



## Filing Receipt

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**DOCKET NO. 52630**

<b>PETITION OF GJGTEB HOLDINGS, LLC TO AMEND CREEDMOOR- MAHA WATER SUPPLY CORPORATION CCN NO. 11029 IN CALDWELL COUNTY BY STREAMLINED EXPEDITED RELEASE</b>	<b>§ § § § § § §</b>	<b>BEFORE THE  PUBLIC UTILITY COMMISSION   OF TEXAS</b>
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**GJGTEB HOLDINGS, LLC’S RESPONSE TO CREEDMOOR-MAHA WATER  
SUPPLY CORPORATION’S MOTION TO ABATE AND CERTIFY ISSUE**

COMES NOW, GJGTEB Holdings, LLC (“Petitioner”) and submits this Response to Creedmoor-Maha Water Supply Corporation’s (“Creedmoor-Maha”) Motion to Abate and Certify Issue, and in support thereof, would respectfully show the following:

**I. BACKGROUND**

Petitioner filed its Petition for a Streamlined Expedited Release (“SER”) from Creedmoor-Maha’s water Certificate of Convenience and Necessity (“CCN”) No.11029 on September 23, 2021. On October 27, 2021, the Commission’s Administrative Law Judge (“ALJ”) issued Order No. 2 finding the Petition “administratively complete.” On November 15, 2021, Creedmoor-Maha filed a Response and Motion to Abate, which Order No. 3 denied on November 29, 2021. Thereafter, on December 13, 2021, Staff of the Public Utility Commission of Texas (“Commission Staff”) filed a Clarification Filing to which Petitioner timely replied on December 15, 2021. Creedmoor-Maha failed to respond to either Commission Staff’s December 13, 2021 Clarification Filing or to Petitioner’s December 15, 2021 reply, but now files this Motion to Abate and Certify Issue untimely, ten (10) working days after Petitioner’s pleading. Under the Commission’s procedural rules, a responsive pleading is due within five (5) working days.<sup>1</sup> Accordingly, this Response is timely filed.

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<sup>1</sup> 16 Tex. Admin. Code (“TAC”) § 22.78(a).

## **II. ARGUMENT**

### **A. Creedmoor-Maha's Motion Is Untimely**

Creedmoor-Maha's second Motion to Abate is an obvious effort to drag out a process that is intended to be expedited. Creedmoor-Maha previously sought to abate this proceeding in order to require Petitioner to identify the type, timing, and amount of water service needed.<sup>2</sup> The Commission ALJ denied Creedmoor-Maha's motion because those service evaluation issues are not critical or even relevant to the proceeding.<sup>3</sup> Not only is Creedmoor-Maha's second Motion to Abate likewise unnecessary, but it is also untimely since it purports to reply to Commission Staff's Clarification Filing that initially raised the issue of a "qualifying county" on December 13, 2021. Creedmoor-Maha's responsive pleading was due no later than December 20, 2021. Similarly, had Creedmoor-Maha wished to reply to Petitioner's Response to Commission Staff's Clarification Filing of December 15 and rebut the applicability of Texas Government Code Chapter 2058 and the proper construction of the bracketed information in Texas Water Code ("TWC") § 13.2541, the time to have done so was no later than December 22, 2021. Notwithstanding the "active issues" it believes are still in "dispute," Creedmoor-Maha waived its opportunity to further contest this SER by not filing a timely response.

As explained in more detail below, the SER petition and qualifying county question are already properly before the ALJ who is more than capable of rendering a statutory construction opinion without further delay and without certification to the Commission.

### **B. A Certified Question Is Improper**

Section 22.127 of the Commission's rules authorizes an ALJ to certify questions to the Commission for resolution.<sup>4</sup> The ALJ is vested with the discretion to certify questions or not.

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<sup>2</sup> Creedmoor-Maha Water Supply Corporation's Response to Petition of GJGTEB Holdings, LLC and Motion to Abate (Nov. 15, 2021).

<sup>3</sup> Order No. 3 (Nov. 29, 2021).

