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PUC DOCKET NO. 48720

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SPINDLETOP RV VENTURES §
PETITION FOR STREAMLINED §
EXPEDITED RELEASE §
FROM CCN NO. 10217 FOR 48.99 §
ACRES IN MEDINA COUNTY §

BEFORE THE PUBLIC UTILITY COMMISSION
FILING CLERK

PUBLIC UTILITY COMMISSION

OF TEXAS

EAST MEDINA COUNTY SPECIAL UTILITY DISTRICT'S

PLEA TO THE JURISDICTION

TO THE HONORABLE COMMISSIONERS:

Now comes, East Medina County Special Utility District (“EMCSUD”), and files this plea to the Commission’s jurisdiction. In support thereof, EMCSUD would respectfully show as follows:

I. INTRODUCTION

EMCSUD is a special utility district duly formed under the laws of the State of Texas and operating under Chapter 65 of the Texas Water Code (TWC). EMCSUD is a “retail public utility” as defined in Chapter 13 of the TWC and holds Certificate of Convenience and Necessity (CCN) No. 10217 authorizing EMCSUD to provide retail water utility service within a portion of Medina County, Texas.

On September 27, 2018, Spindletop RV Ventures LLC (Spindletop) filed a petition for streamlined expedited release of 48.99 acres located within EMCSUD’s CCN area pursuant to TWC § 13.254(a-5) and 16 Tex. Admin. Code § 24.113(I)(TAC).

Spindletop states the Commission has jurisdiction under TWC § 13.254(a-5) because “Medina County does not have a population of more than 45,000 and less than 47,500 but has an estimated population of 50,066 (US Census Bureau, July 1, 2017), and (ii) is adjacent to a county with a population of at least one million (Bexar).”¹ As set forth below, TWC § 13.254(a-5) is not available for property located in counties with a population of more than 45,000 and less than 47,500. According to the most recent federal decennial census, the population of Medina County is more than 45,000 and less than 47,500.

¹ Spindletop RV Ventures Petition for Streamlined Expedited Release from CCN. No. 10217 for 48.99 Acres in Medina County (September 27, 2018).

II. ARGUMENTS & AUTHORITIES

A. Medina County's Current Population Is Established by the 2010 Federal Decennial Census and Deprives the Commission of Jurisdiction under TWC § 13.254(a-5).

Because the Legislature specifically exempted Medina County from being subject to the expedited release provisions of TWC § 13.254(a-5), the Commission lacks jurisdiction over Spindletop's petition. Section 13.254(a-1) of the Texas Water Code provides:

[T]he owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, **and not in a county that has a population of more than 45,500 and less than 47,500.**

(emphasis added). Subsection (a-5) quoted above was added to TWC § 13.254 in 2011.² In adding this provision, the Legislature specifically contemplated that "population" would be determined in accordance with the Code Construction Act. During the second reading before the House of Representatives, the following exchange took place:

REPRESENTATIVE BECK: My only question to you is, are the population brackets based on the 2010 census data?

REPRESENTATIVE CREIGHTON: Yes, that's correct. The population brackets are based on the 2010 census bracket which is consistent with the Code Construction Act, and we want to be very consistent here, and I appreciate that question.³

Under the Code Construction Act, "population" is defined as "the population shown by the most recent federal decennial census." Tex. Gov't Code § 311.005(3).

In 2011, at the time that the Legislature was drafting section (a-5), the last federal decennial census had taken place in 2010. Accordingly, section (a-5) was made applicable only to certain counties in accordance with their population as established by the 2010 decennial

² Acts 2011, 82nd Leg., ch. 1325 (S.B. 573), § 4, eff. Sept. 1, 2011.

³ H.J. of Tex., 82nd Leg., R.S. 5196 (2001), attached hereto as Exhibit "A".

census. According to the 2010 federal decennial census, Medina County has a population of 46,006.⁴

Representative King (who represented Medina County at the time) offered the following floor amendment to subsection a-5: “and not in a county that has a population of more than 45,500 and less than 47,500.”⁵ As the statute reflects, this amendment was adopted. In recognition of the fact that Medina County is not subject to streamlined expedited release under 13.254(a-5), the Commission’s published guidance to landowners excludes Medina County from the list of counties subject to streamlined expedited release.⁶

Nonetheless, in an attempt to invoke the Commission’s jurisdiction, Spindletop cites a 2017 population estimate for Medina County of 50,066. Whatever Medina County’s actual population may be at this time is irrelevant—Medina County’s “population” within the meaning of TWC § 13.254(a-5) is established by the definition of population in § 311.005(3) of the Texas Government Code and is therefore 46,006. A population of 46,006 falls specifically in the window carved out by the last sentence of TWC § 13.254(a-5) and deprives the Commission of jurisdiction.

