



## Filing Receipt

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**PUC DOCKET NO. 52380**

<b>PETITION BY SWWC UTILITIES, INC.</b>	<b>§</b>	
<b>D/B/A HORNSBY BEND UTILITY</b>	<b>§</b>	
<b>COMPANY, INC. AND CITY OF</b>	<b>§</b>	
<b>AUSTIN, TEXAS, FOR TEXAS WATER</b>	<b>§</b>	<b>BEFORE THE PUBLIC UTILITY</b>
<b>CODE § 13.248 APPROVAL AND</b>	<b>§</b>	
<b>ENFORCEMENT OF A CONTRACT</b>	<b>§</b>	<b>COMMISSION OF TEXAS</b>
<b>AND ITS AMENDMENTS</b>	<b>§</b>	
<b>DESIGNATING WATER AND</b>	<b>§</b>	
<b>WASTEWATER SERVICE AREAS IN</b>	<b>§</b>	
<b>TRAVIS COUNTY, TEXAS</b>	<b>§</b>	

**CITY OF AUSTIN’S RESPONSE TO COMMISSION STAFF’S MOTION TO DISMISS**

The City of Austin (the “City”) submits this Response to Commission Staff’s (“Staff”) Motion to Dismiss, which was filed on September 30, 2021. Pursuant to 16 Tex. Admin. Code (“TAC”) § 22.181(e)(3) and Order No. 4, this response is timely filed.<sup>1</sup>

On August 2, 2021, pursuant to Texas Water Code (“TWC”) § 13.248, the City and SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc. (“HBUC”) filed a joint application (“Application”) to approve amendments to a previously approved agreement (“Agreement”) between the parties designating service areas. The original Agreement was approved by the Texas Commission on Environmental Quality (“TCEQ”) in 2004.<sup>2</sup> However, four amendments to the Agreement have not been approved by the TCEQ or the Public Utility Commission of Texas (the “Commission”). The Application and amendments to the Agreement give effect to the Agreement, as amended, including the most recent fourth amendment settling, contingent on Commission approval, the pending civil litigation (“Settlement”) in the 200th Judicial District Court of Travis County, Texas, concerning disputes over the Agreement and the respective service areas the City and SWWC may serve in the future.

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<sup>1</sup> 16 TAC § 22.181(e)(3).

<sup>2</sup> The original 2003 agreement was executed to settle administrative litigation involving competing CCN applications and related service area issues between the City and HBUC. Application at 1-2 n.1.

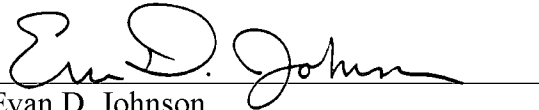
The Application seeks Commission approval of the Agreement, as amended, pursuant to TWC § 13.248. The Application does not seek to establish certificate rights to any new service area for either party, nor does it amend either party's existing certificate rights or service area boundaries. The Application only seeks to establish the validity and enforceability of the amendments to the Agreement that were executed subsequent to the TCEQ's original approval.

Pursuant to TWC § 13.248, contracts "between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the utility commission after public notice and hearing, are valid and enforceable and are incorporated into the appropriate areas of public convenience and necessity." The Application requests Commission approval of the Agreement, as amended, in order to remove any doubt as to whether the full Agreement, including its amendments, is valid and enforceable.

Staff argues in its Motion that, pursuant 16 TAC § 24.253(a), Commission approval of a TWC § 13.248 application cannot occur without an accompanying formal request for changes to service area boundaries or certificate rights, which the parties are not seeking here. Importantly, the City is not required to seek approval from the Commission to serve customers within its municipal boundaries or extraterritorial jurisdiction; therefore, there is no formal approval of a service area transfer contemplated as part of the Application. The City takes no position regarding HBUC's arguments opposing Staff's interpretation of 16 TAC § 24.253(a), but it agrees with HBUC that there is no language in the statute that precludes Commission review of the Application under TWC § 13.248 as filed. Any necessary amendments to boundaries or certification rights sought by either party can (and should) be formalized in a separate proceeding, and until that occurs, no existing certificate rights will be affected by the Commission's approval of the Settlement in this proceeding. The City also agrees with HBUC that approval of the Application,

giving effect to the amendments to the Agreement, would be the most efficient resolution of this proceeding and related litigation.

Respectfully submitted,

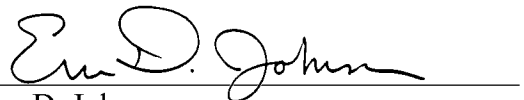
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**ATTORNEYS FOR THE CITY OF AUSTIN**

**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 November 1, 2021, in accordance with the Orders Suspending Rules issued in Project No. 50664.

  
Evan D. Johnson