<sup>4</sup> 16 TAC § 22.127.

However, to be eligible for certification, those questions must meet specific criteria, including the following:<sup>5</sup>

- 1) The commission’s interpretation of its rules and applicable statutes;
- 2) Which rules or statutes are applicable to a proceeding; or
- 3) Whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.<sup>6</sup>

An issue “that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law” has also been interpreted as a “policy” issue where the “ALJ [may] obtain an interlocutory order related to questions about which she has significant doubts[.]”<sup>7</sup> In other words, the certification process is not meant for issues about which the ALJ does not have doubt. In this case, the determination of whether Texas Government Code § 2058.0021 instructs the Commission on how to apply population brackets for the qualifying county criteria in TWC § 13.2541(b) and 16 TAC § 24.245(h)(2)(B), is a straight-up exercise in statutory construction. Contrary to Creedmoor-Maha’s assertions, no controversy exists surrounding this “critical” issue. The applicability of § 2058.021, which by definition applies to every Texas Statute, is not a thorny “policy” issue, and it is not appropriate for certification.

Not only is certification to the Commission unnecessary because the statutory construction of TWC § 13.2541(b) is clearly a matter within the ALJ’s purview, but it is also unnecessary. Any party who loses on the qualifying county issue can appeal the ALJ’s Order to the Commission anyway. Thus, by different paths, the parties reach the same tribunal. Creedmoor-Maha’s second motion to abate merely delays and therefore thwarts a process that the Legislature expressly intended to be short and decisive. Indeed, sixty (60) days since the petition was declared administratively complete was December 27, 2021.<sup>8</sup> It is therefore well past the time the Commission should have granted the SER from Creedmoor-Maha’s CCN.

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<sup>5</sup> See *id.* (“The presiding officer may certify to the commission an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law.”).

<sup>6</sup> *Id.*

<sup>7</sup> Ronald L. Beal, Texas Administrative Practice and Procedure § 7.7 (“Certification of Issues to Referring Agency”) (June 2021).

<sup>8</sup> TWC § 13.2541(c); Order No. 2 at 2 (Oct. 27, 2021).

### C. Applicability Of § 2058.021 To the Water Code Is Not In Question

Chapter 2058 of the Texas Government Code provides in detail how a state agency, including the Commission, shall ascertain population of a political subdivision. Specifically, Tex. Gov't Code § 2058.0021 requires the following:

(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.<sup>9</sup>

The term "population" as used in TWC § 13.2541(b) is defined in the Code Construction Act.<sup>10</sup> The Code Construction Act is applicable to *all* codes enacted by the 60th or subsequent legislatures, including the Texas Water Code.<sup>11</sup> Thus, the proper statutory construction of TWC § 13.2541(b) must be informed by and consistent with the Code Construction Act. But the statutory construction exercise does not stop there. The plain meaning of Texas Government Code Chapter 2058 further enlightens governmental entities how they are to recognize or act on federal census data, including that data referenced in the Code Construction Act's population definition and in TWC § 13.2541(b).

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<sup>9</sup> Tex. Gov't Code Ann. § 2058.0021 (emphasis added).

<sup>10</sup> Tex. Gov't Code Ann. § 311.005(3) ("Population" means the population shown by the most recent federal decennial census).

<sup>11</sup> Tex. Gov't Code Ann. § 311.002(1). Similarly, the construction of the Texas Government Code is expressly subject to the Code Construction Act. *See* Tex. Gov't Code Ann. § 1.002.

