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DOCKET NO. 56479

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

**HORSESHOE BEND WATER COMPANY, LLC'S MOTION FOR SUMMARY
DECISION GRANTING ITS APPLICATION FOR A GOOD CAUSE EXCEPTION**

Horseshoe Bend Water Company (Horseshoe Bend) files this motion for summary decision under 16 Texas Administrative Code (TAC) § 22.182 and in response to Order No. 6.¹ Pursuant to that order, this motion is timely filed on or before October 8, 2024.

I. EXECUTIVE SUMMARY

Horseshoe Bend asserts that it is entitled to summary decision granting its request for good cause to file its rate application on April 1, 2025 with a test year ending on December 31, 2024 for the following reasons:

- Horseshoe Bend's requests a good cause exception to the requirement found in Public Utility Commission of Texas (Commission) rule 16 TAC § 24.25(b)(1)(C) the language of which is referenced in Ordering Paragraph Nos. 7 and 9 in the Notice of Approval in Docket No. 50085.²
- Horseshoe Bend has shown sufficient and uncontroverted evidence that good cause exists to grant an exception under the Commission's rules.
- The Commission has broad authority to grant exceptions and extensions in adjudicative proceedings and Horseshoe Bend's Request for Good Cause is authorized under Commission Rules and prior Commission precedent.
- In the alternative to Horseshoe Bend's original request, Horseshoe Bend requests a good cause exception to file its rate application on February 1, 2025 with a test year ending on September 30, 2024. A deadline consistent with the 90-day extension was

¹ Order No. 6 Setting Deadline (Sept. 24, 2024).

² *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, Notice of Approval at 11 (Nov. 29, 2022).

provided to Park Water Company (Park Water) when its good cause request was denied by the Commission in Docket No. 54017.³

II. PROCEDURAL HISTORY

On April 12, 2024, Horseshoe Bend filed an application for good cause exception to extend the time to file its rate application in accordance with Ordering Paragraph No. 9 in the Notice of Approval in Docket No. 50085. Specifically, Ordering Paragraph No. 9 states that Horseshoe Bend must file a comprehensive base-rate proceeding within 18 months of the filing of the Notice of Approval, which was filed on November 29, 2022.⁴

On September 24, 2024, the Commission Administrative Law Judge (ALJ) filed Order No. 6 requesting the parties to file dispositive motions by October 8, 2024. In response, Horseshoe Bend files this motion for summary decision under 16 TAC § 22.182 showing that there is no genuine issue as to any material fact and that Horseshoe Bend is entitled to approval of its request for good cause to file its rate application by April 1, 2025 with a full 2024 test year.

III. SUMMARY DECISION STANDARD

Pursuant to 16 TAC § 22.182(a), “The presiding officer, on motion by any party, may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed in accordance with §22.222 of this title (relating to Official Notice), or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.”

IV. ARGUMENT

Overall, there is no genuine issue of material fact that Horseshoe Bend should be granted a good cause exception to the Commission rule found in 16 TAC § 24.25(b)(1)(C) whose language is referenced in Ordering Paragraph Nos. 7 and 9 in the Notice of Approval in Docket No. 50085.⁵

³ *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).*

⁴ Docket No. 50085, Notice of Approval at 11.

⁵ 16 TAC § 24.25(b)(1)(C) states that “[a] person under the original rate jurisdiction of the commission who obtained an approved tariff for the first time must file a rate change application within 18 months from the date service begins to revise its rates to be based on a historic test year.” Ordering Paragraph No. 7 of the Notice of Approval in Docket No. 50085 states that “[t]he temporary rates approved in Docket No. 52341 shall remain in place for 18 months following the issuance of this Notice of Approval to allow for the development of a full test year.” Ordering Paragraph

As shown below, Horseshoe Bend's request is distinguishable from the request made by Park Water in Docket No. 54017 and allowable under the Commission's rules and under the memorandum issued by Chairman Gleeson in Docket No. 55995.⁶ Additionally, Horseshoe Bend has shown evidence that it should be entitled to a good cause exception under the Commission's rules. Lastly, in the alternative, Horseshoe Bend requests a good cause exception to file its rate application on February 1, 2024 with a test year ending on September 30, 2024 based on the 90 days allowed to Park Water to file its rate application after its request for good cause was denied.⁷

