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Received - 2022-01-11 11:52:34 AM

Control Number - 52529

ItemNumber - 22

DOCKET NO. 52529

PETITION OF EAST TIOGA 581 LP TO	§	PUBLIC UTILITY COMMISSION
AMEND MARILEE SPECIAL UTILITY	§	
DISTRICT'S CERTIFICATE OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
GRAYSON COUNTY BY EXPEDITED	§	
RELEASE	§	

COMMISSION STAFF'S SECOND SUPPLEMENTAL RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS AND MOTION TO DISMISS

On September 7, 2021, East Tioga 581 LP (East Tioga) filed a petition for streamlined expedited release within Marilee Special Utility District's (Marilee SUD) water certificate of convenience and necessity (CCN) number 10150 in Grayson County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). East Tioga asserts that the land to be released is at least 25 contiguous acres, is not receiving water service, and is located in Grayson County, which it contends is a qualifying county. On October 20, 2021 and October 26, 2021, East Tioga filed supplemental information.

On December 8, 2021, Staff (Staff) of the Public Utility Commission of Texas (Commission) filed a Supplemental Recommendation on Administrative Completeness and Notice. In Order No. 5 filed on December 9, 2021, the administrative law judge (ALJ) found the petition to be administratively complete.

I. ADMINISTRATIVE COMPLETENESS

In its December 8, 2021 Supplemental Recommendation on Administrative Completeness and Notice, Staff contended that Grayson County was a qualifying county under TWC § 13.2541(b) due to the 2020 U.S. Census Data showing that Collin County, a county adjacent to Grayson County, had a population of over 1,000,000. Staff revises its previous recommendation and recommends that the application is administratively incomplete because Grayson County is not a qualifying county under TWC § 13.2541(b) due to Tex. Gov't Code § 2058.0021, which requires 2010 U.S. Census Data to be utilized. Consequently, the 2010 U.S. Census Data indicated that Grayson County's population was 120,877 and that none of the counties adjacent to Grayson

County, including Collin County, had a population of 1,000,000 or more. Therefore, Grayson County is not a qualifying county under TWC § 13.2541(b).

TWC § 13.2541(b) states:

“[T]he owner of a tract of land...may petition for expedited release...and *is entitled to that release* if the landowner’s property *is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,000 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, and not in a county that has a population of more than 45,500 and less than 47,500.*”

In other words, a county is not a qualifying county, and is therefore not entitled to release, if it is *not* a county with a population of at least one million or a county adjacent to a county with a population of one million.

The legislation that controls how population is defined for the purposes of applying TWC § 13.2541(b) is Tex. Gov't Code § 2058.0021.

Tex. Gov't Code § 2058.0021 states the following:

“(a) Except as expressly provided by other law and notwithstanding the definition of "population" in Sections 311.005 and 312.011, a statute that applies to a political subdivision having a certain population according to the most recent federal census:

(1) continues to apply to the same political subdivisions to which the statute applied under the 2010 federal census, regardless of whether the political subdivisions continue to have the population prescribed by the statute according to the 2020 federal census; and

(2) does not apply to a political subdivision to which the statute did not apply under the 2010 federal census, regardless of whether the political subdivision has the population prescribed by the statute according to the 2020 federal census.

(b) This section expires September 1, 2023.”

Tex. Gov't Code § 2058.0021 states that it applies notwithstanding the definition of "population" in Tex. Gov't Code §§ 311.005 and 312.011, which define “population” as the population shown by the most recent federal decennial census. Consequently, based on the “notwithstanding” language utilized in Tex. Gov't Code § 2058.0021, it seems apparent that it was the intent of the legislature that population data from the 2010 census would continue to be utilized until September 1, 2023, when Tex. Gov't Code § 2058.0021 expires.

Therefore, when determining whether a county qualifies under TWC § 13.2541(b), 2010 U.S. Census Data should continue to apply in accordance with the requirements of Tex. Gov't Code § 2058.0021. Consequently, based on 2010 U.S. Census Data population numbers, Grayson

County has a population of 120,877¹ and is adjacent to Collin County, which according to the 2010 U.S. Census Data has a population of 782,341,² Cooke County which has a population of 38,437,³ Denton County which has a population of 662,614,⁴ and Fannin County which has a population of 33,915.⁵ Thus, Grayson County is not a qualifying county for expedited release under TWC § 13.2541(b)⁶ and Staff revises its previous recommendation and recommends that the application is administratively incomplete because Grayson County is not a qualifying county under TWC § 13.2541(b).

II. MOTION TO DISMISS

Staff respectfully requests the ALJ's entry of an order for dismissal without prejudice for failure to state a claim for which relief can be granted under 16 TAC § 22.181(d)(8). Under 16 TAC § 22.181(d)(8), "Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding for any reason specified in this section."

Staff asserts that East Tioga has submitted a petition under TWC § 13.2541(b) in which relief cannot be granted. As stated above, Grayson County is not a qualifying county because it does not have a population of one million and it is not adjacent to a county that has a population of one million. Therefore, because East Tioga's property is not located in a qualifying county and it cannot seek a streamlined expedited release under TWC § 13.2541(b), Staff respectfully requests that the petition be dismissed without prejudice for failure to state a claim for which relief can be granted.

¹ U.S. Census Bureau, Census Data for Grayson County, QuickFacts Grayson County, Texas (2010)
<https://www.census.gov/quickfacts/fact/table/graysoncountytexas/POP010210>

² U.S. Census Bureau, Census Data for Collin County, QuickFacts Collin County, Texas (2010)
<https://www.census.gov/quickfacts/fact/table/collincountytexas/POP010210>

³ U.S. Census Bureau, Census Data for Cooke County, QuickFacts Cooke County, Texas (2010)
<https://www.census.gov/quickfacts/fact/table/cookecountytexas/POP010210>

⁴ U.S. Census Bureau, Census Data for Denton County, QuickFacts Denton County, Texas (2010)
<https://www.census.gov/quickfacts/fact/table/dentoncountytexas/POP010210>

⁵ U.S. Census Bureau, Census Data for Fannin County, QuickFacts Fannin County, Texas (2010)
<https://www.census.gov/quickfacts/fact/table/fannincountytexas/POP010210>

⁶ TWC § 13.2541(b) and TAC § 24.245(h)(2).

III. CONCLUSION

For the reasons detailed above, Staff respectfully requests the entry of an order that finds the petition administratively incomplete and dismissing the petition without prejudice for failure to state a claim that relief can be granted under 16 TAC § 22.181(d)(8).

Dated: January 11, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 11, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Arnett D. Caviel
Arnett D. Caviel