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PUC DOCKET NO. 52556

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

PUC DOCKET NO. 52529

| | | |
|---------------------------------|---|---------------------------|
| PETITION BY EAST TIOGA 581 LP | § | BEFORE THE |
| FOR EXPEDITED RELEASE FROM | § | |
| WATER CCN NO. 10150 | § | PUBLIC UTILITY COMMISSION |
| HELD BY MARILEE SPECIAL UTILITY | § | |
| DISTRICT IN GRAYSON COUNTY | § | OF TEXAS |

**EAST TIOGA 581, LP'S BRIEF TO CERTIFIED QUESTION AND RESPONSE TO
MARILEE SPECIAL UTILITY DISTRICT'S SECOND MOTION TO DISMISS**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

East Tioga 581, LP ("East Tioga") Petitioner in Docket No. 52529 files this Brief to the Certified Question in Docket No. 52556 and Response to Marilee Special Utility District's Second Motion to Dismiss in Docket No. 52529. East Tioga respectfully shows that Grayson County is a qualifying county under Texas Water Code 13.2541(b) and Texas Administrative Code 24.245(h) as follows:

I. INTRODUCTION

On September 7, 2021, East Tioga filed its Petition at the Public Utility Commission of Texas (the "Commission") to amend Marilee Special Utility District's Water Certificate of Convenience and Necessity ("CCN") in Grayson County, Texas by Streamlined Expedited Release under Texas Water Code ("TWC") § 13.2541 and 16 Texas Administrative Code ("TAC") § 24.245(h) (the "Petition"). Commission Staff recommended that the Petition be deemed

administratively complete on October 7, 2021. On October 10, 2021, Marilee SUD filed its First Motion to Dismiss, which was denied on November 10, 2021. On December 8, 2021, Commission Staff filed its Supplemental Recommendation on Administrative Completeness, and soon after that filing, Administrative Law Judge (“ALJ”) Ta issued Order No. 5 on December 9, 2021, finding the Petition administratively complete and establishing that the 60-day administrative approval of the Petition would be February 7, 2022. On January 11, 2022, the ALJ issued Order No. 6 abating the proceeding pending a finding on the Certified Question in Docket No. 52556.

II. ARGUMENT AND AUTHORITY

The 2020 Federal Census should apply to current Petition for Streamlined Expedited Release Under Texas Water Code § 13.2541(b) and should not be dismissed based on the plain reading of the statute and legislative intent.

A. The Plain Language of the Statute Does Not Require Reliance on Federal Census Date to Measure Population.

Texas Water Code 13.2541(b) is not tied to the Federal Census. Texas Water Code section 13.2541(b) provides as follows:

[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.

The plain language of this statute in no way ties the population measurement to the Federal Census. While the Federal Census is the most accurate and reliable measure of population, it is not the exclusive measure required by this statute. Indeed, population estimates based on data such as new home sales, school enrollment, and other factors remain available to measure population under this statute. Here, the CCN holder argues that the 2010 census data exclusively

applies to Texas Water Code 13.2541(b) because of a Texas Government Code provision that was passed in the 87th Legislature in 2021. Texas Government Code §2058.0021 provides as follows:

(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.”

TEXAS GOVERNMENT CODE §2058.0021(emphasis added).

While this section may apply to other statutes it does not apply in this instance. There is no requirement in Texas Water Code section 13.2541(b) that population is established *according to the most recent federal census*. Under the plain reading of Texas Water Code section 13.2541(b) it is not tied to any federal census data, and therefore, Texas Government Code §2058.0021 does not apply. This is a transparent attempt by CCN holders to exploit delay in certification of the 2020 census due to the COVID pandemic. This is contrary to legislative intent as set forth below.

B. The Legislative Intent is Clear that Texas Water Code Section 13.2541(b) Relates to a Growing Texas Population.

TEXAS GOVERNMENT CODE Sections 312.005 and 312.006 state:

LEGISLATIVE INTENT. In interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.

LIBERAL CONSTRUCTION. (a) The Revised Statutes are the law of this state and shall be liberally construed to achieve their purpose and to promote justice.

(b) The common law rule requiring strict construction of statutes in derogation of the common law does not apply to the Revised Statutes.

TEXAS GOVERNMENT CODE §312.005 and 312.006.

On motion of Senator Nichols and by unanimous consent, his remarks regarding CSSB 573 were ordered reduced to writing and printed in the *Senate Journal* as follows:

Chapter 13 of the Water Code provides a landowner may petition TCEQ to be released from a certificate of convenience and necessity if the CCN holder is not providing service. CCNs are permits to allow the holder to be exclusive, provide a water and wastewater services to a geographic area. This exclusive right is granted as an incentive to provide water services, having the rights to a CCN is a state-granted monopoly and should come with responsibilities. However, the current process to be released from a CCN is cumbersome and costly for both the CCN holder and the landowner. It is a *disincentive for developers to buy and develop land within a CCN* because of the cost to be released or the fear of not being released from a nonserving CCN. Committee Substitute to SB 573 updates current process and makes it clear that if a landowner of 25 acres or more is not receiving water or wastewater, they may petition the TCEQ to be released from the CCN..... Committee Substitute to SB 573 *only applies to counties of one million or more, their adjacent counties.*


Clearly the legislative intent of CSSB 573 was to promote low-cost development to benefit the Texas home-buying consumer. Unprecedented population growth is documented by the 2020 federal census. If this Act is not permitted to keep pace with growth in Texas population, it's goal will be thwarted. The goal is to allow development to occur in pace with population growth in a cost-effective manner that can be passed along to homebuyers. With unprecedented population this goal cannot be achieved if high growth counties cannot participate under Texas Water Code §13.2541. This was obviously not the intent as expressed by Senator Nichols.

III. CONCLUSION AND PRAYER

For these reasons, East Tioga 581, L.P. respectfully requests that the Commission hold that the 2020 Federal Census data applies to Grayson County and qualifies it is a county where streamlined expedited released is available under Texas Water Code section 13.2541. In addition, East Tioga 581, L.P. respectfully requests that the CCN holder's Motion to Dismiss be **DENIED**.

Respectfully submitted,

COATS | ROSE

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January, 2022, a true and correct copy of the foregoing document was sent, via electronic mail to all parties of record, in accordance with the Order Suspending Rules, issued in Project No. 50664.

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