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Received - 2021-11-05 11:08:42 AM

Control Number - 52380

ItemNumber - 13

DOCKET NO. 52380

PETITION OF SWWC UTILITIES, INC.	§	PUBLIC UTILITY COMMISSION
DBA HORNSBY BEND UTILITY	§	
COMPANY, INC. AND CITY OF	§	OF TEXAS
AUSTIN FOR APPROVAL OF	§	
SERVICE AREA CONTRACT UNDER	§	
TEXAS WATER CODE § 13.248 AND	§	
TO AMEND CERTIFICATES OF	§	
CONVENIENCE AND NECESSITY IN	§	
TRAVIS COUNTY	§	

**ORDER NO. 5
REQUIRING CLARIFICATION**

The applicants in this proceeding are SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. and the City of Austin. Both are retail public utilities providing water and sewer service. SWWC holds water certificate of convenience and necessity (CCN) number 111978 and sewer CCN number 20650. Austin holds water CCN number 11322 and sewer CCN number 20636. The applicants seek Commission approval of a collection of agreements between them (which they contend should be treated as a single agreement) under Texas Water Code (TWC) § 13.248 and 16 Texas Administrative Code (TAC) § 24.253.

Over the last 18 years, the applicants have executed the following five agreements that are at issue in this case:

- A Settlement Agreement, dated October 20, 2003 (the Original Agreement);¹
- A First Amendment to the Settlement Agreement, dated December 9, 2014 (the First Amendment);
- A Second Amendment to the Settlement Agreement, dated May 24, 2017 (the Second Amendment);
- A Third Amendment to the Settlement Agreement, executed on an unspecified date in 2020 (the Third Amendment); and
- A Fourth Amendment to the Settlement Agreement, dated June 1, 2021 (the Fourth Amendment).

¹ The Original Agreement was entered into by SWWC's predecessor in interest.

A copy of each document is attached to the petition. The administrative law judge (ALJ) is, frankly, finding the Fourth Amendment to be unintelligible and would benefit from additional explanation.

As the ALJ understands it, prior to the execution of the Fourth Amendment, the governing map under the Original Agreement and subsequent amendments was Ex. A attached to the Third Amendment.

- Is this correct?
- If so, do the current certificated service area boundaries of SWWC's and Austin's CCNs match the boundaries shown in Ex. A attached to the Third Amendment?
- What is the "transfer area" shown on the map? Is it within one of the applicant's CCN(s)?
- What is the "AELP" area? Is it within one of the applicant's CCN(s)?

With the execution of the Fourth Amendment, the governing maps became Exs. A-1 and A-2 attached to the Fourth Amendment.

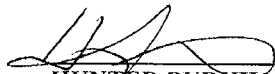
- Is this correct?
- Is there any difference between Ex. A attached to the Third Amendment and Ex. A-1 attached to the Fourth Amendment?
- In the application, the applicants "emphasize" that they do not want their CCN boundaries adjusted in this proceeding.
 - Is this correct?
 - If so, how is that reconcilable with Fourth Amendment Art. 9, paragraph 2, which states that, the parties will cooperate "to have the water and wastewater service areas depicted in Exhibit A-1 and Exhibit A-2 . . . approved as each Party's respective designated customer service areas and incorporated into each Party's respective services areas as appropriate"?
- How are Exs. A-1 and A-2 reconcilable? How can they both reflect the "water and wastewater service areas" of the applicants?
- The applicants appear to envision that, within SWWC's certificated service areas, there will be areas that SWWC cannot serve and Austin can serve and that will be designated as "City Service Area."
 - Is this correct?

- If so, what is the legal authority for such an arrangement and how is it consistent with TWC Ch. 13?
- In its response to the pending motion to dismiss, Austin contends that the application does not seek to “amend either party’s existing certificate rights or service area boundaries.”
 - If the Commission approves the Fourth Amendment—such that, within SWWC’s certificated service areas, there will be areas that SWWC cannot serve and Austin can serve and that will be designated as “City Service Area”—would not existing certificate rights and service area boundaries be affected?

By November 23, 2021, the applicants must respond to the questions raised in this Order and file maps depicting their current CCN boundaries. Commission Staff must do the same by December 7, 2021.

Signed at Austin, Texas the 5th day of November 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE