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

ORDER NO. 7
DENYING MOTION TO STRIKE AND DISMISS, AND DENYING MOTION TO
DIRECT RESPONSES TO DISCOVERY

This Order denies the motion filed by HMW Special Utility District on April 2, 2019, requesting the striking and dismissal of the application filed by Previllage, LLC for expedited release of a tract of land within the boundaries of HMW's water certificate of convenience and necessity (CCN) number 10342 in Harris County, and denies the motion filed by HMW on September 17, 2109 to direct responses to discovery. In this Order, all references to the Texas Water Code (TWC) are to the version in effect at the time Previllage's petition was filed, except where specifically noted otherwise.

I. Background

On March 1, 2019, Previllage filed the petition at issue in this proceeding. In its petition, as amended, Previllage requests expedited release of approximately 50 acres of land located within the boundaries of HMW's water CCN number 10342 in Harris County.

On April 2, 2019, HMW filed two motions: (1) a motion to intervene; and (2) a motion to strike and dismiss Previllage's petition. The motion to intervene was unopposed and was granted on April 24, 2019. In its motion to dismiss, HMW asserts that the Commission should dismiss Previllage's petition because: (1) Previllage incorrectly stated in its affidavit that the tract of land was in Montgomery County rather than Harris County; and (2) the attestations contained in the affidavit are false. On May 3, 2019, Previllage filed an amended petition, correctly naming Harris County as the location of the tract of land to be released.

In Order No. 4 filed on June 11, 2019, responses were requested from Previllage and Commission Staff regarding HMW's motion to strike and dismiss. On July 10, 2019, Previllage filed its response, stating that the revised affidavit filed along with the amended petition on

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May 3, 2019 corrected any errors contained in the original petition, and that HMW provided nothing in its motion to contradict the evidence presented by Previllage. Commission Staff filed its response on July 19, 2019, stating that HMW provided no evidence to rebut the factual attestations in Previllage's affidavit, as revised and filed with the amended petition on May 3, 2019.

On July 23, 2019, HMW filed a reply to the responses. In its reply, HMW maintains its assertion that the error contained in the original affidavit is fatal to the petition. HMW makes the following additional assertions: (a) the petitioner cannot not use expedited release to deprive HMW of service area held under a CCN, because the CCN it is a vested property right; (b) the TWC amendments that became effective on September 1, 2019, preclude the granting of the petition; and (c) the facts of the case reveal that the petition is an attempt by Quadvest, L.P., a water utility and CCN holder to provide service to the requested area.

On September 17, 2019, HMW filed a motion to direct responses to discovery. In its motion, HMW asserts that the Commission is fully authorized to require and regulate discovery in all proceedings before it.

II. Motion to Strike and Dismiss

Although HMW did not state the legal basis for the motion to strike and dismiss, the administrative law judge (ALJ) considers this motion under 16 Texas Administrative Code (TAC) §§ 22.181 and 22.182. In order to obtain expedited release under TWC § 13.254(a-5) and 16 TAC § 24.245(l), a landowner must show, verified through a notarized affidavit, that the land in question is: (a) at least 25 acres in size; (b) is not receiving water service; and (c) is located in a qualifying county. Through its amended petition and affidavit filed on May 3, 2019, Previllage appears to have complied with these requirements; at least sufficiently to overcome a motion to dismiss under 16 TAC § 22.181 or a motion for summary decision under 16 TAC § 22.182.

The arguments brought by HMW likewise do not warrant granting a motion to dismiss or a motion for summary decision. Previllage was afforded an opportunity to cure its original petition, and it did so on May 3, 2019. HMW's argument that Previllage cannot correct what appears to be an inadvertent error in the original affidavit is without merit. Dismissing the petition, rather than providing the petitioner an opportunity to cure, does nothing more than cause unneeded

delay and offend judicial economy, as Previllage, if the petition were dismissed, could have filed a new petition on May 3, 2019.

HMW also alleges that the attestations contained within Previllage's affidavit are false. However, as both Previllage and Commission Staff point out in their responses, HMW never identifies what is false and provides no supporting evidence for this allegation. As such, a mere allegation of untruthfulness cannot support a finding of dismissal in the present case.

HMW's remaining arguments provide no additional basis for dismissal. Previllage, through its petition for expedited release, appears to be using TWC 13.254(a-5) as intended—the decertification of a tract of land from the service area of a CCN holder, who in this case is HMW. Whether TWC 13.254 infringes on a vested property right is not for the Commission to consider, as HMW's argument, in this regard, extends beyond the boundary of Commission jurisdiction. The issue of what utility, if any, will ultimately serve the requested area after the granting of expedited release is not relevant to the question of whether the landowner is entitled to expedited release. Finally, the recent amendments to the TWC, effective September 1, 2019, cannot be considered in the petition's analysis, regardless of the petitioner's motives, because the petition was filed before September 1, 2019.¹

Accordingly, the ALJ finds the petition should be allowed to continue in its current form, and the motion to strike and dismiss is denied.

III. Motion to Direct Discovery

With regard to HMW's motion to direct responses to discovery, the ALJ finds that, because petitions for expedited release under TWC § 13.254 and 16 TAC § 24.245(*l*) are not contested cases and no opportunity for a hearing exists, a motion to direct responses to discovery is inapplicable in the present case.²

Therefore, HMW's motion to direct responses to discovery is denied.

¹ See, Act of May 26, 2019, 86th Leg. R.S., S.B. 2272, § 6.

² See, *Petition of Sunbelt Estates, LLC to Amend the City of Elmendorf's Water Certificate of Convenience and Necessity in Bexar County by Expedited Release*, Docket No. 49564, Order (Sep. 27, 2019).

Signed at Austin, Texas the 20th day of November 2019.

PUBLIC UTILITY COMMISSION OF TEXAS



CHRISTOPHER OAKLEY
ADMINISTRATIVE LAW JUDGE

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