The fact that neither TWC Chapter 13 nor Commission rules expressly invoke Tex. Gov't Code § 2058.0021 is both immaterial and unsurprising.<sup>12</sup> Section 2058.0021, which is designated as a “temporary provision,” is applicable to all governmental entities, including the Commission, that act on federal population data.<sup>13</sup> It would have been non-sensical if not impossible for the Texas Legislature to amend every state statute with bracketed information; instead, the Legislature adopted Tex. Gov't Code § 2058.0021 to apply to ever statute with bracketed population provisions for the next two years so that the Legislature could address the new federal census data during a future session.<sup>14</sup> H.B. 2025 did not grant rulemaking authority to the Commission or any other “state officer, department, agency, or institution” as a means to ignore the federal census directive.<sup>15</sup>

#### **D. Legislative History Of § 2058.021**

Typically, biennial legislative sessions convene *after* the decennial census is released. This allows the State to pass bills to update population brackets affected by the census. However, because of the COVID-19 Pandemic, the issuance of the 2020 U.S. decennial census was delayed such that its release followed the 87<sup>th</sup> Legislative Session instead of preceding it. The H.B. 2025 Bill Analysis provides a justification for § 2058.0021 and explains the reason the State must continue to apply the 2010 U.S. Census until September 1, 2023:

Because of the delayed release of the data this year, governmental entities will have little to no time to adjust to the new data . . . H.B. 2025 seeks to provide a transition period for years in which the census is delayed that is similar to the transition period when data is released in the normal time frame.<sup>16</sup>

Thus, the population figure used to determine the eligibility of a qualifying county in TWC § 13.2541(b) for purposes of a SER petition, including Caldwell County, must be read in light of both § 311.005(3) of the Code Construction Act and § 2058.0021 of the Texas Government Code.

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<sup>12</sup> Creedmoor-Maha Water Supply Corporation's Motion to Abate and Certify Issue at 3-4 (Nov. 15, 2021).

<sup>13</sup> Tex. Gov't Code Ann § 2058.001(c) (“governmental entity” means the state or an agency or political subdivision of the state.”).

<sup>14</sup> See Exhibit A, Bill Analysis. Act of May 31, 2021, 87<sup>th</sup> Leg., R.S., ch. 682, § 3, 2021 Tex. Gen. Laws 5519.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Despite Creedmoor-Maha’s claims of lack of “citing authority” and “apparent lack of connection,” there is no ambiguity that Tex. Gov’t Code § 2058.0021 yields one clear result – it requires the use of 2010 U.S. Census data.<sup>17</sup> The “truest manifestation of what lawmakers intended is what they enacted.”<sup>18</sup>

#### **E. Abatement Is Unwarranted**

Creedmoor-Maha tries to justify an abatement by claiming there is precedent, citing Docket No. 52556.<sup>19</sup> While it is true there are other dockets relating to the qualifying county issue, the certified question in Docket No. 52556 relates only to the timing of when population is determined for purposes of deciding whether a county is qualifying – whether at the time the SER petition is filed, at administrative completeness, or upon issuance of Commission order.<sup>20</sup> The timing issue is not in question in this matter and is also moot. The ALJ’s certified question in Docket No. 52556 makes no mention of Tex. Gov’t Code § 2058.0021 and its applicability. As such, the certified question in Docket No. 52556 is not relevant to this case.

In the alternative, if the Commission ALJ believes the certified question issue in Docket No. 52556 is germane to this docket, Commission Staff’s Brief on the Certified Issue in that case does a good job cutting through the peripheral issues finding that “the 2010 federal census should continue to apply in accordance with the requirements of Tex. Gov’t Code § 2058.0021.”<sup>21</sup> Commission Staff argue correctly that the Commission may not use the 2020 U.S. Census data to determine county qualification based on population for purposes of SERs.

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<sup>17</sup> *Columbia Gas Trans. Corp. v. New Ulm Gas, Ltd.*, 940 S.W.2d 587, 589 (Tex. 1996) (“Ambiguity does not arise simply because the parties advance conflicting interpretations of the contract; rather, for an ambiguity to exist, both interpretations must be reasonable.”).

<sup>18</sup> *Tex. Student Hous. Auth. v. Brazos Cty. Appraisal Dist.*, 460 S.W.3d 137, 141 (Tex. 2015).

<sup>19</sup> Creedmoor-Maha Water Supply Corporation’s Motion to Abate and Certify Issue at 4-5 (Jan. 4, 2022).

