



Control Number: 51249



Item Number: 26

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DOCKET NO. 51249

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

**LINDALE RURAL WATER SUPPLY CORPORATION'S REPLY ON MOTION TO ABATE AND RESPONSE TO CROOK ROSE, INC.'S MOTION TO COMPEL**

Lindale Rural Water Supply Corporation ("LRWSC") files this Reply on Motion to Abate and Response to Crook Rose, Inc.'s Motion to Compel. In support, LRWSC respectfully shows as follows:

**I. REPLY ON MOTION TO ABATE**

Crook Rose, Inc. (Crook Rose) does not dispute the existence of a federal Temporary Restraining Order (TRO) that would prevent the Commission from granting Crook Rose's request for a streamlined expedited release in this docket. Instead, Crook Rose contends that the TRO is not broad enough to warrant abating further actions in this Commission docket and is not permanent. Crook Rose speculates about things that have yet to occur. For example, Crook Rose *hopes* that the federal court will authorize the Commission to proceed and speculates about the arguments LRWSC will make at a later date in this proceeding even though deadlines for both parties in this docket have passed.<sup>1</sup> Finally, Crook Rose complains about the perceived unfairness of the length of this process now that the federal court has enjoined this administrative matter pending the resolution of the federal law issues.

If any party is being treated unfairly here and being forced to needlessly spend its resources, it is LRWSC. Crook Rose should not have filed a SER application against a federally-indebted

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<sup>1</sup> But for the TRO, the Commission would likely have already acted on Crook Rose's request.

*W*

retail public utility to begin with, and the Commission's rejection of LRWSC's motion to dismiss on those federal-law grounds has compelled LRWSC to seek relief in federal court. It would also be unfair to permit Crook Rose to conduct discovery for its federal case at the administrative level where the federal-law issues are not part of the Commission's considerations. Finally, it is unfair for Crook Rose to contend the lack of a permanent injunction should preclude abatement here, when both Crook Rose and the Commission requested extensions on their answers to the federal suit after first obtaining LRWSC's good faith agreement thereto.<sup>2</sup>

If the Honorable Administrative Law Judge ("ALJ") believes the TRO is insufficient in scope to stop these proceedings—whether by compulsion or by discretion—then the ALJ would need to permit LRWSC time to seek additional relief in federal court. But that would also warrant abatement. On either ground, the ALJ should abate these proceedings to allow time for LRWSC to complete its efforts to obtain federal relief. That is what would constitute fairness here.

## **II. RESPONSE TO MOTION TO COMPEL**

For the reasons previously stated, Crook Rose cannot conduct discovery in this Commission proceeding while the TRO prohibits the Commission from acting. That would be unfair and counter to the TRO.

Further, Crook Rose's requests for information ("RFIs") are aimed at its federal case as opposed to this Commission proceeding and go beyond the facts relevant here. There is a different test at issue in the federal case. The Fifth Circuit has determined that 7 U.S.C. § 1926(b) protection applies if the retail public utility has federal debt and meets a "physical ability" test, meaning "it has (1) adequate facilities to provide service to the area within a reasonable time after

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<sup>2</sup> See **Exhibit A**.

a request for service is made and (2) the legal right to provide service.”<sup>3</sup> In that instance, the “service provided or made available” by the utility may not be curtailed.<sup>4</sup>

Here, because the Commission refuses to take federal debt into account, the question is different. SERs may only be granted under Texas law for tracts of land which are “not receiving water or sewer service.”<sup>5</sup> LRWSC contended the tract is receiving service from it via the acts and facilities described in its earlier pleadings, including a water main located within the tract. Crook Rose has contended that is not service to the tract. In his proposed order, over LRWSC’s objections, the ALJ agreed with Crook Rose and recommended the Commission decertify the tract except for LRWSC’s facilities within the tract.<sup>6</sup> The level of service LRWSC *could* provide *if* it received a request for service from Crook Rose for the tract—to date LRWSC has received no such request—is simply not relevant here. That is what Crook Rose’s invalid RFIs seek information about.

Conversely, facts about LRWSC’s ability to respond to a request for service would be relevant to the federal case. The level of LRWSC ability needed for federal debt protection is in question, including the consequences of a lack of a Crook Rose service request, but the federal court is the forum where those types of discovery requests should be propounded, if desired. Not here, where Crook Rose’s requests are not relevant, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Therefore, the ALJ should sustain LRWSC’s objections to Crook Rose’s First RFIs.

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<sup>3</sup> *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 475 and 477-78 (5th Cir. 2020).

<sup>4</sup> *Id.*

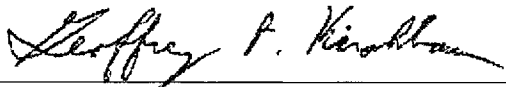
<sup>5</sup> TWC § 13.2541(b); *see also* 16 TAC § 24.245(h)(1)(B).

<sup>6</sup> Memorandum and Proposed Order (Jan. 7, 2021).

### 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 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,

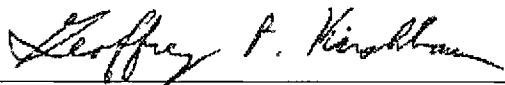
By: 

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**ATTORNEY FOR LINDALE RURAL WATER  
SUPPLY CORPORATION**

### 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 March 8, 2021, in accordance with the Orders Suspending Rules filed in Project No. 50664.

  
\_\_\_\_\_  
Geoffrey P. Kirshbaum

FILE

2021 FEB 22 PM 5: 00

CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

LINDALE RURAL WATER SUPPLY  
CORPORATION,

Plaintiff,

VS.

DEANN T. WALKER, ARTHUR C.  
D'ANDREA, and SHELLY BOTKIN, in  
their official capacities as Commissioners of  
the Public Utility Commission of Texas; and,  
CROOK ROSE, INC.,  
Defendants.

§ §

Civil Action No. 1:21-cv00073-LY

RV.

**EXHIBIT**

# A

**ORDER GRANTING CROOK ROSE, INC.'S, UNOPPOSED MOTION FOR  
EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFF'S  
FIRST AMENDED COMPLAINT**

After considering Defendant Crook Rose, Inc.'s, Unopposed Motion to for Extension of Time to Answer or Otherwise Respond to Plaintiff's First Amended Complaint, the Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that Defendant Crook Rose, Inc.'s, deadline to file an answer or otherwise respond to Plaintiff's First Amended Complaint is March 19, 2021.

SIGNED this 14th day of February, 2021.

  
THE HONORABLE LEE YEAKEL  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

2021 FEB 22 PM 5:00  
CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

LINDALE RURAL WATER SUPPLY  
CORPORATION

Plaintiff,

v.

DEANN T. WALKER, ARTHUR C.  
D'ANDREA, and SHELLY BOTKIN,  
in their official capacities as  
Commissioners of the  
Public Utility Commission of Texas; and  
CROOK ROSE, INC.,  
Defendants.

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No. 1:21-cv-00073-LY

**ORDER GRANTING UNOPPOSED MOTION TO EXTEND TIME**

The Court, having considered the Defendants, the Commissioners of the Public Utility Commission of Texas's, Unopposed Motion for Extension of Time to file Answer or otherwise respond to Plaintiff's Original Complaint, finds that the motion should be and hereby is GRANTED.

IT IS THEREFORE ORDERED that Defendants' time to answer or otherwise respond to Plaintiff's Original Complaint is extended to **March 19, 2021**.

SIGNED this 22nd day of February 2021.

  
LEE YEAKEL  
UNITED STATES DISTRICT JUDGE