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

**MARILEE SPECIAL UTILITY DISTRICT'S RESPONSE TO
PETITIONER'S OBJECTION TO APPLICATION FOR
FEDERAL DEBT AND MOTION FOR WITHDRAWAL**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MARX:

COMES NOW, MARILEE SPECIAL UTILITY DISTRICT ("Marilee") and files this Response ("Response") to CCD-North Sky, LLC's ("Petitioner") Objection to Marilee's Application for Federal Debt and Request for Order of Withdrawal ("Objection"), filed in this docket, and respectfully shows as follows:

I. BACKGROUND

1. On May 10, 2021, Petitioner filed a Petition seeking to use the Public Utility Commission's (the "Commission") streamlined expedited release process, Texas Water Code ("TWC") § 13.2541, to decertify 219.976 acres of property from the water utility service area Marilee serves under Certificate of Convenience and Necessity ("CCN") No. 10150 in Collin County, Texas, pursuant to TWC § 13.2541 and 16 TAC § 24.245(h).¹ The Petition alleged that the Property was greater than 25 acres, is not receiving water or sewer service, and is entirely within Collin County.²

2. On May 24, 2021, Marilee filed a Motion to Intervene.³ The Commission granted the Motion to Intervene on June 9, 2021.⁴

¹ Petition at 1 (May 10, 2021).

² *Id.* at 2.

³ Motion to Intervene (May 24, 2021).

⁴ Order No. 2 – Granting Intervention (June 9, 2021).

3. On June 9, 2021, Commission Staff recommended that the Petition be found administratively incomplete. On June 11, 2021, the Commission entered Order No. 3, in which it found the Petition administratively incomplete, and gave Petitioner until July 7, 2021, to cure the deficiencies identified by Commission Staff.⁵

4. Order No. 1 permitted Marilee to file a response to the Petition, verified by notarized affidavit, by June 16, 2021. Order Nos. 2 and 3 did not extend this deadline. Thus, Marilee filed a verified response to and motion to dismiss the Petition on June 16.⁶

5. After considering all pleadings and ordering supplemental mapping from the parties,⁷ the ALJ denied Marilee's motion to dismiss the Petition.⁸ A primary reason for denying the motion to dismiss was, "Commission Staff has reviewed and confirmed that North Sky's amended petition removed a portion of the property in the general area of the residence receiving service from the requested area."⁹

6. On July 6, 2021, Petitioner filed its Amended Petition to extract approximately 219.67 acres of property (the "Property") from Marilee CCN No. 10150 in Collin County, Texas.¹⁰ The only difference between the Petition and the Amended Petition was Petitioner's carving out of 0.306 acres of property that was at issue in the Petition.

7. On July 28, 2021, Marilee filed supplemental mapping of the Property, which show that Marilee has an "active two-inch waterline located within the Property and Marilee has a residential meter, Meter #241, located within the Property that actively supplies water to a billed residential connection located at 3170 North Louisiana Drive, Celina, Texas 75009, and remains

⁵ Order No. 3 – Finding Petition Incomplete and Establishing an Opportunity to Cure (June 11, 2021).

⁶ Marilee Special Utility District's Response to and Motion to Dismiss Petition (June 16, 2021).

⁷ Order No. 6 – Requiring New Map and Responses (July 20, 2021).

⁸ See Order No. 9 – Denying Motion to Dismiss (Sept. 14, 2021).

⁹ *Id.* at 2.

¹⁰ First Amended Petition by CCD-North Sky, LLC for Expedited Release from Water CCN No. 10150 Held by Marilee Special Utility District in Collin County (July 6, 2021).

on today.”¹¹ On August 17, 2021, in response to Commission Staff’s request, after which Commission Staff and the ALJ found mapping sufficient.¹²

8. The ALJ found the Amended Petition to be administratively complete on September 15, 2021.¹³ The ALJ ordered Marilee and any other intervenor to file their verified response to the Amended Petition by October 7, 2021.¹⁴

9. On October 7, Marilee filed a Verified Response to the Amended Petition (“Verified Response”), in which it argued that the Amended Petition should be denied because Petitioner failed to meet its statutory burden to prove that the Property is not receiving service; the Property is in fact receiving service under TWC § 13.2541 and *Texas General Land Office v. Crystal Clear Water Supply Corp.*;¹⁵ and equity favors not curtailing or limiting Marilee’s service area due to its pending federal debt.¹⁶

10. On October 15, Petitioner filed its Objection, arguing that Marilee filed an application for a federal loan (“Application”) in violation of TWC § 13.2541(e) and TAC § 24.245(h)(8), and requesting that the ALJ order Marilee to withdraw its Application. This Response is timely filed.

