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CHIEF CLERKS OFFICE

TCEQ DOCKET NO. 2004-0834-UCR
SOAH DOCKET NO. 582-04-7557

APPLICATION OF CAMPBELLTON WATER § BEFORE THE STATE
WORKS, INC. TO DISCONTINUE WATER § OFFICE OF
SERVICE AND TO CANCEL CERTIFICATE § ADMINISTRATIVE OF
CONVENIENCE AND NECESSITY No. 12581 § HEARINGS

EXCEPTIONS TO PROPOSAL FOR DECISION
OF INTERVENOR JOAN ROANE

TO THE HONORABLE TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY:

COMES NOW, Joan Roane, intervenor and party-protestant to the above-
referenced application of Receiver William Thane to surrender the certificate of
convenience and necessity (CCN) of Campbellton Water Works, Inc. (CWW) and
to cease providing retail public water service to the public, and files her
Exceptions to the Proposal for Decision (PFD) of SOAH Judge Craig Bennett.
Joan Roane respectfully submits that Judge Bennett is committed fundamental
errors in the identification and application of the law controlling this case.
Further, because of this legal error, Judge Bennett has misapplied the relevant
record evidence in preparing his proposed order. Joan Roane respectfully
submits that the Receiver's application be denied in all respects for the following
reasons:

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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

1. 2. APPLICATION CONSTITUTES A BREACH OF RECEIVER'S FIDUCIARY DUTY UNDER THE TEXAS WATER AND PRACTICES AND REMEDIES CODES¹

Chapter 13 of the Texas Water Code authorizes the TCEQ to have a receiver appointed to assume control of and to operate a troubled water or sewer utility.

Water Code §13.412 provides in pertinent part:

Sec. 13.412. RECEIVERSHIP. (a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that:

- ...
- (3) violates a final order of the commission; or
- (4) allows any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The court shall appoint a receiver if an appointment is necessary:

- ...
- (2) to guarantee continuous and adequate service to the customers of the utility; or
- (3) to prevent continued or repeated violation of the final order.

...

(d) After appointment and execution of bond, the receiver shall take possession of the assets of the utility specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the utility and shall strictly observe the final order involved.

(e) On a showing of good cause by the utility, the court may dissolve the receivership and order the assets and control of the business returned to the utility.

¹ Judge Bennett took official notice of Texas Water Code Chapter 13 during the hearing. **Joan Roane now requests the Court to take official notice of Texas Prac & Rem Code, Chapter 64.** This request was formally made to Judge Bennett in briefing under TRE 201 but Judge Bennett did not acknowledge this in his PFD or make any other ruling. Joan Roane is entitled as a matter of law to a ruling in the hearing record.

... (g) Notwithstanding Section 64.021, Civil Practice and Remedies Code, a receiver appointed under this section may seek commission approval to acquire the water or sewer utility's facilities and transfer the utility's certificate of convenience and necessity. The receiver must apply in accordance with Subchapter H.

Except for the unique opportunity for a receiver to apply to acquire the estate's assets in Water Code §13.412(g), a receiver appointed by the courts at the request of the TCEQ is bound by all other fiduciary duties and self-dealing prohibitions of Chapter 64, Texas Practices and Remedies Code.

McCoy and later William Thane were appointed receiver of the CWW to insure compliance with the outstanding agreed enforcement order. No attempt at fulfilling these duties has been made. Instead, it is uncontroverted that McCoy has expanded its water distribution system outside the 200-foot dually certificated corridor and has encroached upon CWW by taking CWW customers without a TCEQ order or CCN amendment.²

Looking only at the current state of affairs, William Thane has violated his duties as the receiver of the CWW system. He has not maintained the system, has not made permanent repairs to water leaks, and has not installed TCEQ-ordered capital improvements under the guise of a lack of funds while refusing the unique statutory remedy afforded water/sewer utility receivers of emergency rate

