



## Filing Receipt

**Received - 2022-06-16 02:52:45 PM**  
**Control Number - 52435**  
**ItemNumber - 34**

**DOCKET NO. 52435**

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| <b>PETITION BY LEGACY</b>          | <b>§</b> | <b>PUBLIC UTILITY COMMISSION</b> |
| <b>EQUESTRIAN CENTER LLC FOR</b>   | <b>§</b> |                                  |
| <b>EXPEDITED RELEASE FROM</b>      | <b>§</b> | <b>OF TEXAS</b>                  |
| <b>WATER CCN NO. 10150 HELD BY</b> | <b>§</b> |                                  |
| <b>MARILEE SPECIAL UTILITY</b>     | <b>§</b> |                                  |
| <b>DISTRICT IN COLLIN COUNTY</b>   | <b>§</b> |                                  |

**MARILEE SPECIAL UTILITY MOTION TO CERTIFY  
ISSUES TO THE PUBLIC UTILITY COMMISSION OF TEXAS**

TO THE HONORABLE CHIEF ADMINISTRATIVE LAW JUDGE TA:

COMES NOW Marilee Special Utility District (the “District”), by and through undersigned counsel, and files this Motion to Certify Issues to the Public Utility Commission of Texas (the “Commission”), pursuant to 16 Texas Administrative Code (“TAC”) § 22.127. In support thereof, the District respectfully shows the Honorable Administrative Law Judge (“ALJ”) as follows:

**I. BACKGROUND**

1. On August 16, 2021, Petitioner Legacy Equestrian Center (“Petitioner”) filed a Petition for Expedited Release Pursuant to Texas Water Code Section 13.2541 seeking to use the Public Utility Commission’s (“Commission”) streamlined expedited release process, TWC § 13.2541 and 16 TAC § 24.245(h), to extract approximately 67.696 acres of property (the “Tract of Land”) from the water utility service area the District serves under Certificate of Convenience and Necessity (“CCN”) No. 10150 in Collin County, Texas.<sup>1</sup>

2. On September 15, 2021, the ALJ ordered that the Petition was administratively complete, and entered the procedural schedule that governs this proceeding.<sup>2</sup> Included in the procedural schedule in Order No. 12 are the following procedural deadlines:<sup>3</sup>

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<sup>1</sup> Petition of Legacy Equestrian Center LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release (Aug. 16, 2021).

<sup>2</sup> Order No. 2 – Finding Petition Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule (Sept. 15, 2021).

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

| <i><b>In the event expedited release is granted and petitioner and CCN holder are unable to select an agreed-upon appraiser</b></i>   |  |
|---|--|
| Deadline for petitioner and CCN holder 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 | Within 10 days after the Commission approves streamlined expedited release |
| Deadline for reports from petitioner's appraiser and from CCN holder's appraiser  | Within 70 days after the Commission approves expedited release             |
| Deadline for Commission Staff's appraiser's report  | Within 100 days after the Commission approves expedited release            |
| Deadline for Commission's final order determining the amount of monetary compensation, if any, owed by petitioner to CCN holder   | Within 60 days after Commission receives the final appraisal               |
| Deadline for petitioner to pay any compensation due to CCN holder   | Within 90 days of Commission's final order on compensation                 |

3. On March 1, 2022, the Commission entered its Order granting the Petition (the "Order").<sup>4</sup> In the Order, the Commission provided as follows:

The proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with the schedule adopted in Order No. 2. Any decision on compensation will be made by a separate order.<sup>5</sup>

The Order specifically states that Order No. 2 controls the compensation phase of this proceeding. Order No. 2 specifically provides a deadline of "petitioner," not any other party, person, or entity, to compensate CCN holder, which is the District.<sup>6</sup>

4. On May 10, 2022, Petitioners and the District timely submitted appraisal reports for the Tract of Land.

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<sup>4</sup> Order (Mar. 1, 2022).

<sup>5</sup> *Id.* at Ordering Paragraph 7.

<sup>6</sup> Order No. 2 at 3.

