

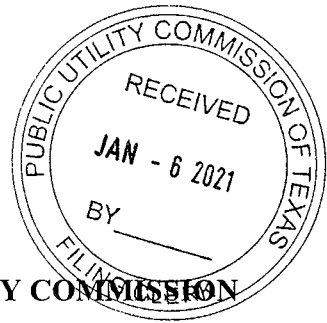


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DOCKET NO. 50244

APPLICATION OF QUADVEST LP
TO AMEND WATER CERTIFICATE
OF CONVENIENCE AND
NECESSITY IN HARRIS COUNTY

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PUBLIC UTILITY COMMISSION
OF TEXAS

**QUADVEST, LP'S RESPONSE TO HMW SPECIAL UTILITY DISTRICT'S
MOTION TO FULL COMMISSION UNDER RULE 22.123**

COMES NOW, Quadvest, L.P. ("Quadvest") and files this response to HMW Special Utility District's ("HMW") Motion to Reconsider Order No. 10. For the reasons set forth below, Quadvest requests that the Motion be denied.

I.

PROCEDURAL BACKGROUND

On November 15, 2019, Quadvest filed an application to amend its water and sewer certificates of convenience and necessity ("CCN") in Harris County, Texas. On November 3, 2020, the Administrative Law Judge issued Order No. 8 (AIS Item No. 27) granting the applicant's motion to sever from this docket the sewer CCN amendment application. Order No. 8 provided an amended procedural schedule, as follows:

Event	Date
Deadline for Commission Staff to provide final maps, certificates, and tariffs (if applicable) to Quadvest for review and consent	December 8, 2020
Deadline for Quadvest to file signed consent forms with the Commission	December 22, 2020
Deadline for Commission Staff to request a hearing on the merits or to file a final recommendation on the application	December 29, 2020
If no hearing is requested, deadline for parties to file joint proposed findings of fact and conclusions of law	January 5, 2021

On November 30, 2020, HMW filed a "Motion to Intervene, Vacate Order, and Abate Proceeding." (AIS Item No. 28) On December 8, 2020, the ALJ granted HMW's motion to intervene and denied HMW's request for reconsideration and motion to abate. (AIS Item No. 29) On December 8, 2020, Quadvest filed its Response to Order No. 9 and Request for Reconsideration. (AIS Item No. 30) On December 15, 2020 the ALJ entered Order No. 10

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granting the request for reconsideration, denying motion to intervene and rescinding Order No. 9 in part. (AIS Item No. 31) On December 15, 2020, HMW filed a Motion to Reconsider Order No. 10 (AIS Item No. 32), which the ALJ denied on December 22, 2020. (AIS Item No. 35)

Refusing to recognize the proper procedural and legal prerequisites associated with its efforts, HMW again demands a recourse not available to it. Quadvest hereby requests that the ALJ deny HMW's motion, based on the following discussion, noting that Quadvest was not properly served with HMW's motion and was not otherwise made aware of the motion until January 5, 2020.

II.

DISCUSSION

The Commission Rules specifically address motions to intervene. 16 TEX. ADMIN. CODE § 22.104 ("Motions to Intervene") provides:

(b) Time for filing motion. Motions to intervene shall be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule, or order of the presiding officer. For an application for certificate of convenience and necessity filed under Public Utility Regulatory Act §39.203(e), motions to intervene shall be filed within 30 days from the date the application is filed with the commission. The motion shall be served upon all parties to the proceeding and upon all persons that have pending motions to intervene.

HMW sought to intervene in this docket more than a year after Quadvest filed its application on November 15, 2019 and almost eight months after the Order No. 5 (AIS Item No. 16) April 16, 2020 deadline to intervene.

The Commission Rules provide for consideration of late-filed requests to intervene, in limited circumstances, as set forth in 16 TEX. ADMIN. CODE § 22.104. In considering a late-filed request, the Administrative Law Judge must consider the following:

- (A) any objections that are filed;
- (B) whether the movant had good cause for failing to file the motion within the time prescribed;
- (C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention;
- (D) whether any disruption of the proceeding might result from permitting late intervention; and

(E) whether the public interest is likely to be served by allowing the intervention.
16 TEX. ADMIN. CODE § 22.104(d)(1).

Quadvest objected to the motion to intervene and asked the Administrative Law Judge to consider the objections it presented pursuant to 22.104(d)(1)(A) (AIS Item No. 30 and AIS Item No. 33).

