



Control Number: 49366



Item Number: 9

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PUC DOCKET NO. 49366

RECEIVED

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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2019 APR 29 AM 10:53
BEFORE THE
PUBLIC UTILITY COMMISSION
FILING CLERK
PUBLIC UTILITY COMMISSION
OF TEXAS

PETITIONER'S RESPONSE TO CITY OF SAN MARCOS' MOTION TO INTERVENE

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 Response to the City of San Marcos' ("City") Motion to Intervene and would respectfully show the following:

I. INTRODUCTION AND BACKGROUND

1. On March 22, 2019, Frost Bank filed with the Public Utility Commission of Texas ("Commission") an application or petition for expedited release of its Freeman Tract from the City's water certificate of convenience and necessity ("CCN") No. 10298.
2. On March 25, 2019, the Administrative Law Judge ("ALJ") issued Order No. 1 requiring comments on the administrative completeness of Frost Bank's application and establishing a procedural schedule.
3. On April 22, 2019, the staff of the PUC filed its response to Order No. 1 stating its position that the petition was administratively incomplete due to mapping issues.
4. On April 22, 2019, the City filed its Motion to Intervene.
5. On April 23, 2019, the ALJ issued Order No. 2 finding the petition administratively incomplete and further establishing a procedural schedule.

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6. In response to the Commission Staff's Recommendation on Administrative Completeness and Proposed Notice, Petitioner filed a letter addressing all of the PUC Staff's mapping and survey issues on April 25, 2019.

7. A reply to City's motion is due within (5) working days. The Petitioner's response is timely filed.

II. RELEVANT FACTS AND LAW

Pursuant to state law and the rules of the Commission, an owner of a tract of land may petition the Commission for expedited release of the area from a CCN, and the Commission is required to grant that release when certain conditions are met.¹ In this case, Petitioner's subject tract of land, the Freeman Tract, is at least 25 acres; it is located in Hays County; and, it is *not* receiving water or sewer service from the City.² Despite the City's claim otherwise, the Freeman Tract does not receive water from the City.³ Frost Bank has met all of the requisite conditions to satisfy the statutory and regulatory requirements for the Commission to grant expedited release. Frost Bank is entitled to the expedited release, and the Commission may not deny the petition.

While Order No. 1 and the Commission rules allow a CCN holder to submit a response to the petition to the Commission, the expedited release process under 16 TAC § 24.245(l)(6) does not provide the existing CCN holder with any opportunity for participation through the expedited streamlined release process. Rather, pursuant to the explicit terms of 16 TAC § 24.245(n)(2), the existing CCN holder may participate in a future docket only after some future utility files a request to provide service to the property removed. Whatever the City's concerns, those concerns are not ripe for adjudication at this time. Therefore, the intent of City's Motion to Intervene is unclear. The City did not claim that Petitioner's application fails to fulfill any other criteria. Pursuant to TWC § 13.254 (a-5), the Commission *shall* grant Frost Bank's request "not later than the 60th

¹ Tex. Water Code Ann § 13.254(a-5).

² Letter from Robert K. Wynn, Senior Vice-President, Frost Bank to the Commission (Mar. 22, 2019).

³ See Affidavit of Kenneth Pape (Apr. 26, 2019), attached as **Exhibit A**. (As stated in his affidavit, Mr. Pape is the lessee and current occupant of the Freeman Tract. Mr. Pape confirms the previously verified and submitted statement of Robert K. Wynn, Senior Vice President of Frost Bank, that the Freeman Tract does not receive any water from the City of San Marcos).

calendar day after the date the landowner files the petition.”⁴

According to Order No. 2, Staff has until June 21, 2019 to make its recommendation on final disposition of Frost Bank’s application. The uncontroverted record and law require the Commission to grant Frost Bank’s release from City’s water CCN.

III. PRAYER

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

Respectfully submitted,

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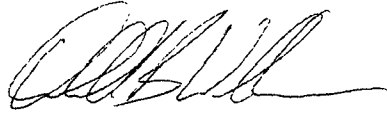
Randall B. Wilburn

ATTORNEYS FOR MATHOM LTD.

⁴ Tex. Water Code Ann § 13.254(a-5).

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 29th of April 2019.

A handwritten signature in black ink, appearing to read 'R. Wilburn', written over a horizontal line.

Randall B. Wilburn

EXHIBIT A

STATE OF TEXAS §
 §
GUADALUPE COUNTY §

AFFADAVIT OF KENNETH PAPE

Before me, the undersigned notary, on this day personally appeared Kenneth Pape, a person whose identity is known to me. After I administered an oath to Kenneth Pape, upon his oath, he said:

“My name is Kenneth Pape. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

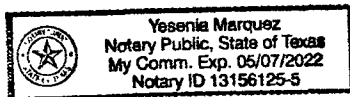
I currently lease pasture land on the Freeman Educational Foundation property or “Freeman Tract” from Frost Bank National Bank in Hays County. I have leased the property to graze cattle for over two years, and I am familiar with the Freeman Educational Foundation property and all utilities that serve that property. Under the terms of the lease, I am responsible for all utilities, including all utility bills for the property. The Freeman Educational Foundation property does not have a City of San Marcos water meter, and none of the property receives water from the City of San Marcos.”

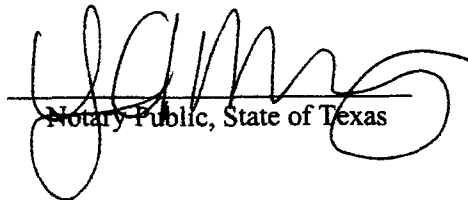
Further affiant sayeth not.


Kenneth Pape

Given under my hand and seal of office on April, 26, 2019.

[Seal]




Notary Public, State of Texas