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PUC DOCKET NO. 52442

PETITION OF MERITAGE HOMES OF	§	PUBLIC UTILITY COMMISSION
TEXAS, LLC TO AMEND NORTH	§	
COLLIN SPECIAL UTILITY	§	OF TEXAS
DITSRICT'S CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
COLLIN COUNTY BY EXPEDITED	§	
RELEASE	§	

**NORTH COLLIN SPECIAL UTILITY DISTRICT'S RESPONSE TO ORDER NO. 7
AND SUPPLEMENTAL RESPONSE AND OBJECTION TO THE PETITION**

COMES NOW, North Collin Special Utility District, a political subdivision of the State of Texas ("North Collin") and files this Supplemental Response and Objection to the Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release from North Collin's Certificate of Convenience and Necessity (CCN) No. 11035 and Motion to Dismiss ("Supplemental Response"). North Collin contends that this proceeding is contested and North Collin is entitled to due process, including a hearing on the petition. In support thereof, North Collin respectfully would show as follows:

I. BACKGROUND

On June 30, 2021, Meritage Homes of Texas, LLC, an Arizona limited liability company ("Petitioner" or "Meritage") filed a petition for streamlined expedited release, pursuant to Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h), from North Collin's water CCN No. 11035 and the City of Melissa's water CCN No. 11482, in the Public Utility Commission of Texas ("PUC" or "Commission") Docket No. 52293.

On August 3, 2021, North Collin filed its Motion to Intervene in Docket No. 52293.

On August 13, 2021, Meritage filed its Motion to Sever, requesting its application for streamlined expedited release from North Collin's CCN be severed from Docket No. 52293.¹

On August 24, 2021, Order No. 4 issued in Docket No. 52293 and Order No. 1 issued in Docket No. 52442 (this proceeding) allowed Meritage's petition to be severed, where the petition from North Collin's CCN would be addressed in Docket No. 52242.²

¹ *Petition by Meritage Homes of Texas, LLC to Amend North Collin Special Utility District's and City of Melissa's Certificates of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52293, Meritage's Response to Order No. 2 and Motion to Sever at 1 (Aug. 13, 2021).

² Order No. 1 at 2 (Aug. 19, 2021); *Petition by Meritage Homes of Texas, LLC to Amend North Collin Special Utility District's and City of Melissa's Certificates of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52293, Order No. 4 at 2 (Aug. 19, 2021).

On August 23, 2021, Meritage filed the Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release Pursuant to Texas Water Code § 13.2541 (the “Petition”). In the Petition, Meritage states that it owns approximately 273.5 acres of property in Collin County, Texas (the “Property”), which is located within the municipal boundaries of the City of Princeton and within the boundaries of North Collin’s CCN.³

On September 6, 2021, Commission Staff filed its Recommendation on Administrative Completeness and Notice (the “Recommendation”), recommending that the Petition is deficient.⁴ The Commission has not deemed the Petition to be administratively complete in accordance with 16 TAC §24.245(h)(5).

On September 13, 2021, North Collin timely filed its Response and Objection to the Petition and Motion to Dismiss (“Response”).

Order No. 3 requires Petitioner and Commission Staff to file a response to North Collin’s Response by October 4, 2021.⁵

Order No. 4 required clarification from North Collin as to which docket North Collin would like to intervene, as intervention had not been granted to North Collin in Docket No. 52293.⁶

On September 21, 2021, North Collin filed its Motion to Intervene and Response to Order No. 4, stating that Order No. 1 in this proceeding incorporated all documents filed in Docket No. 52293 prior to the Motion to Sever filed by Petition on August 13, 2021, including North Collin’s Motion to Intervene on August 3, 2021 in Docket No. 52293.⁷ North Collin again requested intervention pursuant to Order No. 4.⁸

Order No. 6 granted intervention to North Collin in this proceeding.⁹

³ Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release Pursuant to Texas Water Code Section 13.2541, at 2 (Aug. 23, 2021).

⁴ Commission Staff’s Recommendation on Administrative Completeness and Notice, at 1 (Sept. 7, 2021).

⁵ Order No. 3 Requiring Response to Motion to Dismiss at 1 (Sept. 15, 2021).

⁶ Order No. 4 Request for Clarification at 1 (Sept. 20, 2021).