Regarding 22.104(d)(1)(B), Quadvest asserted the movant did not have good cause for failing to file the motion on time. HMW's purported basis for ignoring the established deadline for eight months was, according to Quadvest's best reading of HMW's underlying motion, based on two assertions: (1) Quadvest supplemented its proof of notice in the docket; and (2) the Administrative Law Judge, in the normal course, issued Order No. 7 providing for a deadline of November 6, 2020 for Commission Staff to request a hearing. Neither assertion is remotely relevant to HMW's eight-month delay. Quadvest provided HMW adequate and timely notice. As set out in Quadvest's filings in this docket regarding notice to neighboring utilities (see "Affidavit of Notice to Neighboring Utilities and Affected Parties" (AIS Item No. 50244-11) and "Neighboring Notices" (AIS Item No. 14)), Quadvest provided direct notice to HMW on February 21, 2020. That notice specifically set out HMW's deadline to intervene in the matter. HMW chose not to file a motion to intervene pursuant to that notice. The fact that Quadvest supplemented its proof of notice has no relevance whatsoever to the validity of the intervention deadline or HMW's obligation and ability to respond to that deadline. Similarly, the Administrative Law Judge's issuance of a procedural schedule more than four months after the deadline to intervene that set out a procedural deadline for upcoming steps in the proceedings had no bearing on deadlines for completed stages in the proceedings that proceeded the new procedural schedule addressing upcoming steps in the proceedings.

Regarding 16 TEX. ADMIN. CODE § 22.104(d)(1)(C) ("whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention") and 22.104(d)(1)(D) ("whether any disruption of the proceeding might result from permitting late intervention"), Quadvest asserted that HMW's baseless motion to intervene could result in substantial delay and therefore substantial burden on Quadvest. HMW's request to intervene could unilaterally cause Commission Staff to request a hearing on the merits instead of filing a final recommendation on the application, leading to substantial delay in final consideration of this application and ultimate delay in Quadvest's ability to provide service to the subject area and

significantly hampering development of the subject area by the entities responsible for the development of the tract. Those are delays and resulting prejudices that would not exist if HMW had filed a motion to intervene by the April 16, 2020 deadline, almost nine months ago. Quadvest would have fundamentally and immediately altered its course of business if a timely request to intervene had been submitted in this docket.

Addressing 22.104(d)(1)(E) (“Whether the public interest is likely to be served by allowing the intervention”), granting the motion to intervene would significantly harm the public interest . As discussed above, granting the motion to intervene would substantially delay the provision of sewer service to the subject tract, thus delaying service to customers who have been anticipating service within a timeframe based on the schedule in Order No. 5. The public interest is not served by allowing the intervention. HMW simply sought by its original intervention motion—as it has with many other filings—to improperly revisit the proper decertification by this Commission of a portion of HMW’s service area. The ALJ properly rejected that motion to intervene.

By its motion to reconsider, HMW again sought to impose itself into a process in a manner that was prohibited by law and nowhere found within the Commission’s procedural rules. HMW again grasped well outside of any allowable procedural mechanism to challenge a completed Commission decertification. The fact that HMW has filed a baseless challenge in district court, one of HMW’s arguments in its motion for reconsideration, has no bearing on the subject docket, including any obligation to delay the proceeding in this docket in deference to that district court challenge. There is no basis in law to support HMW’s request for that kind of relief. It would be a stark deviation from Commission procedure to suspend a proceeding based on the pendency of a tangentially related appeal to district court. The ALJ properly rejected that motion to reconsider.

And now, again, HMW seeks to thwart applicable law and procedure by filing an appeal to the Commissioners pursuant to 16 TEX. ADMIN. CODE § 22.123. Such appeal is improper on its face, given the absence of any supported assertion in the appeal that the order of the ALJ “immediately prejudices a substantial or material right” of HMW. See 16 Tex. Admin. Code § 22.123(a)(1), (3) (“An appeal shall specify the reasons why the interim order is unjustified, improper, or immediately prejudices a substantial or material right of a party or materially affects the course of the hearing.”)

HMW’s motion is improper and is baseless, for the reasons set forth herein. Again, HMW is simply seeking to undo what was already properly been done – the Commission’s decertification

of a portion of HMW's CCN area. The ALJ's orders on the issue were proper under applicable law and procedure.

III.

CONCLUSION

For the reasons stated, Quadvest respectfully requests that HMW's motion be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify by my signature above that on the 6th day of January 2021, the foregoing document was served via email to the following:

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