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DOCKET NO. 54283

PETITION BY SJWTX, INC. D/B/A	§	BEFORE THE
CANYON LAKE WATER SERVICE	§	
COMPANY AND SAN ANTONIO	§	
WATER SYSTEM FOR TEXAS	§	
WATER CODE § 13.248 APPROVAL	§	PUBLIC UTILITY COMMISSION
TO DESIGNATE WATER AND SEWER	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY SERVICE AREAS BY	§	
CONTRACT IN KENDALL COUNTY,	§	OF TEXAS
TEXAS	§	

**ASHTON SAN ANTONIO RESIDENTIAL, L.L.C.'S RESPONSE TO JOINT MOTION
TO ADMIT EVIDENCE AND PROPOSED NOTICE OF APPROVAL**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW, Ashton San Antonio Residential, L.L.C. ("Ashton" or "Intervenor") and files this Response to Joint Motion to Admit Evidence and Proposed Notice of Approval and, in support thereof, would respectfully show the following.

I. RESPONSE

On May 11, 2023, Staff of the Public Utility Commission of Texas ("Commission"), SJWTX, Inc. d/b/a Canyon Lake Water Service Company ("SJWTX"), and San Antonio Water System ("SAWS") (hereinafter, "Movants") filed a Joint Motion to Admit Evidence and Proposed Notice of Approval. The Joint Motion to Admit Evidence states that it is in response to the administrative law judge's ("ALJ") Order No. 7 directing the filing of the motion.¹ However, Order No. 7 explicitly states that such motion must be filed "*If no hearing is requested.*"² Ashton timely filed its Motion to Intervene requesting a hearing in this docket on April 27, 2023 and a Response to Petitioners' Objections to the Motion to Intervene on May 8, 2023. The Commission has not acted on either pleading.

¹ Joint Motion to Admit Evidence and Proposed Notice of Approval at 1 (May 11, 2023).

² Order No. 7 at 1 (Mar. 6, 2023) (emphasis added).

The Joint Motion to Intervene further requests the admission of Commission Staff's Final Recommendation into the administrative record, which also stated incorrectly that no hearing was requested by April 27, 2023.³ The ALJ should not admit the proffered evidence, including Commission Staff's Final Recommendation, because both pleadings are erroneous.

Movants' Joint Proposed Notice of Approval is erroneous for the same and additional reasons. Proposed Finding of Fact No. 33 states, "No party requested a hearing, and no hearing is needed." Again, this is incorrect.⁴ Ashton not only requested a hearing on April 27, 2023, which request is still outstanding, but as the developer of property within the proposed CCN area, the decision in this docket could also be adverse to Ashton. As stated previously, notice and opportunity for hearing is a cornerstone of the Tex. Water Code ("TWC") § 13.248 contract approval process.

Moreover, there is no evidence supporting proposed Finding of Fact No. 33 that no hearing is necessary. Similarly, there is no evidence supporting proposed Finding of Fact Nos. 26 or 35 that the resulting CCN amendments will not substantially affect any landowner or that the decision is not adverse to any party. If the proposed TWC § 13.248 contract is issued administratively without hearing, there is no opportunity for the substantive issues to be scrutinized and addressed. For example, proposed Finding of Fact No. 27 states that SJWTX possesses financial, managerial, and technical ("FMT") capability to provide continuous and adequate service within the transferred area. This statement is entirely unsupported by the record. SJWTX does not currently possess an adequate water supply to serve residential homes in Ashton's 120-acre Lily Ranch Subdivision, so how can the Commission find that it has technical capability to provide continuous and adequate service? SJWTX likewise has no nearby wastewater treatment plant nor wholesale sewer agreement by which it would provide wastewater treatment service to the new CCN generally, or to Lily Ranch in particular.⁵ Just because a CCN holder demonstrated FMT in the past does not mean FMT has been automatically demonstrated in each subsequent CCN

³ See Commission Staff's Final Recommendation at 1 (April 27, 2023).

⁴ It is unclear what Movants' mean by "party." If their premise is that no hearing has been requested because Ashton is has not yet been named as a party, this is hair splitting and misleading. Technically, Ashton cannot be named a party by the ALJ until he acts on the still-outstanding Motion to Intervene.

⁵ SJWTX's nearest WWTP is approximately 6.8 miles from the Lily Ranch Subdivision site and Ashton is not aware of any alternative wholesale agreement to provide it sewer service.

amendment or new CCN. On the contrary, every time a CCN holder applies for a CCN in a new area or an amendment to an existing CCN, it is required to demonstrate FMT anew in accordance with TWC § 13.241. This demonstration of FMT cannot be presumed as Movant's Proposed Notice of Approval attempts to do.

Proposed Finding of Fact No. 29 is also conclusory and without merit. How can the Commission find SJWTX financially able to pay for water and sewer facilities when SJWTX cannot or will not identify what facilities are necessary to serve Lily Ranch and their associated costs? Proposed Finding of Fact Nos. 26, 27 and 29 are arbitrary and capricious and not supported by any evidence in the record.

Finally, Movants support their contention that the requirements of informal disposition have been met citing non-existent 16 TAC § 22.25. Section 22.35(a) states that certain applications may be approved by the Commission when, among other things, it has found that no hearing is necessary.⁶ No such finding has been made, so it is premature to conclude that informal disposition is appropriate in this docket. Thus, proposed Conclusion of Law No. 8 is also incorrect and unsupported by the record evidence.


II. PRAYER

WHEREFORE, PREMISES CONSIDERED, Ashton respectfully prays that the Commission deny the Joint Motion to Admit Evidence and Proposed Notice of Approval, grant its Motion to Intervene in this proceeding, and declare Ashton an affected person with a justiciable interest to fully participate in a hearing on the CCN transfer.

⁶ 16 TAC § 22.35(a)(3).

Respectfully submitted,


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By: 
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**ATTORNEYS FOR ASHTON SAN
ANTONIO RESIDENTIAL, LLC**

CERTIFICATE OF SERVICE

I hereby certify that I have or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on the 12th of May 2023.


Helen S. Gilbert