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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	§	

**COMMISSION STAFF'S RESPONSE TO HORSESHOE BEND WATER COMPANY'S
MOTION FOR SUMMARY DECISION**

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. 50085,¹ 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 October 8, 2024, Horseshoe Bend filed a motion for summary decision. On October 9, 2024, the administrative law judge (ALJ) filed Order No. 7, setting a deadline of October 23, 2024 for responses to the motion for summary decision. Therefore, this pleading is timely filed.

II. STANDARD OF REVIEW

Under 16 TAC § 22.182(a), the applicable standard of review for a motion for summary decision is as follows:

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.

¹ *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).

A party opposing a motion for summary decision must show that there is a genuine issue of material fact for determination at a hearing, or that summary decision is inappropriate as a matter of law.² Because Horseshoe Bend's argument is unsupported by law, summary decision is inappropriate here.

III. ARGUMENT

First, Staff and Horseshoe Bend's briefs, submitted in response to Order No. 5, establish a difference between the parties in the legal interpretation of applicable statutes, Commission rules, and case law regarding the issue of the legal basis for granting good-cause exceptions to ordering paragraphs in previous Commission orders. Second, Horseshoe Bend mischaracterizes case law in its motion. Last, Horseshoe Bend misapplies Commission rules in its motion.

Staff re-urges its legal arguments contained in its brief, filed on September 19, 2024. Next, the support Horseshoe Bend utilizes in its motion is mischaracterized. While the Third Court of Appeals did indeed hold that the broad authority of the Commission includes the power to grant exceptions and extensions, that case involved an agreement between the parties, and the dispute at issue "was *never* adjudicated"³ but removed by agreement of the parties from the subject litigation. The Court stated that their decision in this case does "no violence" to the case law Staff cited in its brief; in other words, the Court's decision does not overrule *Mount Olivet Cemetery*.⁴ By contrast, the issue regarding when Horseshoe Bend was required to file a comprehensive rate case was before the Commission, and the Commission explicitly ordered that Horseshoe Bend do so within 18 months of the date of the final order in Docket No. 50085; the final order was not an agreement between parties, nor was the issue regarding the comprehensive rate case filing removed from the final order.⁵ Furthermore, as Staff pointed out in its brief, Horseshoe Bend drafted the ordering paragraph at issue here, which means under the bounds of "fair play," Horseshoe Bend had reasonable opportunity to be heard.

² 16 TAC § 22.182(c).

³ *Pub. Util. Comm'n of Tex. v. Sw. Bell Tel. Co.*, 960 S.W.2d 116, 120 (Tex. App.—Austin 1997, no pet.) (emphasis added).

⁴ 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), noted in *Sw. Bell*, 960 S.W.2d 116, 120.

⁵ *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 Ordering Paragraph No. 9 (Nov. 29, 2022).

Last, no good cause exists under 16 TAC § 24.25(b)(1)(C) for an exception to this provision. As Staff argued in its brief, the omitted-case canon of construction states that a matter not covered is to be treated as not covered. Here, the provisions of 16 TAC § 24.25(b)(1)(C) do not contain any exceptions to the requirement to file a rate change application within 18 months. However, the provisions of 16 TAC § 24.25(b)(2)(C)(vi) do explicitly provide for such an exception. Similarly, the Commission's procedural rules provide for good cause exceptions to any requirement in that chapter. Thus, Horseshoe Bend should not be reading an exception for good cause in a provision that does not provide for one.

Accordingly, Horseshoe Bend's arguments for summary decision is unsupported by the law and should not be granted.

IV. CONCLUSION

Staff respectfully requests that Horseshoe Bend's motion for summary decision be denied for the reasons stated above.

Date: October 23, 2024

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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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 23, 2024 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Cheri Hasz

Cheri Hasz