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PUC DOCKET NO. 53262

**PETITION OF BLACKLAND WATER §
SUPPLY CORPORATION AND THE §
CITY OF ROCKWALL FOR APPROVAL § PUBLIC UTILITY COMMISSION
TO AMEND CERTIFICATE OF §
CONVENIENCE AND NECESSITY § OF TEXAS
UNDER TEXAS WATER CODE §
13.255(a) IN ROCKWALL COUNTY §**

**JOINT PETITIONERS' APPEAL OF ORDER NO. 6
AND REQUEST FOR RECONSIDERATION**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

NOW COMES, joint petitioners, the City of Rockwall, Texas (“City”) and Blackland Water Supply Corporation (“Blackland”), pursuant to 16 Tex. Admin. Code [TAC] § 22.123(a) and file this appeal from Order No. 6 withdrawing a prior finding of administrative completeness and making associated findings.¹ This interim order was issued on August 5, 2022; therefore, this appeal is timely.² Joint petitioners respectfully request prompt consideration by the Commission or, as a request for reconsideration by the presiding officer under 16 TAC § 22.123(a)(8).

I. BACKGROUND

On September 10, 2021, Blackland and City filed a joint petition³ to invoke the Commission’s authority to address various service area agreements entered into from 1989 to 2016 between the petitioners or between Blackland, the holder of water CCN No. 11305, and developers, each of which purport to allow the City to provide retail water service in specified areas within Rockwall County and under varying terms specified by the parties. The presiding officer ordered severance of the proceeding into two dockets, which were re-styled, including the instant proceeding, and deemed “all documents filed prior to the date of this Order on the Commission's interchange in Docket No. 52551 to be incorporated by reference and also a part of

¹ Order No. 6, *Withdrawing Prior Finding of Administrative Completeness, Finding Application Not Administratively Complete, and Providing Opportunity to Cure* (Aug. 5, 2022) (Agency Information System (AIS) Item No. 6) (Order No. 6).

² 16 TAC § 22.123(a)(2).

³ *Joint Petition by Blackland Water Supply Corporation and the City of Rockwall, Texas requesting Approval of Contracts Pursuant to Texas Water Code § 13.248 and Amendment of Service Area Pursuant to § 13.254(a)*, Docket No. 52551 (Sept. 10, 2021), *sub nom* *Petition Of Blackland Water Supply Corporation and the City of Rockwall to Decertificate Portions of a Certificate of Convenience and Necessity Under Texas Water Code § 13.254(a) in Rockwall County* (pending).

the record for Docket No. 53262.”⁴ This proceeding addresses three service area agreements between Blackland and the City from 1989 to 2012 as requests under Water Code [TWC] § 13.255(a). Pursuant to the Severance Order, an amended petition was filed on March 25, 2022. The administrative law judge found the petition administratively complete and notice sufficient.⁵ Upon consideration of a motion to admit evidence jointly filed by Blackland, the City and Commission Staff together with a proposed notice of approval on July 27, 2022, evidence was admitted in Order No. 5 on August 1, 2022.

On August 5, the interim order made the subject of this appeal, Order No. 6, subsequently “concluded that certain elements are missing from the petition which render it incomplete and make it impossible for final action to be taken on the petition at this time.” Joint petitioners believe the conclusion is erroneous and must be corrected by the Commission. The first error is construing Section 13.255(a) as precluding a municipality from using the section without also having or obtaining a CCN.⁶ This is incorrect.

The second “missing” element is the proposed treatment of one customer, Big Tex Trailer World (“Big Tex”), a long-standing customer of Blackland that the parties, by agreement, want Blackland to serve, in part so that no retail water customer is affected or required to change service providers as a result of either of the two proceedings. The interim order states: “The petitioners have not identified any legal provision which empowers the Commission to, under TWC § 13.255, only partially incorporate the terms of an agreement into the respective CCNs of the parties to the agreement, nor have they formally requested in their petition any mechanism by which the Commission could authorize Big Tex’s tract of land to remain within Blackland WSC’s service area while simultaneously approving the agreements.”⁷ However, the agreements and pleadings, together with a correct understanding of Section 13.255(a), provide the Commission the flexibility to effectuate the parties’ intentions.

As such, the finding of administrative completeness in Order No. 5 was reversed and the petition “must be amended to include an application of Rockwall to obtain a CCN authorizing it

⁴ Order No. 1, Severing Proceedings, Establishing Docket, and Imposing Deadlines at 2 (Feb. 25, 2022) (AIS Item No. 2) (“Severance Order”); *and* Docket No. 52551, Order No. 4, Severing Proceedings, Restyling Docket, and Setting Deadline at 2 (Feb. 25, 2022) (identical).

⁵ Order No. 2 (April 18, 2022).

⁶ Order No. 6 at 2-5.

⁷ *Id.* at 5.

to provide service to all areas covered by the three agreements at issue in this proceeding. Additionally, the petition must be amended to either withdraw any request for special treatment related to Big Tex, or to include a cogent and legally supportable process by which the issue of Big Tex can be resolved.”⁸

Leaving Order No. 6 uncorrected immediately prejudices the joint petitioners’ rights, materially affects the course of this proceeding, and unnecessarily increases the cost of this proceeding to the parties and to the Commission. Moreover, it would serve as a material disincentive for retail public utilities to seek Commission clarification of service boundaries. The Commission’s consideration of this interim appeal is especially appropriate to clarify the scope and effect of negotiated agreements under TWC § 13.255(a).

