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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	§	

COMMISSION STAFF’S MOTION TO DISMISS

On August 2, 2021, SWWC Utilities, Inc. dba Hornsby Bend Utility Company, Inc. (HBUC) and the City of Austin (collectively, 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 September 20, 2021, the administrative law judge (ALJ) filed Order No. 3, requiring Staff of the Public Utility Commission of Texas (Staff) to file comments on the administrative completeness of the application and proposed notice along with a proposed procedural schedule by September 30, 2021. Therefore, this pleading is timely filed.

I. MOTION TO DISMISS

Staff respectfully requests the ALJ’s entry of an order for dismissal without prejudice for failure to state a claim for which relief can be granted under 16 TAC § 22.181(d)(8). Under 16 TAC § 22.181(d)(8), “Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding for any reason specified in this section.”

Staff asserts that the Applicants have submitted a petition under 16 TAC § 24.253 in which relief cannot be granted. Under 16 TAC § 24.253(a):

If approved by the commission after notice and hearing, contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities are valid and enforceable and are incorporated into the corresponding certificates of convenience and necessity (CCNs). This section only applies to the transfer of certificated service area and customers between existing CCN holders. Nothing 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.

The Applicants have submitted a service area contract for review and approval, however, the petition does not contemplate the transfer of certificated service area as described in 16 TAC § 24.253(a). Instead, the Applicants' petition only seeks review and approval of the service area contract while the transfer of certificated service area is sought in a completely different docket.¹

Therefore, because the Applicants' petition solely seeks review and approval of the service area contract and does not involve the transfer of certificated service area in this docket as contemplated in 16 TAC § 24.253(a), Staff respectfully requests that the petition be dismissed without prejudice for failure to state a claim for which relief can be granted.

II. CONCLUSION

Staff respectfully requests the entry of an order dismissing the petition without prejudice for failure to state a claim that relief can be granted under 16 Texas Administrative Code (TAC) § 22.181(d)(8).

¹ *Application of SWWC Utilities, Inc. DBA Hornsby Bend Utility Company, Inc. to Amend its Certificates of Convenience and Necessity in Travis County*, Docket 52492, Application (Sep. 1, 2021).

Dated: September 30, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 52380

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

/s/ Arnett D. Caviel
Arnett D. Caviel