



## Filing Receipt

**Received - 2021-11-30 01:26:04 PM**

**Control Number - 52380**

**ItemNumber - 18**

**DOCKET NO. 52380**

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

**COMMISSION STAFF’S RESPONSE TO ORDER NO. 6**

On August 2, 2021, SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (HBUC) and the City of Austin (collectively, the Applicants) filed a petition for review and approval of a service area contract under Texas Water Code (TWC) § 13.248 and 16 Texas Administrative Code (TAC) § 24.253.

On November 5, 2021, the administrative law judge (ALJ) filed Order No. 6 Motion to Dismiss, and set a deadline for parties, including Staff (Staff) of the Public Utility Commission of Texas (Commission), to respond within 20 days from receipt of the motion. 20 days from November 5, 2021 fell on November 25, 2021, a day on the Commission was not open for business. Pursuant to TAC § 22.4(a), the deadline runs until the next day upon which the Commission is open for business, which is November 29, 2021.

**I. STAFF’S RESPONSE TO ORDER NO. 6**

Staff concurs with the ALJ’s motion to dismiss. In Staff’s Motion to Dismiss filed on September 30, 2021, Staff contended that the application should be dismissed under 16 TAC § 22.181(d)(8), for failure to state a claim for which can be granted. Staff is in agreement with the ALJ’s opinion that dismissal is also appropriate under 16 TAC § 22.181(d)(1), for lack of jurisdiction; 16 TAC § 22.181(d)(2), for a moot question or obsolete petition; 16 TAC § 22.181(d)(3), for res judicata; and 16 TAC 22.181(d)(4) for collateral estoppel.

The Applicants’ 2003 agreement was executed to resolve the overlapping of water and sewer certificated service boundaries in the Applicants’ respective applications to amend or obtain water and sewer certificates of convenience and necessity (CCN) that were filed with the Texas

Commission of Environmental Quality (TCEQ). The TCEQ granted the amended CCN applications which reflected the terms of 2003 agreement between the Applicants.

There is sufficient information in the record to indicate that the Commission does not have jurisdiction over the 2003 agreement as the TCEQ was the state agency with regulatory authority over water and sewer utilities when the agreement was originally executed. The Commission did not have regulatory authority over water and sewer utilities until 2014.<sup>1</sup> Furthermore, the issue is moot and has been previously adjudicated to completion with both the 2003 agreement resolving the issue of overlapping water and sewer certificated service areas between the Applicants and the 2003 agreement being reflected in the Applicants' amended CCN applications that were approved by the TCEQ.

## **II. CONCLUSION**

For the reasons stated above, Staff concurs with the ALJ's motion to dismiss the application.

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<sup>1</sup> Acts of May 25, 2013, 83rd Leg., R.S., Ch. 170 (H.B. 1600), § 2.49, eff. September 1, 2014.

Dated: November 30, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Rustin Tawater  
Managing Attorney

/s/ Arnett D. Caviel  
Arnett D. Caviel  
State Bar No. 24121533  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7245  
(512) 936-7268 (facsimile)  
Arnett.Caviel@puc.texas.gov

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**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 30, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Arnett D. Caviel  
Arnett D. Caviel