



## Filing Receipt

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**PUC DOCKET NO. 52697**

<b>PETITION OF SANGER TEXAS</b>	<b>§</b>	<b>BEFORE THE</b>
<b>INDUSTRIAL, LLC AND WEBB</b>	<b>§</b>	
<b>INDUSTRIAL, LLC TO AMEND</b>	<b>§</b>	
<b>BOLIVAR WATER SUPPLY</b>	<b>§</b>	
<b>CORPORATION’S CERTIFICATE</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>OF CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>IN DENTON COUNTY BY</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	<b>OF TEXAS</b>

**PETITIONERS’ REPLY TO BOLIVAR WATER SUPPLY CORPORATION’S  
EXCEPTIONS TO PROPOSED ORDER**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

Sanger Texas Industrial, LLC and Webb Industrial, LLC (“Petitioners”) file this Reply to Bolivar Water Supply Corporation’s (“Bolivar”) Exceptions to Proposed Order, filed with the Public Utility Commission (“PUC” or “Commission”) on February 18, 2022. Unless otherwise specified, responsive pleadings “shall be filed by a party within five working days after receipt of the pleading to which the response is made.”<sup>1</sup> This Reply is timely filed.

**I. BACKGROUND**

On October 12, 2021, Sanger Texas Industrial, LLC filed its Petition for Streamlined Expedited Release, seeking to decertify approximately 211 acres of real property in Denton County (the "Property") from Bolivar’s Certificate of Convenience and Necessity (“CCN”) No. 11257. On November 22, 2021, Petitioners filed their Amended Petition, adding Webb Industrial, LLC as a Petitioner.

Bolivar did not formally intervene in this docket. Bolivar did, however, file a Response to the Petition on November 19, 2021 and a Supplemental Response to the Petition on January 4,

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<sup>1</sup> 16 TAC §22.78(a).

2022 (the “Responses”). In its Responses, Bolivar stated that: (1) it is “fully capable of providing continuous and adequate retail water service to the Property”; (2) it has “lines readily available to provide service to the Petitioner”; and (3) if the Commission grants the Petition, Bolivar “seeks full compensation allowed by law.” Bolivar did *not* argue in its Responses that its actions constitute “service” to the property, that the Petition fails to satisfy the statutory requirements, or that the Petition should be denied. Moreover, while Bolivar’s Response includes a Declaration of its General Manager, James Parkman, the Declaration makes no statement concerning service to the property or any ability of Bolivar to provide service to the property. Rather, the Declaration states that Bolivar seeks full compensation allowed by law if the Petition is granted.

On January 18, 2022, PUC Staff filed its Recommendation on Final Disposition, recommending that the Petition should be granted. Petitioners filed a Reply to Bolivar’s Response to Petition and to Commission Staff’s Recommendation on Final Disposition on January 24, 2022. In their Reply to Bolivar’s Response, Petitioners established that even if the assertions made by Bolivar in its Responses are accurate, they do not support the position that the Property is receiving water service and/or that the Petition should be denied.

The Proposed Order, which would grant the Petition, was issued on February 4, 2022 and set a deadline of February 18, 2022 for filing corrections or exceptions to the Proposed Order. Commission Staff and Petitioners each made filings stating that they have no corrections or exceptions to the Proposed Order. Bolivar filed Exceptions to the Proposed Order, raising arguments concerning Petitioners’ right to expedited release in this docket for the first time.

## **II. REPLY TO BOLIVAR**

In its Exceptions, Bolivar for the first time in this docket argues that Petitioners are not entitled to expedited release. Bolivar’s arguments are without merit, and the Proposed Order should be adopted.

Bolivar argues that “there is no evidence in the record that Bolivar *cannot serve* the entirety of the service area, including Petitioner’s property,” and that actions such as certifying the relevant area, acquiring water, and planning for service to its service area, along with the existence of its lines and facilities serving its CCN area, constitute “service” to the property. As Sanger discussed in its Reply to Bolivar’s Response, however, the PUC and the courts have expressly rejected these types of arguments as a basis for concluding that a property is receiving service.<sup>2</sup> Indeed, Bolivar cites to no court or PUC opinion in support of its argument that its actions constitute service. The law is clearly to the contrary.

As stated in the Proposed Order, “[t]he time that the petition is filed is *the only relevant time period* to consider when evaluating whether a tract of land is receiving water service under TWC § 13.2541(b).”<sup>3</sup> The undisputed evidence of record is that the property at issue was not receiving service from Bolivar when the Petition was filed, and that it has never received service from Bolivar.<sup>4</sup> Moreover, Bolivar’s recommended revisions to the Proposed Order’s Findings of Fact, Conclusions of Law, and Ordering Paragraphs should not be adopted, as Bolivar has not provided evidence in support of its proposed revisions.

### **III. THE PROPOSED ORDER SHOULD BE ADOPTED.**

As PUC Staff stated in its Recommendation on Final Disposition filed on January 18, 2022, the Petition meets the requirements of Chapter 13 of the Texas Water Code and Title 16, Chapter

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<sup>2</sup> See, e.g., *Johnson Cty. Special Util. Dist. v. Pub. Util. Comm'n of Texas*, No. 03-17-00160-CV, 2018 WL 2170259 (Tex. App. – Austin May 11, 2018) (rejecting a CCN holder's argument that the property at issue was receiving water service in a case in which the CCN holder had plans to serve the property at issue, two active water lines crossed the property, one active water line was adjacent to the property, and two inactive water meter boxes were located on the property); *Texas Gen. Land Off. v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App. – Austin 2014) (“[T]he mere existence of water lines or facilities on or near a tract would not necessarily mean that tract was 'receiving water service'”).

<sup>3</sup> Proposed Order, Conclusion of Law 8 (emphasis added); see also, *Johnson Cty. Special Util. Dist. v. Pub. Util. Comm'n of Texas*, No. 03-17-00160-CV, 2018 WL 2170259, at \*8 (Tex. App. – Austin May 11, 2018).

<sup>4</sup> Affidavit of Matt Moore, Exhibit A to Petition, at §§ 3, 5 (stating that the property is located within Bolivar’s CCN area “but the Property is not receiving service from Bolivar” and that the property “has never received water service from Bolivar”).

24 of the Texas Administrative Code and should be approved. The Proposed Order should be adopted and the Petition should be approved.

#### **IV. CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Petitioners respectfully pray that the Commission grant the Petition and release the Property that is the subject of the Petition from Bolivar Water Supply Corporation's CCN No. 11257 in Denton County, and to all other such relief to which they are entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.



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ATTORNEYS FOR SANGER TEXAS  
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LLC

**CERTIFICATE OF SERVICE**

I certify that notice of the filing of this document was provided to all parties of record via electronic mail on February 21, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

A handwritten signature in black ink, reading "Leonard Dougal". The signature is written in a cursive, flowing style.

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Leonard H. Dougal