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PUC DOCKET NO. 53254

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

**PETITIONER’S REPLY TO
BOLIVAR WATER SUPPLY CORPORATION’S RESPONSE**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

STC Group Miller, LLC (“Petitioner”) files this Reply to Bolivar Water Supply Corporation’s (“Bolivar”) Response to the Original Petition of STC Group Miller, LLC and would show as follows:

I. BACKGROUND

On February 22, 2022, Petitioner filed its Petition for Streamlined Expedited Release, seeking to decertify approximately 202 acres of real property in Denton County (the "Property") from Bolivar’s Certificate of Convenience and Necessity (“CCN”) No. 11257. On March 25, 2022, the Commission’s Administrative Law Judge (“ALJ”) issued Order No. 2, finding the Petition administratively complete and notice sufficient. Bolivar filed its Response to the Petition on April 14, 2022. Order No. 2 set a deadline of April 21, 2022 for Petitioner to file a reply to the CCN holder’s response to the administratively complete petition. This Reply is timely filed.

II. REPLY TO BOLIVAR

A. The Property is not receiving water service, and Petitioner is entitled to expedited release.

In its Response to the Petition, Bolivar argues that: (1) it is “fully capable of providing continuous and adequate retail water service to the Property”; and (2) it has “lines readily available

to provide service to the Petitioner.” Bolivar does not argue that the Petition fails to satisfy any of the statutory requirements for streamlined expedited release petitions, and its arguments are not relevant to the ultimate issue in this phase of the proceeding of whether the Property is receiving water service. The Petition should be granted.

The Water Code provides that the owner of a tract of land that is 25 acres or larger and located in certain counties may petition for, and is entitled to expedited release of that tract from a CCN if the tract "is not receiving water or sewer service."¹ The Petition satisfies the Water Code and PUC rules, and Petitioner is entitled to expedited release.

Even assuming the assertions made by Bolivar in its Response are accurate, they do not support the position that the Property is receiving water service. Bolivar argues that it is capable of providing water service and has the lines necessary to do so, but these types of arguments have been expressly rejected by both the PUC and the courts as a basis for concluding that a property is receiving service.² For instance, the PUC rejected a CCN holder's argument that the property at issue was receiving water service in a case in which 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.³ On appeal, the Austin Court upheld the PUC's conclusion that the property was not receiving water service.⁴ In a similar case, the Austin Court likewise upheld the PUC's conclusion that a property was not receiving water service and stated that "the mere existence of water lines or facilities on or near a tract would not necessarily mean that tract was 'receiving water

¹ Tex. Water Code § 13.2541(b).

² 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); *Texas Gen. Land Off. v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App. – Austin 2014).

³ *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).

⁴ *Id.*

service.”⁵ The PUC has concluded, in an order upheld by the Austin Court of Appeals, that the “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.”⁶ The Property is not receiving water service, and the Petition should be granted.

B. Federal Debt is not relevant to this proceeding.

Bolivar asserts in its Response that Bolivar “has long-term debt issued for the benefit of the property that is the subject of the Petition.” Bolivar does not, however, assert that the Petition should be dismissed or denied for that reason. Moreover, to the extent Bolivar believes that the existence of any federal debt is grounds for dismissal or denial, it is clearly incorrect.

The statute and PUC’s rules are clear – federal debt is not relevant to this proceeding. The Water Code provides that the PUC “may not deny the petition [for streamlined expedited release] based on the fact that the certificate holder is a borrower under a federal loan program.”⁷ The PUC’s rules likewise provide that “[t]he fact that a current CCN holder is a borrower under a federal loan program is not a bar to the release of a tract of land under [the PUC’s streamlined expedited release rules].”⁸ The existence of any federal debt is not relevant for purposes of the Petition, and it certainly is not a basis for denial.

C. Compensation is not at issue in this phase of the proceeding.

Bolivar also raises the issue of compensation in its Response and requests that if the Commission grants the Petition, Bolivar “seeks full compensation allowed by law.” Compensation is not at issue in this phase of the proceeding, however. Order 2 makes clear that the issue of

⁵ *Texas Gen. Land Off. v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App. – Austin 2014); *see also*, PUC Docket No. 49863.

⁶ *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).

⁷ Tex. Water Code 13.2541(d).

⁸ 16 TAC § 24.245(h)(8).

compensation will be addressed only after expedited release is granted. Briefing on that issue is not necessary or appropriate at this time.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully prays 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 it is entitled.

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 April 21, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.



Leonard H. Dougal