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DOCKET NO. 49280

PETITION OF PREVILLAGE, LLC TO §
AMEND HMW SPECIAL UTILITY §
DISTRICT'S WATER CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
IN HARRIS COUNTY BY EXPEDITED §
RELEASE

2019 JUL 24 AM 9:56
PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

**COMMISSION STAFF'S AMENDED RESPONSE TO HMW'S MOTION TO DISMISS
AND PROPOSED PROCEDURAL SCHEDULE**

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Amended Response to HMW's Motion to Dismiss and Proposed Procedural Schedule. In support thereof, Staff shows the following:

I. BACKGROUND

On March 1, 2019, Quadvest, LP (Quadvest), filed a petition on behalf of Previllage, LLC, to amend HMW Special Utility District's ("HMW") water CCN (10342) in Harris County by expedited release,¹ under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(l).

On April 24, 2019, Order No. 2 was issued finding the petition deficient.² On May 3, 2019, Quadvest supplemented the application.³ Staff filed a supplemental recommendation on administrative completeness on June 3, 2019 recommending that the supplemented application be found sufficient.⁴

However, between the time Quadvest filed its original application on March 1, 2019, and then filed its supplemental application on May 3, 2019, HMW intervened⁵ and filed a motion to dismiss the petition.⁶ Order No. 4,⁷ filed on June 11, 2019, ordered Staff to reply to HMW's

¹ See Petition (Mar. 1, 2019).

² See Order No. 2 (Apr. 24, 2019).

³ See Quadvest's Resubmittal With Correct County (May 3, 2019).

⁴ See Staff's Supplemental Recommendation on Administrative Completeness (Jun. 3, 2019).

⁵ See HMW's Notice of Appearance and Motion to Intervene (Apr. 2, 2019).

⁶ See HMW's Motion to Strike and Dismiss Application to Decertify (Apr. 2, 2019).

motion to dismiss and Quadvest's response, as well as file a proposed procedural schedule, by July 19, 2019. Therefore, this pleading is timely.

II. RESPONSE & RECOMMENDATION

As stated above, Quadvest supplemented its petition to correct the deficiencies outlined by the ALJ in Order No. 2.⁸ Therefore, Staff respectfully requests that the petition be found administratively complete for further processing.

In Quadvest's supplemental application as well as its original application, an affidavit by an authorized representative stated that it was not receiving water from HMW or any water service provider; that it has not requested water service from HMW; that a review of documentation shows that an account with HMW does not exist for the property; and that a review of surveys and deed records for the property show no utility easements nor indicate that any water lines or other facilities of HMW are located on the property; and, finally, that no work by HMW to extend service to the property has ever been observed.

HMW in its motion to dismiss did not present any evidence that Quadvest was receiving service nor present any examples to constitute "receiving" water. Further, Staff notes the distinction between "receiving" water and "providing" water. In *Tex. General Land Office v. Crystal Clear Water Supply Corp.*, the court made the distinction between the broad scope of TWC § 13.002 of a utility "providing" water service and the more narrow construction in TWC § 13.254(a-5) of a property "receiving" water service.⁹ Because HMW has not presented any evidence or affidavit to support its motion to dismiss, its motion to dismiss should be denied.

III. PROPOSED PROCEDURAL SCHEDULE

In accordance with Staff's administrative completeness recommendation, Staff proposes that the below procedural schedule be used. Under TWC § 13.254(a-6), there is an expedited statutory deadline of 60 days for approval that begins once the Administrative Law Judge (ALJ)

⁷ Order No. 4 (Jun. 11, 2019).

⁸ Order No. 2 (Apr. 24, 2019).

⁹ *Tex. General Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 137 (Tex. App. – Austin 2014, pet. denied).

issues an order finding an application administratively complete. Therefore, Staff requests that the ALJ populate the following deadlines accordingly when the ALJ issues that order.

Event	Date
Order regarding administrative completeness of the Petition	Date of Order
Deadline for HMW and any other intervenors to file a response to the administratively complete Petition	Seven (7) days from date of the Order deeming the Petition administratively complete
Deadline for Commission Staff's recommendation on final disposition	Seven (7) days from the deadline for HMW and any other intervenors to file a response
Deadline for Quadvest to file a reply to both HMW's response and Commission Staff's recommendation on final disposition ¹⁰	Seven (7) days from the deadline for Commission Staff to file its final recommendation
Sixty (60) day administrative approval	Sixty (60) days from the Order deeming the petition administratively complete

IV. CONCLUSION

Staff respectfully requests that an order be issued that finds Quadvest's petition to be administratively complete, that HMW's motion to dismiss be denied and that the above proposed procedural schedule be adopted.

¹⁰ Staff notes that such a reply must be limited to briefing and argument. Submission of any additional proof will be deemed a new petition.

Dated: July 24, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on July 24, 2019,
in accordance with the requirements of 16 TAC § 22.74.



Steven M. Gonzalez