



## Filing Receipt

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**DOCKET NO. 52556**

<b>PETITION OF MONTGOMERY</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ESTATES, LLC TO AMEND GULF</b>	<b>§</b>	
<b>COAST AUTHORITY'S CERTIFICATE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OF CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>IN CHAMBERS COUNTY BY</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	

**COMMISSION STAFF'S BRIEF ON THE CERTIFIED ISSUE**

On September 13, 2021, Montgomery Estates, LLC (Montgomery Estates) filed a petition for streamlined expedited release from Gulf Coast Authority's (Gulf Coast) sewer Certificate of Convenience and Necessity (CCN) No. 20465 under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h). Montgomery Estates asserts that the land to be released is at least 25 contiguous acres, is not receiving water service, and is located in Chambers County, which it contends is a qualifying county.

In Order No. 2 filed on October 14, 2021, the administrative law judge (ALJ) found the petition administratively complete. In Order No. 3 filed on December 3, 2021, the ALJ required the parties to clarify the population of Chambers County. In response, the parties agreed that, at the time of filing of the petition and at the time the petition was declared administratively complete, the best data on Chambers County's population was from a U.S. Census Bureau<sup>1</sup> estimate on July 1, 2019. That estimate indicates that the population of the county was 43,837. However, according to a more recent U. S. Census Bureau estimate<sup>2</sup> released in December 2021, Chambers County's population is 46,571.

On December 23, 2021, the ALJ certified the issue of whether the population of a county, for purposes of compliance with TWC § 13.2541(b), is the population at the time the petition is filed, at the time the petition is deemed administratively complete, or at the time the Commission issues a decision on the request for release, and abated the proceeding while the certified issue is

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<sup>1</sup> See *Petition of Montgomery Estates, LLC to Amend Gulf Coast Authority's Certificate of Convenience and Necessity in Chambers County by Expedited Release*, Staff's Clarification Filing (Dec. 9, 2021) (citing U.S. Census Bureau, Census Data for Chambers County QuickFacts Chambers County, Texas (2020)).

<sup>2</sup> *Id.*

pending. The ALJ established a deadline of January 5, 2022, for parties to file responsive briefing on the certified issue. Therefore, this pleading is timely filed.

## **I. COMMISSION STAFF’S BRIEFING ON THE CERTIFIED ISSUE**

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 its population is between 45,500 and 47,500. According to the 2020 U.S. Census Data, the current population estimate for Chambers County is 46,571.<sup>3</sup> In error, Staff previously indicated that the 2020 U.S. Census Data was released in December 2021.<sup>4</sup> Instead, the data that is scheduled for release in December 2021 pertains to the population estimates for 2021, which will incorporate the results of the 2020 census. The 2020 U.S. Census Data for the decennial census was itself released on August 12, 2021.<sup>5</sup>

Staff recommends that the effective date for determining the population of the qualifying county is the date when the Commission files an order, either granting or denying streamlined expedited release. Based on the plain language of TWC § 13.2541(b), which states that a landowner is *only entitled* to the release if the property is in a qualifying county, Staff recommends that a landowner only becomes entitled to the release once the Commission files an order granting the release.

However, Staff recommends that this issue is moot in light of other legislation that controls how population is defined for the purposes of applying TWC § 13.2541(b). Specifically, Tex. Gov’t Code § 2058.0021, states the following:

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<sup>3</sup> U.S. Census Bureau, Census Data for Chambers County, QuickFacts Chambers County, Texas (2020), <https://www.census.gov/quickfacts/fact/table/chamberscountytexas/POP010220>

<sup>4</sup> U.S. Census Bureau, Schedule (2020), <https://www.census.gov/programs-surveys/popest/about/schedule.html>

<sup>5</sup> U.S. Census Bureau, 2020 Census of Population and Housing, Decennial Census P.L. 94-171 Redistricting Data (Aug. 12, 2021), <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html>

“(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.

As such, Staff respectfully recommends that when determining whether a county qualifies under TWC § 13.2541(b), the 2010 federal census should continue to apply in accordance with the requirements of Tex. Gov't Code § 2058.0021. Therefore, based on the 2010 federal census population numbers, Chambers County has a population of 35,096<sup>6</sup> and is adjacent to Harris County, which has a population of 4,092,459.<sup>7</sup> Thus, Chambers County is a qualifying county for expedited release under TWC § 13.2541(b).<sup>8</sup>

## **II. CONCLUSION**

For the reasons detailed above and in accordance with the requirements of Tex. Gov't Code § 2058.0021, Staff recommends that the 2010 federal census should be used to determine whether a county is a qualifying county until September 1, 2023. Staff therefore recommends that

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<sup>6</sup> U.S. Census Bureau, Census Data for Chambers County, QuickFacts Chambers County, Texas (2020), <https://www.census.gov/quickfacts/fact/table/chamberscountytexas/POP010220>

<sup>7</sup> U.S. Census Bureau, Census Data for Harris County, QuickFacts Harris County, Texas (2020), <https://www.census.gov/quickfacts/fact/table/harriscountytexas/POP010220>

<sup>8</sup> TWC § 13.2541(b) and TAC § 24.245(h)(2).

Chambers County is a qualifying county for expedited release under TWC § 13.2541(b). Staff respectfully requests the entry of an order consistent with the foregoing recommendation.

Dated: January 5, 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 on January 5, 2022 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ John Harrison  
John Harrison