



## **Filing Receipt**

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**DOCKET NO. 56479**

<b>APPLICATION OF HORSESHOE BEND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>WATER COMPANY FOR GOOD</b>	<b>§</b>	
<b>CAUSE EXCEPTION TO EXTEND THE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TIME TO FILE ITS RATE</b>	<b>§</b>	
<b>APPLICATION IN ACCORDANCE</b>	<b>§</b>	
<b>WITH THE NOTICE OF APPROVAL IN</b>	<b>§</b>	
<b>DOCKET NO. 50085</b>	<b>§</b>	

**COMMISSION STAFF'S BRIEF IN RESPONSE TO ORDER NO. 5**

**I. INTRODUCTION**

On April 12, 2024, Horseshoe Bend Water Company filed an application for a good-cause exception to extend the time to file its rate-change application as ordered in Docket No. 50085,<sup>1</sup> to April 1, 2025. The notice of approval in Docket No. 50085 included Ordering Paragraph No. 9 which ordered Horseshoe Bend to file a comprehensive base-rate proceeding within 18 months of the notice of approval.

On August 29, 2024, the administrative law judge (ALJ) filed Order No. 5, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file briefing addressing the questions presented in that Order by September 19, 2024. Therefore, this pleading is timely filed.

**II. BACKGROUND**

The Texas Commission on Environmental Quality first appointed Mark Patterson (Mr. Patterson) as temporary manager for Horseshoe Bend Water System, owned and operated by Castle Water, Inc., by emergency order on July 3, 2019, and again on December 30, 2019. The Commission then appointed Mr. Patterson as the temporary manager beginning June 27, 2020 until the Commission ordered otherwise.<sup>2</sup> On October 10, 2019, during Mr. Patterson's temporary management of Horseshoe Bend Water System, Castle Water and Horseshoe Bend Water Company filed an application (the STM application) seeking to transfer Castle Water's water

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<sup>1</sup> *Application of Castle Water, Inc. dba Horseshoe Bend Water System and Horseshoe Bend Water Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker County*, Docket No. 50085 (Nov. 29, 2022).

<sup>2</sup> *Petition for an Order Appointing a Temporary Manager for Castle Water, Inc. dba Horseshoe Bend Water System*, Docket No. 50847, Order at Ordering Paragraph No. 1 (Jun. 22, 2020).

facilities and service area to Horseshoe Bend Water Company.<sup>3</sup> While this transaction was pending, Mr. Patterson filed an application for temporary rates.<sup>4</sup>

In the final order for the temporary rates, the rates ordered were effective on the date the Commission filed a final order in the STM application.<sup>5</sup> The final order for the STM application was filed on November 29, 2022 and ordered that the temporary rates approved earlier remain in place for 18 months and that Horseshoe Bend file a comprehensive base-rate proceeding within 18 months of the date of the final order.<sup>6</sup> The 18-month deadline for the temporary rates and the filing of the comprehensive base-rate proceeding was May 29, 2024.

### III. STAFF'S BRIEFING

Order No. 5 requested briefing regarding the following questions:

1. [H]ow this matter is distinguishable from Docket No. 54017,<sup>7</sup> a case in which the Commission denied a utility's request to extend the date to file a rate application after being ordered in a prior docket, and in light of Chairman Gleeson's July 10, 2024 memorandum in Docket No. 55995<sup>8</sup> asserting that there is no legal basis for granting a good-cause exception to the requirements of a Commission final order.

First, Horseshoe Bend carries the burden to prove a good cause exception to a Commission final order. Here, Horseshoe Bend has had ample time to develop a test year in preparation for filing its base-rate proceeding under Ordering Paragraph 9 in the final order for Docket No. 50085. Furthermore, the Proposed Notice of Approval drafted and filed by Horseshoe Bend contains a substantially similar ordering paragraph to the Final Order in Docket No. 50085, ordering Horseshoe Bend to file a comprehensive base-rate proceeding within 18 months of the date of the final order.

Second, in light of the Commission action in Docket No. 54017 and Chairman Gleeson's memorandum in Docket No. 55995, Staff believes granting the good-cause exception is

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<sup>3</sup> Docket No. 50085.