II. RESPONSE

A. Marilee’s Application Does Not Violate TWC § 13.2541(e) or TAC § 24.254(h)(8) Because It Was Filed Before this Proceeding Was Initiated.

11. TWC § 13.2541(e) and 16 TAC § 24.254(h)(8), on which Petitioner bases its Objection do not support Petitioner’s Objection in this proceeding. TWC § 13.2541(e) provides:

¹¹ Marilee Special Utility District’s Supplemental Mapping at 2 & Exhibit A, Affidavit of Eddy Daniel, at ¶ 3 (July 29, 2021).

¹² Marilee Special Utility District’s Second Supplemental Map (Aug. 17, 2021); Commission Staff’s Comments on Mapping (Aug. 27, 2021); Order No. 8 – Finding Mapping Sufficient, Requiring Commission Staff Recommendations (Aug. 31, 2021).

¹³ Commission Staff’s Supplemental Recommendation (Sept. 13, 2021).

¹⁴ Order No. 10 – Finding Petition Administratively Complete and Notice Sufficient and Establishing Procedural Schedule (Sept. 15, 2021).

¹⁵ 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

¹⁶ See 7 U.S.C § 1926(b); Verified Response at ¶¶ 27-33; Verified Response, Exhibit A, Affidavit of Donna Loiselle, at ¶¶ 10-12 (describing actions taken to secure USDA-approved loan and supporting documentation).

The certificate holder may not initiate an application to borrow money under a federal loan program after the date the petition is filed until the utility commission issues a decision on the petition.

16 TAC § 24.245(h)(8) provides:

The fact that a current CCN holder is a borrower under a federal loan program is not a bar to the release of a tract of land under this subsection. The CCN holder must not initiate an application to borrow money under a federal loan program after the date the petition is filed until the commission issues a final decision on the petition.

12. Even if the District's Application violated either provision in another proceeding, which it does not, Petitioner cannot object to the District's Application in this proceeding because this proceeding had not been initiated when the District filed its Application. Petitioner admits that this is true, stating "Marilee's application for federal debt was not initiated during the pendency of this docket."¹⁷

13. As described in Marilee's Verified Response, Donna Loiselle, General Manager of Marilee, was authorized on February 11, 2021, to apply for a Water and Wastewater Guaranteed loan of \$1,553,000 from Live Oak Bank. After April 7, 2021, she did so, and Live Oak Bank sent a commitment letter to Marilee's Board of Directors on April 13, 2021, approving the Application. On July 12, 2021, Marilee received approval from the United States Department of Agriculture ("USDA").¹⁸ Marilee has not closed on the USDA loan but is working diligently to do so.

14. This docket was initiated on May 10, 2021, months after when Marilee filed its loan application with Live Oak Bank.¹⁹ Therefore, Petitioner cannot complain that the District violated TWC § 13.2541, because *Petitioner's* Petition was not yet filed when the District filed its Application. There has been no violation of TWC § 13.2541 in this proceeding. Moreover, Petitioner's Petition was supplanted by the Amended Petition, which was filed on July 6, 2021.

¹⁷ Objection at ¶ 5.

¹⁸ See Verified Response, Exhibit A, Affidavit of Donna Loiselle, at ¶¶ 10-12 (describing actions taken to secure USDA-approved loan and supporting documentation).

¹⁹ The original Petition was filed on May 10, 2021.

B. Marilee's Application Does Not Violate TWC § 13.2541(e) or TAC § 24.254(h)(8) in any Other Proceeding.

15. In its Objection, Petitioner argues that the Commission should order the District to withdraw its Application because of another proceeding to which Petitioner is not a party.²⁰ The proceeding Petitioner invokes is Commission Docket No. 50404,²¹ in which Petitioner is not a party. Further, the District properly waited to file its Application until the petition in Docket 50404 was considered for final disposition by the Commissioners at an open meeting on April 7, 2021, which resulted in the petition being remanded.²² As the Commission had issued a decision on the petition, the District did not violate TWC § 13.2541(e) or TAC § 24.254(h)(8) by making its Application at that time.²³ The Petitioner in Docket 50404 filed an amended petition on April 27, 2021, which was not ordered to be administratively complete until June 10, 2021.²⁴

C. Petitioner Has No Standing to Object to the District's Application with Regard to Any Proceeding to Which Petitioner Is Not a Party.

