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DOCKET NO. 46866

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PUBLIC UTILITY COMMISSION
FILING CLERK

PETITION OF PATRICIA MILLER §
DEASON TO AMEND MARILEE §
SPECIAL UTILITY DISTRICT'S §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN COLLIN §
COUNTY BY EXPEDITED RELEASE §

PUBLIC UTILITY COMMISSION
OF TEXAS

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Recommendation on Final Disposition. In support thereof, Staff would show the following:

I. BACKGROUND

On February 17, 2017, Patricia Miller Deason (Deason) filed a petition (Petition) with the Public Utility Commission of Texas (Commission) for expedited release of 257.86 acres (Property) from Marilee Special Utility District's (Marilee) water certificate of convenience and necessity (CCN) No. 10150 in Collin County, Texas, pursuant to Tex. Water Code § 13.254(a-5) (TWC) and 16 Tex. Admin. Code § 24.113(r) (TAC).¹ Deason asserts that the Property is not receiving water service from Marilee.²

In Order No. 4, issued April 6, 2017, the Administrative Law Judge (ALJ) ordered Staff to file a recommendation on final disposition by April 10, 2017. Therefore, this pleading is timely filed.

II. STATUTORY APPROVAL DEADLINE

Pursuant to TWC § 13.254(a-6) and 16 TAC § 24.113(s), the Commission must render a decision on a petition for expedited release "not later than the 60th calendar day after the date the landowner files the petition." A petition is not considered filed until it is deemed administratively complete. Order No. 3, issued on March 22, 2017, deemed Deason's petition administratively complete; therefore the 60-day deadline for administrative approval is May 21, 2017.

¹ Petition at 4 (Feb. 17, 2017).

² *Id.*

III. RECOMMENDATION ON FINAL DISPOSITION

A. “Receiving Service” Standard

Pursuant to TWC § 13.254(a-5), the tract of land sought to be released from a CCN must not be receiving water or sewer service. Service is defined as “any act performed, anything furnished or supplied, and any facilities or lines committed or used by the retail public utility in the performance of its duties . . .”³ In *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, the court explained that:

The mere existence of water lines or facilities on or near a tract would not necessarily mean that a tract was ‘receiving water service.’ Rather... such a determination is essentially a fact-based inquiry requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water *to the particular tract* or has performed acts or supplied anything *to the particular tract* in furtherance of its obligation to provide water to that tract pursuant to its CCN.⁴

The court in *Crystal Clear* clarified that “[c]ertainly an active water tap on the... [p]roperty would constitute a facility or line ‘used’ to supply water to the tract on which it was located.”⁵ The court further stated that a tract of land would not be considered to be receiving service “simply because the retail public utility has performed an act, such as entering into a contract to secure water supply, unless the act was performed in furtherance of providing water to the tract seeking decertification.”⁶

The Commission has held that “even though a utility has facilities available and capable of providing water service, that does not mean the facilities are committed and dedicated to serving that particular tract.”⁷ The Commission has further held that “the time that the petition is filed is the only relevant time period to consider when evaluating whether a tract of land is

³ TWC § 13.002(21); *see also* 16 TAC § 24.3(44).

⁴ 449 S.W.3d 130, 140 (Tex. App.-Austin 2014, pet. denied).

⁵ *Id.*

⁶ *Id.*

⁷ *Petition of HMP Ranch, Ltd. To Amend Johnson County Special Utility District’s Certificate of Convenience and Necessity in Johnson and Tarrant Counties by Expedited Release*, Docket No. 45037, Order, Finding of Fact No. 23 (Dec. 18, 2015).

receiving water service under TWC. § 13.254(a-5).” Whether a tract might have previously received water or sewer service is irrelevant.⁸

B. Parties’ Proof

Marilee asserts that Deason’s property is receiving water service from Marilee, as supported by the affidavit of Donna Loiselle and Marilee’s Response to Deason’s petition for expedited release.⁹ Marilee’s Response asserts that:¹⁰

- 1) Marilee has constructed an 8-inch waterline directly on the south side of the Property, in which an adjacent 2-inch waterline serves off the 8-inch waterline to the Property. Marilee has also constructed a 6-inch waterline adjacent to a portion of the east side of the Property for the purpose of providing retail water service to the Property.
- 2) In 1997, at Deason’s request, Marilee transferred water service from J.R. McIlroy to Deason with the location of the meter at the corner of County Roads 130 and 132. (Account #309)
- 3) In 2004, at Deason’s request, Marilee initiated water service to the 166 acres of the Property. (Account #1528)
- 4) Marilee maintains two active water meters through which Marilee provides water service to the Property.
- 5) Water usage by the Property is reflected in the current billing statements for Accounts #309 and #1528.

