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PUBLIC UTILITY COMMISSION
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OPEN MEETING COVER SHEET

COMMISSIONER MEMORANDUM

MEETING DATE: March 29, 2018

DATE DELIVERED: March 28, 2018

AGENDA ITEM NO.: 27

CAPTION: *Docket No. 47918 - Petition of Primewood Investments, LP to Amend H-M-W Special Utility District's Certificate of Convenience and Necessity in Montgomery County by Expedited Release.*

ACTION REQUESTED: Memo from Commissioner Marquez

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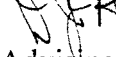
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Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Brandy Marty Marquez
Commissioner Arthur C. D'Andrea

All Parties of Record (*via electronic transmission*)

FROM: David Hrcir 
Commission Advising

RE: *Petition of Primewood Investments, LP to Amend H-M-W Special Utility District's Certificate of Convenience and Necessity in Montgomery County by Expedited Release, Docket No. 47918, March 29, 2018 Open Meeting, Item No. 27.*

DATE: March 28, 2018

Please find enclosed a memorandum containing modifications proposed by Commissioner Marquez to the proposed order in the above-referenced docket. No other commissioner will file a memorandum in this docket.

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Public Utility Commission of Texas

Memorandum

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea

FROM: Commissioner Brandy Marty Marquez 

DATE: March 28, 2018

RE: **Open Meeting of March 29, 2018 – Agenda Item No. 27**
Docket No. 47918; *Petition of Primewood Investments, LP to Amend H-M-W Special Utility District's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

I recommend that the Commission make the following modifications to the proposed order in this docket.

First, I recommend that the Commission correct the proposed order as to what constitutes the tract of land under Texas Water Code § 13.254(a-5) and as to the acreage. The tract of land should be the 1,295 acres identified by Primewood Investments, LP in its application.

Second, I recommend that the Commission clarify that the area to be released from H-M-W Special Utility District's certificate of convenience and necessity (CCN) is three distinct areas within the 1,295-acre tract of land. Those three areas together total 143 acres.

Third, I recommend that the Commission modify proposed finding of fact 18, as follows, based on the record. The utility bears the burden of proof on this issue under 16 Texas Administrative Code (TAC) § 24.113(n)(5).

18. HMW SUD did not identify any~~has no~~ property that is rendered useless or valueless by the decertification.

Fourth, I would recommend that the Commission add the following conclusions of law as conclusions of law 5 through 8 to provide additional legal reasoning and support for the decision. The current proposed conclusions of law and footnotes will need to be renumbered if the following are included.

5. The area or areas to be released from a CCN under TWC § 13.254(a-5) and 16 TAC § 24.113(l) may be smaller in acreage than the tract of land.²

² See generally *Petition of Carma Easton LLC to Amend Creedmoor-Maha Water Supply Corporation's Certificate of Convenience and Necessity in Travis County by Expedited Release*, Docket No. 45902, Order, Findings of Fact Nos. 22-24 and Conclusion of Law No. 5 (Sept. 28, 2016).

6. A tract of land under TWC § 13.254(a-5) and 16 TAC § 24.113(l) must form a connected, uninterrupted whole.³

³ 16 TAC § 24.3(73); *Petition by Carma Easton, LLC to Amend Creedmoor-Maha Water Supply Corporation's Certificate of Convenience and Necessity in Travis County by Expedited Release*, Docket No. 46802, Order, Conclusion of Law No. 5 (Apr. 13, 2017); *see also* *Petition of SLF IV – 114 Assemblage, L.P. to Amend Aqua Texas, Inc.'s Sewer Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 44668, Order at 5-6 (Sept. 11, 2015).

7. The requirement that facilities be committed and dedicated to serve a tract of land is not satisfied just by facilities that are available and capable of providing water service.

8. The requirement that facilities be committed and dedicated, or acts be performed, to serve a tract of land is not satisfied just by facilities that are committed or used, or acts that are performed, for the general provision of service to a certificated area.

Lastly, I would also delegate to Commission Advising and Docket Management staff the authority to modify the order to conform to the *Citation and Style Guide for the Public Utility Commission of Texas* and to make other non-substantive changes to the order for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I look forward to discussing this matter with you at the open meeting.