



## Filing Receipt

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**PUC DOCKET NO. 52442**

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

**NORTH COLLIN SPECIAL UTILITY DISTRICT'S RESPONSE, CORRECTIONS AND  
EXCEPTIONS TO THE REVISED PROPOSED ORDER**

North Collin Special Utility District, a political subdivision of the State of Texas ("North Collin") files this Response, Corrections and Exceptions to the Revised Proposed Order. Meritage's petition was filed into this proceeding under Docket No. 52442 on August 8, 2021, requesting release of 273.5 acres (the "Property") from North Collin's water Certificate of Convenience and Necessity ("CCN") No. 11035. Subsequently, Meritage filed its First Amended Petition by Meritage Homes of Texas, LLC, for Streamlined Expedited Release Pursuant to Texas Water Code Section 13.2541 on September 29, 2022 (the "Amended Petition"), requesting that 272.23 acres of the Property (the "Release Property") be released from North Collin's CCN. Order No. 18 found the Amended Petition, as supplemented with revised mapping, to be administratively complete.<sup>1</sup> Revised Proposed Order was filed on January 17, 2023, requiring the parties in this proceeding to file corrections or exceptions to the Revised Proposed Order by January 31, 2023<sup>2</sup>; thus, this Response, Corrections and Exceptions to the Revised Proposed Order is timely filed. In support thereof, North Collin respectfully shows as follows:

**I. THE PROPERTY DOES NOT QUALIFY FOR EXPEDITED RELEASE**

**A. The Release Property Cannot be Released Because the Release Property Does Not Qualify for Release.**

North Collin proved that the Release Property cannot be released from its territory, and North Collin's CCN No. 11035 cannot be amended under Texas Water Code § 13.2541 because

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<sup>1</sup> Order No. 18 Finding Amended Petition Administratively Complete; Establishing Deadlines, at 1 (Nov. 15, 2022).

<sup>2</sup> Revised Proposed Order, at Memorandum (Jan. 17, 2023).

the Release Property is receiving water “service” as defined by state law. The Order states incorrect facts and law regarding North Collin’s “service” to the Release Property. The Order disregards that North Collin’s facilities and waterlines are serving the Release Property and are committed or dedicated to providing water service. For these reasons, the Commission must amend its Revised Proposed Order to deny the release of the Release Property.

**B. The Commission’s Revised Proposed Order Would Result in an Improper and Illegal Order Granting Release.**

The Commission’s findings of fact and conclusions of law violate Texas Government Code § 2001.174(2), which states that a court:

(2) shall reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (A) in violation of a constitutional or statutory provision;
- (B) in excess of the agency’s statutory authority;
- (C) made through unlawful procedure;
- (D) affected by other error of law;
- (E) not reasonably supported by substantial evidence considering the reliable and probative evidence in the record as a whole; or
- (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.<sup>3</sup>

The findings of fact and conclusions of law in the Revised Proposed Order violate each category articulated in section (A) through (F). As a result, the Commission must revise its Revised Proposed Order to deny release of the Release Property.

**II. NORTH COLLIN’S RECOMMENDED CHANGES TO THE PROPOSED FINDINGS OF FACT MUST BE ADOPTED IN THE COMMISSION’S FINAL ORDER.**

The Revised Proposed Order includes several incorrect Findings of Fact regarding North Collin’s water service to the Release Property. Read together, they purport to support the conclusion that “[t]he tract of land is not receiving water service under TWC §§ 13.002(21),

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<sup>3</sup> Tex. Gov’t Code § 2001.174(2)(A)-(F).

13.2541(b) and 16 TAC § 24.245(h)(2)[.]”<sup>4</sup> North Collin presented sufficient evidence that it has facilities and lines committed and dedicated to the Release Property and has performed many acts in furtherance of providing water service to the Release Property. The Revised Proposed Order ignores or misconstrues that evidence. The Findings of Fact in the Commission’s Revised Proposed Order should be revised as follows:

Findings of Fact #48: The tract of land is ~~not~~ receiving ~~actual~~ water service from the CCN holder.

