Crook Rose's First RFIs as not relevant. The Commission has taken the position in this proceeding and in other Texas Water Code section 13.2541 proceedings that the Commission will not consider the existence of the incumbent utility's federal loan and that the incumbent utility's ability to provide water service within a reasonable time after a request were made is not relevant to the Commission's decision. Absent a change in the Commission's legal position for Texas Water Code section 13.2541 matters, the consequence is that Crook Rose RFIs 1-1 through 1-11 and Crook Rose RFIs 1-15 through 1-16 are not relevant to this proceeding.

Finally, LRWSC objects to Crook Rose RFIs 1-1 through 1-11 and Crook Rose RFIs as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Those requests all go well beyond the question of whether service is currently provided to the Crook Rose property for purposes of this Texas Water Code section 13.2541 proceeding.

III. PRAYER

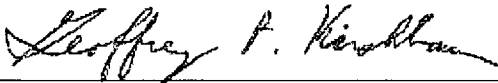
For the foregoing reasons, Lindale Rural Water Supply Corporation respectfully requests that the Honorable ALJ grant LRWSC's Motion to Abate and relieve LRWSC from any obligation

Convenience and Necessity in Kaufman County by Expedited Release, Docket No. 50442, Order No. 5 Abating Proceeding (Mar. 30, 2020).

¹⁰ See 16 TAC § 22.142(a)(1)(D) (authorizing "protection of a party . . . from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights.")

to respond to Crook Rose, Inc.'s First Requests for Information and, in the alternative, sustain LRWSC's specific objections to same. LRWSC also requests the ALJ grant LRWSC such other and further relief to which it is justly entitled at law or in equity.

Respectfully submitted,


By: 

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**ATTORNEY FOR LINDALE RURAL WATER
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CERTIFICATE OF CONFERENCE

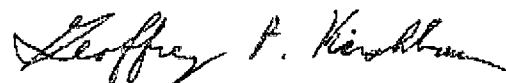
On February 22, 2021, counsel for Lindal Rural Water Supply Corporation conferred with Joe Freeland, counsel for Crook Rose, Inc., about this filing. Crook Rose was unwilling to withdraw its discovery requests or agree to abatement. The undersigned also conferred with Robert Parish, counsel for Commission Staff, about LRWSC's motion to abate. At this time, Commission Staff takes no position on the motion.



Geoffrey P. Kirshbaum

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 February 22, 2021, in accordance with the Orders Suspending Rules filed in Project No. 50664.



Geoffrey P. Kirshbaum

Therefore, IT IS ORDERED that Plaintiff Lindale Rural Water Supply Corporation's Application for Temporary Restraining Order is GRANTED.

IT IS FURTHER ORDERED that Defendants DeAnn T. Walker, Arthur C. D'Andrea, and Shelly Botkin, in their official capacities as Commissioners of the Public Utility Commission of Texas (the "PUC Officials") are enjoined from granting Defendant Crook Rose, Inc.'s petition for expedited release of its property in PUC Docket No. 51249.

IT IS FURTHER ORDERED that the PUC Officials are enjoined from curtailing Plaintiff Lindale Rural Water Supply Corporation's certificated water service area in PUC Docket No. 51249.

IT IS FURTHER ORDERED that, on agreement of the parties, this Order Granting Temporary Restraining Order will not expire until the date of the Court's decision on Plaintiff Lindale Rural Water Supply Corporation's Application for Preliminary Injunction, the hearing for which shall be set following the receipt by the Court of further submissions by the parties regarding scheduling.

SIGNED this the 2nd day of February, 2021.


UNITED STATES DISTRICT JUDGE