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On June 21, 2021, YWSC filed a Motion to Intervene, Initial Comments, and a Request for Response Deadline. On June 30, 2021, the Honorable Administrative Law Judge issued Order No. 9, granting YWSC’s Motion to Intervene. YWSC filed a Pre-Discovery Response to the Application on July 30, 2021. On August 6, 2021, Staff requested an extension to file its third set of requests for information. The Honorable Administrative Law Judge granted Staff’s request, and established a new procedural schedule—though the deadline to request a hearing remained unchanged and is August 13, 2021. Therefore, this request for a hearing is timely filed.

II. YWSC’S JUSTICIABLE INTEREST

To participate in a proceeding before the Commission as an intervenor, a person must file a motion to intervene and be recognized as a party under 16 Texas Administrative Code (“TAC”) § 22.103.⁴ According to Commission rules, 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.⁵

The Texas Water Code (“TWC”), Commission rules, and Order No. 9 of this docket confer standing to YWSC. When applying for a new CCN amendment for an area that would require construction of a physically separate water system, the TWC and Commission rules require the applicant to demonstrate that regionalization and consolidation with another retail public water system is not economically feasible.⁶ Here, the service area Old Highway 90 seeks to annex to its water CCN (the “Requested Area”) is two (2) miles from YWSC’s existing CCN (CCN No. 11463) and five (5) miles from YWSC’s nearest existing facilities. Not only is regionalization and consolidation economically feasible, but YWSC has already made significant investments to serve the area immediately to the west of the Requested Area and agreed to serve the Requested Area prior to Old Highway 90 filing its Application.⁷ Therefore,

⁴ 16 Tex. Admin. Code § 22.103(b); *see also* 16 Tex. Admin. Code § 22.2(25).

⁵ *Id.*

⁶ Tex. Water Code § 13.241(d); 16 Tex. Admin. Code § 24.227(b).

⁷ *See* Written Service Request Given to YWSC and YWSC’s Formal Response at 1-3 (Dec. 9, 2020).

TWC § 13.241(d), and 16 TAC § 24.227(b) confer standing to YWSC in this proceeding. Further, Order No. 9, Granting YWSC’s Motion to Intervene issued by the Honorable Administrative Law Judge confirms that YWSC has a right to participate in this contested case as a party.⁸

III. ARGUMENTS AND AUTHORITIES

The procedural history of this proceeding demonstrates why a hearing on the merits of Old Highway 90’s Application is necessary. Since filing the original Application on November 5, 2020, Old Highway 90 skirted every opportunity to provide the information requested by Staff. Staff is simply seeking evidence demonstrating the Texas Commission on Environmental Quality (“TCEQ”) has approved Old Highway 90’s new public water system and distribution system⁹—a prerequisite of any CCN amendment application requiring the construction of a new standalone public water system.¹⁰

Old Highway 90 bears the burden to demonstrate to the Commission that it has met all of the demands that the Commission rules and TWC places on applicants seeking to amend an existing CCN.¹¹ So far, Old Highway 90 has failed to meet that burden in the following respects, which YWSC intends to address with evidence, legal argument, and cross-examination at the hearing:

- (1) Old Highway 90 is unable to show that regionalization and consolidation are not economically feasible—which is a prerequisite for all CCN amendment applications seeking to add an area that would require the construction of a new standalone water system.¹²
- (2) A retail water utility must demonstrate that it has (1) a public water system approved by the TCEQ, capable of providing drinking water that meets the requirements of Texas Health and Safety Code (“THSC”), chapter 341, TCEQ rules, and the TWC; and

⁸ Order No. 9 (Jun. 30, 2021) (corrected on Jul. 6, 2021).

⁹ See Commission Staff’s Second Request for Information at 5 (Jul. 16, 2021); Commission Staff’s Third Request for Information at 5 (Aug. 6, 2021).

¹⁰ Tex. Water Code § 13.241(d); 16 Tex. Admin. Code § 24.227(b).

¹¹ See 16 Tex. Admin. Code § 24.12 (“the burden is on the moving party”).

¹² Tex. Water Code § 13.241(d); 16 Tex. Admin. Code § 24.227(b).

- (2) access to an adequate supply of water or a long-term contract for purchased water. Old Highway 90 has not demonstrated either.¹³
- (3) Each retail public utility that provides water service must plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer users.¹⁴ THSC, chapter 341 and TCEQ rules set the minimum standards for such facilities, and retail public utilities must meet those minimum standards.¹⁵ Further, a person may not begin construction of a public drinking water supply system unless TCEQ's Executive Director first determines that the system and system distribution facilities conform to THSC, chapter 341 and TCEQ rules.¹⁶
- (4) Commission rules require applications for a CCN amendment that require the construction of a new public drinking water system or facilities to be accompanied by an approval letter issued by the TCEQ for the public drinking water system or system facilities.¹⁷ Any approval letter for the proposed public drinking water system or facilities must be filed with the Commission before the issuance of a CCN amendment.¹⁸ Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in dismissal of the application without prejudice.¹⁹
- (5) The Application was deemed administratively complete on May 17, 2021.²⁰ Old Highway 90 is still unable to demonstrate that TCEQ has approved either its public water system or its distribution facilities.²¹
- (6) It appears from Old Highway 90's responses to the several requests for information submitted by Staff, that it is treating TCEQ's public drinking water regulations with the same lack of understanding or sophistication, and casual indifference, that it has treated

¹³ 16 Tex. Admin. Code § 24.227(a)(1).

