



Control Number: 49280



Item Number: 28

Addendum StartPage: 0

DOCKET NO. 49280

Petition of Previllege, LLC to Amend HMW	*	Before the Public Utility Commission
Special Utility District's Water Certificate of	*	of Texas
Convenience and Necessity in Harris County	*	
by Expedited Release	*	

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Response by Intervenor HMW Special Utility District of Harris and Montgomery Counties
 to Commission Staff Recommendation on Final Disposition

Comes now the Intervenor, HMW Special Utility District of Harris and Montgomery Counties("HMW"), filing its Response to Commission Staff Recommendation on Final Disposition, and states as follows:

I.

The Texas Public Utility Commission("PUC") granted HMW's Motion to Intervene on April 24, 2019.

II.

HMW holds Certificate of Convenience No. 10342(the "CCN"), a portion of which the Applicant seeks to decertify. HMW is a retail public utility as defined by the Texas Water Code (the "Code").

III.

The Commission Staff's recommendation was filed on September 25, 2019.

Unfortunately, the effect of the Commission Staff's filing is to recommend nothing at all. The staff position wholly declines to address any issue raised by the Intervenor or, more importantly, by the facts. Its unstated position is to disregard all of the procedural and substantive issues raised by the documents on file, to say nothing of its obligation to gather and consider applicable law and additional relevant facts.

As such, the Commission Staff's recommendation should be disregarded in its entirety. HMW's arguments on the merits of the Petition are set forth below.

IV.

Notwithstanding the responses of Quadvest, L.P("Quadvest"), through its counsel, the proposed decertification continues to be incurably defective on its face, as well as unlawful, in that conflicting sworn affidavits have been filed with the PUC in support of the Petition, by the same individual. The two documents are directly contradictory, and thus neither can be either worthy of belief or a lawful statutory basis for decertification. The plain meaning of former Code Section 13.254(a-5) requires a sworn affidavit. It goes without saying that two affidavits containing substantive statements in direct conflict cannot possibly meet that requirement.

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Not surprisingly, neither the Commission Staff nor Quadvest cite a Commission holding or judicial decision that contradictory sworn affidavits may be the basis for decertification of an existing property right under former Code Section 13.254.

Alternatively, the Petition is not and cannot be made administratively complete by correction. The filing of an additional substantive, but clearly contradictory, sworn affidavit about the property sought to be decertified cannot transform the prior affidavit, which is part of the record, to a document that supports administrative completeness.

Finally, the Commission staff's comment regarding "providing" rather than "receiving" water service is irrelevant to HMW's Motion to Dismiss, which is pending, because it does not address either the presence or the veracity of contradictory affidavits in the same proceeding. Its additional comment that HMW has presented no evidence is equally without merit, because the two affidavits are in fact the evidence.

Accordingly, PUC should grant HMW's Motion to Dismiss.

V.

Further, and alternatively, Code Subsections 13.254(a-1) through (h) have been revised by the 86th Texas Legislature in a manner that affects both the process for and the amount of compensation to be provided to the CCN holder in the event of decertification. See C.S.S.B. 2272, which was adopted by both houses of the legislature and signed by the Governor on June 10, 2019. The revisions are now effective as of September 1, 2019.

HMW asserts that the Petitioner almost certainly knew that the legislation ultimately adopted was pending before the Texas Legislature prior to the filing of the petition, and that it moved to take advantage of existing law, prior to passage of the revision, by immediately filing its petition with the knowledge and assistance of Quadvest.

Documents contained in the record also clearly show that Quadvest assisted in the filing of the Petition and strongly suggest that it was in fact its driving force.

Regardless of the Petitioner's knowledge of the pending change in law and public policy, the PUC should not allow the Petitioner to subvert the intent of the Texas Legislature by allowing either the Petitioner or Quadvest to benefit from a statutory scheme that has now expired. That the case for a Petition that is based on the contradictory affidavits that are the sole purported legal basis for the PUC's consideration of the Petition.

Accordingly, the Petition should be dismissed, or alternatively denied on the merits.

VI.

In addition, and alternatively, both the Petition itself and the evidence to be shown by HMW, including evidence likely to become available through discovery, will demonstrate that Quadvest is (1) the actual Petitioner party in interest, (2) the *de facto* applicant for decertification, and (3) the intended provider of water service to the tract sought to be decertified.

