

CREDIT UNION COMMISSION SPECIAL MEETING MINUTES
Credit Union Department Building
914 East Anderson Lane, Austin, Texas
October 25, 2024

A. CALL TO ORDER -- Chair Jim Minge called the meeting to order at 9:01 a.m. in the conference room of the Credit Union Department Building, Austin, Texas, pursuant to Chapter 551 of the Texas Government Code, and declared that a quorum was present. Other members present included, Liz Bayless, Karyn Brownlee, and David Shurtz; attending by remote connection was Becky L. Ames, Kay Rankin-Swan, Cody Huggins, Beckie Stockstill Cobb and David Bleazard. The Chair introduced Karen L. Miller, General Counsel and Assistant Attorney General, Melissa Juarez. Representing the Department staff were Commissioner Michael S. Riepen, Director of Information and Technology Joel Arevalo, and Executive Assistant Isabel Velasquez. Chair Minge appointed Isabel Velasquez as Recording Secretary. The Chair inquired and the Commissioner confirmed that the notice of the meeting was properly posted with the Secretary of State (**October 15, 2024 TRD# 2024006041 and Revised #2024006035**).

❖ **RECEIVE REQUESTS AND MOTIONS FOR EXCUSED ABSENCES** –

There were none.

❖ **WELCOME GUESTS** Zachary Rhines, Assistant Attorney General representing the department at a SOAH appeal and Casey Bell, attorney for Cooperative teachers.

B. CONSIDERATION OF THE PROPOSAL FOR DECISION OF THE STATE OFFICE OF ADMINISTRATIVE HEARINGS (SOAH) IN THE MATTER OF THE APPLICATION TO AMEND BYLAWS OF COOPERATIVE TEACHERS CREDIT UNION, NO 469-23-07487 -- The Chair referred the members to the two notebooks with the record of the SOAH hearing, Notebook 2, being the hearing transcript and exhibits filed of record, and

Notebook 1 of the pleadings and orders in the case. Notebook 1 contained the Proposal for Decision (PFD) under tab 27.

The Chair recognized Karen Miller, General counsel for the Department to provide a background of the case. She explained when the original order approving the application (which modified the geographical request) was appealed to SOAH under the rules for Credit Union's it was withdrawn.

The appeal reviewed the application de novo. The SOAH judge made the recommendation that the Commissioner enter an order approving the application without any geographical modification. The Commissioner has the exclusive power to grant or deny a bylaw amendment under Section 122.011 of the Credit Union Act. The application must go back to the Commissioner for a final order subject to appeal under 122.007 of the Credit Union Act.

Counsel Miller noted department rules related to a SOAH appeal of a preliminary order on field of membership were amended in 2018. Prior to that time the SOAH recommendation went to the Commissioner, however those amendments changed the process to require the Commission to review the SOAH decision, with the power to adopt or decline to adopt the PFD or Commissioner's decision or to Remand to the Commissioner for further review. This meeting was necessary because the prior rule requiring the Commissioner to review and make a determination within 30 days was changed to require the Commission to review the Proposal For Decision in 30 days. Since the preliminary order was withdrawn when the Credit Union appealed to SOAH, there is no Commissioner's order in the record.

C. GRANT OR DENIAL OF ORAL ARGUMENT– The Commission considered whether to allow oral argument by the representative of the parties. Mr. David Schurtz moved to allow oral argument and Mr. David Bleazard seconded. The motion passed.

The Chair recognized Zachary Rhines. He noted that the expansion request was for all counties in Texas, this was exceptional and unprecedented. Cooperative Teachers Credit Union (CTCU) had only standard services and branches in the area of Tyler Texas. Digital services were similar to those many other credit unions offer. Allowing a geographic expansion from one county to the entire state would undermine the purpose of a geographic field of membership, setting a precedent that almost any credit union could expand statewide, eliminating a geographical requirement. Expansion to the entire state of Texas ignores the requirement in the Act and Rules for Credit Unions that credit union membership is tied to a unifying characteristic and simply being “Texan” does not rise to this level.

Further the applicant is at a capital rate just above 7% and below that subjects a credit union to prompt corrective action.

Lastly, the only option offered for prospective members would be digital services, with no in person offerings, which would not allow availability of service equally for all the member group requested, those who live work or worship in any county of Texas.

The original order limiting the expansion to 8 counties was reasonable, which would allow CTCU the ability to demonstrate they could serve remote populations. The expansion request desires to go from operating in one county with physical locations to serving the entire state of Texas.

There were no questions of Mr. Rhines.

The Chair acknowledged Mr. Bell for rebuttal. Mr. Bell noted the arguments were extensively briefed in the SOAH record. He argued that the rules allowed for appeal of the Commissioner’s decision to SOAH, who weighed all the evidence and found that CTCU met the statutory and regulatory requirements. The standard for

any change to those findings were outlined in Government Code 2001.058. This is the standard to review any final order of the Commissioner. CTCU requests that the statute be followed in the Commissions' recommendation to the Commissioner for a final order.