B. Medina County’s Adjacency to Bexar County Does Not Vest the Commission with Jurisdiction.

Secondly, Spindletop’s pleadings in support of Commission jurisdiction reflect that Spindletop ignores the specific exemption discussed above in reading “a county adjacent to a county with a population of at least one million” as a second basis for Commission jurisdiction. In fact, the relevant statutory language reads:

[T]he owner of a tract of land . . . may petition for expedited release . . . if the landowner's property is located

- in a county with a population of at least one million,
- a county adjacent to a county with a population of at least one million, **or**

⁴ United States Census Bureau, Quick Facts, Medina County, (October 2, 2018, 3:04 p.m.), <https://www.census.gov/quickfacts/fact/table/medinacountytexas/POP010210#viewtop>.

⁵ H.J. of Tex., 82nd Leg., R.S. 5436 (2011), attached hereto as Exhibit B.

⁶ Public Utility Commission of Texas, Streamline Expedited Release Guidance, (October 3, 1:38 p.m.), <https://www.puc.texas.gov/industry/water/utilities/Streamline.pdf>.

- a county with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more,
- **and** not in a county that has a population of more than 45,500 and less than 47,500.

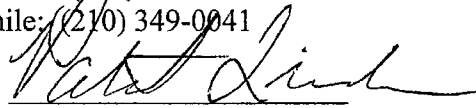
(emphasis added). The use of the word “and” demonstrates that a county with a population of 45,500 and less than 47,500 is exempt from decertification even if it is adjacent to a county with a population of at least one million. Accordingly, while being adjacent to a county with a population of at least one million may suffice to confer jurisdiction in other instances, the 45,500—47,500 exemption precludes jurisdiction over Spindletop’s petition.

III. CONCLUSION & PRAYER

WHEREFORE, PREMISES CONSIDERED, TWC § 13.254(a-5) does not vest the Commission with jurisdiction over Spindletop’s petition. EMCSUD prays the Commission dismiss Spindletop’s petition for lack of subject matter jurisdiction, and for any other relief to which EMCSUD may be entitled.

Respectfully submitted,
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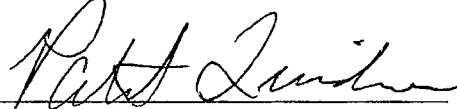


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**ATTORNEYS FOR EAST
MEDINA COUNTY SPECIAL
UTILITY DISTRICT**

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2018, a true and correct copy of the above and foregoing document was served in accordance with 16 TAC § 22.74.



Patrick Lindner

EXHIBIT "A"

Amendment No. 1

Representatives S. King and Chisum offered the following amendment to **SB 1551**:

Amend **SB 1551** (house committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Chapter 13, Code of Criminal Procedure, is amended by adding Article 13.075 to read as follows:

Art. 13.075. CHILD INJURED IN ONE COUNTY AND RESIDING IN ANOTHER. An offense under Title 5, Penal Code, involving a victim younger than 18 years of age, or an offense under Section 25.03, Penal Code, that results in bodily injury to a child younger than 18 years of age, may be prosecuted in the county:

- (1) in which an element of the offense was committed;
- (2) in which the defendant is apprehended;
- (3) in which the victim resides; or
- (4) in which the defendant resides.

SECTION _____. Article 13.075, Code of Criminal Procedure, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Amendment No. 1 was adopted.

SB 1551, as amended, was passed to third reading.

CSSB 573 ON SECOND READING
(Creighton, Eissler, and Cook - House Sponsors)

CSSB 573, A bill to be entitled An Act relating to certificates of public convenience and necessity for water or sewer services.

CSSB 573 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE BECK: My only question to you is, are the population brackets based on the 2010 census data?

REPRESENTATIVE CREIGHTON: Yes, that's correct. The population brackets are based on the 2010 census bracket which is consistent with the Code Construction Act, and we want to be very consistent there, and I appreciate that question.

REMARKS ORDERED PRINTED

Representative Beck moved to print remarks between Representative Creighton and Representative Beck.

The motion prevailed.

(Geren in the chair)

Amendment No. 1

Representative Brown offered the following amendment to **CSSB 573**:

Amend **CSSB 573** (house committee report) in SECTION 2.45 of the bill, in added Section 13.254(a-5), Water Code (page 77, line 11), between "220,000" and the period by inserting "that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more".

Amendment No. 1 was adopted.

Amendment No. 2

Representative Callegari offered the following amendment to **CSSB 573**:

Amend **CSSB 573** (house committee report) as follows:

(1) Strike the recital to SECTION 1 of the bill (page 1, lines 5-7) and substitute "Section 13.254, Water Code, is amended by amending Subsections (a), (a-1), (a-2), and (a-3) and adding Subsections (a-5), (a-6), and (h) to read as follows:".

