



Control Number: 51710



Item Number: 22

Addendum StartPage: 0

DOCKET NO. 51710

PETITION OF HONEYCREEK §
VENETIAN, LLC TO AMEND WESTON §
WATER SUPPLY CORPORATION'S §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN COLLIN §
COUNTY BY EXPEDITED RELEASE §

PUBLIC UTILITY COMMISSION

OF TEXAS

2021 MAY 21 PM 12:18

ORDER NO. 5
DENYING MOTION TO DISMISS

This Order denies the motion filed by Weston Water Supply Corporation's (Weston WSC) on May 5, 2021, requesting the dismissal of the application filed by Honeycreek Venetian, LLC (Honeycreek) for expedited release of a tract of land within the boundaries of Weston WSC's water certificate of convenience and necessity in Collin County.

The motion identifies two grounds for dismissal.

A. Federal Preemption

On May 5, 2021, Weston WSC filed a motion to dismiss this proceeding. Weston WSC claims that 7 U.S.C. § 1926(b) pre-empts the Texas Water Code (TWC) § 13.2541 if a utility can meet the new standard announced in *Green Valley SUD*¹ that is used to determine whether a utility qualifies for protection under section 1926(b).²

Honeycreek responded to the motion to dismiss on May 18, 2021. Honeycreek argues that, irrespective of Weston WSC's apparent federal loan, 7 U.S.C. § 1926(b) does not impair the Commission's mandate to process the streamlined expedited release application.

On May 19, 2021, Commission Staff filed its recommendation on the application and addressed the motion to dismiss. Commission Staff recommended that Weston WSC's claim of protection under 7 U.S.C. § 1926(b) is moot. Weston WSC cited no authorities to support its claim of protection by meeting new standard announced in *Green Valley SUD*. Absent any federal court ruling specifically addressing preemption, Commission Staff state their recommendation must comply with state law.

¹ *Green Valley Special Util Dist v City of Schertz*, 969 F.3d 460, 411 and 478 (5th Cir. Aug .7, 2020) (en banc)

² Weston WSC's Response to Petition and Motion to Dismiss at 6 and fn 24 (May 5, 2021).

Under TWC § 13.2541, the Commission “may not deny [a streamlined expedited release] petition based on the fact that the certificate holder is a borrower under a federal loan program.” Thus, Weston WSC’s possession of a federal loan is immaterial to the determination to be made in this case. Accordingly, Weston WSC’s motion to dismiss on this ground is denied.

B. Receiving Water Service Under the Standards of the Texas Water Code

Weston WSC asserts that it provides service under TWC § 13.254, as demonstrated by the following: (1) Weston WSC has a six inch water line located within the property; (2) Weston WSC has facilities near the property; (3) Weston WSC evaluated capacity and signed a contract with the prior owner of the property; and (4) the establishment of a past account by a tenant of the prior owner for a meter that was terminated and removed from the property.

Honeycreek opposes dismissal on this ground.

Commission Staff has not taken a position on this ground.

Weston WSC’s arguments on this point address the merits of the petition; they do not identify a ground for dismissal specified in the Commission’s dismissal rule, 16 TAC § 22.181(d). Accordingly, the motion to dismiss on this ground is denied.

The administrative law judge concludes that the motion to dismiss should be denied.

Signed at Austin, Texas the 21st day of May 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



GREGORY R. SIEMANKOWSKI
ADMINISTRATIVE LAW JUDGE