² Staff engineer Prabin Basnet testified that McCoy could serve all of the Campbellton service area under the ¼-mile buffer zone of Texas Water Code 13.243(1) only after Campbellton's CCN was cancelled. Therefore, per the testimony of Applicant witness Martin Thompson and Joan Roane that McCoy is now serving throughout Campbellton service area, McCoy is encroaching in violation of Water Code §13.242(a).

changes.³ Mr. Thane has not rehabilitated the CWW water system and has not petitioned the court to return it to its prior owners. Mr. Thane has not petitioned the court to be relieved as receiver nor sought to sell the CWW assets to a TCEQ-approved retail public water utility. Mr. Thane has not requested to purchase the CWW system himself. Instead, he seeks to abandon the CWW assets including CCN, and give the service area to McCoy. The Water Code does not provide him with this option.

Mr. Thane has not presented any evidence that his plan is acceptable to the affected water customers now dependent on the CWW water system. The receiver merely assumes that they will go along with his program or be without water. Ms. Roane's testimony on the stand demonstrated that this assumption is incorrect. This community has a history of hauling water to meet domestic service needs. Ms. Roane indicated that this practice is occurring now and will continue to occur if the community is abandoned to McCoy.

The relief William Thane seeks in this application is beyond the scope of the options available to a receiver under the Texas Water and Practice and Remedies Codes. For this reason, the application must be denied. The TCEQ has no jurisdiction to hear a voluntary decertification petition from a person not allowed by law to file it.

³ Water Code §13.4133

2. RECORD OF FACTS

An unfortunate consequence in the common practice of using administrative law judges to conduct administrative hearings as proxies for the ultimate fact finders, i.e., the TCEQW Commissioners, is that the preparation of a concise PFD precludes the ALJ from presenting a comprehensive picture of all facts established by all parties. The ALJ is compelled to limit his presentation and generally to only those facts that support his proposed order. Judge Bennett, a fine ALJ, has suffered from these constraints in preparing his PFD. Joan Roane respectfully submits that the following presents a more thorough and complete picture of this record:

It is undisputed that CWW was started by Joan Roane's father who acquired a water supply and built a distribution system for the benefits of his neighbors in Campbellton, Texas. The Roane Family operated this sole source of drinking water for the Campbellton Community for many years as a community benefit and without raising rates above what the local low-income populace could afford.

After the death of CWW's founder, Joan Roane's brother, Ira Roane, took over complete management and control of the water company. It is undisputed that Ira Roane did not maintain the water system within the standards of Texas Commission on Environmental Quality (TCEQ) rules. It is also undisputed that, as a result of Ira Roane's neglect, the TCEQ brought an enforcement action

against the water company. This first enforcement case was resolved by Agreed Order. It is undisputed that Ira Roane subsequently did not fulfill the terms of the Agreed Order or make all the agreed capital improvements and operational changes. This resulted in the TCEQ, through the Office of the Attorney General (OAG), bringing another enforcement action against CWW in the Travis County District Court. In that civil suit, the OAG/TCEQ had Ira Roane removed from the management and operation of the water company and a receiver appointed to assume his duties.

It is undisputed that the court originally appointed McCoy as receiver. McCoy assumed management and operation of the CWW water system.

Once in control of the service area and without authorization from the TCEQ, McCoy started providing retail public water utility service to Campbellton residents in CWW's certificated service area through McCoy water lines. Campbellton customers' meters were disconnected from the Campbellton distribution system and connected to McCoy water lines. McCoy water lines were extended throughout the Campbellton certificated service area.

Through the testimony of McCoy's field manager, Martin Thompson, it was shown that McCoy refused to make meaningful repairs to the Campbellton system because of a claim of lack of fund. However, as Mr. Thompson testified, McCoy did not attempt to collect Campbellton's tariffed revenue stream because

the utility only had flat rates. McCoy never sought an emergency rate change or any other TCEQ-approved actions to improve CWW's cash flows so it could rehabilitate the CWW water system. Instead, McCoy chose to poach CWW customers to expand its own customer base.