Deason asserts that the Marilee is not providing “service” to the Property as defined by TWC § 13.002(21), and specifically that any improvements that Marilee has made are not dedicated solely to serving the Property.¹¹ Deason states that water meters that are not located on the Property do not equate to “service.” Deason relies on *Crystal Clear* and states that the court held that the “mere existence of water line or facilities on or near a tract [does] not necessarily

⁸ *Id.* at Conclusion of Law No. 7.

⁹ Marilee’s Response to Petition (Mar. 15, 2017).

¹⁰ *Id.* at 2-3.

¹¹ Deason’s Reply to Marilee at 1 (Mar. 31, 2017).

mean that tract [is] receiving water service.”¹² Deason reiterates that “receiving service” is a fact-based inquiry that requires the Commission to consider any lines committed providing water to *the particular tract*, and that the *Crystal Clear* court respects a landowner’s discretion in defining which tracts are involved and does not contain an “all or nothing” requirement.¹³

C. Staff’s Recommendation

Staff recommends that Marilee has adequately proven the Property is receiving water service under TWC § 13.254(a-5), as defined by TWC § 13.002(21) and further clarified by the Commission and by the court in *Crystal Clear*. Staff has reviewed Deason’s Petition and, as supported by the attached memorandum of Gregory Charles of the Water Utility Regulation Division, Staff recommends that the Petition be denied.

The billing statements provided by Marilee show that the referenced meters are actively providing water service to the Property. Staff maintains that the active meters would be considered “active water tap[s]” under the *Crystal Clear* standard.¹⁴ Further, the billing period shown in the statements includes the date that Deason’s Petition was filed. Therefore, Staff recommends that the Property was receiving service during the relevant time period, and is ineligible for expedited release.

IV. CONCLUSION

For the reasons stated above, Staff respectfully recommends that an order be issued denying Deason’s Petition.

¹² *Id.* at 2 (citing *Crystal Clear* at 140).

¹³ *Id.* at 2-3 (citing *Crystal Clear* at 136).

¹⁴ *Crystal Clear*, 449 S.W.3d at 140.

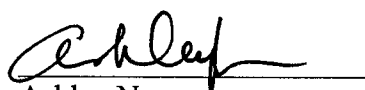
DATED: April 10, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 10th of April, 2017, in accordance with 16 TAC § 22.74.


Ashley Nwonuma

PUC Interoffice Memorandum

To: Ashley Nwonuma
Legal Division
Public Utility Commission of Texas

Thru: Lisa Fuentes, Manager
Water Utilities Division

From: Greg Charles, Staff Engineer
Water Utilities Division

Date: April 10, 2017

Subject: *Docket No. 46866: Petition of Patricia Miller Deason to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

On February 17, 2017, Patricia Miller Deason (Petitioner), filed with the Public Utility Commission of Texas (Commission) a petition seeking an expedited release of Certificate of Convenience and Necessity (CCN) No. 10150 held by Marilee Special Utility District (Marilee SUD) in Collin County, pursuant to Texas Water Code (TWC), Chapter (§) 13.254 (a)(1) and (a-5), and 16 Texas Administrative Code (TAC) § 24.113(r). The Petitioner filed an affidavit stating that the land is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, which is a qualifying county.

The Petitioner filed metes and bounds and an adequate map delineating the area with enough details to confirm the location of the property. The Petitioner also provided a warranty deed confirming the Petitioner's ownership of the property. The area being requested for expedited release is approximately 257.86 acres of land. Staff was able to confirm the acreage of the total property.

On March 2, 2017 Marilee SUD filed a motion to intervene, and on March 9, 2017, Order No. 2 granted the motion to intervene. On March 15, 2017, Marilee SUD filed a response to the petition. The response stated that the requested area was receiving service at the time the petition was filed. Marilee SUD's response included a copy of a cancelled check which was written by the Petitioner while applying for service to the requested area in 2004. In addition, the response included copies of billing statements for service to the requested area, between January 24, 2017 and February 22, 2017, showing the Petitioner is still a current customer.

Staff reviewed Marilee SUD's response to the petition and is convinced the requested area does not meet the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(r). Therefore, Staff recommends denial of the petition.