A. The Commission has broad authority to grant exceptions and extensions in adjudicative proceedings.

The Third Court of Appeals has held that the broad authority of the Commission includes the power to grant exceptions and extensions.⁸ In addressing the Public Utility Regulatory Act (PURA),⁹ the court concluded:

A delegation of power to an administrative agency, in such broad and general terms, implies a legislative judgment that the agency should have the widest discretion in conducting its adjudicative proceedings, including a discretion to make ad hoc rulings in specific instances, within the bounds of relevant statutes and the fundamentals of *fair play*. Within those limits and without express statutory authority, it has been held that an agency's power to conduct adjudicative proceedings necessarily includes an attendant power to consolidate proceedings, allow intervention by strangers to the litigation, *and grant continuances*. An

No. 8 of the Notice of Approval in Docket No. 50085 states that "HBWC must file a comprehensive base-rate proceeding within 18 months of the date of this Notice of Approval."

⁶ *Compliance Filing for CenterPoint Energy Houston Electric, LLC Concerning Rider SRC & ADFIT-Refund of System Restoration Charges*, Docket No. 55995, Chairman Gleeson's Memorandum (Jul. 10, 2024).

⁷ Docket No. 54017, Order at 4.

⁸ *Pub. Util. Comm'n of Tex. v. Sw. Bell Tel. Co.*, 960 S.W.2d 116 (Tex. App.—Austin 1997, no pet.).

⁹ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001–66.016 (PURA). The statute included the power "to do all things, whether specifically designated in [PURA] or implied herein, necessary and convenient to the exercise of [the Commission's] power and jurisdiction." PURA § 16. The delegated power also includes an express power to conduct adjudicative proceedings "with respect to administering the provisions of [PURA] or the rules, orders, *or other actions* of the commission." *Id.* (emphasis added). The language of the previous PURA § 16 is mirrored in its current iteration in Tex. Utilities Code § 14.001: "The commission has the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction."

agency must have the flexibility necessary to adjust to the variety of incidents encountered in particular contested cases.¹⁰

The same delegation of power, “expressed in the broadest possible terms,” appears in Texas Water Code (TWC) § 13.041(a), regarding water and sewer utilities.¹¹ Accordingly, while the Commission’s Notice of Approval in Docket No. 50085 does not expressly authorize extensions and exceptions, it does not prohibit them—thus, the authority to allow them “within the bounds of . . . fair play” is necessarily inferred.

Many Texas agencies have similar authority to suspend the application of rules, including extending deadlines, in instances when they would result in injustice or conflict with public necessity.¹² Such administrative authority exists throughout Texas, and the Commission’s exercise of such authority in this case is prudent. Therefore, the Commission has the authority to grant Horseshoe Bend’s requested relief.

The need for flexibility is especially true for this case as Horseshoe Bend took over a distressed water system and Horseshoe Bend has needed to make substantial repairs to the system over the last 21 months that were not implemented until 2024. Therefore, “fair play” certainly would dictate allowing all reasonable opportunities for a party to be heard, and not unnecessarily restricting any opportunity to present information.¹³

B. Horseshoe Bend has demonstrated good cause exists to grant an exception.

Horseshoe Bend has shown evidence that there is no genuine issue of material fact in approving its good cause exception to 16 TAC § 24.25(b)(1)(C), and no evidence has been presented to the contrary by Commission Staff, or any other party, disputing such grounds. In fact, Commission Staff initially had no objection and “support[ed] Horseshoe Bend’s request for a

¹⁰ *Sw. Bell*, 960 S.W.2d 116, 119 (citations omitted) (emphasis added).

¹¹ The statute says: “The [Public] utility commission and the commission [on Environmental Quality] may do all things, whether specifically designated in this chapter or implied in this chapter, necessary and convenient to the exercise of these powers and jurisdiction”

¹² See 28 TAC § 41.5 (2021) (Texas Department of Insurance, Division of Workers’ Compensation); 1 TAC § 61.1 (2021) (Crime Victims Compensation); 16 TAC § 1.3 (2021) (Railroad Commission of Texas, allowing suspension of rules for “public emergency or imperative public necessity”); 4 TAC § 1.49 (2021) (Texas Department of Agriculture); 22 TAC § 131.85(d) (2002) (Texas Board of Professional Engineers and Land Surveyors); 22 TAC § 509.2 (2002) (Texas State Board of Public Accountancy).

