



Control Number: 52556



Item Number: 17

PUC DOCKET NO. 52556

**PETITION OF MONTGOMERY
ESTATES, LLC TO AMEND GULF
COAST AUTHORITY'S CERTIFICATE
OF CONVENIENCE AND NECESSITY
IN CHAMBERS COUNTY BY
EXPEDITED RELEASE**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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FILED

ORDER ON CERTIFIED ISSUE

This Order addresses the issue certified to the Commission by the Commission's administrative law judge related to the date that the population of a county should be determined for purposes of meeting the population limits specified in Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h)(2). For the reasons discussed in this Order, the Commission concludes that the 2010 federal census is the applicable source for determining whether the population of Chambers County meets that limits specified in TWC § 13.2541(b) and 16 TAC § 24.245(h)(2) in this docket.

To qualify for streamlined expedited release under TWC § 13.2541, a landowner must demonstrate that its tract of land is located in a county that meets certain population limits specified in that section.¹ A county that meets the specified population limits is denominated a qualifying county. Concerned about whether there was adequate information in this docket on whether Chambers County is a qualifying county, the administrative law judge required the parties to clarify the population of Chambers County and provide supporting information.² In response, the parties asserted that, using the population estimate for Chambers County as of July 1, 2019 provided by the United States Census Bureau, Chambers County would meet the populations limits specified in TWC § 13.2541(b).³ However, based on the 2020 census data, released in December

¹ Tex. Water Code § 13.2541(b).

² Order No. 3 (Dec. 3, 2021).

³ Commission Staff's Clarification Filing at 1-2 (Dec. 9, 2021); Montgomery Estates and Gulf Coast Authority's Joint Clarification in Response to Order No. 3 at 2-3 (Dec. 9, 2021).

2021, Chambers County does not meet the population limits.⁴ Thus, if the population is determined at the time the petition was filed—in this case, September 13, 2021—or when the petition was found administratively complete—October 14, 2021—the parties assert that Chambers County meet the statutory population limits. Montgomery Estates and the Gulf coast Authority asserted that the population on the date a petition for expedited release is filed controls this issue.⁵

In light of these responses by the parties, the judge deemed it appropriate to certify the issue to the Commission:

For purposes of identifying whether a county is a qualifying county under TWC § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h)(2), is population of a county determined 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?⁶

In its brief, Commission Staff noted that the 2020 census was actually released on August 12, 2021 and argued that the appropriate date for determining the population of a county in a streamlined expedited release case is the date when the Commission files its order.⁷ Commission Staff asserted further, however, that this issue is moot and that the 2010 census applies in this case.⁸ Montgomery Estates argued the Commission has discretion to use either the 2010 or 2020 census and therefore has discretion to approve the petition in this case and should do so.⁹

The Commission has previously determined that whether a tract of land is receiving service should be determined at the time a petition for streamlined expedited release is filed.¹⁰ However, population limits like the ones in TWC § 13.2541 at issue here are determined by reference “to the

⁴ Commission Staff’s Clarification Filing at 1-2; Montgomery Estates and Gulf Coast Authority’s Joint Clarification in Response to Order No. 3 at 2-3.

⁵ Montgomery Estates and Gulf Coast Authority’s Joint Clarification in Response to Order No. 3 at 2.

⁶ Order No. 4 (Dec. 23, 2021).

⁷ Commission Staff’s Brief on the Certified Issue at 2 (Jan 5, 2022).

⁸ *Id.* at 3.

⁹ Montgomery Estate’s Brief on the Certified Issue at 6-7 (Jan. 5, 2022).

¹⁰ *Petition of HMP Ranch, Ltd To Amend Johnson County Special Utility Districts Certificate of Convenience and Necessity in Johnson and Tarrant Counties by Expedited Release*, Docket No. 45037, Conclusion of Law No. 7 (Dec. 18, 2015); *Petition of SIG Magnolia LP to Amend Dobbin Plantersville Water Supply Corporation’s Certificate of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 51979, Conclusion of Law No. 8 (Jan. 31, 2022); see also *Johnson County Special Util. Dist. v. Pub. Util. Comm’n*, 2018 WL 2170259 (Tex. App.—Austin 2018, pet. Denied).

most recent federal decennial census.”¹¹ In addition, other provisions specify when a governmental entity generally may recognize a new federal decennial census.¹² Thus, it is the date the census must be recognized, not the date of the petition, the determination of administrative completeness, or the Commission’s order, that would generally govern the issue here. But the transition from the 2010 census to the 2020 census is governed, for purposes of this docket, by another provision in the Government Code.

Until September 1, 2023, “a statute that applies to a political subdivision having a certain population according to the most recent federal census 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”¹³ As indicated by the information provided by the parties in this docket, Chambers County meets the population limits in TWC§ 13.2541(b) based on the 2010 federal census to be a qualifying county. Accordingly, Chambers County continues to meet these population limits based on the 2010 census notwithstanding that its population under the 2020 census does not meet the population limits.

¹¹ Tex. Gov’t Code § 311.005(3), “‘Population’ means the population shown by the most recent decennial census.”

¹² Tex. Gov’t Code § 2058.002.

¹³ Tex. Gov’t Code § 2058.0021.

Signed at Austin, Texas the 10th day of February 2022.


PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER

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