⁷ North Collin Special Utility District’s Motion to Intervene and Response to Order No. 4 at 2 (Sept. 21, 2021).

⁸ *Id.*

⁹ Order No. 6 Request for Clarification at 1 (Sept. 20, 2021).

On September 29, 2021, North Collin filed its Motion for Leave, requesting leave to provide supplemental information regarding water service to the Property, and subsequently filed its supplemental information.¹⁰

Order No. 7 granted North Collin's request for leave but did not mention the filing of North Collin's Supplemental Response and Objection to the Petition on September 29, 2021 (Item 16 of this Docket); Order No. 7 also required North Collin to file its supplemental material no later than October 11, 2021.¹¹ Thus, this response is timely filed.

Although North Collin has already submitted the supplemental information, North Collin is re-filing the same supplemental information in accordance with Order No. 7.

II. ARGUMENTS AND AUTHORITIES

The Petition is premised on 16 TAC § 24.245(h) and TWC § 13.2541, and must be dismissed as the Property is receiving water service from North Collin and for reasons provided in North Collin's Response.¹²

Following the filing of the Response, North Collin discovered the identity of previous landowners of the Property, including various documents in its records. Attachment 1 to this Supplemental Response is the Affidavit of Allen Knight, General Manager of North Collin.

Attachment 2 to this Supplemental Response provides a true and correct copy of the Service Agreement dated December 27, 1965 ("Service Agreement") and executed by Woodrow Walker, the previous owner of the Property, to receive water service from Altoga. The Service Agreement reflects that Altoga (now merged with North Collin) agreed to sell and deliver water to the Property, and the property owner at the time Woodrow Walker agreed to pay for the water and delivery thereof to the Property. The Service Agreement also states that "[a]ll water shall be metered by meters to be furnished and installed by [Altoga]."¹³ At the time, Altoga installed its

¹⁰ North Collin Special Utility District's Motion for Leave (Sept. 29, 2021); North Collin Special Utility District's Supplemental Response and Objection to the Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release and Motion to Dismiss (Sept. 29, 2021).

¹¹ Order No. 7 Granting Motion for Leave at 1 (Oct. 5, 2021).

¹² See North Collin Special Utility District's Response and Objection to the Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release and Motion to Dismiss (Sept. 13, 2021) (providing the arguments and authorities to support, among other things, that the Property is receiving water service and that denial of the Petition and dismissal of this proceeding is appropriate under various laws).

¹³ Attachment 2, p. 1.

2" waterline and a 5/8" x 3/4" meter on the Property, as provided in North Collin's Response and including the location thereof,¹⁴ and Altoga began providing water service to the Property.

The Service Agreement also states that "[Altoga] shall have the right to locate a water service meter and the pipe necessary to connect the meter on the property of the Members at a point to be chosen by [Altoga] and shall have access to its property and equipment located upon Member's premises at all reasonable times for any purpose connected with or in the furtherance of its business operations"¹⁵ In accordance with the Service Agreement, Altoga chose the location for its 2" waterline and the 5/8" x 3/4" meter and installed said waterline and meter.¹⁶

Further, Woodrow Walker agreed to grant an easement to Altoga for the purposes of installing, maintaining, and operating the 2" waterline and 5/8" x 3/4" meter, among other things, on the Property.¹⁷

Attachment 3 to this Supplemental Response is a true and correct copy of a handwritten note from Mrs. Woodrow Walker dated August 14, 1999, also a previous owner of the Property, providing for the meter reading of said 5/8" x 3/4" meter, in addition to various repairs in the furtherance of receiving water service from Altoga.¹⁸

The Service Agreement, the installation of Altoga's 2" waterline and the 5/8" x 3/4" meter set on the Property to provide water service, the easement granted to Altoga for such installation, and the handwritten note from Mrs. Walker, are all evidence that the Property is receiving "service" from North Collin (previously, Altoga) under state and federal laws as argued in North Collin's Response. Altoga (now, North Collin) has constructed facilities and waterlines on the Property that were and, more importantly, currently *are* committed by North Collin to provide water service to the Property in the performance of its duties under the Texas Water Code.

PRAYER

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth herein and in its Response, North Collin Special Utility District respectfully requests that the Petition be denied in its entirety, that North Collin's Motion to Dismiss be granted as the Property is receiving water

¹⁴ North Collin's Response at 4 and Attachments A-B (Sept. 13, 2021).

