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PUBLIC UTILITY COMMISSION

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| Petition of Previllage, 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 | * | |

**Motion for Rehearing by HMW Special Utility District of Harris and Montgomery Counties
of Commission Order on Final Disposition**

Comes now the Intervenor, HMW Special Utility District of Harris and Montgomery Counties("HMW"), filing its Motion for Rehearing of the Commission's Order 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 Petitioner seeks to decertify. HMW is a retail public utility as defined by the Texas Water Code (the "Code").

In addition, the record strongly indicates that Quadvest, L.P.("Quadvest") is (1) the actual Petitioner party in interest, (2) the *de facto* petitioner 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.

III.

The Commission issued its final order for disposition of this petition on December 13, 2019. Its ruling has the further effect of sustaining the ruling of the Commission's administrative law judge to dismiss all issues presented to that officer by HMW. Accordingly, the Commission's order is a final order that disposes of all issues presented to the Commission, and is now properly the subject of this Motion for Rehearing.

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IV.

Notwithstanding the responses of the Commission staff and Quadvest, through its counsel, the subject petition to decertify continues to be incurably defective on its face, as well as unlawful, in that conflicting sworn affidavits have been filed with the Commission in support of the Petition, by the same individual. As evidence, the two documents are directly contradictory in that the purported property owner states under oath and submitted as evidence supporting the application that he owns the same property, (1) in two counties, and (2) one inside and one outside of the CCN held by HMW.

Thus, neither affidavit is or 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.

Further, the two affidavits are the sole evidence before the Commission on whether the subject property can be decertified from HMW's CCN.

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

Moreover, as evidence, the first of the two affidavits cannot be made to disappear from the record of the Petition, or its substance as evidence diminished through the process of requiring administrative completeness. While a Petitioner may file an amended pleading in a contested proceeding before the Commission, the filing of an additional substantive, but clearly contradictory, sworn affidavit about the property sought to be decertified cannot diminish the prior affidavit, which continues to be part of the record, to a superfluous document with no value as evidence. If anything, its value as evidence increases because of its contradiction of the second affidavit. To summarize, one document cannot supplant the other, but each are contradictory. At the very least, the Commission has a duty to explain how the second of the two affidavits is worthy of belief, while the first one is not.

Finally, the Commission staff's response on this issue simply does not address either the presence or the veracity of contradictory affidavits in the same proceeding. Its comment that HMW has presented no evidence for its position is off the point and completely without merit because the two affidavits are in fact the only relevant evidence. Petitioner bears the burden of proof to show a right to decertification, which it clearly has not discharged. HMW need not offer any evidence at all.

Accordingly, the Commission should vacate its final order and grant HMW's Motion to Dismiss.

V.

In addition, and alternatively, the record of this proceeding shows, and the evidence likely to become available through discovery, which the Commission has denied, will demonstrate that Quadvest is (1) the actual Petitioner party in interest, (2) the *de facto* Petitioner for decertification, and (3) the intended provider of water service to the tract sought to be decertified.

Nevertheless, Quadvest is also a retail public utility as defined by the Code, the holder of CCN No. 11612 and a competitor of HMW. 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...”.

HMW asserts that this petition, instigated by Quadvest, is precisely the type of interference that Water Code Section 13.252 was designed to prevent. The Commission should and is in fact obliged by law to apply it.

VI.

The Commission has a duty to apply the Texas Water Code in its entirety. More specifically, it must apply and enforce Code Section 13.252, based on the pleadings and the evidence, 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); *City of San Antonio v. City of Boerne*, 111 SW3d 22,25(Tex. Sup. 2003); and *Liberty Mutual Insurance Company v. Adcock*, 412 SW3d 492, 494-496(Tex. Sup. 2013). Thus, the Commission must give effect to both Water Code Sections 13.252 and 13.254, and cannot proceed simultaneously under one, while in violation of the other.

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 required by statute, as well as applicable case law, to (1) apply both Water Code Sections 13.252 and 13.254, and (2) prefer the public interest over any private interest.

In the latter regard, the Commission should note that HMW is a governmental entity that lawfully holds a CCN, which is a vested property right, that is intended to secure water service for a portion of the public that it serves. HMW has a right to protect its vested property right in this administrative proceeding. See *Continental Casualty Insurance Company v. Functional Restoration Associates*, 19 SW3d 393, 404(Tex. Sup. 2000).

In contrast, the facts show that Quadvest is a private entity that in this instance is attempting, through a surrogate, to deprive HMW of a portion of its CCN. By so acting, Quadvest has violated Water Code Section 13.252, which the Commission is duty bound to apply. To the extent that the Commission has ignored or failed to permit discovery of evidence that Quadvest has done so is a further failure to perform its legal duty.

In further contrast to HMW, 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 seeks to harmonize the interpretation of Water Code Sections 13.252 and 13.254, HMW represents the public interest, and Quadvest the private interest, as those terms are used in Government Code Section 311.21(5).

VII.

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 Commission 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 all the more the case in a Petition based on the contradictory affidavits that are the sole purported legal basis for the Commission's consideration of the Petition.

VIII.

The evidence has shown, and any additional evidence obtained through discovery will almost certainly show, that the Petition is no more than 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 the record shows has been ongoing, is its interest in providing such service. Thus, this application is submitted not for the purpose intended by the relevant portions of Code Section 13.254, but instead to facilitate an effort by 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 this proceeding, as provided by Commission rules, that is directed to further develop facts relevant to its allegation against Quadvest under Water Code Section 13.252. HMW's requests are reasonable, timely and clearly not burdensome. Reference is made thereto and incorporated by reference in this Motion for Rehearing. The Commission's decision to decide this application on the merits without the benefit of such discovery is error.

X.

Further, and alternatively, the Commission is authorized to and should prohibit the extension of service by Quadvest to, and its interference with the actual or intended operation of HMW's utility system, within HMW's CCN. *See Water Code Section 13.252.* As a part of its order granting this Motion for Rehearing, the Commission should issue orders that prohibit such extensions of service by Quadvest or any affiliated entity. *Id.*

Wherefore, premises considered, HMW moves the Commission to vacate its order for final disposition, dismiss the Petition, or alternatively deny it on its merits, or alternatively grant HMW's discovery requests prior to taking further action on the Petition, and to grant such other and further relief as the Commission deems just under applicable law.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true copy of the foregoing Motion for Rehearing was filed electronically and served on the Petitioner, Quadvest and the PUC staff on the 6th day of January, 2020, as further provided by 16 TAC Section 22.74.

/s/ Patrick F. Timmons, Jr.

Patrick F. Timmons, Jr.