¹³ *State v. Crank*, 666 S.W.2d 91, 94 (Tex. 1984), *cert. denied*, 469 U.S. 833, (1984) (“[T]he ultimate test of due process of law in an administrative hearing is the presence or absence of rudiments of fair play.”); see also *Ray v. Tex. State Bd. of Pub. Accountancy*, 4 S.W.3d 429, 433 (Tex. App.—Austin 1999, no pet.) (“Texas courts have also defined the minimum as requiring the presence of the ‘rudiments of fair play.’”) (citing *Crank*, 666 S.W.2d at 94).

good-cause waiver to extend the 18-month deadline to file a rate application to no later than April 1, 2025.”¹⁴

Horseshoe Bend requests a good cause exception in order to allow additional time for a more fully representative test year, particularly one that reflects the investment and time required to take over a distressed water utility. A 2024 test year will allow for necessary planned capital improvements, and the installation of new meters that will provide more accurate usage and billing data. Allowing for a more representational test year aligns with the Commission’s policy of setting rates that are just and reasonable to both the consumer and utility.

Furthermore, Horseshoe Bend included the testimony of Bryan Thomas to support its request.¹⁵ Mr. Thomas’s testimony addresses the capital improvements and benefits of those improvements to customers and the associated benefits to a subsequent rate proceeding.¹⁶ In short, the new meters placed into service by Horseshoe Bend “will allow for more accurate usage data and a more fully representational test year.”¹⁷ Additionally, at Commission Staff’s request, Horseshoe Bend filed its 2023 annual report on April 11, 2024.¹⁸

Support for good cause is further shown by the fact that Horseshoe Bend—at Commission Staff’s request¹⁹—provided notice to customers of its request, and upon a reasonable opportunity to comment or intervene, no customer elected to do so. This evidences Horseshoe Bend’s commitment to comply with the intent of the Commission’s Notice of Approval in Docket No. 50085 and act within the public interest in its mandated rate filing.

Horseshoe Bend took over a distressed water system and Horseshoe Bend has needed to make substantial repairs to the system over the last 21 months that was not implemented until 2024.²⁰ By denying the request for good cause exception, the Commission would be requiring a 2023 test year which would be less representative than a 2024 test year. The purpose behind 16 TAC § 24.25(b)(1)(C) is so utilities file a rate application with an historic test year. A 2024

¹⁴ Commission Staff’s Recommendation on Final Disposition at 1.

¹⁵ Application at Attachment A.

¹⁶ Testimony of Bryan Thomas, Attachment A at 4–5.

¹⁷ *Id.* at 5:13–14.

¹⁸ *Year-End 2023 Water and Sewer Utility Annual Reports in Accordance with 16 TAC § 24.129*, Project No. 55975, Horseshoe Bend’s 2023 Annual Report (Apr. 11, 2024).

¹⁹ Commission Staff’s Supplemental Recommendation at 1–2.

²⁰ *Commission Staff’s Petition for an Order Appointing a Temporary Manager to Castle Water, Inc. dba Horseshoe Bend*, Docket No. 50847, Notice of Approval (Nov. 29, 2022).

test year would better fulfill the purpose of 16 TAC § 24.25(b)(1)(C) and allow the rates developed to be just and reasonable along with allowing the utility the needed latitude rehabilitate a distressed system.

Horseshoe Bend's request for a good cause exception is supported by uncontroverted evidence that will allow for a rate proceeding being filed more consistent with the public interest and that will not cause undue delay or prejudice any party.

C. Park Water's request for good cause exception in Docket No. 54017 is not applicable to Horseshoe Bend's request for good cause in this proceeding.

