



## Filing Receipt

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**DOCKET NO. 52101**

**PETITION OF CCD-NORTHSKY, LLC § PUBLIC UTILITY COMMISSION  
TO AMEND MARILEE SPECIAL §  
UTILITY DISTRICT'S CERTIFICATE § OF TEXAS  
OF CONVENIENCE AND NECESSITY §  
IN COLLIN COUNTY BY EXPEDITED §  
RELEASE §**

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 5**

On May 10, 2021, CCD-North Sky, LLC (North Sky) filed a petition with the Public Utility Commission of Texas (Commission) requesting streamlined expedited release from Marilee Special Utility District's (Marilee SUD) water certificate of convenience and necessity (CCN) number 10150 under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h). North Sky asserts that the land to be released is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, which is a qualifying county. On June 16, 2021, Marilee SUD filed a motion to dismiss North Sky's petition. On June 29, 2021, North Sky filed a response to Marilee SUD's motion to dismiss. On July 6, 2021, North Sky amended its petition and mapping data to revise the requested area.

On July 7, 2021, the administrative law judge (ALJ) filed Order No. 5, requiring Commission Staff (Staff) to file a response to Marilee SUD's motion to dismiss and factual allegations and to the petitioners' response to Marilee SUD's motion to dismiss by July 16, 2021. Therefore, this pleading is timely filed.

**I. RESPONSE TO MARILEE SUD'S MOTION TO DISMISS**

On June 16, 2021, Marilee SUD filed a motion to dismiss North Sky's petition for expedited release in this proceeding. Marilee SUD's motion to dismiss included both factual and legal arguments to support its request for dismissal.

***Factual allegations***

Marilee SUD's motion to dismiss North Sky's petition included factual allegations in which Marilee SUD claimed it is currently providing water service to the requested area.<sup>1</sup>

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<sup>1</sup> Marilee Special Utility District's Response to and Motion to Dismiss Petition (Jun. 16, 2021) at 3-7 (Motion to Dismiss).

Specifically, Marilee SUD identified a residential meter within the property, located at 3170 North Louisiana Drive, Celina, Texas 75009 (the Residence), that it claims has been receiving water service from Marilee SUD through a two-inch water line since December 5, 1981.<sup>2</sup> Accordingly, Marilee SUD alleged that North Sky could not meet its burden to prove that the requested area is not receiving service and, therefore, that the petition for expedited release should be dismissed.<sup>3</sup>

It is Staff's understanding that North Sky's July 6, 2021 amendment was intended to remove the Residence from the requested area. Staff has reviewed the amended mapping data and confirmed that a portion of property in the same vicinity as the Residence was removed from the requested area. However, as detailed in the attached memorandum from Jolie Mathis, Infrastructure Division, Staff is unable to confirm that the Residence has been fully and accurately removed from the amended requested area due to a deficiency in the maps included with Marilee SUD's motion to dismiss. Specifically, the Marilee SUD's mapping information does not include a scale bar that would allow Staff to accurately identify the exact location of the Residence. Accordingly, Staff recommends that Marilee SUD file supplemental mapping as described in Ms. Mathis' memorandum so that Staff may evaluate whether the amended requested area is receiving service from Marilee SUD.

***Statutory basis for dismissal***

Marilee SUD's motion to dismiss also included legal arguments that North Sky's petition should be dismissed for failure to comply with requirements under TWC §§ 13.254 and 13.2541. Marilee SUD first argues that TWC § 13.2541 establishes requirements for the content to be included in filing a petition for expedited release and does not contain any provision that would allow a petitioner an opportunity to cure a deficient petition.<sup>4</sup> While TWC § 13.2541 does not expressly provide petitioners with an opportunity to cure deficiencies in filed petitions, Staff notes that 16 TAC § 24.245(h)(5)—the Commission rule adopted to implement the process established under TWC § 13.2541—clearly states that “[t]he presiding officer will determine whether the petition is administratively complete” and “[i]f the petition is determined not to be administratively complete, the presiding officer will issue an order describing the deficiencies in the petition and

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<sup>2</sup> *Id.* at 6-7.

<sup>3</sup> *Id.* at 3-7.