North Collin has provided service to the Release Property, and that North Collin has specific infrastructure that is committed to servicing the development of the Release Property.<sup>5</sup> The testimony is un rebutted. There is not legally or factually sufficient evidence that the tract is not receiving water service. Nor is there any legally or factually sufficient evidence that the infrastructure that North Collin has around the Release Property is not committed to serving the Release Property.

Findings of Fact #51: ~~Altoga~~ North Collin has provided water service to the tract of land ~~for~~ approximately 15 years ~~ago~~.

North Collin has provided evidence that North Collin, formerly Altoga Water Supply Corporation, has provided water service to the Release Property for 15 years.<sup>6</sup>

Findings of Fact #52: The CCN holder owns and operates additional water system infrastructure located outside of, but in proximity to, the petitioner’s tract of land. ~~None of this infrastructure provides water service to the tract of land.~~

North Collin has provided service to the Release Property, and North Collin has specific infrastructure that is committed to servicing the development of the Property, including the Release Property.<sup>7</sup> To the extent the Commission or ALJ are relying on the affidavit of David

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<sup>4</sup> Revised Proposed Order at 7 ¶ 12 (Jan. 17, 2023)

<sup>5</sup> North Collin Special Utility District’s Response and Objection to the First Amended Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release and Motion to Dismiss and Motion to Abate at 17-18, Attachment A-1 ¶ 2, 5, and Attachment A-2 ¶ 4 (Dec. 28, 2022).

<sup>6</sup> *Id.* at 17-18, Attachment A-1 ¶ 2, 5.

<sup>7</sup> *Id.*

Aughinbaugh, his statement that “The Tract of Land – Portion is not receiving water service from North Collin Special Utility District or any other water service provider”<sup>8</sup> is conclusory and does not constitute legally or factually sufficient evidence.<sup>9</sup> Petitioner Meritage had the burden to establish that North Collin’s infrastructure was not committed to the Property, and failed to meet this burden.

Findings of Fact #53: The CCN holder has ~~not~~ committed or dedicated ~~any~~ facilities or lines to the tract of land for water service.

North Collin has provided service to the Release Property, and North Collin has specific infrastructure that is committed to servicing the development of the Property, including the Release Property.<sup>10</sup> The testimony is un rebutted. There is not legally or factually sufficient evidence that the tract is not receiving water service. Nor is there any legally or factually sufficient evidence that the infrastructure that North Collin has around the Release Property is not committed to serving the Release Property.

Findings of Fact #54: The CCN holder has ~~no~~ facilities or lines that provide water service to the tract of land.

North Collin has provided service to the Release Property, and North Collin has specific infrastructure that is committed to servicing the development of the Property, including the Release Property.<sup>11</sup> The testimony is un rebutted. There is not legally or factually sufficient evidence that the tract is not receiving water service. Nor is there any legally or factually sufficient evidence that the infrastructure that North Collin has around the Release Property is not committed to serving the Release Property.

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<sup>8</sup> First Amended Petition by Meritage Homes of Texas, LLC, for Streamlined Expedited Release pursuant to Texas Water Code Section 13.2541 at Exhibit A ¶ 3 (Sept. 29, 2022).

<sup>9</sup> *See, e.g., Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996) (“Conclusory affidavits are not enough to raise fact issues.”)

<sup>10</sup> North Collin’s Response and Objection to the First Amended Petition at 17-18, Attachment A-1 ¶ 2, 5.

<sup>11</sup> *Id.*

Findings of Fact #55: The CCN holder has ~~not~~ performed ~~any~~ acts for or supplied ~~anything~~ water service to the tract of land.

North Collin has provided service to the Release Property, and North Collin has specific infrastructure that is committed to servicing the development of the Property, including the Release Property.<sup>12</sup> The testimony is un rebutted. There is not legally or factually sufficient evidence that the tract is not receiving water service. Nor is there any legally or factually sufficient evidence that the infrastructure that North Collin has around the Release Property is not committed to serving the Release Property.

North Collin’s changes are required based on evidence in the record.<sup>13</sup> Only property “that is not receiving water service” may be released under Texas Water Code § 13.2541.