At some point, McCoy wanted out of its role as receiver. Although McCoy's reasons for seeking to be discharged as receiver were never explained at the hearing, it is undisputed that McCoy employee William Thane was appointed to replace McCoy as the receiver. Mr. Thane assumed title and control over the CWW water utility assets, including the utility's state-approved tariff. It is also undisputed that William Thane retained McCoy as his contract operator and customer service provider. As the new receiver, Mr. Thane made no attempt to change McCoy's operations in Campbellton. Mr. Thane never sought an emergency rate change or other TCEQ-approved action to improve CWW's cash flows so he could rehabilitate the CWW water system and bring it into compliance with the unfulfilled Agreed Order. He did not authorize repairs or rehabilitation, or even metering, of the Campbellton system because of purported cash flows. What money that was there went to McCoy as did Campbellton customers as quickly as McCoy could change them out.

It is undisputed that during the McCoy/Thane receiverships, there have been chronic water leaks, which McCoy failed to permanently fix. The TCEQ's report

on its inspections of the CWW water system⁴ demonstrates that the water system increased its number of violations during Mr. Thane and McCoy's operations. McCoy field manager Martin Thompson candidly testified that he and his crews did not attempt to replace chronically leaking CWW water lines. Mr. Thompson said that they only patched leaks using inner tube pieces and "hay wire clamps."⁵ Mr. Thompson acknowledged under cross-examination by Joan Roane that more effective, but more expensive, leak repair methods were not used at the receiver's direction because of low cash flows. Martin Thompson acknowledged under Joan Roane's cross-examination that there were no technical reasons why more effective repairs and maintenance techniques could not have been used. Mr. Thompson admitted that little was done to maintain or operate the CWW water system because of insufficient cash flow from unmetered water sales. He was also quite candid in admitting that the Receiver and/or McCoy made no effort to policy the utility's tariff because CWW connections were unmetered.

TCEQ engineering witness Prabin Basnet opined that inner tube patches and wire were not a satisfactory method of repairing public drinking water supply lines. Mr. Basnet admitted that alternate repair methods were available for use on old metal water pipe. Mr. Basnet testified that neither McCoy nor Mr. Thane ever applied for a Water Code §13.4133 rate change. Mr. Basnet confirmed that there was no reason why a receiver could not seek rate relief for this water system.

⁴ Roane Exhibit 1 - exhibit A, page 17

⁵ Receiver Exhibit 1, pg 1, A 12.

Joan Roane presented uncontroverted testimony about the decline in CWW's water service and customer base during the period of the McCoy and Thane receiverships. Ms. Roane identified chronic leaks that have not been repaired.⁶

It is undisputed that the receiver seeks to surrender CWW's CCN, abandon the existing CWW water facilities and have McCoy assume retail public water service to all Campbellton-area residents⁷. No compensation will be paid to CWW for the damage to its property caused by McCoy servicemen, for the loss of the economic value of the CWW water system or for lost future revenues from former CWW customers.⁸

It is uncontroverted that to do this, Campbellton's remaining customers will have to relocate their service lines to new McCoy metering points.⁹ CWW customers will have to purchase McCoy memberships and pay the water supply corporation's impact and tap fees.¹⁰ Ms. Roane presented uncontroverted testimony that these costs were excessive for the low income and elderly residents of Campbellton. While the receiver did not present any evidence of

⁶ Joan Roane Exhibit 1, pg 10, line 5-18

⁷ Testimony of Martin Thompson under Joan Roane's cross-examination

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* Mr. Thompson did testify that economically disadvantaged CWW customers would have a deferred payment period for the impact/tap fees. He could not testify on what a CWW customer's monthly payment would be under this plan.

what the rate impact of the proposed change will have on CWW customers, Joan Roane presented uncontroverted testimony that it would be financial burden.¹¹