16. As the District's Application was already filed when Petitioner initiated this proceeding, Petitioner's Objection is wholly based on the District's actions in Docket 50404, to which Petitioner is not a party. If Docket 50404 did not exist, there would be no basis for

²⁰ See Objection at ¶ 4 (alleging that the District filed its Application while "Docket 50404 was pending").

²¹ *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 50404 (pending).

²² See Order Remanding to Docket Management, Docket 50404 at 2 (Apr. 7, 2021) ("the Commission remands the proceeding to Docket Management for the petitioners to have the opportunity to amend the petition and address water meter 1528, along with any other relevant water meters, and any residences served by any of those meters[.]").

²³ See 16 TAC § 22.262 (describing effect of remand on proceeding before the Commission).

²⁴ See First Amended Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release, Docket No. 50404 (Apr. 27, 2021); Mapping Information to Supplement First Amended Petition, Docket No. 50404 (Apr. 28, 2021); Marilee Special Utility District's Response and Objection to the First Amended Petition, Docket No. 50404 (May 13, 2021); Commission Staff's Request for an Extension, Docket No. 50404 (May 26, 2021); Order No. 10 – Requiring Recommendations; Order No. 11 – Granting Extension, Docket No. 50404 (May 28, 2021); Commission Staff's Supplemental Recommendation on Administrative Completeness and Sufficiency of Notice, Docket No. 50404 (June 9, 2021); Commission Staff's Second Request for an Extension, Docket No. 50404 (June 9, 2021); Order No. 12 – Finding Amended Petition, as Supplemented, Administratively Complete, Granting Extension, and Establishing Procedural Schedule, Docket No. 50404 (June 10, 2021).

Petitioner's Objection, as the fact that the District's Application was already filed when this proceeding was initiated means there is no violation of TWC § 13.2541(e) or TAC § 24.254(h)(8) in this proceeding. As such, Petitioner is essentially attempting to litigate an issue relevant only to Docket No. 50404, a separate proceeding with separate petitioners, in this proceeding, which is procedurally improper

17. Petitioner has no standing to litigate issues relating to Docket 50404 in this proceeding because Petitioner cannot show any "justiciable interest" in the District's Application. A "justiciable interest" is defined to require a showing that there is a real controversy *between the parties*, which will be actually determined by the judicial declaration sought.²⁵ A plaintiff must contend that the controversy restricts the plaintiff's rights, not somebody else's.²⁶

18. Should Petitioner desire to challenge the District's Application in Docket 50404, then Petitioner should move to participate in Docket 50404 as an intervenor under 16 TAC § 22.103(B), not assert claims related to Docket 50404 in this proceeding.

III.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Marilee respectfully requests the Commission deny and strike Petitioner's Objection for the following reasons: the District's Application was filed prior to the initiation of this docket; the District's Application did not violate and has not been held to have violated TWC § 13.2541(e) or TAC § 24.254(h)(8) in Docket No. 50404 because Marilee's Application was not filed during a period of time when a petition was pending; and, further, Petitioner has no standing to complain about actions that occurred in proceedings to which Petitioner is not a party because Petitioner has no justiciable interest in the

²⁵ See, e.g., *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 518 (Tex. 1995) (holding that standing requires the plaintiff to contend that matter complained of "restricts the plaintiff's rights, not somebody else's").

²⁶ See, e.g., *McMaster v. PUC of Tex.*, No. 03-11-00571-CV, 2012 WL 3793257, at *15 (Tex. App.—Austin Aug. 31, 2012, no pet.) (mem. op.) (stating that where appellant was not a party to the CCN proceeding at issue, the district court lacked jurisdiction over claims brought by the non-party related to that proceeding).

outcome of such a proceeding. Marilee also seeks all other and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,



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ATTORNEYS FOR MARILEE SPECIAL
UTILITY DISTRICT

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail and/or Certified Mail Return Receipt Requested to all parties on this 21st day of October 2021.



Grayson E. McDaniel