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

MARILEE SPECIAL UTILITY DISTRICT’S MOTION FOR CLARIFICATION

COMES NOW, MARILEE SPECIAL UTILITY DISTRICT (“Marilee”) and files this Motion for Clarification of Orders No. 1 and 2 issued by the Public Utility Commission of Texas (“Commission”) in this proceeding. In support of this motion, Marilee respectfully shows as follows:

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I.

BACKGROUND

1. On September 3, 2021, Petitioners Clifton Van McKnight and Bryan Jeffery McKnight (“Petitioners”) filed a Petition for Expedited Release Pursuant to Texas Water Code § 13.2541 and 16 TAC § 24.245(h) (“Petition”) seeking to extract approximately 62.700 acres of Property (the “Property”) from the water utility service area Marilee serves under Certificate of Convenience and Necessity (“CCN”) No. 10150 in Collin County, Texas.¹

2. On September 7, 2021, the Honorable Administrative Law Judge Siemankowski (“ALJ”) entered Order No. 1,² which, among other things, requested Commission Staff’s comments on the administrative completeness of the Petition by October 4, 2021 and provided a date of October 11, 2021, for Marilee, as CCN holder, to file a verified response to the Petition.

¹ Petition at 2 (Sep. 3, 2021).

² Order No. 1 – Requiring Comments on Administrative Completeness, Notice, and Other Matters, and Establishing Procedural Schedule (Sept. 7, 2021).

3. On September 16, 2021, Marilee filed a Motion to Intervene, which was granted.³

4. On October 4, 2021, Commission Staff filed its Recommendation on Administrative Completeness of the Petition and Notice, in which Commission Staff identified deficiencies in the Petition, recommended that the Petition be found administratively incomplete and that Petitioner be ordered to cure the deficiencies by November 3, 2021, and recommending that Staff be given a deadline of December 3, 2021 to file a supplemental recommendation on the administrative completeness of the petition.⁴

5. On October 5, 2021, the ALJ entered Order No. 2, finding the Petition administratively incomplete and ordering Petitioner to cure the deficiencies by November 3, 2021 and Commission Staff to file a supplemental recommendation on administrative completeness and notice by December 3, 2021.⁵ Order No. 2 did not address the deadline for Marilee's verified response that was set in Order No. 1 for October 11, 2021.

6. On October 6, 2021, VPTM Cross Creek LB, LLC ("Petitioner")⁶ filed its First Amended Petition for Expedited Release ("Amended Petition"), seeking to extract the Property from Marilee's CCN No. 10150.

II.

REQUEST FOR CLARIFICATION

7. Marilee seeks clarification of the date that its verified response to the Petition or Amended Petition is due in this proceeding. Currently, Order No. 1 provides, "by October 11, 2021, Marilee SUD may submit a response, verified by notarized affidavit, to the petition."⁷ However, the Order also states, "Additional deadlines will be established if the petition is deemed administratively complete."⁸

³ Order No. 2 – Finding Petition Administratively Incomplete and Establishing Opportunity to Cure, and Granting Motion to Intervene at 2 (Oct. 5, 2021).

⁴ Commission Staff's Recommendation on Administrative Completeness and Notice at 1 (Oct. 4, 2021).

⁵ Order No. 2 – Finding Petition Administratively Incomplete and Establishing an Opportunity to Cure (Oct. 5, 2021).

⁶ Marilee refers to VPTM Cross Creek LB, LLC as "Petitioner" because that is how VPTM Cross Creek LB, LLC refers to itself in its pleading. Marilee does not waive its right to challenge the merits of whether VPTM Cross Creek LB, LLC is, in fact, a proper "Petitioner" in this proceeding.

⁷ Order No. 1 at 2.

⁸ *Id.*

8. Marilee wholly supports Commission Staff's recommendation that the Petition is administratively incomplete⁹ and the ALJ's deadlines for cure and supplemental recommendation on administrative completeness set by Order No. 2. Marilee seeks clarification of whether the finding of administrative incompleteness and opportunity to cure also affects the date that Marilee's verified response is due.

9. Commonly, the Commission enters a procedural schedule in proceedings initiated under TWC § 13.2541 and TAC § 16.245(h) after the petition is ordered to be administratively complete. That procedural schedule sets intervenors' deadline to file their verified responses as approximately 20 days after the date that the petition was ordered administratively complete.

10. For the sake of judicial efficiency cost, accuracy, and creating a clear record, Marilee wishes to avoid filing cumulative or duplicative responses to the Petition or Amended Petition, and therefore seeks clarification from the ALJ. As the orders currently exist, Marilee would be required to file its verified response to an administratively incomplete petition on October 11, 2021, and then would need to file another verified response after the Petition or Amended Petition is eventually ordered administratively complete, assuming that event occurs. Marilee respectfully requests clarification as to whether the ALJ intends for Marilee to file its verified response to the Petition on October 11, 2021, as stated in Order No. 1, or whether Marilee should alternatively consider that deadline implicitly overruled or extended by Order No. 2's new deadlines.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Marilee respectfully requests that the Commission grant its Motion for Clarification and enter an order establishing the deadline for Marilee to file its Verified Response to the Petition or Amended Petition.

⁹ No party has yet commented on the administrative completeness of the Amended Petition.

Respectfully submitted,



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ATTORNEYS FOR MARILEE SPECIAL
UTILITY DISTRICT

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 5th day of October 2021.