Mr. Schurtz requested to ask a few questions. He is concerned that the Administrative Law Judge (ALJ) got the burden of proof wrong. In the PFD, on page 9 the last sentence reads that the record does not establish an inability to serve a larger group or that there are operational or management concerns to warrant a geographical limitation". The burden appears wrong, as the burden is that the applicant proves they have the ability to serve a larger group. Why do you think the ALJ made that statement?

Counsel Bell responded the Commissioner's discretion was not one of the requirements which are later in the rule in subpart g. Only the five items in subpart g required proof.

Mr. Schurtz asked how did they demonstrate that the entire state of Texas had unifying characteristics? Attorney Bell referred to the ALJ analysis on Pages 9& 10 of the PFD.

The panel asked if CTCU could demonstrate that a capital ratio of 7% was sufficient to support an ability to serve the entire State of Texas. Counsel Bell introduced his client representative, Tim Miller to address that question. He stated that some credit unions consider capital ratios of 10% to 20% excessive and 7% is the minimum to enter prompt corrective action. CTCU has the technology to add additional members without additional expenses. They could manage asset growth successfully. They already have members across the State of Texas. (it was noted by a commission member, this was because they joined locally, but later moved).

Mr. Shurtz asked Counsel Bell to explain how, when reviewing the ALJ opinion versus that of the Commissioner and Deputy commissioner of the Department, with over 80 years' experience in the Credit Union industry, should the ALJ's opinion have more weight than that of the Commissioners?

Counsel Bell responded that the ALJ looked at the evidence and found that none of the financial information indicated to her there would be an inability to serve the larger group. He referred to Mr. Miller's testimony and documentation in the record. The SOAH findings of fact are reviewed by the Commissioner who makes the decision if he will change any of those.

When asked if it was the Commissioner's decision to agree or disagree with the PFD and to adopt or decline to adopt the PFD was the next step, Counsel Bell agreed, stating the right was reserved to the Commission and Commissioner by rule.

Mr. Schurtz asked what was driving the desire to expand to all counties. Counsel Bell referred to his client, Tim Miller for the answer. He testified that the desire to expand was for opportunity. Smith County only has 250,000 people, while they lend to people of moderate credit or low credit they need to have members with good credit to pay back loans and market and grow the credit union.

A follow up question was asked as to why the expansion approved of 6-8 counties would not give the ability to grow in a safe and sound manner. Mr. Miller answered "no", that Tyler is the only non-rural location in Smith County, in the 8 additional counties there are no major cities with enough population where you can be more selective. It was asked how you expand to all counties in Texas without having "financial deserts". Mr. Miller stated they would start with the greatest opportunity, they would not "go out" to counties with a limited number of people because that wouldn't provide good returns, they would go after the "low hanging fruit first".

Mrs. Kay Swan, commission member, explained she did a little math, if we got 10 members to do an average of a \$50,000 car loan, one from each county, that would be \$128 million of new loans, do you think you could fund those loans and absorb the capital hit from that large of an influx?

Mr. Miller responded they would look to participations but questioned if it was reasonable to get ten people from each county and that growth could be controlled by marketing. It is not reasonable that each county would produce 10 customers because even in Smith county they don't take the Credit Union up on offers.

Commission members asked Mr. Miller to discuss his reduction of staff the last two years. He explained that was due to decreased mortgage lending and they were down 1/3 of staff numbers the last two years. They did not anticipate the expansion would take so long (3 years). It was asked if he considered Longview, population of 81,000 to be an urban area since that county was included in the modified approval. The answer was that it is pretty rural outside of Longview.

Commission members asked about the comment to go after low hanging fruit and that it appeared to sound as if even if the expansion were approved, CTCU did not intend to attempt to serve all 254 counties requested. The response was that they planned to go after a select group of people. They would not offer stamp medallions or payday loans.

Mr. Bleazard, (remote), commented the ALJ in the PFD only focused on the capital ratio, he questioned if the only thing that speaks to the safety and soundness would be the net worth ratio and should the financial ability to serve the larger group be considered in the Commissioner's decision. Counsel Bell responded that financial metrics could play a role. He invited Mr. Miller who said that there were a lot of metrics in the call report but the only one is the statute is the net worth ratio (*it is believed he was referring to the Prompt Corrective Action –federal rule*) and they could successfully serve a broader field of membership, as considered by the ALJ.

At 10:01 a.m. the commission convened into Executive Session in order to discuss legal issues until 10:56 a.m.

The Commission reconvened at 11:02 a.m.

Motion was made for the application and PFD to be remanded to the Commissioner to issue a final order by Ms. Liz Bayless; seconded by Ms. Karyn Brownlee. The motion passed.

DRAFT

ADJOURNMENT – There being no further business for the Credit Union Commission, Chair Minge adjourned the meeting at 11:06 a.m.

Jim Minge
Chairman

Isabel Velasquez
Recording Secretary

Distribution:

Legislative Reference Library

DRAFT