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PUC DOCKET NO. 53254

PETITION OF STC GROUP MILLER,	§	BEFORE THE
LLC TO AMEND BOLIVAR WATER	§	
SUPPLY CORPORATION’S	§	PUBLIC UTILITY COMMISSION
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN DENTON	§	OF TEXAS
COUNTY BY EXPEDITED RELEASE	§	

**PETITIONER’S RESPONSE AND OBJECTIONS
TO BOLIVAR WATER SUPPLY CORPORATION’S APPRAISAL REPORT**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

STC Group Miller, LLC (“Petitioner”) hereby files this Response and Objections to Bolivar Water Supply Corporation’s (“Bolivar”) Appraisal Report. Pursuant to 16 Texas Administrative Code § 22.78(a), responsive pleadings are required to be filed within five working days after receipt of the pleading. Bolivar filed its appraiser’s report on October 13, 2022. Therefore, this response is timely filed. In support thereof, Petitioner shows the following:

I. BACKGROUND

On August 4, 2022, the Commission issued a Final Order in this proceeding granting streamlined expedited release of the Property at issue and triggering the compensation phase of the docket. On October 12, 2022, Petitioner filed its appraisal report and Bolivar filed its appraisal report on October 13, 2022. Petitioner’s report determined that **\$0** in compensation is owed to Bolivar as a result of the decertification in this docket,¹ while Bolivar’s report concludes that the compensation amount should be **\$1,329,384**.

¹ Petitioner’s report did find, however, that Bolivar should be allowed to recover any necessary and reasonable legal and professional fees as approved by the Commission.

II. PETITIONER'S RESPONSE

As discussed in more detail herein, this dramatic disconnect in compensation determinations is primarily a result of: (1) Bolivar's report relying on dramatically inflated valuation figures prepared in anticipation of this litigation, and (2) Bolivar's report improperly including certain costs in the compensation amount that are not allocable to the property at issue under the applicable rules and statute.

A. BOLIVAR'S COMPENSATION CLAIM IMPROPERLY RELIES ON AN INFLATED VALUATION REPORT

The Commission has repeatedly determined, as have the Commission's independent third-party appraisers, that the inflated valuations submitted by Bolivar in similar decertification dockets have no basis in fact and have historically awarded only a fraction of the compensation sought by Bolivar in its appraisals. In Docket No. 52697, Bolivar's appraisal report claimed that \$1,359,800 in compensation was due as a result of the removal of the subject property from Bolivar's CCN. The Commission's independent third-party appraiser determined that only \$26,543 in compensation was due to Bolivar and the Commission awarded that amount.² In Docket No. 52698, Bolivar's appraisal report claimed that \$204,167 in compensation was due as a result of the removal of the subject property from Bolivar's CCN. The Commission's independent third-party appraiser determined that only \$6,706 in compensation was due to Bolivar and the Commission awarded that amount.³ In Docket No. 52655, Bolivar's appraisal report claimed that \$1,928,355 in compensation was due as a result of the removal of the subject property

² *Petition of Sanger Texas Industrial, LLC and Webb Industrial, LLC to Amend Bolivar Water Supply Corporation's Certificate of Convenience and Necessity in Denton County by Streamlined Expedited Release*, Docket No. 52697, Notice of Approval at Findings of Fact 9-12 (Aug. 2, 2022) ("On June 13, 2022, the CCN holder filed its appraiser's report, completed by KOR Group and dated June 13, 2022, which recommended compensation in the amount of \$1,359,800...[t]he amount of compensation owned to the CCN holder by the petitioners for the streamlined expedited release is \$26,543").

³ *Petition of Crossland Construction Company, Inc. to Amend Bolivar Water Supply Corporation's Certificate of Convenience And Necessity In Denton County By Expedited Release*, Docket No. 52698, Notice of Approval at Findings of Fact 7-10 (Sep. 13, 2022) ("On August 4, 2022, the CCN holder filed its appraiser's report, completed by KOR Group and dated August 4, 2022, which recommended compensation in the amount of \$204,167... [t]he amount of compensation owed to the CCN holder by the petitioner for the streamlined expedited release is \$6,706.").

from Bolivar's CCN. The Commission's independent third-party appraiser determined that only \$84,699 in compensation was due to Bolivar and the Commission awarded that amount.⁴ The appraisal report submitted by Bolivar in this proceeding is simply more of the same. As was the case in the proceedings outlined above, Bolivar's appraisal valuation in this proceeding relies on dramatically inflated valuation figures prepared in anticipation of this litigation and the Commission should reject it.

B. BOLIVAR'S APPRAISER'S REPORT IMPROPERLY INCLUDES COSTS NOT ALLOCABLE TO THE PROPERTY AT ISSUE

In reaching its compensation determination, Bolivar purports to rely on the factors set out at Tex. Water Code (TWC) § 13.254(g) and 16 Tex. Admin. Code (TAC) § 24.245(j). However, none of those factors support the award of compensation described in Bolivar's Appraisal Report. The compensation amount should be \$0, with the exception that Bolivar should be allowed to recover any reasonable and necessary attorneys' fees as approved by the Commission. As discussed in more detail herein, Bolivar has improperly included certain costs that are not allocable to the Property at issue.