In contrast to the receiver's limited evidence supporting abandoning the CWW water system, Joan Roane presented an uncontroverted plan of rehabilitation, which she wants to undertake for the benefit of her community and to redeem her family name after Ira Roane's mismanagement.¹² First, CWW owns the only on-site water supply through an artesian well owned by the City of Corpus Christi.¹³ Everyone agrees that the CWW water is hot when produced from the water well. Mr. Thompson testified that the water could not be disinfected to comply with TCEQ rules because of this heat.¹⁴ However, Mr. Thompson retracted this testimony under cross-examination and admitted that hot water is only difficult to disinfect with chlorine – the only TCEQ-approved method he had experience with.¹⁵ Mr. Thompson candidly admitted that there were a number of other TCEQ-approved disinfection methodologies and that he did not know if they could be used.¹⁶ Staff Engineer Prabin Basnet confirmed there are other the TCEQ-approved disinfection methods.¹⁷ Mr. Basnet, whose TCEQ duties include reviewing plans and disinfection methods for proposed public water supplies,

¹¹ Joan Roane Exhibit 1, pg 1, lines 19-23 and Testimony of Joan Roane under the Receiver's and the Executive Director's cross-examinations

¹² Joan Roane Exhibit 1, pg 2, line 3-9

¹³ *Id* at line 11-16

¹⁴ Testimony of Martin Thompson under Joan Roane's cross-examination

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Testimony of Prabin Basnet under Joan Roane's cross-examination

also stated that he knew of no reason to believe that the CWW groundwater could not be treated to comply with all TCEQ rules.¹⁸

Second, it is uncontroverted that the CWW produces artesian water and delivers it throughout the service area using the naturally occurring pressure of the water well. The water system needs a very limited amount of storage, pressure tank and booster pump capacity to meet the plant standards of the TCEQ's rules.¹⁹ Ms. Roan testified that she could afford to and would make these improvements and would install any capacities her engineer, Clarence Littlefield, PE,²⁰ determined were needed. She testified that Mr. Littlefield had already performed such a study and that it was the basis of her testimony.²¹ Staff engineer Prabin Basnet testified under Joan Roane's cross-examination that he knew of no reason why Mr. Littlefield could/would not design public water supply improvements that he would not approve under the applicable TCEQ rules.²² Mr. Basnet did not dispute Mr. Littlefield's professional findings.

Joan Roane presented uncontroverted testimony that she planned on three financing sources to fund Mr. Littlefield's capital improvements. First, Ms. Roane has arranged for interim financing from area resident Mr. Sandy Monferdini, who attended the January 24th hearing. No party opponent presented any evidence

¹⁸ *Id.*

¹⁹ 30 TAC 290.45. Judge Bennett took official notice of the TCEQ Public Drinking Water Hygiene Rules found in 30 TAC Chapter 290, Subchapters D and F, which include this minimum plant capacity rule

²⁰ Martin Thompson confirmed under Joan Roane's cross-examination that Mr. Littlefield was also McCoy's consulting engineer.

²¹ Joan Roane Exhibit 1, pg 5, line 13 – pg 6, line 9

²² Testimony of Prabin Basnet under Joan Roane's cross-examination

that Mr. Monferdini is unable or unwilling to provide any financing Ms. Roane needs.

Second, Ms. Roane has been working on long-term financing through a state loan project through her county government. To this end, Ms. Roane retained Ms. Karen Kibbe, an expert on public financing programs. Ms. Kibbe sponsored the loan application²³ and presented unchallenged testimony on its status.²⁴ The Receiver, through cross-examination by Robert Busselman, questioned whether Ms. Roane would receive the loan proceeds in 2007 or 2008.²⁵ No attempt was made to show that planned interim financing from Mr. Monferdini would not accommodate any delays in the state loan funds.

Third, Ms. Roane presented testimony of her intent to seek rate relief at the TCEQ in a "cash needs basis" rate case under 30 TAC 291.34(d). Staff witness Mr. Basnet confirmed that Ms. Roane would qualify for a "cash needs basis" rate case. The opposing parties showed skepticism through their cross-examination of Ms. Roane that a rate case would provide adequate cash flows without generating excessively high rates.²⁶ No evidence was presented to support this claim. No evidence could have been presented because Ms. Roane admits that she does not yet know how much additional rate relief she will need.²⁷ Ms. Roan

²³ Joan Roane Exhibit 2, Kibbe Exhibit C

²⁴ Joan Roane Exhibit 2, pg 2, line 9 – pg 4, line 5. Also see; Testimony of Karen Kibbe under the Receiver's and the Executive Director's cross-examinations

²⁵ The Executive Director also presented this same line of cross-examination.

