

Control Number: 48720



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DOCKET NO. 48720

RECEIVED

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

PUBLIC UTILITY COMMISSION AM 10: 56  
COMMISSION  
PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

**COMMISSION STAFF'S RESPONSE TO EAST MEDINA COUNTY SPECIAL UTILITY DISTRICT'S PLEA TO THE JURISDICTION**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Commission Staff's Response to East Medina County Special Utility District's Plea to Jurisdiction and would show the following:

**I. BACKGROUND**

On September 27, 2018, Spindletop RV Ventures LLC (Spindletop) filed a petition for streamlined expedited release (SER) of 48.99 acres located within East Medina County Special Utility District's (EMCSUD) certificate of convenience and necessity (CCN) No. 10217 (Petition) pursuant to TWC § 13.254(a-5) and 16 Tex. Admin. Code § 24.245(l)(TAC).<sup>1</sup>

On October 4, 2018, EMCSUD filed a Plea to the Jurisdiction alleging that Spindletop "states the Commission has jurisdiction under TWC § 13.254(a-5)"<sup>2</sup> EMCSUD also claims that "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."<sup>3</sup> A motion to dismiss under 16 TAC § 22.181(e)(3) provides that "the party that initiated the proceeding or any other affected party shall have 20 days from the date of receipt to respond to a motion to dismiss." Therefore, this pleading is timely filed.

<sup>1</sup> As of Oct. 17, 2018, 16 TAC § 24.113 has been renumbered as 16 TAC § 24.245.

<sup>2</sup> East Medina County Special Utility District's Plea to the Jurisdiction at 1 (Oct. 4, 2018).

<sup>3</sup> *Id.* at 2

## II. JURISDICTION

Spindletop's Petition does not claim that Section 13.254(a-5) vests the Commission with jurisdiction in this matter. Spindletop's Petition simply states that "the Petitioner requests that the PUC amend EMCSUD CCN No. 10217 by streamlined expedited release under Texas Water Code § 13.254(a-5) and 16 Tex. Admin. Code § 24.245(1) and release the Petitioner's Property from EMCSUD CCN No. 10217."<sup>4</sup> Subchapter G, Chapter 13, Texas Water Code, conveys to the Commission jurisdiction over the approval, amendment, and decertification process for CCNs, including by SER. Spindletop is requesting the decertification of 48.99 acres located within EMCSUD CCN No. 10217 by SER. Consequently, the Commission has jurisdiction over Spindletop's Petition.

## III. RELIEF

Section 13.254(a-5) contains an exclusion to the SER provision for a county that has a population of more than 45,500 and less than 47,500. The Code Construction Act<sup>5</sup> defines "population" as "the population shown by the most recent federal decennial census."<sup>6</sup> Consequently, the fact that the U.S. Census Bureau estimates Medina County's population as of July 1, 2017 to be approximately 50,066 is irrelevant for purposes of determining whether Spindletop is entitled to the relief being sought. While Spindletop has stated a claim upon which relief can be granted by the Commission, Section 13.254(a-5) prevents Spindletop from being entitled to that relief because the population of Medina County as of the 2010 federal decennial census was more than 45,500 and less than 47,500.

## IV. CONCLUSION

For the reasons stated above, EMCSUD's Plea to the Jurisdiction is not the proper procedural mechanism to achieve the dismissal of Spindletop's Petition because the Commission has jurisdiction in this case; however, Commission Staff respectfully requests the entry of an Order dismissing Spindletop's Petition because the facts as specified in the Petition demonstrate as a

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<sup>4</sup> Spindletop RV Ventures Petition for Streamlined Expedited Release from CCN. No. 10217 for 48.99 Acres in Medina County at 2 (September 27, 2018).

<sup>5</sup> Chapter 311, Tex. Gov't Code.

<sup>6</sup> Tex. Gov't Code § 311.005(3).

matter of law that Spindletop is not entitled to the relief requested under TWC §13.254(a-5) and 16 Tex. Admin. Code §24.245(1).

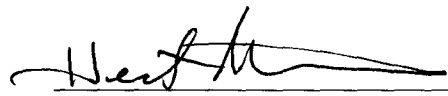
Dated: October 22, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

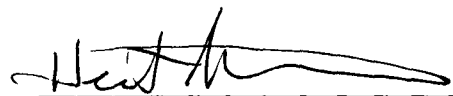
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**DOCKET NO. 48720  
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on October 22, 2018, in accordance with 16 TAC § 22.74.

  
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Heath D. Armstrong