(2) In SECTION 1 of the bill, in amended Section 13.254, Water Code (page 2, between lines 11 and 12), insert the following:

(a-1) As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility. The fact that a certificate holder is a borrower under a federal loan program is not a bar to a request under this subsection for the release of the petitioner's land and the receipt of services from an alternative provider. On the day the petitioner submits the petition to the commission, the [The] petitioner shall send [deliver], via certified mail, a copy of the petition to the certificate holder, who may submit information to the commission to controvert information submitted by the petitioner. The petitioner must demonstrate that:

(1) a written request for service, other than a request for standard residential or commercial service, has been submitted to the certificate holder, identifying:

(A) the area for which service is sought;

(B) the timeframe within which service is needed for current and projected service demands in the area;

(C) the level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternative provider to provide the service at the same level and manner that is requested from the certificate holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested; and

(F) [~~D~~] any additional information requested by the certificate holder that is reasonably related to determination of the capacity or cost for providing the service;

(2) the certificate holder has been allowed at least 90 calendar days to review and respond to the written request and the information it contains;

(3) the certificate holder:

(A) has refused to provide the service;

(B) is not capable of providing the service on a continuous and adequate basis within the timeframe, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service, or in the manner reasonably needed or requested by current and projected service demands in the area; or

(C) conditions the provision of service on the payment of costs not properly allocable directly to the petitioner's service request, as determined by the commission; and

(4) the alternate retail public utility from which the petitioner will be requesting service possesses the financial, managerial, and technical capability to provide ~~is capable of providing~~ continuous and adequate service within the timeframe, at the level, at the cost, and in the manner reasonably needed or requested by current and projected service demands in the area.

(3) In SECTION 1 of the bill, in amended Section 13.254, Water Code (page 2, between lines 22 and 23), insert the following:

(a-3) Within 60 ~~90~~ calendar days from the date the commission determines the petition filed pursuant to Subsection (a-1) to be administratively complete, the commission shall grant the petition unless the commission makes an express finding that the petitioner failed to satisfy the elements required in Subsection (a-1) and supports its finding with separate findings and conclusions for each element based solely on the information provided by the petitioner and the certificate holder. The commission may grant or deny a petition subject to terms and conditions specifically related to the service request of the petitioner and all relevant information submitted by the petitioner and the certificate holder. In addition, the commission may require an award of compensation as otherwise provided by this section. If the certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area the petitioner seeks to have released, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(4) In SECTION 1 of the bill, in amended Section 13.254, Water Code (page 3, between lines 13 and 14), insert the following:

(h) A certificate holder that has land removed from its certificated service area in accordance with this section may not be required, after the land is removed, to provide service to the removed land for any reason, including the violation of law or commission rules by a water or sewer system of another person.

(5) Add the following appropriately numbered SECTIONS to the bill and renumber the subsequent SECTIONS of the bill accordingly:

SECTION ____ . Section 13.245, Water Code, is amended by amending Subsection (b) and adding Subsections (c-1), (c-2), and (c-3) to read as follows:

(b) Except as provided by Subsections [Subsection] (c), (c-1), and (c-2), the commission may not grant to a retail public utility a certificate of public convenience and necessity for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(c-1) If a municipality has not consented under Subsection (b) before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvements plan required by Section 13.244(d)(3) or a subdivision plat, the commission may grant the certificate of public convenience and necessity without the consent of the municipality if:

(1) the commission makes the findings required by Subsection (c);

(2) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the commission before the 180th day after the date the formal request was made; and

(3) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

(A) comply with the municipality's service extension and development process; or

(B) enter into a contract for water or sewer services with the municipality.

(c-2) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the certificate of public convenience and necessity to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(c-3) The commission must include as a condition of a certificate of public convenience and necessity granted under Subsection (c-1) or (c-2) that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

SECTION _____. Sections 13.2451(a) and (b), Water Code, are amended to read as follows:

(a) Except as provided by Subsection (b), if [H] a municipality extends its extraterritorial jurisdiction to include an area certificated to a retail public utility, the retail public utility may continue and extend service in its area of public convenience and necessity under the rights granted by its certificate and this chapter.

(b) The commission may not extend a municipality's certificate of public convenience and necessity beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects

to exclude some or all of the landowner's property within a proposed service area in accordance with Section 13.246(h). This subsection does not apply to a transfer of a certificate as approved by the commission. [A municipality that seeks to extend a certificate of public convenience and necessity beyond the municipality's extraterritorial jurisdiction must ensure that the municipality complies with Section 13.241 in relation to the area covered by the portion of the certificate that extends beyond the municipality's extraterritorial jurisdiction.]

