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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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**ORDER NO. 11
DENYING NORTH COLLIN SPECIAL UTILITY DISTRICT'S MOTION TO ABATE
AND MOTION TO DISMISS**

This Order addresses pending motions in this matter.

I. The Motion to Abate

In this matter, Meritage Homes of Texas, LLC seeks streamlined expedited release from North Collin Special Utility District's water certificate of convenience and necessity (CCN) number 11035 in Collin County. On November 5, 2021, North Collin filed an unopposed motion to abate for 30 days in this docket, pending settlement discussions between the parties. North Collin stated in its motion that a report on the settlement discussions would be submitted after the expiration of the 30 days. To this date no report has been filed. The 30 days has passed, and North Collin's motion to abate is dismissed as moot.

II. The Motion to Dismiss

On September 21, 2021, North Collin filed a motion to intervene. In Order No. 6 filed on September 28, 2021 the administrative law judge (ALJ) granted the motion to intervene.

On September 13, 2021, North Collin filed a motion to dismiss. On September 29, 2021 and November 12, 2021, North Collin filed supplements to that motion. The motion identifies two grounds for dismissal.

A. Federal Preemption

North Collin argues that Compass' petition should be dismissed because North Collin is indebted on a loan guaranteed by the federal government and has provided or made service available to the land in question, thereby entitling North Collin to the protections provided under 7 U.S.C. § 1926(b).

Meritage responded to the motion to dismiss on October 4, 2021. Meritage argues that, irrespective of North Collin's apparent federal loan, 7 U.S.C. § 1926(b) does not impair the Commission's mandate to process the streamlined expedited release application.

Commission staff has not taken a direct position on the motion to dismiss, but in its recommendation on final disposition, filed on January 14, 2022, staff argues that irrespective of North Collin's apparent federal loan, 7 U.S.C. § 1926(b) does not impair the Commission's mandate to process the streamlined expedited release application.

The administrative law judge concludes that this portion of the motion to dismiss should be denied. The question of whether North Collin has a federal loan need not be, and cannot be, answered in this case. Under Texas Water Code (TWC) § 13.2541, the Commission "may not deny [a streamlined expedited release] petition based on the fact that the certificate holder is a borrower under a federal loan program." Thus, the question of whether North Collin possesses a federal loan is immaterial to the determination to be made in this case. Accordingly, North Collin's motion to dismiss on this ground is denied.

B. Receiving Water Service Under the Standards of the Texas Water Code

North Collin next argues that the petition must be dismissed because the property in question is receiving water service as defined by the TWC §§ 13.002(21) and 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h), as interpreted by Texas courts.

Meritage opposes dismissal on this ground.

Commission staff has not taken a direct position on this ground of this motion, but in its recommendation on final disposition, filed on January 14, 2022, staff states that North Collin's has not submitted evidence sufficient to rebut Meritage's claim that the property in question is not receiving service.

North Collins's arguments on this point address the merits of the petition; they do not identify a ground for dismissal specified in the Commission's dismissal rule, 16 TAC § 22.181(d). Accordingly, the motion to dismiss on this ground is denied.¹

The schedule adopted in Order No. 10 remains in effect.

¹ By denying North Collin's motion on this ground, the ALJ is not precluding North Collin from asserting the same facts in opposition to the merits of the petition.

Signed at Austin, Texas the 23rd day of February 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'G. R. Siemankowski', written in a cursive style.

**GREGORY R. SIEMANKOWSKI
ADMINISTRATIVE LAW JUDGE**

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