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| <b>PETITION OF CCD-NORTHSKY, LLC</b>  | <b>§</b> | <b>PUBLIC UTILITY COMMISSION</b> |
| <b>TO AMEND MARILEE SPECIAL</b>       | <b>§</b> |                                  |
| <b>UTILITY DISTRICT’S CERTIFICATE</b> | <b>§</b> | <b>OF TEXAS</b>                  |
| <b>OF CONVENIENCE AND NECESSITY</b>   | <b>§</b> |                                  |
| <b>IN COLLIN COUNTY BY EXPEDITED</b>  | <b>§</b> |                                  |
| <b>RELEASE</b>                        | <b>§</b> |                                  |

**COMMISSION STAFF’S SUPPLEMENTAL RECOMMENDATION**

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 and filed supplemental maps on July 28 and August 17, 2021.

On August 31, 2021, the administrative law judge (ALJ) filed Order No. 8, establishing a deadline of September 13, 2021 for the Staff of the Public Utility Commission of Texas (Staff) to file a supplemental recommendation on sufficiency of the petition and notice and proposed procedural schedule and response to Marilee SUD's motion to dismiss. Therefore, this pleading is timely filed.

**I. ADMINISTRATIVE COMPLETENESS**

Staff has reviewed the petition and supplemental information and, as detailed in the memorandum from Jolie Mathis, Infrastructure Division, filed on August 27, 2021 with Staff’s Response to Order No. 5, Staff recommends that the petition is administratively complete. Staff’s recommendation on administrative completeness is not a comment on the merits of the petition.

## II. STAFF'S RESPONSE TO THE 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> 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.

### *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

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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).

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

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

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

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 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

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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.

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).

### **III. 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. Staff was able to confirm that the Residence has been fully and accurately removed from the requested area at this time.

***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.

**IV. NOTICE SUFFICIENCY**

Under 16 TAC § 24.245(h)(3)(f), a landowner seeking streamlined expedited release must provide proof that a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner submits the petition to the Commission. North Sky stated that it mailed a copy of its petition to the CCN holder, Marilee SUD, by certified mail on the day the petition was filed with the Commission. North Sky also included an affidavit attesting to this provision of notice to Marilee SUD. Accordingly, Staff recommends that the notice is sufficient.

**V. PROCEDURAL SCHEDULE**

Under 16 TAC § 24.245(h)(7), there is an expedited deadline of 60 days for approval of the requested release that begins once the ALJ issues an order finding a petition administratively complete. Staff recommends that the petition be found administratively complete. Therefore, Staff proposes the following procedural schedule and requests that the ALJ populate the deadlines accordingly when the ALJ issues that order.

| <b>Event</b>  | <b>Date</b>      |
|---|------------------|
| Deadline for Marilee SUD and intervenors to file a response to the administratively complete petition | October 7, 2021  |
| Deadline for Staff's recommendation on final disposition<br><sup>14</sup> <i>Id.</i>                  | October 21, 2021 |

|   |  |
|---|--|
| Deadline for petitioner to file a reply to both Marilee SUD's response and Staff's recommendation on final disposition  | October 28, 2021   |
| Sixty-day administrative approval of streamlined expedited release  | November 16, 2021  |
| <b><i>In the event streamlined expedited release is granted and petitioner and Marilee SUD can select an agreed-upon appraiser</i></b>  |  |
| Deadline for petitioner and <i>Marilee SUD</i> to make a filing stating that they have selected an agreed-upon appraiser  | Within 10 days after the Commission approves streamlined expedited release               |
| Deadline for appraiser's report   | Within 70 days after the Commission approves streamlined expedited release               |
| Deadline for Commission's final order determining the amount of monetary compensation, if any, owed by petitioner to <i>Marilee SUD</i>   | Within 60 days after appraiser's report  |
| Deadline for petitioner to pay any compensation due to <i>Marilee SUD</i>   | Within 90 days of the Commission's final order on compensation                           |
| <b><i>In the event streamlined expedited release is granted and petitioner and Marilee SUD are unable to select an agreed-upon appraiser</i></b>  |  |
| Deadline for petitioner and <i>Marilee SUD</i> to make a filing stating that they have been unable to select an agreed-upon appraiser and affirming that they will pay half of the cost of Commission Staff's appraiser <sup>15</sup> | Within 10 days after the Commission approves streamlined expedited release <sup>16</sup> |
| Deadline for reports from petitioner's appraiser and <i>Marilee SUD's</i> appraiser   | Within 70 days after the Commission approves streamlined expedited release               |
| Deadline for Staff's appraiser's report   | Within 100 days after the Commission approves streamlined expedited release              |
| Deadline for Commission's final order determining the amount of monetary compensation, if any, owed by petitioner to <i>Marilee SUD</i>   | Within 60 days after the Commission receives the final appraisal                         |
| Deadline for petitioner to pay any compensation due to <i>Marilee SUD</i>   | Within 90 days of the Commission's final order on compensation                           |

## VI. CONCLUSION

For the reasons detailed above, Staff recommends that North Sky's petition for expedited release should not be dismissed at this time. Staff also recommends that the petition be found administratively complete, that the notice be found sufficient, and that the proposed procedural

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<sup>15</sup> TWC § 13.2541(i).

<sup>16</sup> It is critical for Staff to know as soon as possible after the Commission grants the petition whether Staff needs to secure the services of a third appraiser. If the petitioner and CCN holder are unable to agree, and fail to make this filing, Staff may need additional time to file its appraiser's report.

schedule be adopted. Staff respectfully requests the entry of an order consistent with these recommendations.



Dated: September 13, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**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 via electronic mail on September 13, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Mildred Anaele  
Mildred Anaele