5. On June 2, 2022, Commission Staff and the District filed a joint request for clarification and abatement (the “Joint Request”).<sup>7</sup> Commission Staff explained that Petitioner’s counsel had informed Commission Staff that Petitioner sold the Tract of Land to an unknown buyer who is not and has never been a party to this proceeding.<sup>8</sup> Based on these developments, Commission Staff requested abatement of the proceeding pending clarification from the ALJ as to whether, among other things, Petitioners still have standing to bring this proceeding, since they have sold the Tract of Land.<sup>9</sup>

6. On June 10, 2022, the ALJ entered an order denying the Joint Request.<sup>10</sup>

## **II. MOTION TO CERTIFY ISSUE TO THE COMMISSION**

7. The Commission’s procedural rules authorize a presiding officer to certify to the Commission an issue that involved an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the Commission by law.<sup>11</sup> The District respectfully submits that the issue raised by the Joint Request—namely, whether Petitioners still have standing and how this case is to proceed now that Petitioners have sold the Tract of Land—is appropriate for certification to the Commission, as it involves an ultimate satisfaction of TWC § 13.2541, which is a statutory standard.

8. To obtain release of property from a CCN holder under Texas Water Code (“TWC”) § 13.2541, a landowner must demonstrate with affirmative evidence that the landowner *owns a tract of land* that is at least 25 acres, that the tract of land is located in a qualifying county,

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<sup>7</sup> Joint Request for Clarification and Abatement (June 2, 2022).

<sup>8</sup> *See id.* at 1 (“Staff recently learned from counsel for Legacy Equestrian that the property for which the petitioner seeks release is no longer owned by Legacy Equestrian,” and “Staff has been unable to ascertain the name of the new property owner.”).

<sup>9</sup> *Id.*

<sup>10</sup> Order No. 6 - Clarification (June 10, 2022).

<sup>11</sup> 16 TAC § 22.127(a).

and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.<sup>12</sup>

9. The Petitioner in this proceeding does not own the Tract of Land,<sup>13</sup> and, as a result, no longer has standing to bring this proceeding. Petitioner cannot “cure” this deficiency: The Commission rules do not provide for Petitioner to abandon its case and the Commission has ruled in a different TWC § 13.2541 proceeding that Petitioner is prohibited from substituting in a different petitioner—one who actually owns the Tract of Land and has standing to bring this proceeding—at this stage of the proceeding.<sup>14</sup> As the ALJ stated in that order, Petitioner should have withdrawn its Petition when it sold the Tract of Land.<sup>15</sup> As Petitioner has not done so, the District believes that it is appropriate for the Commission to withdraw the Order and dismiss the Petition.

10. For the foregoing reasons the District respectfully requests that the ALJ certify the issues raised in the Joint Request to the Commission, and abate this proceeding pending the Commission’s resolution of the certified issue.<sup>16</sup>

**A. Alternatively, the District Moves for the ALJ to Abate this Proceeding While the District Moves the Commission to Reconsider the Order.**

11. In the alternative, the District may file a motion for reconsideration of the Order based on the newly discovered fact that Petitioner no longer owns the Tract of Land. The ALJ has

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<sup>12</sup> TWC § 13.2541 (emphasis added); *see also* 16 TAC § 24.245(h). *See also* Marilee Special Utility District’s Response and Objection to the Administratively Complete Amended Petition, at 9, 12-13 (detailing Petitioners’ failure to meet their burden of proof under TWC § 13.2541 and 16 TAC § 24.245(h)).

<sup>13</sup> Commission Staff’s Informational Filing and Request for Clarification and Abatement, at 4 & Staff’s Exhibit B (June 9, 2022) (stating that Petitioners have sold the Tract of Land at issue in this proceeding and providing email from Petitioners’ counsel, dated June 2, 2022, admitting that Petitioners “closed on the sale of the property” on Thursday, May 26, 2022, and that Petitioners’ counsel “ha[s] not been engaged by the buyer.”).

<sup>14</sup> *See Petition of Charles D. Carter to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52917, Order No. 6 – Rejecting First Amended Petition and Request to Restyle Docket (Apr. 6, 2022) (“The request to restyle the petition is denied and the attempt to substitute Sater as the petitioner is denied. The proper course of action would be for Mr. Carter to move to withdraw his petition in this docket so that it can be closed. If Sater wishes to pursue streamlined expedited release it must file a new petition in a new docket.”).