<sup>4</sup> *Application of Mark Patterson for Temporary Rates for a Nonfunctioning Utility*, Docket No. 52341 (Jul. 22, 2021).

<sup>5</sup> Docket No. 52341, Order at Ordering Paragraph No. 1 (Jul. 27, 2022).

<sup>6</sup> Docket No. 50085, Notice of Approval at Order Paragraph Nos. 7 and 9 (Nov. 29, 2022).

<sup>7</sup> *Application of Park Water Company to Extend the Time to File a Rate Application in Accordance with Notice of Approval in Docket No. 49311*, Docket No. 54017, Order (Apr. 5, 2023).

<sup>8</sup> *Compliance Filing for CenterPoint Energy Houston Electric, LLC Concerning Rider SRC and ADFIT – Refund of System Restoration Charges*, Docket No. 55995, Commissioner Memorandum (Jul. 10, 2024).

inappropriate. The Commission previously denied Park Water Company's application for a good-cause exception to extend the deadline for it to file a rate change application under an ordering paragraph in a previous final order.<sup>9</sup> In a later docket, Chairman Gleeson stated that there is no legal basis for granting a good cause exception to ordering paragraphs in previous Commission orders.<sup>10</sup> Chairman Gleeson explained that the Commission may grant good-cause exceptions to Commission rules, but not to statutes or to previous Commission orders.<sup>11</sup> Case law supports this legal doctrine as well.<sup>12</sup>

Last, the omitted-case canon of construction states that a matter not covered is to be treated as not covered. Commissioner Jackson's memo in Docket No. 53336 is a prime example of this principle.<sup>13</sup> The ordering paragraph at issue in Docket No. 53336 ordered the utility to file a rate application with the Commission within 18 months from the date water services begin. Commissioner Jackson proposed revising this ordering paragraph to "allow flexibility to address changed facts or unforeseen circumstances," and suggested adding the phrase "unless the Commission finds good cause to waive the rule requirement." This portion of the ordering paragraph in the final order was revised thusly: "... and file a rate application with the Commission within 18 months from the date water service begins, *unless otherwise ordered by the Commission*" (emphasis added).<sup>14</sup>

2. [W]hat rates are currently being charged since the temporary rates established in Docket No. 52341<sup>15</sup> ceased on May 29, 2024 according to ordering paragraph seven in the Notice of Approval in Docket No. 50085.

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<sup>9</sup> Docket No. 54017, Order at Finding of Fact 13.

<sup>10</sup> Docket No. 55995, Commissioner Memorandum at 1.

<sup>11</sup> *Id.*

<sup>12</sup> *See Pub. Util. Comm'n of Tex. v. Brazos Elec. Power Co-op., Inc.*, 723 S.W.2d 171 at 173 (Tex. App. 1986), writ refused NRE (Apr. 15, 1987) (stating "that the Public Utility Commission lacks statutory authority or any implied power to review in any judicial capacity its orders which have become final"); *Sproles Motor Freight Line v. Smith*, 130 S.W.2d 1087 at 1088 (Tex. Civ. App. 1939), writ refused (stating that the Commission is without power to review its own orders when such orders are final).

<sup>13</sup> *Application of Big Easy Aqua LLC for a Certificate of Convenience and Necessity in Colorado County*, Docket No. 53336, Commissioner Memorandum at 2 (Feb. 14, 2024).

<sup>14</sup> Docket No. 53336, Order at Ordering Paragraph No. 6 (Feb. 15, 2024); this ordering paragraph is also supported by case law, *see Sexton v. Mount Olivet Cemetery Ass'n*, 720 S.W.2d 129, 145 at 145 - 146 (Tex. App. 1986), writ refused NRE (Jan. 28, 1987).

<sup>15</sup> Docket No. 52341, Order.

Staff believes Horseshoe Bend also bears the burden on this issue. The record of this proceeding does not contain information on the rates currently being charged since temporary rates ceased on May 29, 2024. Therefore, Staff cannot opine on this issue.

#### **IV. CONCLUSION**

For the reasons detailed above, Staff respectfully requests entry of an order consistent with this pleading.

Date: September 19, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 56479**

**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 September 19, 2024 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Cheri Hasz  
Cheri Hasz