¹⁴ 16 Tex. Admin. Code § 24.205.

¹⁵ 16 Tex. Admin. Code § 24.205(1).

¹⁶ 30 Tex. Admin. Code § 290.39

¹⁷ 16 Tex. Admin. Code § 24.233(a)(14)(A).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Order No. 8 (May 15, 2021).

²¹ Compare Commission Staff's Third Request for Information at 5 (Aug. 6, 2021) with Old Highway 90's Response to Staff's Third Request for Information (Aug. 10, 2021).

the Commission’s utility regulations in this proceeding. In fact, Old Highway 90 claims it has sought an exception from TCEQ of its economic feasibility requirements.²² Note that Old Highway 90 has similarly sought waivers of certain requirements in this proceeding.²³

- (7) Old Highway 90 has not demonstrated that it possess the financial, managerial, and technical capability to provide continuous and adequate service.²⁴
- (8) Old Highway 90 bears the burden to demonstrate financial assurance by either (1) obtaining an irrevocable stand-by letter of credit issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation as more precisely detailed under TAC § 24.11(d); or (2) by satisfying the leverage and operations tests under TAC § 24.11(e).²⁵
- (9) YWSC believes good cause exists for the Commission to require Old Highway 90 to comply with both Tex. Admin. Code §§ 24.11(d) and (e) in order to demonstrate financial assurance. Old Highway 90 is not a Texas company, corporation, or partnership, but rather is merely the “d/b/a,” or name of its individual owner, Mr. Chester Maples, Jr. Based on the updated information provided in the Old Highway 90’s response Staff’s Second Request for Information, Old Highway 90 shows only \$2,803 cash available at the end of 2020.²⁶ The remaining assets reported are accounts receivable (\$17,700), and fixed assets (\$3,701,400)—the purported value of Old Highway 90’s existing system facilities, which are located in separate areas of Medina County at least 15 linear miles away from the Requested Area.²⁷ At this stage in the proceeding, it does not appear that Old Highway 90 can satisfy both the leverage test

²² Old Highway 90’s Response to Third Request for Information at 1-2 (Aug. 2, 2021).

²³ See e.g., Old Highway 90’s Request for Waiver of 16 TAC § 24.235(b)(4) and Objection to Yancey WSC’s Motion to Intervene (Jul. 9, 2021).

²⁴ Tex. Water Code § 13.241(a); 16 Tex. Admin. Code § 24.227(a).

²⁵ Tex. Water Code § 24.11(c)-(e).

²⁶ See Old Highway 90’s Response to Second Request for Information at 5 (Aug. 2, 2021).

²⁷ *Id.*

and the operations test to demonstrate financial assurance under TAC § 24.11(d) and (e).

IV. REQUEST FOR HEARING ON THE MERITS

As of the date of this Request for Hearing on the Merits, Staff has submitted three requests for information. Most recently, Staff submitted its Third Request for Information, seeking to discover for the second time, whether Old Highway 90 was capable of producing evidence of TCEQ's approval of its proposed water system and distribution system.²⁸ As it turns out, Old Highway 90 is not able to produce TCEQ's approval.

At this time, YWSC respectfully requests that a formal hearing on the merits be scheduled, and that the YWSC be given sufficient time to conduct discovery. The gaping holes in Old Highway 90's Application, Old Highway 90's lack of transparency with Staff and YWSC, and Old Highway 90's casual indifference to fundamental human health statutes and regulations raises concerns about its financial, managerial, and technical capabilities to provide continuous and adequate retail public water service to the Requested Area.

V. CONCLUSION

YWSC appreciates the opportunity to supplement its previous filings addressing its concerns about the Application as an intervenor in this proceeding. YWSC respectfully requests that its Request for a Hearing on the Merits be granted, that YWSC be recognized as a party with standing to contest the Application, and that YWSC receives all such other and further relief to which it may be justly entitled.

²⁸ Commission Staff's Third Request for Information at 5 (Aug. 6, 2021).

Respectfully submitted,

/s/ C. Cole Ruiz

C. Cole Ruiz

State Bar No. 24117420

Michael A. Gershon

State Bar No. 24002134

Lloyd Gosselink Rochelle & Townsend, P.C.

816 Congress Avenue, Suite 1900

Austin, Texas 78701

(512) 322-5800 phone

(512) 472-0532 facsimile

cruiz@lglawfirm.com

mgershon@lglawfirm.com

ATTORNEYS FOR

YANCEY WATER SUPPLY CORPORATION

**DOCKET NO. 51488
CERTIFICATE OF SERVICE**

I certify that notice of the filing of this document was provided to all parties of record via electronic mail and through the Interchange on the Commission's website on August 13, 2021, in accordance with Order No. 9 in this proceeding and the Order Suspending Rules issued in PUC Project No. 50664.

/s/ C. Cole Ruiz

C. Cole Ruiz