<sup>4</sup> *Id.* at 7-9.

setting a deadline for the petitioner to address the deficiencies.” Moreover, there is a wealth of Commission precedent in which TWC § 13.2541 has been interpreted to allow for the correction of deficiencies in a filed petition.<sup>5</sup> Therefore, Staff disagrees with Marilee SUD’s contention that TWC § 13.1541 bars North Sky from addressing deficiencies within its petition.

Marilee SUD also argues that TWC § 13.254 establishes a 60-day timeline for approval of North Sky’s petition and that there is no path by which the Commission can grant approval of the petition by July 9, 2021, which is 60 days after the date the petition is filed.<sup>6</sup> Again, Staff notes that the rules adopted to implement the expedited release proceeding established under TWC §§ 13.254 and 13.2541 clearly contradict Marilee SUD’s argument. Specifically, 16 TAC § 24.245(h)(7) states that “[t]he commission will issue a decision on a petition filed under this subsection no later than 60 calendar days *after the presiding officer by order determines that the petition is administratively complete* (emphasis added).” Accordingly, the 60-day timeline does not begin to toll the date that a petition is filed, but rather only once an order finding the petition administratively complete has been issued. Because no such order has been issued at this point in this proceeding, the 60-day timeline for approval has yet to begin tolling. Accordingly, Staff disagrees that there is no path for the Commission to grant approval of the petition within the statutory 60-day timeline.

### ***Compensation***

Lastly, Marilee SUD argues that, if the property is removed from its CCN, that Marilee SUD is entitled to a determination of just and adequate compensation.<sup>7</sup> In the event that the requested area is removed from Marilee SUD’s CCN, Staff agrees that Marilee SUD would be entitled to such a compensation determination under TWC § 13.2541(f) and 16 TAC § 24.245(i).

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<sup>5</sup> See, e.g., *Petition of Clay Road 628 Development, LP to Amend T&W Water Service Company's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 51455, Order No. 3 Requiring a Response (Feb. 19, 2021); *Petition of JLM 717 Kaufman LP to Amend the City Of Crandall's Certificate of Convenience and Necessity in Kaufman County by Expedited Release*, Docket No. 51531, Order No. 3 Finding Petition Administratively Incomplete and Establishing an Opportunity to Cure (Jan. 5, 2021); *Petition of Colorado River Project, LLC to Amend SWWC Utilities, Inc. dba Hornsby Bend Utility's Certificate of Convenience and Necessity in Travis County by Expedited Release*, Docket No. 51166, Order No. 4 Finding Application Administratively Incomplete and Providing Opportunity to Cure (Sep. 30, 2020).

<sup>6</sup> Motion to Dismiss at 7-8.

<sup>7</sup> *Id.* at 9-10.

## II. RESPONSE TO NORTH SKY'S RESPONSE TO THE MOTION

On June 29, 2021, North Sky filed a response to Marilee SUD's motion to dismiss, arguing that Marilee SUD did not identify a valid basis for dismissal under 16 TAC § 22.181, that supplemental mapping would address the issue of service in the requested area, and that the 60-day timeline for approval has not yet begun to run under 16 TAC § 24.245(h)(7).

### *Basis for dismissal under 16 TAC § 22.181*

North Sky first responds to the motion to dismiss by alleging that Marilee SUD has not identified a valid basis for dismissal under 16 TAC § 22.181, but instead seeks what amounts to a summary disposition of the proceeding based on contested facts and Marilee SUD's interpretation of the statutory deadline.<sup>8</sup>

Dismissal of a proceeding is governed by 16 TAC § 22.181, which includes a list of reasons for which a motion to dismiss may be granted.<sup>9</sup> As acknowledged by Marilee SUD, a motion to dismiss must specify at least one of the reasons for dismissal identified under 16 TAC § 22.181(d), including lack of jurisdiction, moot question or obsolete petition, res judicata, or collateral estoppel.<sup>10</sup> However, Marilee SUD's motion to dismiss fails to specify any of grounds for dismissal included under 16 TAC § 22.181(d). Instead, Marilee SUD requests dismissal of the proceeding on factual bases more appropriately pursued in a motion for summary disposition under 16 TAC § 22.182.<sup>11</sup> Accordingly, Staff agrees with North Sky that Marilee SUD has not identified a valid basis for dismissal of its petition.