As explained in Horseshoe Bend's Response to Order No. 5, the denial of Park Water's request for good cause exception to extend the time to file its Class C Rate Application is not applicable to Horseshoe Bend's request.²¹ Park Water was required to file a rate application within 18 months from the date service began under 16 TAC § 24.25(b)(1)(C).²² Because Park Water began providing water and sewer services on August 1, 2020, it was required to file its rate application by February 1, 2022.²³ Instead, Park Water filed an extension request on August 31, 2022 to extend its deadline to file its Class C rate application to February 22, 2023.²⁴ It appeared during the open meeting that the Commissioners denied the request for good cause exception because it was untimely and Park Water essentially requested an extension twice by waiting to file a request for a good cause exception until 6 months after the deadline.²⁵

D. Horseshoe Bend's request for good cause is allowed under Commission rules and under prior Commission precedent.

Ordering Paragraph Nos. 7 and 9 in the Notice of Approval in Docket No. 50085 approving Horseshoe Bend's sale, transfer, or merger application with the Commission requires Horseshoe Bend to file a rate application within 18 months of the issuance of the Notice of Approval for the development of a full test year.²⁶ Essentially, the Notice of Approval mirrors the requirement

²¹ Horseshoe Bend Water Company, LLC's Brief in Response to Order No. 5, at 2–3 (Sept. 19, 2023).

²² Docket No. 54017, Order at 1–2.

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ See https://www.adminmonitor.com/tx/puct/open_meeting/20230323/ Open Meeting (Mar. 23, 2023); see also Horseshoe Bend Water Company, LLC's Brief in Response to Order No. 5 at 3.

²⁶ Docket No. 50085, Notice of Approval at 11.

found in 16 TAC § 24.25(b)(1)(C), which states that “[a] person under the original rate jurisdiction of the commission who has obtained an approved tariff for the first time must file a rate change application within 18 months from the date service begins to revise its rates to be based on a historic test year.” This is the same rule that was cited in the Notice of Approval for Park Water’s Application for a Certificate of Convenience and Necessity, wherein Park Water was required to file its rate application within 18 months from the date service began.²⁷ When Park Water requested a good cause exception to this requirement, in the Commission’s denial the order stated that “[t]here is insufficient evidence of good cause to extend the deadline by which Park Water must file a rate change application.”²⁸ As this statement implies, had there been sufficient evidence, good cause could have been found to grant Park Water’s request for an extension of time to file its rate application. This is supported by the Commission rule found in 16 TAC § 24.2(b), which states “the commission may make exceptions to this chapter for good cause.” A similar rule is also found in the Commission’s electric rules found in Chapter 25 of the Texas Administrative Code,²⁹ as well as in the Commission’s procedural rules found in Chapter 22 of the Texas Administrative Code.³⁰

Furthermore, prior recent precedent also demonstrates that the Commission can grant good cause exceptions to requirements found in a Commission rule and then noted in a Commission Order or Notice of Approval. Mostly recently, on October 3, 2024, the Commission granted Lone Star Transmission, LLC’s (Lone Star) request for an extension of its rate filing requirement found in 16 TAC § 25.247 and PURA § 36.157(b), which requires investor-owned utilities to file for a comprehensive rate review within 48 months of the most recent order setting rates or proceeding that approved a settlement agreement that allowed the utility to avoid filing a rate case.³¹ Based on the statute and Commission rule, Lone Star was required to file a comprehensive rate review on February 9, 2025.³² This requirement was also noted in Ordering Paragraph No. 4 of the

²⁷ *Application of Park Water Company to Obtain Certificates of Convenience and Necessity in Midland County*, Docket No. 49311, Notice of Approval at Ordering Paragraph No. 8 (Mar. 10, 2020), which states “Park Water must file a rate application in order to true-up the rates approved in this docket with the Commission within 18 months from the date service begins under 16 TAC § 24.25(b)(1)(C).”

²⁸ Docket No. 54017, Order at 3.

²⁹ See 16 TAC § 25.3.

³⁰ See 16 TAC § 22.5(b).

³¹ *Application of Lone Star Transmission, LLC for an Extension of Rate Filing Requirement Under 16 TAC § 25.247*, Docket No. 56752, Order (Oct. 3, 2024).

³² *Id.* at 2–3.

