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CRYSTAL BLUFF GOAT RANCHES,	§	PUBLIC UTILITY COMMISSION
LLC’S APPEAL OF THE COST OF	§	
OBTAINING SERVICE FROM	§	OF TEXAS
POSSUM KINGDOM WATER	§	
SUPPLY CORPORATION	§	

**CRYSTAL BLUFF GOAT RANCHES, LLC’S RESPONSE TO POSSUM KINGDOM
WATER SUPPLY CORPORATION’S PLEA TO THE JURISDICTION
AND MOTION TO DISMISS**

COMES NOW Crystal Bluff Goat Ranches, LLC, and files this is Response to Possum Kingdom Water Supply Corporation’s Plea to the Jurisdiction and Motion to Dismiss, and would respectfully show unto the Commission as follows:

I. BACKGROUND

Crystal Bluff Goat Ranches, LLC, (“CBGR”) is a developer who acquired an 18.07-acre tract of land near Possum Kingdom Lake which it platted into twelve parcels known as Hummingbird West.¹ In 2017, CBGR applied to Possum Kingdom Water Supply Corporation (“PKWSC”) for water service to Hummingbird West. PKWSC approved CBGR’s application for water service.² Since a main water line ran along the same side of the road as CBGR’s tract, the parcels in Hummingbird West would be able to tap into the line without PKWSC having to construct any additional infrastructure. PKWSC quoted CBGR capital in aid of construction fee (“CIAC”) of \$2,300 to \$2,800 per lot.³

PKWSC sold CBGR a meter for Lot 7 of Hummingbird West in 2017 for \$1,850.00 plus a \$150.00 engineering fee.⁴ In 2019, PKWSC sold CBGR meters on Lots 5 and 3 for \$2,337.00 and \$2,487.00, respectively.⁵ The owner of Lot 5 purchased Lot 6 and does not require a meter for Lot 6, thus reducing CBGR’s remaining need to only 8 meters.⁶ In 2021, PKWSC dramatically increased the CIAC fee from \$2,300.00 to an astonishing \$13,385.00 per meter, and offered to

¹ Appeal Packet Document 1: February 22, 2022, Cover Letter to Commission enclosing Appeal of the Cost of Obtaining Service from a Water Supply Corporation for Crystal Bluff Goat Ranches, LLC.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* See also Appeal Packet Document 13: January 6, 2022, Letter to PKWSC. Both meters were \$2,337.00, but PKWSC inexplicably included an additional \$150 engineering fee for Lot 3 which was included in the total price of the meter for Lot 5.

⁶ Appeal Packet Documents 1 and 13.

“grandfather in” 2 of CBGR’s meters, even though CBGR had at this point already purchased three.⁷ As support for their position of attempting to force CBGR to essentially re-purchase two meters, PKWSC stated that the meters installed in 2019 were done so “without the manager’s knowledge of previous communications.”⁸ PKWSC further attempted to force CBGR to pay the increased CIAC fee for Lot 6, because some “future owner of lot 6 may request water in the future and this must be taken into account in the contract.”⁹ In the same January 11, 2022, letter to CBGR, PKWSC specifically stated that their previous May 2021 offer to CBGR was “**withdrawn**”; the new offer from PKWSC was “13,385.00 per meter or \$160,620.00 for [the Hummingbird West development].”¹⁰

II. ARGUMENT

The Commission should deny PKWSC’s Plea to the Jurisdiction and Motion to Dismiss CBGR’s Application. This Commission has appellate jurisdiction to consider CBGR’s Application pursuant to TEX. WATER CODE § 13.043(g). Subsection (g) states, in relevant part, “An appeal under this subsection must be initiated within 90 days after the date written notice is provided to the applicant or member of the decision of an affected county or water supply or sewer service corporation relating to the applicant’s initial request for that service.”

Although PKWSC had transmitted prior inconsistent and frequently-changing offers surrounding the CIAC fees to CBGR, PKWSC’s January 11, 2022, letter unequivocally stated that the prior offer (which included “grandfathering in” two previously-purchased meters) had been **withdrawn**. The offer as stated in PKWSC’s January 11, 2022, letter contained materially different terms than the previous offer. Because the terms are materially different than in prior communications, and because PKWSC expressly stated that the prior offer had been **withdrawn**, PKWSC’s January 11, 2022, letter constitutes a distinct “decision of an affected . . . water supply . . . service corporation relating to the applicant’s initial request for service.”¹¹ Contrary to PKWSC’s claim that CBGR seeks to litigate “. . . a cost estimate for obtaining service provided to [CBGR] many months ago,” PKWSC’s January 11, 2022, letter could not be more clear in revoking its prior decision and posing a materially different decision to CBGR to consider.¹²

⁷ Appeal Packet Document 12: May 11, 2021, Letter to CBGR.

⁸ Appeal Packet Document 4: January 11, 2022, Letter to CBGR.

⁹ *Id.*

¹⁰ *Id.*

¹¹ TEX. WATER CODE §13.043(g).

¹² Appeal Packet Document 4: January 11, 2022, Letter to CBGR.

Because PKWSC expressly revoked its previous offer to “grandfather in” two of CBGR’s previously-purchased meters, this is a new “decision. . . **affecting the amount to be paid to obtain service** . . .”¹³

Because PKWSC’s “decision” regarding CBGR’s rates and the total number of meters is in the form of an offer to contract, this Commission should treat it as such. Texas Courts have held that “An offeror may revoke an offer “at any time up to the time of acceptance.”¹⁴ PKWSC’s January 11, 2022, letter to CBGR **expressly revoked** its prior decision on its offer of rates and services to Plaintiff and replaced it with a materially different decision. Since CBGR does not have the benefit under Texas law of accepting PKWSC’s prior (now withdrawn) offers, this Commission should now allow PKWSC to use them as a basis for determining the Commission’s appellate jurisdiction in this matter. Simply put: PKWSC notified CBGR on January 11, 2022, of its decision “affecting the amount to be paid for service.”¹⁵ CBGR filed the current appeal 42 days later on February 22, 2022 – well inside its 90-day window to appeal.

III. CONCLUSION AND PRAYER

Because its appeal was timely filed pursuant to the Texas law governing these proceedings, Crystal Bluff Goat Ranches, LLC, respectfully requests that this Commission DENY Possum Kingdom Water Supply Corporation’s Plea to the Jurisdiction and Motion to Dismiss. Crystal Bluff Goat Ranches, LLC, respectfully prays for such other relief, either general or specific, to which it may be entitled in the premises.

Respectfully submitted this the 20th day of June, 2022.

¹³ TEX. ADMIN. CODE §24.101 (emphasis added).

¹⁴); *Kidwill v. Werner*, No. 10-05-00274-CV, 2006 WL 3627883, at *1 (Tex. App. Dec. 13, 2006) (citing *Peacock v. Harrison*, 189 S.W.2d 500, 503 (Tex.Civ.App.-Austin 1945, writ dism'd w.o.j.) and *Bowles v. Fickas*, 140 Tex. 312, 167 S.W.2d 741, 743 (Tex.1943)).

¹⁵ TEX. ADMIN. CODE §24.101.

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CERTIFICATE OF SERVICE

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 June 20, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ C. Justin Broome
C. Justin Broome