<sup>20</sup> *Petition of Montgomery Estates, LLC to Amend Gulf Coast Authority’s Certificate of Convenience and Necessity in Chambers County by Expedited Release*, Docket No. 52556, Order No. 4 at 2 (Dec. 23, 2021).

<sup>21</sup> *Petition of Montgomery Estates, LLC to Amend Gulf Coast Authority’s Certificate of Convenience and Necessity in Chambers County by Expedited Release*, Docket No. 52556, Commission Staff’s Brief on the Certified Issue at 3 (Jan. 5, 2022).

## **F. Summary**

According to the applicable 2010 U.S. Census, Caldwell County had a population of 38,066.<sup>22</sup> Thus, Caldwell County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2), as Caldwell County is a county adjacent to Travis County with a population of at least one million.<sup>23</sup> As per the Commission Staff's Recommendation on Final Disposition, the SER petition meets all of the statutory and regulatory requirements. Therefore, the Commission should issue the requested SER from the Creedmoor-Maha CCN and deny Creedmoor-Maha's Motion to Abate and Certify Issue.

## **III. CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Petitioner GJGTEB Holdings, LLC respectfully prays that the Commission deny Creedmoor-Maha Water Supply Corporation's Motion to Abate and Certify Issue, grant its Petition, and release Petitioner's approximately 194-acre Cornerstone tract from CCN No. 11029 in Caldwell County, a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2), and to all other such relief to which it is entitled.

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<sup>22</sup> U.S. Census Bureau, Census Data for Caldwell County, Quickfacts Caldwell County, Texas (2020) <https://www.census.gov/quickfacts/fact/table/caldwellcountytexas,US/PST045219>.

<sup>23</sup> According to the U.S. Census Bureau, the 2010 population of Travis County was 1,024,266; *see* U.S. Census Bureau, Census Data for Travis County, Quickfacts Travis County, Texas (2020) <https://www.census.gov/quickfacts/traviscountytexas>.



Respectfully submitted,

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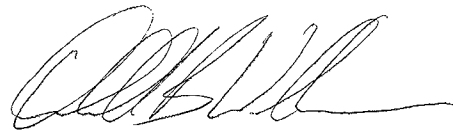
By: \_\_\_\_\_

Randall B. Wilburn

**ATTORNEYS FOR GJGTEB  
HOLDINGS, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that I have or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on the 10th of January 2022.



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Randall B. Wilburn

**BILL ANALYSIS**

H.B. 2025  
By: Hunter  
State Affairs  
Committee Report (Unamended)

**BACKGROUND AND PURPOSE**

In previous regular legislative sessions following the decennial U.S. census, the state legislature has passed a bill to update population brackets in statute that limit the applicability of those statutes to certain political subdivisions. Because of the delay in the release of the 2020 census data, the legislature will be unable to pass a similar bill during the current legislative session. To preserve the applicability of these statutes until such time as the legislature is able to pass an update bill, H.B. 2025 seeks to continue to apply the 2010 census numbers to statutory population brackets until 2023. In addition, under normal circumstances, governmental entities are given a period of months to make adjustments made necessary by the release of new census data. Because of the delayed release of the data this year, governmental entities will have little to no time to adjust to the new data. H.B. 2025 seeks to provide a transition period for years in which the census is delayed that is similar to the transition period when data is released in the normal time frame.

**CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

**RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

**ANALYSIS**

H.B. 2025 amends the Government Code to require a governmental entity to recognize and act on a published federal decennial census report or count on the later of either of the following dates:

- September 1 of the year after the calendar year during which the census was taken; or
- the first day of the first calendar month occurring after the 150th day after the date of publication.

H.B. 2025 provides that the population figures from the 2010 federal census continue to apply with respect to a statute that applies to a political subdivision having a certain population according to the most recent federal census until September 1, 2023. The bill specifies that a statute does not apply to a political subdivision to which the statute did not apply under the 2010 federal census, regardless of whether the subdivision has the population prescribed by the statute according to the 2020 federal census.

**EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.