²⁶ Testimonies of Joan Roan and Karen Kibbe under the Receiver's and the Executive Director's cross-examinations

²⁷ Testimony of Joan Roan under the Receiver's and the Executive Director's cross-examinations

did present uncontroverted evidence on how she can reduce CWW's operating costs and operate cheaper than McCoy's long-distance operation.²⁸ She testified that she did not desire to earn a profit from CVWW, but wanted only to serve her community with affordable water.²⁹

There is no evidence in the hearing record that shows that Ms. Roane's goals are not achievable if she is given the opportunity to assume control of the CWW assets. They would be foreclosed if CWW was decertificated and the area turned over to McCoy's exclusive control.

3. RECEIVER HAS PRESENTED NO EVIDENCE OF ANY ATTEMPT TO COMPLY WITH REQUIREMENTS OF 30 TAC 291.115(i)

In response to the termination of utility service provisions of Water Code §13.250(c) and the CCN revocation provisions of §13.254, the TCEQ has adopted 30 TAC 291.115.³⁰ This lengthy rule requires a CCN holder who wishes to terminate service to attempt to market the affected utility system and to present evidence of these attempts at hearing. William Thane, through McCoy, made no effort to market the CCW assets. He unilaterally decided to declare the assets valueless and to abandon them.³¹ Joan Roane presented unchallenged

²⁸ Martin Thompson testified that McCoy's operations were limited to occasionally sending service crews to patch water lines or switch CWW service to a McCoy meter. See: Testimony of Martin Thompson under Joan Roane's cross-examination. Also see: Joan Roane Exhibit 1,

²⁹ Joan Roane Exhibit 1, pg 2, line 3-9 and *Id.* at pg 6, line 21 – pg 8, line 1-8 and pg 9, line 4 – 18.

³⁰ Official notice of this rule was taken at the hearing when Judge Bennett took official notice of all of the Chapters 290 and 291 rules.

³¹ Martin Thompson testified in response to Joan Roane's cross-examination that it would cost over \$1 million dollars to rehabilitate the CWW; therefore, in his opinion, the assets were

evidence from McCoy's own system engineer that the receiver and his witness were incorrect³². The CWW system can easily be rehabilitated so the system has value under the appraisal standards of the statute. Common sense dictates that a water right to 2,000,000 gallons per day from an artesian well has great value in arid South Texas.

All Mr. Thane has presented in this case is a desire to end the CWW receivership and a plan to give its service area to McCoy without compensation. Most of the elements of Rule 291.115 have not been met. The application must be denied.

4. APPLICATION IS AN ATTEMPT TO CIRCUMVENT THE COMPENSATION REQUIREMENTS OF WATER CODE §13.254

Chapter 13 of the Water Code clearly recognizes situations where a utility's service does not conform to TCEQ rules and it becomes necessary to remove the current CCN holder. Water Code §13.254 was enacted to address this situation. §13.254 provides in pertinent part:

Sec. 13.254. REVOCATION OR AMENDMENT OF CERTIFICATE. (a) The commission at any time after notice and hearing may, on its own motion or on receipt of a petition described by Subsection (a-1), revoke or amend any certificate of public convenience and necessity with the written consent of the certificate holder or if it finds that:

valueless. Mr. Thompson candidly admitted that this opinion was based solely on conversations with one identified engineer – Clarence Littlefield, PE., other unidentified engineers and unidentified water system operators in the area. This greatly differed from the qualified engineering reports in Joan Roane Exhibit 2, Kibbe Exhibit C, sealed engineering report of Clarence Littlefield.