A determination of whether the Release Property receives water service from the CCN holder is a fact-specific inquiry, and the lack of active water taps or facilities on the Release Property itself is not determinative.<sup>14</sup> An analysis of the facts should begin with the definitions of “service” and “facilities” in the Texas Water Code. “Service” is defined as:

[A]ny act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties. . . to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.<sup>15</sup>

The term “facilities” is defined as:

[T]he plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.<sup>16</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *See* North Collin’s Response and Objections to the First Amended Petition, at Attachments A-B (Oct. 6, 2022).

<sup>14</sup> *Tex. Gen Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140–41 (Tex. App.—Austin, pet. denied).

<sup>15</sup> Tex. Water Code § 13.002(21); 16 Tex. Admin. Code § 24.3(33).

<sup>16</sup> Tex. Water Code § 13.002(9); 16 Tex. Admin. Code § 24.3(15).

North Collin has adequate facilities to provide service to the Release Property. Under the quoted statutory definitions, a property can “receive water service” even before development and delivery of water to active water taps.<sup>17</sup> In the *Crystal Clear* decision, the court stated that facilities or lines “used” or “committed” to providing such service might cause a property to “receive service” under the statutory and regulatory definition.<sup>18</sup> North Collin has constructed infrastructure and developed water supply “committed” to the Meritage Property and the property is “receiving service.”

The record supports a conclusion of law that the Release Property is receiving water service. North Collin explained in detail the numerous ways that the Release Property is “receiving” water service:

- North Collin “installed and provided water to the Property through a 5/8” x 3/4” meter and 2-inch (2”) waterline on the Property, extended from a 4-inch (4”) waterline and connected to its 8-inch (8”) waterline which transmits water from its facilities at two locations: (1) at the corner of FM 1827 and FM 75, facilities consisting of a pump station, 138 gallon per minute (GPM) well, 150,000 gallon ground storage tank, and 10,000 gallon pressure tank, and (2) through various 2”, 4”, 6”, 8”, and 10” waterlines from Well #2 located at 200 Crystal Creek Lane, McKinney, Texas located northeast of the Property.
- North Collin is “in the process of constructing a proposed 500,000-gallon elevated tank located southwest of the Property and installing proposed 12-inch (12”) waterlines that will provide additional capacity and water service.”
- The planned construction of the 500,000 gallon-elevated water tank and “the 12” waterline along CR 409” will directly provide service to the Property.<sup>19</sup>

At the time Petitioner filed its Petition and also its Amended Petition, North Collin had not received a request for water service from Petitioner.<sup>20</sup> Meritage has since requested service from North

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<sup>17</sup> See *Crystal Clear*, 449 S.W.3d at 140–41.

<sup>18</sup> *Id.*

<sup>19</sup> North Collin’s Response to Amended Petition at 4–7, 9–11 (Oct. 6, 2022).

<sup>20</sup> See Revised Proposed Order at 6 ¶ 49 (Jan. 17, 2023).

Collin for some of the Property, and North Collin has facilities in place to deliver water to the Release Property per Meritage's request. North Collin also has facilities committed to parts of the Release Property for which Meritage has not requested service, per the affidavit of Allen Knight.

**III. NORTH COLLIN'S RECOMMENDED CHANGES TO THE REVISED PROPOSED ORDER'S CONCLUSIONS OF LAW MUST BE ADOPTED IN THE COMMISSION'S FINAL ORDER.**

Since the proposed Findings of Fact are erroneous, the Commission's proposed Conclusions of Law that rely on those factual errors should be changed as follows:

Conclusion of Law #1: The Commission ~~does not have~~ has authority over this petition because this petition and Property do not qualify for streamlined expedited release under TWC §§ 13.254 and 13.2541.

North Collin has provided evidence that the Petition and Amended Petition, as well as the Property and Release Property, do not qualify for streamlined expedited release.<sup>21</sup>

Conclusion of Law #4: Petitions for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h)(7) ~~are not~~ can be contested cases and North Collin stated that this is a contested case in its Response and Objection to the Petition by Meritage Homes of Texas, LLC for Streamlined Expedited Release and Motion to Dismiss.

The text of Texas Water Code §§ 13.254 and 13.2541 do not state that petitions for streamlined expedited release are uncontested cases. Nor does the text of 16 Tex. Admin. Code § 24.245(h) state that these types of proceedings are uncontested. North Collin claims an entitlement to a contested case in the record that this is a contested proceeding, and North Collin is entitled to have that fact accurately reflected in the Commission's final order.