Commission Order in Docket No. 51206 that approved a settlement agreement that allowed Lone Star to avoid filing a rate review application on December 8, 2020.³³ In a similar manner, the Commission approved a similar request by Texas-New Mexico Power Company (TNMP) for an extension to file a rate review application in Docket No. 56429.³⁴ These instances demonstrate that by referencing a rule in an ordering paragraph, the Commission does not change the power of the rule, nor does it curtail the ability of the Commission to grant a utility's request for good cause exception to the rule requirement.

Both these requests for extension and good cause requests to rate application filing deadlines were approved by the Commission after the date of Chairman Gleeson's memorandum in Docket No. 55995.³⁵ Furthermore, these instances and the request by Horseshoe Bend are distinguishable from the request for good cause exception made in Docket No. 55995. In Docket No. 55995, the applicant—CenterPoint Energy Houston Electric, LLC (CenterPoint)—requested a good cause exception to an Ordering Paragraph No. 3 in Docket No. 51567, which stated that “CenterPoint may establish a regulatory liability or regulatory asset to be included in CenterPoint's next base-rate application for any difference between the amounts refunded under the rider TC2 & TC3 refund tariff at the end of the refund period and the amounts required to be refunded under the financing orders.”³⁶ This ordering paragraph is a specific directive and is not a reference to a Commission rule. As explained in the memorandum by Chairman Gleeson, “[t]he Commission may grant good-cause exceptions to Commission rules, but not to statutes or to previous Commission orders.”³⁷

Overall, Horseshoe Bend requested a good cause exception to Ordering Paragraph Nos. 7 and 9 in Docket No. 50085. These ordering paragraphs reference the exact language found in the

³³ *Application of Lone Star Transmission, LLC for Good Cause Waiver of Rate Filing Requirement under 16 TAC 25.247 and Adoption of Rate Settlement*, Docket No. 51206, Order at 6 (Sept. 24, 2020).

³⁴ *Application of Texas-New Mexico Power Company for an Extension of Rate Filing Requirement Under 16 TAC § 24.257*, Docket No. 56429, Order (Aug. 29, 2024).

³⁵ Chairman Gleeson's memorandum was filed on July 10, 2024. The order approving Lone Star's extension in Docket No. 56752 was filed on October 3, 2024, and the order approving TNMP's extension in Docket No. 56429 was filed on August 29, 2024.

³⁶ Docket No. 55995, CenterPoint Energy's Response to Commission Staff's Final Recommendation at 3 (Mar. 7, 2024); *see also Compliance Filing of CenterPoint Energy Houston Electric, LLC for Rider TC2 and TC3 Refund of Transition Charges*, Docket No. 51567, Order at 7 (Aug. 2, 2021).

³⁷ Docket No. 55995, Chairman Gleeson's Memorandum at 1.

Commission's rule in 16 TAC § 24.25(b)(1)(C).³⁸ Therefore, Horseshoe Bend is requesting good cause exception to the ordering paragraphs that reference a Commission rule similar to that requested by LoneStar and TNMP, and allowed as noted under 16 TAC § 24.3 and under the Commissioner's memorandum in Docket No. 55665.

E. Horseshoe Bend's alternative good cause exception request.

Horseshoe Bend notes that the Commission provided Park Water ninety days to file its rate application after denying its request for a good cause extension request.³⁹ In that manner, Horseshoe Bend alternatively requests that the Commission grant a good cause exception for Horseshoe Bend to file its rate application on February 1, 2025 with a test year ending on September 30, 2024. This would allow Horseshoe Bend to prepare an application with a more representative test year but allow Commission Staff the chance to review Horseshoe Bend's rate application two months sooner than the date requested by Horseshoe Bend in its original application.

V. CONCLUSION

For the reasons stated above, Horseshoe Bend respectfully requests the entry of an order approving the application and granting its motion for summary decision and approving its request for good cause to file its rate application on April 1, 2025 with a test year ending on December 31, 2024. In the alternative, Horseshoe Bend requests the approval of a good cause exception to file its rate application on February 1, 2025 with a test year ending on September 30, 2024. Horseshoe Bend further requests any and all relief to which it may be justly entitled.

³⁸ Supra. fn. 5.

³⁹ Docket No. 54017, Order at 4.

Respectfully submitted,

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**ATTORNEYS FOR HORSESHOE BEND
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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 October 8, 2024, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Rashmin J. Asher

Rashmin J. Asher