³² *Id.*

(1) the certificate holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate;

...
(b) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Section 13.242(c).

(c) If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities with their consent to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(d) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(e) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided. The commission shall ensure that the monetary amount of compensation is determined not later than the 90th calendar day after the date on which a retail public utility notifies the commission of its intent to provide service to the decertified area.

(f) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(g) For the purpose of implementing this section, the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the

amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors. The commission shall adopt rules governing the evaluation of these factors.

(g-1) If the retail public utilities cannot agree on an independent appraiser within 10 calendar days after the date on which the retail public utility notifies the commission of its intent to provide service to the decertified area, each retail public utility shall engage its own appraiser at its own expense, and each appraisal shall be submitted to the commission within 60 calendar days. After receiving the appraisals, the commission shall appoint a third appraiser who shall make a determination of the compensation within 30 days. The determination may not be less than the lower appraisal or more than the higher appraisal. Each retail public utility shall pay half the cost of the third appraisal.

It is clear that the Legislature intended in cases where a CCN must be taken from the current holder that the TCEQ-approved successor utility pay compensation to the prior certificate holder. William Thane cannot unilaterally decide to abandon the CWW water system assets for no compensation to the estate while petitioning the TCEQ to allow his employer to serve the CWW customers without a CCN amendment. This violates his duties under the Water and Practices and Remedies Codes. The commission may decertificate CWW but, if it does, it must follow the compensation requirements of §13.254. The receiver's own witness, Martin Thompson admitted that CWW's water system would be rendered useless and, in his unqualified opinion, valueless, if this application is granted. This testimony alone demonstrates that the application is an illegal attempt to circumvent §13.254 so the receiver's employer does not have to pay

compensation to CWW and/or its shareholders. McCoy may not serve outside the 200-foot dual certification corridors along three McCoy mains until the compensation issue is settled.³³ Merely canceling a CCN does not cure this statutory prohibition.

The application must be denied for failing to follow the statutory plan for changing certificated utilities when existing service is found deficient.

5. GRANTING THE APPLICATION REWARDS MCCOY FOR VIOLATING WATER CODE §13.241(A)

It is uncontroverted that McCoy is only certificated in the Campbellton community to 200-foot corridors along the three McCoy water mains running through CWW's certificated service area.³⁴ It is clear from the testimony of Martin Thompson and Joan Roane that McCoy has extended its service outside these corridors. It is unclear from this record whether McCoy did this at Mr. Thane's direction or on its own. Who authorized the encroachment is not controlling, but the act itself shows McCoy is poaching water customers outside the parameters of Water Code Chapter 13.

Joan Roane presented uncontroverted testimony that if the application is granted, McCoy would continue to violate Water Code 13.241(a) by serving

³³ Water Code §13.254(d)

³⁴ Maps showing the lines and respective utility service areas are found Joan Roane Exhibit 1, Roane Exhibits A and B

where it does not have a CCN. McCoy has, and continues to, interfere with the facilities and operations of the CWW water system in violation of Water Code §13.252.³⁵ The receiver presented no evidence to dispute this. Staff engineer Prabin Basnet disagreed based solely upon an overlay comparison of CCN maps in the TCEQ's records. Mr. Basnet admitted he had made no field inspection of the area and did not know which residences were served by which utility. Mr. Basnet agreed that as long as CWW held a CCN, McCoy could not expand its service everywhere CWW serves. Ms. Roane testified that she believes there are CWW customers outside McCoy's ¼-mile buffer zone. Therefore, Mr. Basnet's calculations will not cover everyone who has been a CWW customer. Even if the application is granted, McCoy cannot serve everyone in Campbellton. The TCEQ cannot grant an unnoticed CCN amendment to McCoy in the context of William Thane's decertification application.

There is no question that McCoy has been violating CWW's CCN without a TCEQ certification order since the receivership was created. It is not in the public interest to allow McCoy to benefit from its misdeeds. This is not a simple case of serving without a CCN where no one is certificated or where no

³⁵ Water Code Sec. 13.252. INTERFERENCE WITH OTHER RETAIL PUBLIC UTILITY. If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the commission may issue an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service.

alternative service is being provided. This fact situation presents a clear case of ongoing of CCN encroachment.