1. Factor 2B: Value of service facilities within the removed area.

Bolivar's own appraisal report states that Factor 2B includes "the value of the service facilities belonging to the former CCN holder that are *within the removed area*."⁵ However, Bolivar subsequently includes in its appraisal report \$312,000 (2,600 linear feet x \$120 per linear foot) for a 12-inch distribution line that "extends along the north side of the property for 2,600

⁴ *Petition of McCart St, LLC to Amend Bolivar Water Supply Corporation's Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 52655, Notice of Approval at Findings of Fact 7-10 (Jul. 15, 2022) ("On June 13, 2022, the CCN holder filed its appraiser's report, completed by KOR Group and dated June 13, 2022, which recommended compensation in the amount of \$1,928,355... [t]he amount of compensation owned to the CCN holder by the petitioner for the streamlined expedited release is \$84,699").

⁵ *Petition of STC Group Miller, LLC to Amend Bolivar Water Supply Corporation's Certificate of Convenience and Necessity in Denton County by Streamlined Expedited Release*, Docket No. 53254, Bolivar WSC Appraisal Report at 2 (Oct. 10, 2022) ("Bolivar Appraisal Report").

linear feet.”⁶ However, Bolivar does not claim that the waterline is within the removed area, which is the standard for inclusion of the water distribution line under Factor 2B, but instead only claims it runs along the north side of the Property. Furthermore, as is attested to by the affidavit of Jon Anderson, the owner of the Property at issue, there are no distribution lines or other facilities on the Property, nor does Bolivar hold any easements on the Property.⁷ Therefore, even if the facilities were located within the removed area, they would have been placed there without any right or consent to do so and were not installed to provide service to the property.

2. Factor 2G: Necessary and reasonable legal expenses and professional fees.

As part of the compensation due under Factor 2G, Bolivar includes its \$8,000 appraisal fee as part of its total fees for which compensation should be provided. However, the statute and the PUC’s rules are clear: Bolivar must bear the costs of its own appraisal. The Texas Water Code states that where the “petitioner and the certificate holder cannot agree on an independent appraiser ... the petitioner and the certificate holder shall each engage its own appraiser *at its own expense*.”⁸ Bolivar may not recover the costs of its appraiser and the Commission should excluded those costs from the compensation amount awarded, if any, in this proceeding.

III. CONCLUSION

Bolivar’s report does not properly apply the statutory factors for appraiser’s reports in streamlined expedited release dockets, nor does it apply reliable valuation figures, and Petitioner therefore objects to the report as discussed above, and in particular to the analysis and conclusions reached in Factors 2B and 2G. As Petitioner’s appraiser’s report concluded, \$0 should be awarded

⁶ Bolivar Appraisal Report at 3.

⁷ See Exhibit A, Affidavit of Jon Anderson.

⁸ TWC § 13.2541(i); *see also*, 16 TAC § 24.245(i)(2)(B).

to Bolivar as a result of the streamlined expedited release of the Property in this docket, except that Bolivar should be allowed to recover any necessary and reasonable attorneys' fees as approved by the Commission.

Respectfully submitted,

JACKSON WALKER L.L.P.



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ATTORNEYS FOR STC GROUP MILLER, 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 October 20, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Leonard H. Dougal

Exhibit “A”

Affidavit of Jon Anderson

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AFFIDAVIT OF JON ANDERSON

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, THE UNDERSIGNED AUTHORITY, on this day personally appeared JON ANDERSON, known to me, who being by me first duly sworn, deposed and stated on his oath as follows:

1. “My name is JON ANDERSON. I am over the age of 18 years of age, and am fully competent and authorized to make this Affidavit. I have personal knowledge of the facts stated in this affidavit and they are true and correct.

2. I have reviewed the title records for the approximate 202.7 acre decertified property located in Denton County (the “Property”), and, after investigation and due inquiry, there is no Bolivar Water Supply Corporation (“Bolivar”) easements on the Northside of the Property, nor are there any other Bolivar easements anywhere on the Property.

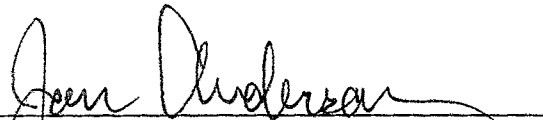
3. I am familiar with the Property and, after investigation and due inquiry, to my knowledge there is no Bolivar waterlines or other facilities on any portion of the Property.

4. In the event that there are any water pipelines or other facilities on the Property, it was not known to me to exist, was clearly not constructed to serve the Property, does not serve the Property, and would therefore be illegally located on the Property as there are no easements for such a pipeline.

5. Based upon my knowledge of the Property, and after investigation and due inquiry, the Property is not receiving water service from Bolivar and has never received water service from

Bolivar. Furthermore, as the owner of the Property, I have never requested service from Bolivar nor to my knowledge has any former owner of the Property ever requested service from Bolivar.

Further, Affiant Sayeth Not.


Jon Anderson

STATE OF TEXAS §
 §
COUNTY OF ~~TRAVIS~~ ^{Titus} §

BEFORE ME, a notary public, on this day personally appeared JON ANDERSON, introduced to me and acknowledged with proper identification to be the person whose name is subscribed to the foregoing instrument and being by me first duly sworn and given under my hand and seal of office this 19th day of October, 2021².


Notary Public – State of Texas