Quadvest is also a retail public utility as defined by the Code, and the holder of CCN No. 11612. As such, it is prohibited by Code Section 13.252 from extending or attempting to extend retail water

service to “any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of convenience and necessity...”.

VII.

The Commission has a duty to apply the Texas Water Code in its entirety. More specifically, its duty is to apply and enforce Code Section 13.252, in addition to the relevant portions of Code Section 13.254. It may not focus solely on a single section of the Water Code, but must instead apply the entire regulatory scheme intended by the Texas Legislature. See *F.F.P Operating Partners, L.P. v. Duenez*, 237 SW3d 680, 683(Tex. Sup. 2007).

In doing so, the Commission is also subject to the Texas Code Construction Act, set forth in Government Code Chapter 311, to the extent that statutory provisions are arguably in conflict. Based on these facts, Government Code Sections 311.021(2) and (5) have particular application. Specifically, the Commission is directed to (1) apply both Water Code Sections 13.252 and 13.254, and (2) prefer the public interest over any private interest.

In that regard, the Commission should note that HMW is a governmental entity that lawfully holds a CCN, which is also a vested property right, that is intended to secure water service for a portion of the public that it serves. In contrast, the facts show that Quadvest is a private entity that is attempting, through a surrogate, to deprive HMW of a portion of its CCN. By doing so, Quadvest violates Water Code Section 13.252, which the Commission is duty bound to apply.

In further contrast, Quadvest does not own the property sought to be decertified. Thus, it is not in the class of landowners intended to benefit from the public policy adopted by the relevant portions of Water Code Section 13.254, including now former Section 13.254(a-5).

Thus, in any analysis that harmonizes the interpretation of Water Code Sections 13.252 and 13.254, HMW represents the public interest, and Quadvest is the private interest, as those terms are used in Government Code Section 311.21(5).

VIII.

The evidence has shown, and any additional evidence obtained through discovery will almost certainly show, that the Petition is in fact part of an effort by Quadvest to extend retail water service to portions of the CCN currently held by HMW. Indeed, the sole logical explanation for the involvement of Quadvest in the filing and prosecution of the Petition, which has been ongoing, is its interest in providing such service. Thus, the Petition is submitted not for the purpose intended by the relevant portions of Code Section 13.254, but instead to facilitate an effort Quadvest, L.P. to expand its own retail water service at the expense of HMW, in violation of Code Section 13.252.

IX.

Further, and alternatively, HMW has requested discovery in the proceeding, as provided by Commission rules, that is directed to further develop facts relevant to its allegations pertaining to Quadvest in regard to Water Code Section 13.252. HMW’s requests are reasonable, timely and clearly not burdensome. If the Commission declines to dismiss the Petition and elects to determine the Petition on its merits, it should grant HMW’s discovery requests and require that responses thereto be provided in full, and immediately, to discharge its responsibility to provide a timely decision.

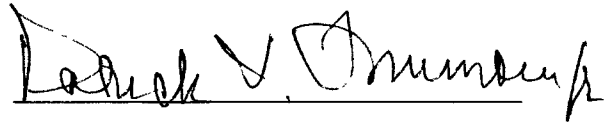
X.

Further, and alternatively, the PUC is authorized to and should prohibit the extension of such service by Quadvest and its interference with the actual or intended operation of HMW's utility system within its CCN. *See Water Code Section 13.252*. As an alternate remedy, the PUC should issue orders that prohibit such extensions of service by Quadvest or any affiliated entity. *Id.*

Wherefore, premises considered, HMW moves the PUC to dismiss the Petition, or alternatively to deny it on its merits, or alternatively to grant HMW's discovery requests, and to grant such other and further relief as the Commission deems just under applicable law.

Respectfully submitted,

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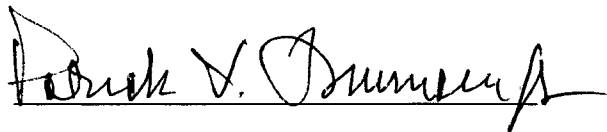
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Certificate of Service

I hereby certify that a true copy of the foregoing Motion to Intervene was filed electronically and served on the Applicant and the PUC staff on this 11th day of October, 2019 as further provided by 16 TAC Section 22.74.



Patrick F. Timmons, Jr.