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DOCKET NO. 49366

PETITION OF FROST BANK §  
NATIONAL BANK, AS TRUSTEE OF §  
THE FREEMAN EDUCATIONAL §  
FOUNDATION TO AMEND THE CITY §  
OF SAN MARCOS WATER §  
CERTIFICATE OF CONVENIENCE §  
AND NECESSITY IN HAYS COUNTY §  
BY EXPEDITED RELEASE §

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PUBLIC UTILITY COMMISSION  
OF TEXAS

**PETITIONER'S REPLY TO COMMISSION STAFF'S RECOMMENDATION ON  
FINAL DISPOSITION**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:**

COMES NOW, Frost Bank National Bank as Trustee of the Freeman Educational Foundation ("Frost Bank" or "Petitioner") and files this Reply to Commission Staff's Recommendation on Final Disposition ("Reply") and would respectfully show the following:

**I. BACKGROUND**

1. On March 22, 2019, Frost Bank filed with the Public Utility Commission of Texas ("Commission") a Petition for streamlined expedited release of its 525-acre Freeman Tract ("Freeman Tract") from the City of San Marcos' ("City") water certificate of convenience and necessity ("CCN") No. 10298 ("Opt-out Petition").

2. On April 2, 11, and 25, May 22, 2019 Frost Bank provided the Commission Administrative Law Judge ("ALJ") and Staff additional mapping and survey information.<sup>1</sup>

3. On June 18, 2019, Commission Staff recommended that the Commission find the Opt-Out Petition administratively complete and notice sufficient.

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<sup>1</sup> This Reply incorporates all previous submittals as if set out in full. Note, Frost intended some submittals made at the behest of Commission Staff to confirm receipt of information previously provided and to provide additional information on the location of the Crystal Clear S.U.D. waterlines (and absence of City of San Marcos infrastructure), which were merely informational and not required by 16 TAC § 24.245(I).

4. On June 20, 2019, the ALJ issued Order No. 4 in which he agreed with Commission staff, found the opt-out petition complete and notice sufficient, and issued a procedural schedule.

5. On July 26, 2019, after parties responded to the Commission Staff's first Recommendation on Final Disposition, the ALJ issued Order No. 5, reversing his finding in Order No. 4 and finding instead that the petition remained administratively incomplete.

6. On August 19, 2019, Frost Bank responded to Order No. 5, supplementing its application for opt-out and curing the noted deficiencies.

7. On September 6, 2019, Frost Bank filed a copy of the February 2, 1985 Order Admitting Will to Probate and Authorizing Letters Testamentary for the Estate of Harold M. Freeman with the Commission.

8. On September 9, 2019, Commission Staff filed its Supplemental Recommendation on Administrative Completeness and Proposed Notice.

9. On September 11, 2019, the ALJ issued Order No. 6 finding the application administratively complete, notice sufficient and adopting the Commission Staff's proposed procedural schedule.

10. On September 25, 2019, Commission Staff filed its Recommendation on Final Disposition.

11. Order No. 6 established October 2, 2019 as the deadline for Frost Bank to reply to both the Commission Staff and the City of San Marcos. Therefore, this pleading is timely filed.

## **II. DISCUSSION**

Frost Bank National Bank as Trustee of the Freeman Educational Foundation ("Frost Bank" or "Petitioner") agrees with Commission Staff's recent Recommendation on Final Disposition that its supplemental filings have cured any deficiencies and "Frost Bank has shown that it meets the requirements for streamlined expedited release."<sup>2</sup> No party disputes this fact,

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<sup>2</sup> Commission Staff's Final Recommendation at 2 (Sept. 25, 2019).

including the City of San Marcos.

The application met the requirements in place at the time Frost Bank originally filed the application on March 22, 2019, and the application does so now. As of September 1, 2019, the Texas Legislature moved the substantive portions of TWC § 13.254(a-5) to TWC § 13.2541(b) and added non-substantive changes.<sup>3</sup> The demonstration required for a streamlined expedited release from a CCN and made by Frost Bank under old TWC § 13.254(a-5) at the time of filing the application is substantively identical to new TWC § 13.2541(b). The threshold number of acres is the same, the property location is the same, the requirement that the property is not receiving service that the current CCN holder is authorized to provide is the same, and the requisite information to provide the Commission in accordance with 16 TAC § 24.245(l)(4) is still the same. Accordingly, the same analysis for streamlined expedited release that would have occurred under TWC § 13.254(a-5) is indistinguishable from the new TWC § 13.2541(b) process.

Additionally, the Commission Staff is correct that no utility's property will be deemed useless or valueless as a result of Frost Bank's streamlined expedited release; therefore, a proceeding to determine value pursuant to 16 TAC § 24.245(n) and (o) is not warranted. The City of San Marcos has not and is not providing water to the subject property.<sup>4</sup> The Legislature's enactment of S.B. 2272 does not change the analysis or outcome of this case. Frost Bank has met all of the requisite conditions to satisfy the regulatory and statutory requirements for the Commission to grant the request for expedited release of Frost Bank's property from the City of San Marcos' water CCN pursuant to Texas Water Code § 13.2541(b).

### **III. PRAYER**

WHEREFORE PREMISES CONSIDERED, Frost Bank requests that the ALJ recommend the streamlined expedited release of the property from the City's water CCN and for any such other relief to which it is entitled.

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<sup>3</sup> See Act of May 26, 2019, 86<sup>th</sup> Leg., R.S., ch. 688 (S.B. 2272), eff. Sept. 1, 2019 now codified at Tex. Water Code Ann § 13.2541(b).

<sup>4</sup> See City of San Marcos' Response to Commission Staff's First Request for Information RFI No. 1-1 Through RFI No. 1-4 (May 10, 2019) (AIS No. 13) (City admits no service contracts or bills for water service provided and no water service received).

Respectfully submitted,  
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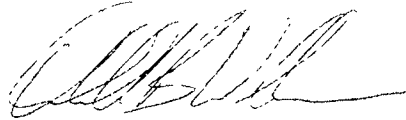


Randall B. Wilburn

**ATTORNEYS FOR FROST BANK  
NATIONAL BANK**

**CERTIFICATE OF SERVICE**

I hereby certify that I have served a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on the 2nd of October 2019.



Randall B. Wilburn