¹⁵ Attachment 2, p. 2.

¹⁶ North Collin's Response at 4 and Attachments A-B.

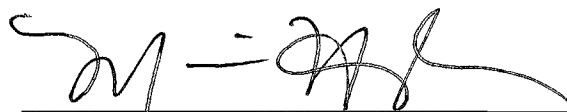
¹⁷ Attachment 2, p. 2.

¹⁸ Attachment 3.

service from North Collin under federal and state laws, and all other such relief as North Collin may be entitled. North Collin respectfully reserves the right to provide a response to the Petition after the Petition has been deemed administratively complete by October 14, 2021, in accordance with 16 TAC § 24.245(h)(6) and Order No. 5.¹⁹

If the Commission shall require further evidence that North Collin has “provided or made service available” to the Property, or whether the Property is “receiving service,” North Collin respectfully requests an evidentiary hearing for such consideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Maria Huynh', written over a horizontal line.

Maria Huynh
State Bar No. 24086968
James W. Wilson
State Bar No. 00791944
JAMES W. WILSON & ASSOCIATES, PLLC
103 W. Main Street
Allen, Texas 75013
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Email: mhuynh@jww-law.com
jwilson@jww-law.com

ATTORNEYS FOR NORTH COLLIN SPECIAL
UTILITY DISTRICT

¹⁹ Order No. 5 Finding Petition Administratively Complete and Notice Sufficient, and Establishing Procedural Schedule at 2 (Sept. 24, 2021).

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served on the following parties of record on October 11, 2021, by e-mail in accordance with the Commission's Order.²⁰

via e-mail: forrest.smith@puc.texas.gov

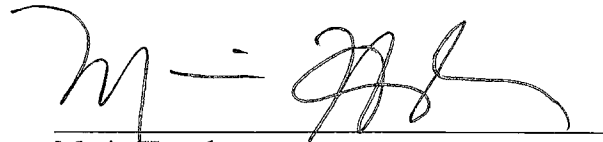
Forrest Smith
Attorney-Legal Division
Public Utility Commission
1701 N. Congress
P.O. Box 13326
Austin, Texas 78711-3326

Attorney for the Commission

via e-mail: seidman@winstead.com

Scott W. Eidman
Winstead PC
2728 N. Harwood Street, Suite 500
Dallas, Texas 75201

Attorney for Petitioner

A handwritten signature in black ink, appearing to read 'M - [illegible]', is written over a horizontal line.

Maria Huynh

²⁰ *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).

ATTACHMENT 1

PUC DOCKET NO. 52442

PETITION OF MERITAGE HOMES OF TEXAS, LLC TO AMEND NORTH COLLIN SPECIAL UTILITY DISTRICT'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN COLLIN COUNTY BY EXPEDITED RELEASE	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**SUPPORTING AFFIDAVIT OF ALLEN KNIGHT, GENERAL MANAGER
OF NORTH COLLIN SPECIAL UTILITY DISTRICT**

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this date personally appeared Allen Knight, who being by me first duly sworn states as follows:

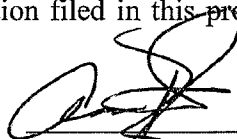
"1. My name is Allen Knight. I am more than 18 years of age and I am of sound mind and qualified to make this affidavit. I have personal knowledge of all facts stated herein.

2. Since 1998, I have been the duly appointed general manager of North Collin Special Utility District ("North Collin"). I am the custodian of the records of North Collin. North Collin was formerly a water supply corporation, known as North Collin Water Supply Corporation ("WSC"), and converted to a special utility district ("SUD"), granted by an order of the Texas Commission on Environmental Quality ("TCEQ") issued on August 25, 2015. North Collin merged with Altoga Water Supply Corporation ("Altoga") in 2019, as granted and approved by the Public Utility Commission of Texas in Docket No. 46452.

3. I have read North Collin's Supplemental Response and Objection to the Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release and Motion to Dismiss (the "Response") and each and every factual statement contained therein is true and correct.

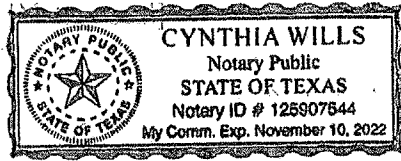
4. Attachment 2 is a true and correct copy of the Service Agreement dated December 27, 1965 and executed by Woodrow Walker, the previous owner of the property subject to this proceeding, to receive water service from Altoga.

