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DOCKET NO. 52551

JOINT PETITION OF BLACKLAND	§	PUBLIC UTILITY COMMISSION
WATER SUPPLY CORPORATION AND	§	
THE CITY OF ROCKWALL FOR	§	OF TEXAS
APPROVAL OF SERVICE-AREA	§	
CONTRACT UNDER TEXAS WATER	§	
CODE § 13.248 AND TO AMEND	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY UNDER TEXAS	§	
WATER CODE § 13.254(a) IN	§	
ROCKWALL COUNTY	§	

ORDER NO. 1
REQUIRING COMMENTS ON ADMINISTRATIVE COMPLETENESS AND
PROPOSED NOTICE AND ADDRESSING OTHER PROCEDURAL MATTERS

This Order addresses the September 10, 2021 petition of Blackland Water Supply Corporation and the City of Rockwall.

I. Requiring Comments on the Administrative Completeness
of the Petition and Notice, the Possible Need for Severance, and Other Matters

Upon first glance, it appears to the administrative law judge (ALJ) that the petition involves at least three separate types of matters (and possibly multiples of each type):

- 1) A request for approval of multiple service-area agreements entered into between Blackland WSC and the city over a period of decades, under Texas Water Code (TWC) § 13.248;
- 2) A request for decertification of various portions of Blackland WSC's certificated service area under TWC § 13.254(a) in light of a series of agreements between Blackland WSC and developers entered into over a period of many years; and
- 3) A request to approve changes to Blackland WSC's service area under TWC § 13.255(a) based on multiple agreements between Blackland WSC and the city.

As best the ALJ can determine, the petition involves multiple agreements involving, the ALJ suspects, different signatories (some of whom are not parties in this proceeding). The oldest contract is from 1989 and the newest is from 2016. In multiple instances, the geographic area at issue in one contract apparently overlaps with the geographic area at issue in another.

The ALJ is unsure whether the petition can be processed in its current form. The following is a non-exhaustive list of concerns the ALJ has, at this preliminary stage, identified with the

application.

First, the ALJ wonders whether the proceeding should be severed into multiple proceedings—one for each agreement. Each agreement must be evaluated in its own right. The ALJ is concerned that the only thing accomplished by analyzing all of the agreements in one docket would be to create confusion.

Second, the ALJ is unsure whether this should be a petition filed by the petitioners, or an enforcement action brought by Commission Staff. Blackland WSC is the holder of water certificate of convenience and necessity (CCN) number 11305. As such, it is legally obligated, under TWC § 13.250, to provide continuous and adequate water service within the entirety of its certificated service area. According to the petition, however, for *32 years* there have been large swathes of Blackland WSC's certificated service area in which the utility has ceased providing service, and the geographic scope of such non-served areas has steadily increased over time, such that it now encompasses something in the range of 1,500 acres. This arrangement has been in place without, apparently, any modification to Blackland WSC's CCN.

Third, the ALJ is also unsure that the relief requested can be granted under the statutes relied upon by the petitioners. For example, the process of approval for service-area agreements authorized by TWC § 13.248 and 16 Texas Administrative Code (TAC) § 24.253 envisions a prospective, not retroactive, application. Under 16 TAC § 24.253(c), notice of the service-area agreement must be given to the “affected customers” of Blackland WSC who “*will be* transferred as part of the contract”¹ to the city. It is difficult to imagine how Blackland WSC can provide notice to any of its former customers who were transferred to the city in 1989 or how such notice would be meaningful. Moreover, the petitioners must provide copies of any agendas and minutes from any city council or board meetings at which the agreements were discussed. But they have not attached any such documents to their petition, or explained why they are not required.

Fourth, the petitioners seek relief under TWC § 13.248, but simultaneously claim it is not applicable because it applies only to contracts between CCN holders. The ALJ is dubious of this claim. By its express terms, TWC § 13.248 applies to “contracts between retail public utilities.” The petitioners admit they are both retail public utilities.

Fifth, the petitioners assert that the only public notice that should be required in this case

¹ Emphasis added.

is the public notice given by the Commission for the open meeting at which the Commission takes final action on the petition. This position conflicts with the notice requirements specified in the statutes and rules cited by the petitioners.

By October 11, 2021, Commission Staff must file comments on the administrative completeness of the petition and sufficiency of notice, and address the issues identified above and any other concerns Commission Staff may have about the application. By the same date, Blackland WSC, Rockwall, and Commission Staff must file a recommendation regarding how to proceed with the petition and propose a procedural schedule.

II. Discovery

Discovery may proceed informally; however, objections to requests for information (RFIs) must be filed and served within 10 days of receiving the RFI. Objections must include a statement that negotiations were conducted diligently and in good faith. If the parties are unable to resolve a discovery dispute, a motion to compel a response to an RFI must be filed and served within five working days of receipt of an objection. The motion to compel must specify the grounds for the motion.

III. Filings

Unless otherwise specified, an original and ten copies of documents relating to this proceeding must be filed with the Commission's filing clerk in accordance with 16 Texas Administration Code (TAC) § 22.71. **In light of the Commission's Second Order entered in Docket No. 50664, this requirement will be considered satisfied if pleadings are filed with the Commission through the Interchange on the Commission's website as long as the Commission's Second Order is in effect.²**

Service of pleadings is typically governed by 16 TAC § 22.74. However, as long as the Commission's Second Order remains in effect, all parties must file any pleading or document with the Commission solely through the Interchange on the Commission's website and provide notice, by email, to all other parties that the pleading or document has been filed with the Commission, unless otherwise ordered by the presiding officer. It will be incumbent

² See *Issues Related the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (July 16, 2020).

upon all other parties to obtain a copy of the pleading or document by accessing the Interchange at: <https://interchange.puc.texas.gov>.

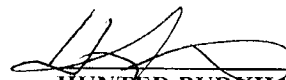
All parties are required to provide their current addresses, **e-mail addresses**, telephone and fax numbers, if available, to all other parties and to the Commission by filing and serving all parties with such information. Each party must provide the Commission and all parties with updated address, **e-mail address**, telephone, and fax information if such information changes. The **e-mail addresses**, telephone and fax numbers will be included on the service list for the convenience of the parties. Parties are responsible for updating their own service lists to reflect changed information and the addition of any other parties.

IV. Ex Parte Communications

Ex parte communications with the administrative law judge (ALJ) are prohibited under 16 TAC § 22.3(b)(2). Parties must communicate with the ALJ only through written documents filed with the Commission's filing clerk and served on all parties. Questions concerning this Order or any other order must be submitted in writing, filed with the Commission, and served on all parties of record.

Signed at Austin, Texas the 15th day of September 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE