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**DOCKET NO. 49366**

<b>PETITION OF FROST BANK</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>NATIONAL BANK, AS TRUSTEE OF</b>	<b>§</b>	
<b>THE FREEMAN EDUCATIONAL</b>	<b>§</b>	<b>OF TEXAS</b>
<b>FOUNDATION TO AMEND THE CITY</b>	<b>§</b>	
<b>OF SAN MARCOS' WATER</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	
<b>AND NECESSITY IN HAYS COUNTY</b>	<b>§</b>	
<b>BY EXPEDITED RELEASE</b>	<b>§</b>	

**ORDER NO. 5**

**REVERSING ORDER NO. 4, FINDING THAT PETITION REMAINS ADMINISTRATIVELY INCOMPLETE, AND ESTABLISHING A NEW PROCEDURAL SCHEDULE**

In this matter Frost Bank National Bank, as trustee of the Freeman Educational Foundation, seeks to amend the City of San Marcos' water certificate of convenience and necessity in Hays County by expedited release. The application was first filed in this matter on March 22, 2019, with clarifying supplements filed by the applicant on April 2, 11, and 25, and May 22, 2019. On May 18, 2019, Commission Staff recommended that the application be found administratively complete. In Order No. 4 issued on June 20, 2019, the undersigned administrative law judge (ALJ) followed Commission Staff's recommendation and concluded that the application was administratively complete.

Since issuance of Order No. 4, however, the ALJ has discovered discrepancies in the application which render it deficient and indicate that, without further clarification from the applicant, the application cannot be granted at this time. The applicant claims to be the owner of a 525-acre tract of land in Hays County. To support its claim of ownership, the applicant has provided a copy of a special warranty deed. That deed raises questions that must be resolved before the application can be granted.

First, the applicant in this case is "Frost Bank National Bank, as Trustee of the Freeman Education Foundation." The deed in question, however, identifies the (partial) owner as "Frost National Bank, Independent Executor and Trustee under the Will of Joseph Freeman." In other words, the applicant has failed to establish that it is the right entity to submit the application.

Second, the deed in question conveys to Frost National Bank, Independent Executor and Trustee under the Will of Joseph Freeman only "a one-half (1/2) undivided interest" in the 525-

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acre tract, less what appears to be something akin to a life estate retained by the grantor. Under Texas Water Code § 13.254(a-5) and 16 Texas Administrative Code § 24.245(l), “the owner” of a tract of land greater than 25 acres can petition for expedited release. The deed does not identify Frost National Bank, Independent Executor and Trustee under the Will of Joseph Freeman as “the owner,” but only as a partial owner. Absent documentation showing that the owner(s) of 100% of the interests in the land are part of the application, it cannot be granted.

Accordingly, the ALJ orders as follows:

- Order No. 4 is reversed and the procedural schedule specified in Order No. 4 is no longer in effect;
- The application is deemed to be not administratively complete;
- On or before August 26, 2019, the applicant must supplement the application to cure the deficiencies described herein;
- On or before September 9, 2019, Commission Staff must file a supplemental recommendation regarding administrative completeness, along with a proposed procedural schedule, if appropriate.

Signed at Austin, Texas the 26<sup>th</sup> day of July 2019.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
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**HUNTER BURKHALTER**  
**ADMINISTRATIVE LAW JUDGE**

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