6. ALTERNATE RECEIVER WILLING TO COMPLY WITH WATER CODE AND TCEQ RULES

All CCN-related statutes and rules have a strong “public interest” element to them. CCNs may be granted only when the commission finds the CCN necessary for the service, accommodation, convenience or safety of the public.³⁶ The first duty of any TCEQ receiver is to rehabilitate the utility system to levels sufficient to serve the public. At that point, the receiver is to return the system to the prior owner. No attempt to do this has been made by either of the receivers appointed over this water system.

The receiver suggests that the only way the affected public can obtain adequate service is to give the area to McCoy. While the Executive Director found that McCoy would be capable of serving if CWW's CCN were removed, Mr. Basnet never implied that this was the only way the Campbellton community could be served. Joan Roane has presented a sound plan for her family, minus her brother Ira Roane, to resume control of the CWW water system so it can be improved and operated in compliance with TCEQ rules. A plan of improvements from McCoy's own consulting engineer was presented. Prabin Basnet, the only testifying witness qualified to address Joan Roane's plan, testified on cross-

³⁶ Water Code §13.246(b)

examination that he knew of no reason to challenge Clarence Littlefield's engineering plans. He also did not challenge Ms. Roane's financing plans.

Ms. Roane testified without challenge that she had a TCEQ-licensed operator standing by to run the system while her daughter and grandson finished getting their operator licenses. She said that the CWW customers themselves were offering to help rehabilitate and operate the water system as a community project. Mr. Thompson testified that he hires equipment and contractors to assist McCoy operate its water utility in this area. Ms. Roane can do the same relying on the same pool of suppliers and labor.

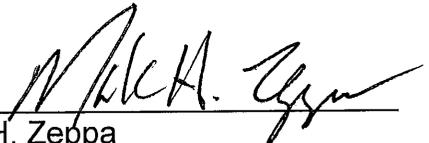
As discussed above, Ms. Roane has planned three independent methods of financing improvements and operation of the water system. Karen Kibbe showed that her financing was not a "pipe dream." The receiver, through attorney Robert Busselman, sought to impeach Ms. Roane's financing plans by suggesting that CWW's corporate charter had been forfeited. It is true that the charter had been suspended at the time of hearing. During the receivership, while the business was in outsiders' hands, the required annual financial filings had not been made. As Ms. Roane testified when questioned by Mr. Busselman, she intended to remedy this oversight. In her opinion, corporate reinstatement would be a simple matter. It was. As demonstrated by Exhibit A to Joan Roane's Closing Arguments and Brief, CWW is currently in good corporate standing with the State of Texas.

Joan Roane's assumption of responsibility for the CWW water system as the third receiver and then the final owner is a viable option to this application. The receiver's plan to abandon a water system without the compensation to the CCN holder required by law violates public policy and two major state Codes.

7. SUMMARY

For the various reasons presented above, William Thane's application must be denied. The PFD must be reversed. Thereafter, if Mr. Thane no longer desires responsibility for the CWW water system, his proper remedy is to petition the court to be relieved. Texas law does not permit Mr. Thane to conspire with McCoy on an unlawful take over of the CWW service area.

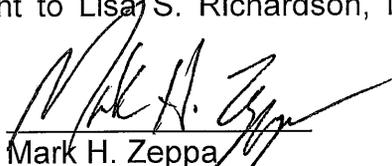
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CERTIFICATE OF SERVICE

I, Mark Zeppa, counsel for Joan Roane, certify that true and correct copies of these Exceptions were served on the presiding ALJ, TCEQ Docket Clerk (original + 11 copies) and all parties of record by facsimile transmission and USPS mail on April 27, 2007. A courtesy copy was sent to Lisa S. Richardson, Natural Resource Division, OAG.



Mark H. Zeppa

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