II. SECTION 13.255(a) CAN BE USED BY UNCERTIFICATED MUNICIPALITIES AND ACCOMMODATE BIG TEX

Correctly observing that Section 13.255 and the Commission’s implementing rule, 16 TAC § 24.259, contemplate two methods by which a municipality can expand service within its corporate limits even if another retail public utility is present, the order states, “The first method is by written agreement (as is the case in this proceeding) and the second method is by the unilateral action of the municipality.”⁹ However, the first is addressed exclusively in part (a), while the other twelve (12) parts of Section 13.255 deal with the involuntary transfers, and the distinction is significant.

First, section is entitled “Single Certification in Incorporated or Annexed Areas,” however, the Code Construction Act makes clear that the “heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.”¹⁰ This point is especially germane to this proceeding, which turns upon the proper construction part (a). Section 13.255(a) provides, in relevant part:

(a) In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides water or sewer service to *all or part* of the area pursuant to a certificate of convenience and necessity *may* agree in writing that all or part of the

⁸ *Id.*

⁹ Order No. 6 at 4.

¹⁰ Tex. Gov’t Code § 311.024. The Code Construction Act is Chapter 311, Government Code, Tex. Gov’t Code § 311.001, and it “applies to the construction of each provision of [TWC], except as otherwise expressly provided by this code.” TWC § 1.002(a).

area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. The agreement *may* provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. The executed agreement shall be filed with the utility commission, and the utility commission, on receipt of the agreement, shall incorporate the terms of the agreement into the *respective* certificates of convenience and necessity of the parties to the agreement. [Emphasis and ellipses added.]

The language provides a significant amount of discretion to the parties: *all or part* of the area within the city limits can be included in the voluntary agreement, and the written agreement *may* provide for certain terms, including “for such other or additional terms that the parties may agree on.” As noted in the Code Construction Act: “‘May’ creates discretionary authority or grants permission or a power.”¹¹ Thus, nothing prohibits parties to the agreement agreeing that the area will be uncertificated when transferred to the municipality. Likewise, nothing prevents the parties from carving out an area – or a customer – from the transfer, as was done for Big Tex. The novel construction presented in Order No. 6 immediately affects the proceeding and presents an unwanted, costly and potentially time-consuming process to the City.¹²

The distinction between permissive provisions and mandatory requirements is illustrated in the closing sentence of part (a), which states that, upon filing of the agreement, the Commission “*shall* incorporate the terms of the agreement into the *respective* certificates of convenience and necessity of the parties to the agreement.” (Emphasis added). The Code Construction Act states simply, “‘Shall’ imposes a duty.”¹³ This sentence also demonstrates that the specific result, the transfer to an uncertificated municipality, is allowed: why else would the Legislature add *respective* if only certificated entities were eligible to use part (a), since “respective” indicates that it would only apply to the “particular” or “separate” CCN of each party, *if any*.¹⁴ Otherwise, the word becomes superfluous, which would be a disfavored reading.¹⁵

¹¹ Code Construction Act, Tex. Gov’t Code § 311.016(1).

¹² A cost difference for all parties – and the public – is especially apparent between the voluntary process presented in section 13.255(a) and the detailed and potentially contentious process starting in part (b), in the alternative to reaching a written agreement.

¹³ *Id.* § 311.016(2).

¹⁴ “Respective,” *Merriam-Webster.com Dictionary*, <https://www.merriam-webster.com/dictionary/respective> (last visited 8/15/2022).

¹⁵ *See, e.g., TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is ‘a cardinal principle of statutory construction’ that ‘a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.’ *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (internal quotation

And the entirety of part (a) reinforces this construction supporting joint petitioners' petition, especially when the permissive and open-ended language used by the Legislature is contrasted to the twelve parts of section 13.255(b)-(m) that address the circumstances when no written agreement exists. There is no need to venture beyond the statute for either question: nothing in TWC § 13.255(a) requires certification of the municipality utilizing the section, and the agreement with the incumbent utility can (and, here, does) address "such other or additional terms that the parties may agree on," such as how to deal with Big Tex.

III. CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the City and Blackland pray that the Commission grant this appeal and reverse Order No. 6 and reinstate Order No. 5 to allow this proceeding to proceed to conclusion in the public interest, and for other such relief as may be appropriate.


Respectfully submitted,

ABERNATHY ROEDER BOYD & HULLETT PC
1700 Redbud Blvd., Suite 300
McKinney, Texas 75069
Telephone (214) 544-4000
Facsimile (214) 544-4044

DAVIDSON TROILO REAM & GARZA PC
601 NW Loop 410, Suite 100
San Antonio, Texas 78216
Telephone (210) 349-6484
Facsimile (210) 349-0041

By: /s/ G. Randal Hullett by permission
G. Randal Hullett
State Bar No. 10258150
Email: rhullett@abernathy-law.com

Attorneys for Blackland Water Supply Corporation

By: 
Paul M. González
State Bar No. 00796652
Email: pgonzalez@dtrglaw.com
Patrick W. Lindner
State Bar No. 12367850
Email: plindner@dtrglaw.com

Attorneys for City of Rockwall

marks omitted); see *United States v. Menasche*, 348 U.S. 528, 538-539 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.'" (quoting *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883))). "[W]ere we to adopt [Andrews'] construction of the statute,' the express exception would be rendered "insignificant, if not wholly superfluous." *Duncan*, 533 U.S., at 174. We are 'reluctant to treat statutory terms as surplusage in any setting,' *ibid.*, (internal alteration and quotation marks omitted), and we decline to do so here.") (citations, quotes, parentheticals and emphasis in original, footnote omitted).

CERTIFICATE OF SERVICE
Docket No. 53262

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 August 15, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

RICHARD HETTYGER for Paul Gonzalez
Paul M. González