



## Filing Receipt

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**PUC DOCKET NO. 52380**

<b>PETITION BY SWWC UTILITIES, INC.</b>	<b>§</b>	<b>BEFORE THE PUBLIC UTILITY</b>
<b>D/B/A HORNSBY BEND UTILITY</b>	<b>§</b>	
<b>COMPANY, INC. AND CITY OF</b>	<b>§</b>	<b>COMMISSION OF TEXAS</b>
<b>AUSTIN, TEXAS, FOR TEXAS WATER</b>	<b>§</b>	
<b>CODE § 13.248 APPROVAL AND</b>	<b>§</b>	
<b>ENFORCEMENT OF A CONTRACT</b>	<b>§</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>	

**SWWC UTILITIES, INC. D/B/A HORNSBY BEND UTILITY COMPANY, INC.’S  
SUPPLEMENTAL APPLICATION INFORMATION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc. (HBUC or Applicant), and hereby files this Supplemental Application Information related to their Petition filed with City of Austin (City) (collectively, the Applicants) for approval and enforcement of a contract and its amendments designating water and wastewater service areas, and customers to be served by the Applicants in those areas (Petition or Application). In support thereof, HBUC shows the following.

**I. ADDITIONAL EXPLANATION OF APPLICATION AUTHORITY**

Commission Staff has expressed concerns to Applicants regarding the legal authority for the Application and related procedural issues. HBUC attempts to address those concerns here.

While Applicants have sought approval for their agreements under Texas Water Code (TWC) § 13.248 and 16 Texas Administrative Code (TAC) § 24.253, Commission Staff has indicated concern that an applicable Commission rule includes language beyond what is contained in TWC § 13.248 that might preclude processing of the Application. In pertinent part, 16 TAC § 24.253(a) states, “This section only applies to the transfer of certificated service area and

customers between existing CCN holders.”<sup>1</sup> This language precedes a statement that “[n]othing in this provision negates the requirements of TWC § 13.301 to obtain a new CCN and document the transfer of assets and facilities between retail public utilities.”<sup>2</sup>

Read together, HBUC believes these provisions merely show intent to prevent retail public utilities from circumventing the TWC § 13.301 process for certificates of convenience and necessity (CCNs) if it is applicable. HBUC does not believe this rule language limits TWC § 13.248 applications to only those where certificated service areas are transferred since TWC § 13.248 simply states, “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 referenced rule language is not in TWC § 13.248.

Here, there is no “appropriate” CCN area that requires “incorporat[ion]” in *this* docket because: (1) most incorporation of the Applicants’ respective agreed CCN areas was previously accomplished in the original TCEQ-approved agreement between the parties;<sup>3</sup> (2) most of the agreement amendments do not change the originally designated areas;<sup>4</sup> and (3) the fourth agreement amendment contemplates incorporating part of the HBUC areas released in Docket No. 51166 back into HBUC CCN No. 11978 and 20650 via a CCN amendment application now pending in Docket No. 52492 since Docket No. 51166 is closed.<sup>5</sup> No transfer from the City for

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<sup>1</sup> 16 TAC § 24.253(a).

<sup>2</sup> *Id.*

<sup>3</sup> See Application at **Exhibit 1** - Order in TCEQ Docket Nos, 2002-189-UCR, 2000-0112-UCR, 2002-0756-UCR, and 2002-1197-UCR (Nov. 16, 2004); **Exhibit 2** - Settlement Agreement between City of Austin and Hornsby Bend Utility Company, Inc. (Oct. 20, 2003); **Exhibit 3** – First Amendment to the Settlement Agreement (Dec. 4, 2014); **Exhibit 4** – Second Amendment to the Settlement Agreement (May 24, 2017); **Exhibit 5** – Third Amendment to the Settlement Agreement (Sep. 20, 2020); **Exhibit 6** – Fourth Amendment to the Settlement Agreement (Jun 1, 2021).

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

<sup>5</sup> *Id.*; see also *Petition of Colorado River Project, LLC to Amend SWWC Utilities, Inc. dba Hornsby Bend Utility’s Certificate of Convenience and Necessity in Travis County by Expedited Release*; Docket No. 51166; Order (Jan. 14,

those areas can occur here because those areas are not within the City's CCNs. Yet, Applicants are requesting approval of their agreements designating service areas as allowed by TWC § 13.248 so that the agreements as amended "are valid and enforceable."<sup>6</sup> Thus, while the Commission may proceed to process the Application under both TWC § 13.248 and 16 TAC § 24.253, at a minimum, the Commission should consider the Application pursuant to TWC § 13.248. The final order here could potentially recognize that statute and the CCN amendment application in Docket No. 52492 in support of granting Applicants the relief requested.

Applicants also discussed with Commission Staff the possibility of consolidating this matter with Docket No. 52492. However, HBUC is concerned that if the two matters were consolidated, the CCN amendment process in Docket No. 52492 will take longer than the process here. As stated in the Application, the Applicants would like Commission approval of the Application agreements by November 1, 2021 so as to avoid their currently scheduled temporary injunction hearing scheduled in December 2021.

## **II. ADDITIONAL EXPLANATION REGARDING LANDOWNER INTERESTS**

The only landowner affected by the service area designation changes reflected in the agreements as amended is the petitioner from Docket No. 51166, Colorado River Project, LLC. ("CRP"). The agreed service area designations do not alter the CCN areas originally agreed to and approved by TCEQ in 2004 except with respect to CRP property which was released by the Commission in Docket No. 51166. In Docket No. 52492, HBUC has requested to add back to its water and sewer CCNs portions of the territory previously released by the Commission in Docket No. 51166. A letter from CRP supporting the requested CCN amendment was filed as an

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2021); *Application of SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. to Amend its Certificates of Convenience and Necessity in Travis County*; Docket No. 52492 (Sep. 1, 2021).

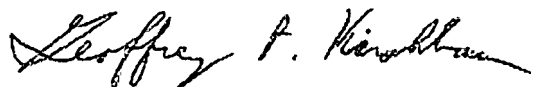
<sup>6</sup> TWC § 13.248.

attachment to the application in Docket No. 52492.<sup>7</sup> CRP is not a retail public utility and, thus, not a party here, but is aware and supportive of this filing and that in Docket No. 52492.

### III. CONCLUSION

SWWC Utilities, Inc. d/b/a Hornsby Bend Utility Company, Inc. respectfully requests the Commission process this Petition under TWC § 13.248 and 16 TAC § 24.253, or just TWC § 13.248 if deemed appropriate, with respect to the Settlement Agreement and the Applicants' First, Second, Third, and Fourth Amendments. HBUC requests the Commission approve and enforce same. If for any reason the Commission finds the information submitted with this Petition is insufficient for Application acceptance, HBUC respectfully requests that the Applicants be notified immediately and provided an opportunity to cure any deficiencies identified.

**Respectfully submitted,**

By: 

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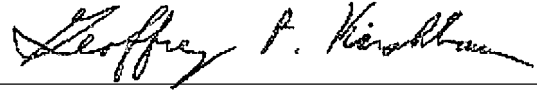
**ATTORNEYS FOR SWWC UTILITIES, INC.  
D/B/A HORNSBY BEND UTILITY COMPANY,  
INC.**

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<sup>7</sup> Application of SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. to Amend its Certificates of Convenience and Necessity in Travis County; Docket No. 52492; CCN Amendment Application at Exhibit 3 (Sep. 1, 2021).

**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 September 16, 2021, in accordance with the Orders Suspending Rules issued in Project No. 50664.



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Geoffrey P. Kirshbaum