### *Supplemental Mapping*

North Sky also asserts that the Residence receiving service from Marilee SUD was inadvertently included in the initial requested area as the result of a mapping error, which North Sky aimed to correct with its July 6, 2021 amended petition.<sup>12</sup> North Sky claims that once the

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<sup>8</sup> Petitioner's Response to Marilee Special Utility District's Motion to Dismiss (Jun. 29, 2021) at 2-3 (Petitioner's Response).

<sup>9</sup> 16 Tex. Admin. Code (TAC) § 22.181(d).

<sup>10</sup> See Motion to Dismiss at 3.

<sup>11</sup> See 16 TAC § 22.181(a).

<sup>12</sup> Petitioner's Response at 3-4.

accurate mapping data is on the record, the issue of whether the requested area is receiving service will be resolved.<sup>13</sup>

As discussed above, Staff has reviewed and confirmed that North Sky's amended petition removed a portion of the property in the general area of the Residence from the requested area. However, because the mapping in Marilee SUD's motion to dismiss does not include scaling, Staff is unable to confirm that the Residence has been fully and accurately removed from the requested area at this time. Therefore, Staff recommends that Marilee SUD file supplemental mapping as described in Ms. Mathis' memorandum so that Staff may evaluate whether the amended proposed area is receiving service from Marilee SUD.

***60-day timeline***

Lastly, North Sky argues that Marilee SUD has improperly interpreted the 60-day statutory deadline for approval.<sup>14</sup> For the reasons discussed above, Staff agrees that the 60-day timeline for approval does not begin until an order has been issued finding the petition administratively complete.

**III. CONCLUSION**

For the reasons discussed above, Staff recommends that North Sky's petition for expedited release should not be dismissed at this time. Staff also recommends that Marilee SUD file supplemental mapping including scaling information as detailed in the attached memorandum. Staff respectfully requests that an order be issued consistent with the foregoing recommendations.

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<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Id.*

Dated: July 16, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 52101**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on July 16, 2021 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/Courtney Dean  
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Courtney N. Dean

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Courtney Dean, Attorney  
Legal Division

**FROM:** Jolie Mathis, Utility Engineering Specialist  
Infrastructure Division

**DATE:** July 15, 2021

**RE:** Docket No. 52101 – *Petition of CCD-North Sky, LLC to Amend Marilee Special Utility District's Water Certificate of Convenience and Necessity in Collin County by Expedited Release*

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On May 10, 2021, CCD-North Sky, LLC (North Sky) filed a petition for streamlined expedited release from Marilee Special Utility District's (Marilee SUD) water certificate of convenience and necessity (CCN) No. 10150 in Collin County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). North Sky asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, which is a qualifying county.

In response to Order No. 5, Staff is currently unable to evaluate whether the requested area is receiving water service from Marilee SUD due to discrepancies in the mapping attached to Marilee SUD's motion to dismiss. Specifically, Marilee SUD's maps do not include scaling information that would allow Staff to accurately determine the exact location of the meters in relation to the portion of the property receiving service. In order to make this determination, Staff requests that Marilee SUD resubmit the revised maps and include a scale bar.

### **Mapping Content:**

Based on the mapping review by Tracy Montes, the maps filed by Marilee SUD on June 16, 2021 do not include a scale bar identifying the units of measure used to create the maps. A scale bar is required to determine the measured distances between meters and other landmarks shown on their maps. Until a scale bar is submitted with the revised maps, Staff will not be able to determine if the meters found on Marilee SUD's maps were accurately removed from the petitioner's revised maps filed on July 6, 2021. Staff is unable to determine if the revised mapping documents provided by the petitioner have accurately removed the meters from the tract of land they are seeking to be released from Marilee SUD's CCN service area.



Staff requests that Marilee SUD provide revised detailed maps to replace those filed on June 16, 2021, including a scale bar indicating the units of measure and identifying the same meters of interest shown in reference to verifiable man-made and natural landmarks.