



## Filing Receipt

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**Control Number - 52518**

**ItemNumber - 13**

**DOCKET NO. 52518**

<b>PETITION OF CLIFTON VAN</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>MCKNIGHT AND BRYAN JEFFERY</b>	<b>§</b>	
<b>MCKNIGHT TO AMEND MARILEE</b>	<b>§</b>	
<b>SPECIAL UTILITY DISTRICT’S</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>AND NECESSITY IN COLLIN</b>	<b>§</b>	
<b>COUNTY BY EXPEDITED RELEASE</b>	<b>§</b>	

**MARILEE SPECIAL UTILITY DISTRICT’S OPPOSITION TO COMMISSION STAFF’S REQUEST TO RESTYLE THE DOCKET AND ORDER NO. 4, AND MOTION TO DISMISS PETITION**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE SIEMANKOWSKI:**

COMES NOW Marilee Special Utility District (the “District”), by and through undersigned counsel, and files this Response in Opposition to Commission Staff’s Unopposed Request for Extension and Request to Restyle the Docket (the “Request”), filed on November 23, 2021,<sup>1</sup> and Order No. 4 (the “Order”). The District’s Response, filed within five working days of receipt of the Request, is timely.<sup>2</sup>

**BACKGROUND**

1. On September 3, 2021, Clifton Van McKnight and Bryan Jeffery McKnight (“Petitioners”) (together with the District and Commission Staff, the “Parties”) filed a petition for streamlined expedited release (“Petition”), seeking to decertify 62.700 acres of property (the “Property”) from the District’s Certificate of Convenience and Necessity No. 10150 in Collin County, Texas, pursuant to Texas Water Code (“TWC”) § 13.2541 and 16 Texas Administrative Code (“TAC”) § 24.245(h).

2. 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

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<sup>1</sup> See Commission Staff’s Unopposed Request for Extension and Request to Restyle the Docket (“Request to Restyle the Docket”) (Nov. 23, 2021).

<sup>2</sup> See 16 Tex. Admin. Code § 22.78(a) (2019) (providing that, unless otherwise specified, a responsive pleading shall be filed by a party within five working days after receipt of the pleading).

land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.<sup>3</sup>

3. On September 16, 2021, the District moved to intervene in this proceeding. The District's motion was granted by the Honorable Administrative Law Judge ("ALJ") on October 5, 2021.<sup>4</sup>

4. On October 6, VPTM Cross Creek LB ("VPTM Cross Creek") filed a First Amended Petition in the docket.<sup>5</sup> Neither the Petition nor the First Amended Petition have ever been found administratively complete.

5. On November 23, 2021, Commission Staff filed the Request, claiming that its request for an extension to comment on the First Amended Petition's administrative completeness was "unopposed" because "Staff has conferred with counsel for VPTM and is authorized to state that VPTM is unopposed to this request."<sup>6</sup> Commission Staff further claimed, without legal support, that "Since VPTM is now the owner of the property, as indicated by the amended petition, it is thus the petitioner of record in this docket."<sup>7</sup>

6. On November 29, 2021, before allowing the District an opportunity to respond to the Request, the ALJ entered an Order granting Commission Staff's request for an extension and restyling the docket (the "Order").<sup>8</sup>

**OPPOSITION TO REQUEST AND ORDER,  
AND MOTION TO DISMISS PETITION**

**A. The Request Was Not Unopposed Because Commission Staff Failed to Confer with the District, a Party to this Proceeding.**

7. The District opposes Commission Staff's Request because (1) Commission Staff failed to confer with the District before it claimed that its Request was "unopposed," and (2)

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<sup>3</sup> TWC § 13.2541 (emphasis added); *see also* 16 TAC § 24.245(h).

<sup>4</sup> Order No. 2 – Finding Petition Administratively Incomplete and Establishing Opportunity to Cure, and Granting Motion to Intervene (Oct. 5, 2021).

<sup>5</sup> First Amended Petition by VPTM Cross Creek LB, for Expedited Release Pursuant to Texas Water Code Section 13.2541 (Tract 2) (Oct. 6, 2021).

<sup>6</sup> Request at 1.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Order No. 4 – Granting Unopposed Extension, Revising Deadline, and Restyling (Nov. 29, 2021).

Commission Staff is legally incorrect in claiming that this proceeding may simply be “restyled” to have been brought by completely new Petitioners to this proceeding.

8. The procedural rules of the Public Utility Commission of Texas (the “Commission”) provide that “Persons desiring to intervene must file a motion to intervene and be recognized as a party . . . in order to participate as a party in a proceeding.”<sup>9</sup> The District thus filed a motion to intervene in this proceeding, which was granted.<sup>10</sup>

9. The Commission rules further provide that “parties to proceedings before the commission” are classified as “(1) applicants, or complainants; (2) respondents; (3) intervenors; and (4) commission staff representing the public interest.”<sup>11</sup> The Commission rules provide that “parties . . . have the right to . . . fully participate in any proceeding.” As an intervenor, therefore, the District has the right to fully participate in this proceeding.

