



Control Number: 52529



Item Number: 29

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 §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

ORDER

This Order addresses the petition of East Tioga 581 LP for streamlined expedited release of a tract of land in Grayson County from Marilee Special Utility District's certificate of convenience and necessity (CCN) number 10150. On December 20, 2021, Marilee Special Utility District filed a motion to dismiss for failure to state a claim upon which relief can be granted because the tract of land at issue in the petition is not located in a qualifying county. 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 also on the grounds that the tract of land is not located within a qualifying county. The administrative law judge (ALJ) filed a proposal for decision on February 22, 2022, recommending the Commission dismiss the petition, without prejudice, under 16 Texas Administrative Code (TAC) § 22.181(d)(8) due to the petitioner's failure to state a claim for which relief can be granted.

The Commission agrees with the ALJ's determination that Grayson County is not a qualifying county; therefore, the tract of land is not eligible for streamlined expedited release under Texas Water Code (TWC) § 13.2541(b). However, the Commission disagrees with the ALJ's recommendation that the petition be dismissed for failure to state a claim for which relief can be granted. The Commission denies East Tioga's request to release the tract of land identified in the petition from Marilee Special Utility District's service area under CCN number 10150.

Accordingly, the Commission makes the following modifications to the proposal for decision. The Commission deletes conclusions of law 4 through 7 because the Commission denies the petition rather than dismisses it for failure to state a claim for which relief can be granted.

The Commission also makes non-substantive changes for such matters as capitalization, spelling, grammar, punctuation, style, correction of numbering, and readability.

I. Findings of Fact

The Commission adopts 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 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.

Qualifying County

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 Commission adopts 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 TAC § 24.245(h)(2).
4. DELETE.
5. DELETE.
6. DELETE.
7. DELETE.

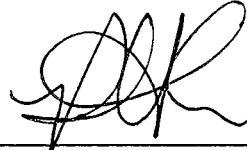
III. Ordering Paragraphs

In light of the above findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission modifies the proposal for decision to the extent provided in this Order.
2. The Commission denies East Tioga's request to release the tract of land identified in the petition from Marilee Special Utility District's service area under CCN number 10150.
3. The Commission denies all other motions, and any other requests for general or special relief, if not expressly granted.

Signed at Austin, Texas the 12th day of May 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER

SERVICE LIST

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

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Verified: 090821 MS; 090821 ms; 100821 ms; 10/13/21 ggo; 111021 ms; 120921 ms; 011122 ms; 021822 KG; 2/22/22 rdh; 3/17/22 rdh, 5/10/22 NE