<sup>15</sup> *See* 16 TAC § 22.181(g)(1) (“A party that initiated a proceeding may withdraw its application without prejudice to refiling of same, at any time before that party has presented its direct case.”).

<sup>16</sup> *See* 16 TAC § 22.127(c) (“The presiding officer may abate the proceeding while a certified Commission action issue is pending.”).

“broad discretion” to abate a proceeding under the Commission’s procedural rules.<sup>17</sup> Accordingly, in the event that the ALJ does not certify an issue to the Commission, the District respectfully requests that the ALJ abate this proceeding while the District files a motion for reconsideration of the Order.

**B. Alternatively, the District Moves for the ALJ to Abate this Proceeding Pending the Outcome of the District’s State-Court Appeal of the Order.**

12. In the alternative, the District respectfully submits that this proceeding be abated during the pendency of the District’s state-court appeal of the Order, as described herein.

13. On May 25, 2022, the District initiated judicial review of the Order in Travis County District Court (the “Appeal”).<sup>18</sup> The District is in the process of supplementing its Original Petition for Judicial Review to include the newly discovered fact that Petitioner no longer owns the Tract of Land, as it sold the Tract of Land before this proceeding was final.

14. The Commission’s Order in this proceeding will potentially be reversed or remanded to the Commission for reconsideration, at which time the District will move the Commission to withdraw the Order and dismiss this proceeding, since Petitioner no longer owns the Tract of Land at issue, and thus lacks standing to pursue its claim under TWC § 13.2541.

15. In the event that the ALJ does not certify an issue to the Commission or abate the proceeding pending the District’s Motion for Reconsideration of the Order to the Commission, the District alternatively respectfully requests that the ALJ enter an order abating this proceeding during the pendency of the Appeal.

### **III. PRAYER**

The Petitioner in this proceeding, Legacy Equestrian Center, does not own the Tract of Land that is the subject of the Petition,<sup>19</sup> and accordingly cannot satisfy TWC § 13.2541’s

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<sup>17</sup> 16 TAC § 22.202(c).

<sup>18</sup> *Marilee Special Utility Dist. v. Pub. Util. Comm’n of Texas*, No. D-1-GN-22-002413 (53<sup>rd</sup> Dist. Ct., Travis County, Tex., May 25, 2022) (Marilee Special Utility District’s Original Petition for Judicial Review).

<sup>19</sup> See Joint Request for Clarification and Abatement at 1 (June 2, 2022) (“Staff recently learned from counsel for Legacy Equestrian that the property for which the petitioner seeks release is no longer owned by Legacy Equestrian,” and “Staff has been unable to ascertain the name of the new property owner.”).

requirement that the landowner *owns a tract of land* that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.<sup>20</sup>

For the aforementioned reasons, the District prays that the ALJ take one off the following actions:

- Certify issues raised in the Joint Request to the Commission, and abate this proceeding pending the Commission's resolution of the certified issues;
- Abate this proceeding while the District files a motion for reconsideration of the Order with the Commission; or
- Enter an order abating this proceeding during the pendency of the District's Appeal of the Commission's Order.

Finally, the District also respectfully requests any other relief in law or equity to which it may show itself to be entitled.

Respectfully submitted,

  
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John J. Carlton

State Bar No. 03817600

Grayson E. McDaniel

State Bar No. 24078966

The Carlton Law Firm P.L.L.C.

4301 Westbank Drive, Suite B-130

Austin, Texas 78746

(512) 614-0901

Fax (512) 900-2855

[john@carltonlawaustin.com](mailto:john@carltonlawaustin.com)

[grayson@carltonlawaustin.com](mailto:grayson@carltonlawaustin.com)

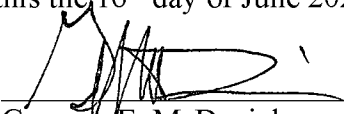
ATTORNEYS FOR MARILEE SPECIAL  
UTILITY DISTRICT

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<sup>20</sup> TWC § 13.2541 (emphasis added); *see also* 16 TAC § 24.245(h).

### **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 the 16<sup>th</sup> day of June 2022.

  
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Grayson E. McDaniel