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Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Isaac Ta *I. T.*
Administrative Law Judge

RE: **Docket No. 52529**— *Petition of East Tioga 581 LP to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Grayson County by Expedited Release*

DATE: February 22, 2022

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the PFD.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date, as well as the deadline for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 52529

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

PROPOSAL FOR DECISION

This Proposal for Decision (PFD) recommends that the Commission dismiss the petition by East Tioga 581 LP for streamlined expedited release of a tract of land from Marilee Special Utility District's certificate of convenience and necessity (CCN) number 10150 in Grayson County due to the petitioner's failure to state a claim for which relief can be granted, under 16 Texas Administrative Code (TAC) § 22.181(d)(8). The administrative law judge (ALJ) recommends that the dismissal be without prejudice.

I. Findings of Fact

The ALJ makes the following findings of fact.

Background

1. East Tioga is a Texas limited partnership registered with the Texas secretary of state under filing number 803352837.
2. Marilee is a special utility district operating under chapter 65 of the Texas Water Code (TWC).
3. Marilee holds CCN number 10150 that obligates it to provide retail water service in its certificated service area in Grayson County.
4. On September 7, 2021, East Tioga filed a petition for streamlined expedited release of a tract of land in Grayson County from Marilee's CCN number 10150.

Motions to Dismiss

5. On December 20, 2021, Marilee filed a motion to dismiss due to the petitioner's failure to state a claim for which relief can be granted.

6. On January 11, 2022, Commission Staff filed a motion to dismiss due to the petitioner's failure to state a claim for which relief can be granted.
7. On January 19, 2022, East Tioga filed a response to the motions to dismiss.
8. No hearing was held on the motions to dismiss and no hearing is needed because the facts necessary to support dismissal are established as a matter of law.

Grounds for Dismissal

9. Grayson County has a population of 120,877.
10. The counties adjacent to Grayson County are Fannin, Denton, Cooke and Collin counties.
11. None of the counties adjacent to Grayson County has a population of at least one million.

II. Conclusions of Law

The ALJ makes the following conclusions of law.

1. The Commission has authority over the petition for streamlined expedited release under TWC §§ 13.254 and 13.2541.
2. To obtain release under TWC § 13.2541(b), a landowner must demonstrate 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.
3. Grayson County is not a qualifying county under Texas Government Code § 2058.0021, TWC § 13.2541(b), and 16 Texas Administrative Code (TAC) § 24.245(h)(2).
4. Under 16 TAC § 22.181(c), dismissal of this case does not require a hearing because the facts necessary to support the dismissal are established as a matter of law.
5. Under 16 TAC § 22.181(d)(8), the ALJ may recommend to the Commission that it dismiss a proceeding, with or without prejudice, for failure to state a claim for which relief can be granted.
6. Under 16 TAC § 22.181(f)(2), dismissal of a case for reasons other than those specified in 16 TAC § 22.181(g)(1) or (2) requires preparation of a PFD.
7. East Tioga's petition fails to state a claim for which relief can be granted, which warrants dismissal of this proceeding, without prejudice, under 16 TAC § 22.181(d)(8).

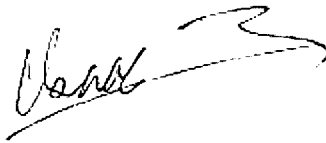
III. Ordering Paragraphs

The ALJ recommends the following ordering paragraphs.

1. The Commission dismisses East Tioga's petition, without prejudice, for failure to state a claim for which relief can be granted.
2. The Commission denies all other motions, and any other requests for general or special relief if not expressly granted.

Signed at Austin, Texas the 22nd day of February 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read "Isaac TA", written over a horizontal line.

**ISAAC TA
ADMINISTRATIVE LAW JUDGE**