10. Commission Staff did not confer and did not even claim to have conferred or attempted to confer with the District before filing its Request. Accordingly, Commission Staff’s claim that its Request was unopposed is incorrect and deficient.

11. The District strongly objects to the ALJ’s error in granting Commission Staff’s Request and for failing to require Commission Staff that to confer with all parties to this proceeding before deeming its Request to be “unopposed.” The Order states:

Commission Staff represents that counsel for petitioner is not opposed to the request for extension. The administrative law judge (ALJ) grants Commission Staff’s unopposed request for extension.<sup>12</sup>

The ALJ implies in the Order that Commission Staff is only required to confer with a petitioner before claiming that a motion or other filing is “unopposed.” Such a conclusion unlawfully disregards the District’s right to fully participate in these proceedings, and the District respectfully requests that the ALJ reconsider and withdraw the Order.

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<sup>9</sup> 16 Texas Admin. Code (“TAC”) § 22.103(b).

<sup>10</sup> Order No. 2 – Finding Petition Administratively Incomplete and Establishing Opportunity to Cure, and Granting Motion to Intervene (Oct. 5, 2021).

<sup>11</sup> 16 TAC § 22.102(a).

<sup>12</sup> Order at 1.

**B. The District Moves to Dismiss the Petition For Failing to State a Claim Upon Which Relief May Be Granted.**

12. 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.<sup>13</sup>

13. The Commission’s procedural rules include the following reasons for dismissal: lack of jurisdiction, moot question or obsolete petition, res judicata, collateral estoppel, unnecessary 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.<sup>14</sup>

14. The Petitioners in this proceeding, Clifton Van McKnight and Bryan Jeffrey McKnight, do not own the Property.<sup>15</sup> Therefore, the Petitioners’ Petition must be denied for failure to state a claim for which relief can be granted, pursuant to 16 TAC § 22.181.<sup>16</sup>

**C. The Order Must Be Withdrawn Because the Docket May Not Be “Restyled” to Reflect New Petitioners.**

15. Commission Staff’s Request that “this docket be restyled” to reflect new petitioners is legally incorrect, unsupported by authority, and should have been denied. The ALJ’s Order approving such “restyling” is in error and must be reconsidered and rejected to avoid procedural impropriety that severely prejudices the District.

16. The Commission rules allow Petitioners to *amend* their pleadings.<sup>17</sup> They do not allow for the docket to be “restyled” as though the proceeding had been initiated by completely different petitioners. The Commission rules do not provide for a petitioner to completely abandon

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<sup>13</sup> TWC § 13.2541 (emphasis added); *see also* 16 TAC § 24.245(h).

<sup>14</sup> 16 TAC § 22.181(d).

<sup>15</sup> *See*

<sup>16</sup> *See* 16 TAC § 22.181(c) (“The Commission may dismiss this proceeding without hearing if the facts necessary to support dismissal are uncontested or are established as a matter of law.”).

<sup>17</sup> 16 TAC § 22.76.

its case and for a totally different petitioner to take its place. The Commission rules indicate that a petitioner that wishes to withdraw formally withdraw its petition *before* presenting its direct case.<sup>18</sup> Here, Petitioners presented their direct case in their sworn Petition. Petitioners have never applied to withdraw the Petition. Accordingly, in the docket, there is a Petition that cannot be granted, and a First Amended Petition that was not filed by the Petitioners. The correct action for the ALJ to take is to deny and dismiss the Petition for failure to state a claim upon which relief may be granted, as Petitioners cannot establish a right to relief under TWC § 13.2541 and 16 TAC § 24.245(h), since they do not own the Property.

17. For the reasons above, the ALJ should disregard the First Amended Petition as being filed by a non-party to this proceeding. Should VPTM Cross Creek wish to file a new proceeding, it may do so.

**PRAYER**

WHEREFORE, Marilee Special Utility District moves the ALJ to reconsider and withdraw the Order, and enter to an order on reconsideration that denies Commission Staff's Request to Restyle the Docket, grants the District's Motion to Dismiss, denies the Petition, and dismisses this proceeding. The District also prays for any and all additional relief under law and equity to which it may be entitled.

Respectfully submitted,



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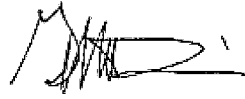
ATTORNEYS FOR MARILEE SPECIAL  
UTILITY DISTRICT

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<sup>18</sup> 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.").

**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 1<sup>st</sup> day of December 2021.



Grayson E. McDaniel