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PUC DOCKET NO. 52515

PETITION OF BELKNAP, FP, LTD. TO	§	PUBLIC UTILITY COMMISSION
AMEND MARILEE SPECIAL UTILITY	§	
DISTRICT’S CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	OF TEXAS
COLLIN COUNTY BY EXPEDITED	§	
RELEASE	§	

MARILEE SPECIAL UTILITY DISTRICT’S OPPOSITION TO PETITIONER’S MOTION TO EXTEND TIME, AND MOTION TO DISMISS THE FIRST AMENDED PETITION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE TA:

COMES NOW Marilee Special Utility District (the “District”), by and through undersigned counsel, and files this Opposition to Petitioner’s Motion to Extend Time, and Motion to Dismiss the First Amended Petition (“Opposition and Motion to Dismiss”). In support thereof, respectfully shows the Honorable Administrative Law Judge (“ALJ”) as follows:

BACKGROUND

On September 3, 2021, 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, Texas Water Code (“TWC”) § 13.2541 and 16 Texas Administrative Code (“TAC”) § 24.245(h), to extract approximately 317.729 acres (“Property”) from the water utility service area the District serves under Certificate of Convenience and Necessity (“CCN”) No. 10150 in Collin County, Texas.

On November 3, 2021, the Petitioner filed a First Amended Petition.¹ On January 24, 2022, the ALJ entered Order No. 7, requiring Petitioner to provide a signed affidavit to support the First Amended Petition.²

¹ First Amended Petition by Belknap FP, Ltd. For Expedited Release Pursuant to Texas Water Code Section 13.2541 (Nov. 3, 2021).

² Order No. 7 – Requiring Affidavit (Jan. 24, 2022).

On January 27, 2022, Petitioner filed a Motion to Extend Time (the “Motion”). In the Motion, Petitioner’s counsel stated that Petitioner does not own the Property.³ Despite the fact that Petitioner is not eligible to seek streamlined expedited release of land that it does not own, Petitioner then moved the ALJ for an extension until February 3, 2022, for Petitioner to “cure its petition deficiencies.”

ARGUMENT

The Petitioner in this proceeding, Belknap FP, Ltd., does not own the Property,⁴ and accordingly is not eligible for release of the Property from the District’s CCN. To obtain release of property from a CCN holder under 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.⁵

The Petitioner in this proceeding, Belknap FP, Ltd., has admitted that it does not own the Property.⁶ Petitioner, therefore, is not eligible to seek streamlined expedited release of the Property. Petitioner cannot “cure” this deficiency: The Commission rules do not provide for Petitioner to abandon its case and for a totally different petitioner to take its place. Under these circumstances, Petitioner should withdraw its First Amended Petition.⁷ As Petitioner has not done so, it is appropriate for the ALJ to dismiss the First Amended Petition.

The Commission’s procedural rules include the following reasons for dismissal: lack of jurisdiction, moot question or obsolete petition, res judicata, collateral estoppel, unnecessary

³ See Petitioner’s Motion for Extension of Time at 1 (Jan. 27, 2022) (“Counsel for Petitioner just learned that the property has been sold[.]”). The Motion also misnames Petitioner as “CCD-Coit Land, LLC,” rather than “Belknap FP, Ltd.” CCD-Coit Land, LLC is the petitioner in one of the 23 other streamlined expedited released cases the District is currently defending against. See *Petition of CCD-COIT Land, LLC to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52516 (pending).

⁴ Petitioner’s Motion for Extension of Time at 1 (Jan. 27, 2022).

⁵ TWC § 13.2541 (emphasis added); see also 16 TAC § 24.245(h). See also Marilee Special Utility District’s Verified Response to Petition of Belknap, FP, Ltd. to Amend Certificate of Convenience and Necessity in Collin County by Expedited Release, at ¶¶ 10-19 (detailing Petitioner’s burden of proof under TWC § 13.2541 and 16 TAC § 24.245(h)).

⁶ Petitioner’s Motion for Extension of Time at 1 (Jan. 27, 2022).

⁷ 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.”).

duplication of proceedings, failure to prosecute, failure to amend an application such that it is sufficient after repeated determinations that the application is insufficient, failure to state a claim for which relief can be granted, gross abuse of discovery, withdrawal of an application, or other good cause shown.⁸ Here, Petitioner does not own the Property, and therefore cannot state a claim for streamlined expedited release of the Property upon which relief may be granted. Accordingly, the District moves the Honorable Administrative Law Judge (“ALJ”) to deny Petitioner’s Motion and dismiss the First Amended Petition.

PRAYER

The Petitioner in this proceeding, Belknap FP, Ltd., does not own the Property that is the subject of the First Amended Petition,⁹ 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.¹⁰ As this deficiency is fatal to the First Amended Petition and cannot be cured, dismissal pursuant to 16 TAC § 22.181 is the appropriate remedy. For the aforementioned reasons, the District prays that the ALJ grant the District’s Opposition and Motion to Dismiss, deny Petitioner’s Motion, and dismiss the First Amended Petition for failure to state a claim upon which relief may be granted, pursuant to 16 TAC § 22.181.

⁸ 16 TAC § 22.181(d).

⁹ Petitioner’s Motion for Extension of Time at 1 (Jan. 27, 2022).

¹⁰ TWC § 13.2541 (emphasis added); *see also* 16 TAC § 24.245(h).

Respectfully submitted,



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ATTORNEYS FOR MARILEE SPECIAL
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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 27th day of January 2022.


