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DOCKET NO. 52435

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

MARILEE SPECIAL UTILITY DISTRICT’S APPEAL OF ORDER NO. 6

TO THE PUBLIC UTILITY COMMISSION:

COMES NOW Marilee Special Utility District (the “District”), by and through undersigned counsel, and files this Appeal of Order No. 6 with the Public Utility Commission of Texas (the “Commission”), pursuant to 16 Texas Administrative Code (“TAC”) § 22.123. In support thereof, the District respectfully shows the Commission 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.¹

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

¹ 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).

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

³ *Id.* at 3.

<i>In the event expedited release is granted and petitioner and CCN holder are unable to select an agreed-upon appraiser</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").⁴ 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.⁵

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.⁶

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

⁴ Order (Mar. 1, 2022).

⁵ *Id.* at Ordering Paragraph 7.

⁶ 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”).⁷ In the Joint Request, the parties explained that Petitioner’s counsel 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.⁸ Based on these developments, Commission Staff and the District requested “clarification regarding whether the release can proceed at all, given that the property has now changed hands, and, if the release can proceed, what entity will be responsible for the petitioner’s portion of the fee for Staff’s appraiser.”⁹ Commission Staff further requested abatement of the proceeding pending clarification of these issues.¹⁰

6. Petitioner filed no response to the Joint Request.

7. On June 10, 2022, the ALJ entered Order No. 6 denying the Joint Request.¹¹ The ALJ stated that abatement is unnecessary and there “is no need for clarification on whether the release can proceed because the release has already occurred.”¹² The ALJ held, “Legacy Equestrian is responsible for paying the amount of compensation to be awarded to Marilee SUD, if any.”¹³

8. In response to Order No. 6, on June 16, 2022, the District filed a Motion to Certify an Issue to the Commission, requesting that the ALJ certify whether Petitioner has standing to continue to bring this case, as it is no longer the owner of the Tract of Land.¹⁴ Petitioner filed no response to the District’s motion.

⁷ Joint Request for Clarification and Abatement (June 2, 2022).

⁸ 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.”).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Order No. 6 - Clarification (June 10, 2022).

¹² *Id.* at 1.

¹³ *Id.*

¹⁴ Marilee Special Utility District’s Motion to Certify Issues to the Public Utility Commission of Texas (June 16, 2022).

9. On June 27, the ALJ entered an order denying the District’s motion. The ALJ stated that the correct course of action for the District was to appeal Order No. 6 to the Commission, and provided a deadline of July 1, 2022, for the District to do so.¹⁵

10. Accordingly, the District now appeals Order No. 6. Pursuant to the deadline provided in Order No. 8, this appeal is timely filed.

II. APPEAL OF ORDER NO. 6

11. The ALJ’s decision to deny the Joint Request was incorrect. Commission Staff and the District need clarification of how this proceeding is to continue now that the Petitioner is no longer the owner of the Tract of Land. The District respectfully requests that the Commission reverse Order No. 6 and provide instructions to the ALJ on the issues raised in the Joint Request.

A. Petitioner Is No Longer a Party to this Proceeding and the Commission’s Order Should Therefore be Reconsidered.

12. The Petitioner in this proceeding does not own the Tract of Land,¹⁶ 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. Further, in a different TWC § 13.2541 proceeding, Petitioner was prohibited from substituting in a different petitioner—one who actually owned the tract of land—at this stage of the proceeding.¹⁷ The ALJ stated in that order that the Petitioner should have withdrawn its Petition when it sold the Tract of Land.¹⁸

¹⁵ See Order No. 8 (June 27, 2022) at 1 (“[T]he ALJ finds good cause under 16 TAC § 22.5(b) to extend the deadline to file an appeal of Order No. 6 to July 1, 2022.”).

¹⁶ 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.”).

¹⁷ 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.”).

¹⁸ 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.”).

13. 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, 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.¹⁹

14. Here, there is no “Petitioner” left whatsoever. The Tract of Land has been sold and no other petitioner has made an appearance. 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.²⁰ There is now no petitioner to compensate the District. This case is not final until the District has been compensated and until any subsequent judicial review of this case has been concluded. There being no petitioner, there is no party to bring this case. Accordingly, the District respectfully requests that the Commission reconsider the Order based on this new information and revise or withdraw the Order as the Commission may deem appropriate.

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

15. 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.

16. On May 25, 2022, the District initiated judicial review of the Order in Travis County District Court (the “Appeal”).²¹ 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.

17. 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

¹⁹ 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)).

²⁰ Order No. 2 at 3.

²¹ *Marilee Special Utility Dist. v. Pub. Util. Comm’n of Texas*, No. D-1-GN-22-002413 (53rd Dist. Ct., Travis County, Tex., May 25, 2022) (Marilee Special Utility District’s Original Petition for Judicial Review).

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.

18. 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, no longer owns the Tract of Land that is the subject of the Petition,²² and accordingly cannot satisfy TWC § 13.2541's 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.²³

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


- Grant the District's appeal of Order No. 6 and provide instructions to the ALJ to clarify whether Petitioner still has standing to bring this proceeding; or
- Enter an order abating this proceeding during the pendency of the District's Appeal of the Commission's Order in Travis County District Court.

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

²² 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.").

²³ TWC § 13.2541 (emphasis added); *see also* 16 TAC § 24.245(h).

Respectfully submitted,



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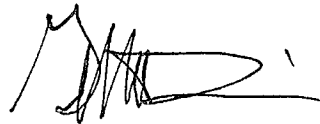
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ATTORNEYS FOR MARILEE SPECIAL
UTILITY DISTRICT

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 the 30th day of June 2022.



Grayson E. McDaniel