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DOCKET NO. 52532

PETITION OF E REAL ESTATE, LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND MARILEE SPECIAL	§	
UTILITY DISTRICT'S CERTIFICATE	§	OF TEXAS
OF CONVENIENCE AND NECESSITY	§	
IN COLLIN COUNTY BY EXPEDITED	§	
RELEASE (TRACT 3)	§	

ORDER NO. 6
DENYING MARILEE SPECIAL UTILITY DISTRICT'S MOTION TO DISMISS

In this matter, E Real Estate, LLC seeks streamlined expedited release from Marilee Special Utility District's water certificate of convenience and necessity (CCN) number 10150 in Collin County.

On February 3, 2022, Marilee SUD filed a motion to dismiss. The petitioner filed a response to the motion to dismiss on February 24, 2022. Commission Staff did not respond to the motion to dismiss.

The motion identifies two grounds for dismissal.

A. Federal Loan

Marilee SUD argues that the petition should be dismissed because the utility claims to be indebted on a loan guaranteed by the federal government and claims to have provided or made service available to the land in question, thereby entitling the utility to the protections provided under 7 U.S.C. § 1926(b).

The administrative law judge (ALJ) concludes that this portion of the motion to dismiss should be denied. The question of whether Marilee SUD has a federal loan need not be, and cannot be, answered in this case. Under Texas Water Code (TWC) § 13.2541(d), the Commission "may not deny [a streamlined expedited release] petition based on the fact that the certificate holder is a borrower under a federal loan program." Thus, the question of whether Marilee SUD possesses a federal loan is immaterial to the determination to be made in this case. Accordingly, the motion to dismiss on this ground is denied.

B. Receiving Water Service Under the Standards of the Texas Water Code

Marilee SUD next argues that property in question is receiving water service as defined by the TWC §§ 13.002(21) and 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h), as interpreted by Texas courts and, therefore, the petition should be dismissed under 22 TAC § 22.181(d)(8) because it fails to state a claim for which relief can be granted.

The question of whether the property in question is receiving service goes to the merits of the application. A factual dispute exists between the parties as to whether the property is receiving service. This factual dispute will be decided at the time the petition is decided on the merits. The existence of the factual dispute does not mean that E Real Estate's petition fails to state a claim for which relief can be granted. Accordingly, the motion to dismiss on this ground is also denied.¹

The schedule adopted in Order No. 5 remains in effect.

Signed at Austin, Texas the 28th day of February 2022.

PUBLIC UTILITY COMMISSION OF TEXAS


HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE

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¹ By denying Marilee SUD's motion on this ground, the ALJ is not precluding the utility from asserting the same facts in opposition to the merits of the petition.