~~[DELETE ENTIRELY] Conclusion of Law #8: The time that the petition is filed is the only relevant time period to consider when evaluating whether a tract of land is receiving water service under TWC§ 13.2541(b). Whether a tract of land might have previously received water service is irrelevant.~~

There is nothing in Texas Water Code § 13.2541(b), or any other Commission rules, that supports the Commission's interpretation about timing of receiving water service as stated in this conclusion of law. Texas Water Code § 13.2541 only states that the property may be released *if it is not*

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<sup>21</sup> North Collin's Response to Amended Petition at 3.



*receiving water service*. North Collin submitted sufficient evidence into the record to show that the Release Property has been receiving water service for many years and is “receiving water service” consistent with the opinion in *Crystal Clear*, 449 S.W.3d at 140.

Conclusion of Law #12: The tract of land is ~~not~~ receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

North Collin has provided evidence of the waterlines and meters providing water service to the Release Property, the facilities committed to providing water service to the Release Property, and acts performed to dedicate facilities and lines to the Release Property.<sup>22</sup>

Conclusion of Law #13: The petitioner is not entitled under TWC § 13.2541(b) to the release of the tract of land from the CCN holder’s certificated service area because the Property does not qualify for expedited streamlined release under TWC § 13.2541(b).

The Release Property is receiving water service, so it does not qualify for streamlined expedited release under Texas Water Code § 13.2541(b).<sup>23</sup>

~~[DELETE ENTIRELY] Conclusion of Law #14: under TWC §§ 13.254(h) 13.2541(a), after the date of this Order the CCN holder has no obligation to provide retail water service to the tract of land.~~

Conclusion of Law #14 must be disregarded because it is inconsistent with the evidence presented in this proceeding.

~~[DELETE ENTIRELY] Conclusion of Law #16: The Commission processed the petition in accordance with the TWC and Commission rules.~~

Conclusion of Law #16 should be deleted in its entirety because the conclusion is contrary to Texas Water Code § 13.2541(b), which only allows expedited streamlined release for property that is not receiving water service.

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<sup>22</sup> North Collin’s Response to Amended Petition at 4–7, 9–11, Attachments A-B.

<sup>23</sup> *Id.* at 3-7.

The Conclusions of Law that reference the Property or Release Property receiving water service are misleading. North Collin does not have to provide actual present delivery of water to the Release Property in order for the Amended Petition to be denied. The *Crystal Clear* Court held that “it is important to consider whether the facilities and lines are ‘committed’ to the tract seeking expedited release or ‘used’ to provide water to that tract.”<sup>24</sup> Under this standard, North Collin is providing water service to the Property, including the Release Property, through the existing waterline, meter, and nearby facilities dedicated to service the Property and Release Property.<sup>25</sup>

#### IV. CONCLUSION.

North Collin has established that it is providing water service to the Property under Texas Water Code §§ 13.002(21), 13.2541 and 16 Tex. Admin. Code § 24.245(h) and in a manner consistent with the *Crystal Clear* decision. North Collin has provided dispositive evidence that the Release Property is receiving water “service” by existing waterlines and meters on the Property and planned facilities that will also service the specific Property, including the Release Property.

WHEREFORE, because North Collin has provided the evidence to correct the Revised Proposed Order’s Findings of Fact and Conclusions of Law, the Release Property does not qualify to be released from North Collin’s CCN. North Collin respectfully requests that the Commission revise the Revised Proposed Order as provided herein and deny the Amended Petition and dismiss this proceeding.

Respectfully submitted,

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<sup>24</sup> *Crystal Clear*, 449 S.W.3d at 140.

<sup>25</sup> North Collin’s Response to Amended Petition at 4-7.

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**CERTIFICATE OF SERVICE**

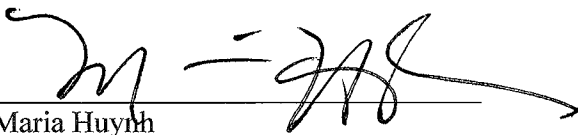
I certify that a true and correct copy of this document was served on the following parties of record on January 31, 2023, via e-mail in accordance with the Commission's Order.<sup>26</sup>

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<sup>26</sup> *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).