5. Attachment 3 is a true and correct copy of a handwritten note from Mrs. Woodrow Walker dated August 14, 1999, also a previous owner of the property subject to this proceeding, related to the meter reading for a meter located at the end of the 2" waterline on said property and indicated in North Collin's Response and Objection filed in this proceeding on September 13, 2021."



Allen Knight, General Manager
North Collin Special Utility District

SUBSCRIBED AND SWORN TO before me on the 29 day of September, 2021, by
Allen Knight, General Manager of North Collin Special Utility District.



Cynthia Wills
Notary Public, State of Texas

ATTACHMENT 2

SERVICE AGREEMENT

AGREEMENT made this 27th day of Dec. 19 65,
between Atlog Water Supply Corporation, a Corporation
organized under the laws of the State of Texas (hereinafter called the Corpora-
tion) and Andrew Walker (hereinafter called the Member) Witnesseth:

The Corporation agrees to sell and deliver water to the Member,
and Member agrees to purchase and receive water from the Corporation, for
general farm use and domestic purposes, in accordance with the Bylaws and
rules and regulations of the Corporation as amended from time to time by
the Corporation.

The Member shall pay the Corporation for service hereunder at the
rates and upon the terms and conditions set forth in the rate schedule
adopted from time to time by the Corporation's Board of Directors.

The Board of Directors shall have the authority to sell the member-
ship of any Member in the event of nonpayment of any water charges or assess-
ments owing by said Member within thirty (30) days after demand for payment by
mail, properly addressed to such delinquent Member. The proceeds of any sale
of membership over and above the amount due the Corporation shall be paid to
the delinquent Member. In lieu of such sale of membership, the Board of
Directors may purchase the membership on behalf of the Corporation at a price
determined by the Board to be the fair value of the membership, provided that
in the event of either a sale of the membership or the purchase thereof by the
Corporation the proceeds shall be first applied to the payment of any indebted-
ness due the Corporation by the delinquent Member.

All water shall be metered by meters to be furnished and installed
by the Corporation.

In the event the total water supply shall be insufficient to meet
all of the needs of the Members, or in the event there is a shortage of
water, the Corporation may prorate the water available among the various
Members on such basis as is deemed equitable by the Board of Directors, and
may also prescribe a schedule of hours covering use of water for garden
purposes by particular Members and require adherence thereto or prohibit
the use of water for garden purposes; provided that, if at any time the
total water supply shall be insufficient to meet all of the needs of all of
the Members, the Corporation must first satisfy all of the needs of all
Members for domestic purposes before supplying any water for livestock
purposes and must satisfy all the needs of all Members for both domestic
and livestock purposes before supplying any water for garden purposes.

The Member shall install at his own expense a service line from the meter to the point of use.

The Member shall hold the Corporation harmless from any and all claims or demands for damage to real or personal property occurring from the point Member ties on to the Corporation meter to the final destination of the line installed by Member. The Member agrees to grant to the Corporation an easement of right-of-way for the purpose of installing, maintaining and operating such pipelines, meters, valves, and any other equipment which may be deemed necessary for the Corporation, on such form as is required by the Corporation.

The Corporation shall have the right to locate a water service meter and the pipe necessary to connect the meter on the property of the Members at a point to be chosen by the Corporation, and shall have access to its property and equipment located upon Member's premises at all reasonable times for any purpose connected with or in the furtherance of its business operations, and on discontinuance of service shall have the right to remove any of its property from the Member's premises.

Howard Walker
Member

ACCEPTED AND APPROVED:

Billy Moore
President

ATTACHMENT 3

Home: ... The Walker
4536 FM 1827
Meter # 2788915 (?)
Meter Reading 735280 8/14/99

Dead Meter: N. side FM 1827
2788915 (?) 1st rock driveway
west of our
meter reading house at 4536
8/14/99 Under big Cedar
171360 tree at end of
driveway

Thanks for all the leak
repairs, purification system
working & tank repairs in making.
Most of all thanks to all the
directors - new and old. We are
glad to read our meters. Like your
pursuing costs of hook-ups to other
water suppliers. Hope suggested this
over the years. yeah! Aggies.
Mrs. W. Walker