SECTION _____. Section 13.246(h), Water Code, is amended to read as follows:

(h) Except as provided by Subsection (i), a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed service area may elect to exclude some or all of the landowner's property from the proposed service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of a new application for a certificate of public convenience and necessity or for an amendment to an existing certificate of public convenience and necessity. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the application shall be modified so that the electing landowner's property is not included in the proposed service area. An applicant for a certificate of public convenience and necessity that has land removed from its proposed certificated service area because of a landowner's election under this subsection may not be required to provide service to the removed land for any reason, including the violation of law or commission rules by the water or sewer system of another person.

SECTION _____. The changes made by this Act to Sections 13.245, 13.2451, 13.246, and 13.254, Water Code, apply only to:

(1) a retail public utility's application for a certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of a municipality that is made on or after the effective date of this Act;

(2) an extension of a municipality's certificate of public convenience and necessity for a service area in the extraterritorial jurisdiction of the municipality on or after the effective date of this Act; and

(3) a petition to release an area from a certificate of public convenience and necessity that is made on or after the effective date of this Act.

Amendment No. 3

Representatives Lucio and Oliveira offered the following amendment to Amendment No. 2:

Amend Amendment No. 2 by Callegari to **CSSB 573** (house committee report) as follows:

(1) On page 3, line 15 of the amendment, strike "If" and substitute "Except in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to that county, if".

(2) On page 4, lines 2-3 of the amendment, strike "and (c-3)" and substitute "(c-3), and (c-4)".

(3) On page 5, between lines 16 and 17 of the amendment, insert the following:

(c-4) Subsections (c-1), (c-2), and (c-3) do not apply to a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county.

(4) On page 5, line 30 of the amendment, through page 6, line 1 of the amendment, strike "This subsection does not apply to a transfer of a certificate as approved by the utility commission." and substitute "This subsection does not apply to:

(1) a transfer of a certificate as approved by the commission; or

(2) an extension of extraterritorial jurisdiction in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to such a county."

Amendment No. 3 was adopted.

Amendment No. 2, as amended, was adopted.

Amendment No. 4

Representative Walle offered the following amendment to **CSSB 573**:

Amend **CSSB 573** (house committee printing) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, lines 6-7), strike "Subsections (a-5) and (a-6)" and substitute "Subsections (a-5), (a-6), and (a-7)"

(2) In SECTION 1 of the bill in amended Section 13.254, Water Code (page 3, between lines 13-14), add the following:

(a-7) The utility shall include with the statement of intent provided to each landowner or ratepayer a notice of:

(1) a proceeding under this section related to certification or decertification;

(2) the reason or reasons for the proposed rate change; and

(3) any bill payment assistance program available to low-income ratepayers.

Amendment No. 4 was adopted.

HR 1315 - ADOPTED

(by S. King, et al.)

Representative S. King moved to suspend all necessary rules to take up and consider at this time **HR 1315**.

The motion prevailed.

The following resolution was laid before the house:

HR 1315, Honoring the achievements of chef and restaurateur Tom Perini of Buffalo Gap.

HR 1315 was read and was adopted.

On motion of Representative Sheffield, the names of all the members of the house were added to **HR 1315** as signers thereof.

EXHIBIT “B”

SB 573 ON THIRD READING
(Creighton, Eissler, and Cook - House Sponsors)

SB 573, A bill to be entitled An Act relating to certificates of public convenience and necessity for water or sewer services.

Amendment No. 1

Representative T. King offered the following amendment to **SB 573**:

Amend **SB 573** (house committee printing) in SECTION 1 of the bill, in added Section 13.254(a-5), Water Code (page 3, line 4), between "220,000" and the period, by inserting ", and not in a county that has population of more than 45,500 and less than 47,500".

Amendment No. 1 was adopted.

Amendment No. 2

Representative Phillips offered the following amendment to **SB 573**:

Amend **SB 573** on third reading as follows:

(1) In Section 13.254(a-3), Water Code, as amended on second reading by Amendment No. 2 by Callegari and Amendment No. 3 by Lucio III, strike "Except in a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to that county, if the certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area the petitioner seeks to have released, the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.".

(2) Add a new appropriately numbered SECTION to the bill and renumber subsequent SECTIONS accordingly:

SECTION ____ . Section 13.254, Water Code, is amended by adding Subsections (a-8), (a-9), and (a-10) to read as follows:

(a-8) If a certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area a petitioner seeks to have released under Subsection (a-1), the commission is not required to find that the proposed alternative provider is capable of providing better service than the certificate holder, but only that the proposed alternative provider is capable of providing the requested service.

(a-9) Subsection (a-8) does not apply to a county that borders the United Mexican States and the Gulf of Mexico or a county adjacent to a county that borders the United Mexican States and the Gulf of Mexico.

(a-10) Subsection (a-8) does not apply to a county:

(1) with a population of more than 30,000 and less than 35,000 that borders the Red River; or

(2) a county with a population of more than 100,000 and less than 200,000 that borders a county described by Subdivision (1).