



Control Number: 46866



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Commissioner

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PUBLIC UTILITY COMMISSION  
FILING CLERK

*Public Utility Commission of Texas*

**TO:** Donna L. Nelson, Chairman  
Kenneth W. Anderson, Jr., Commissioner  
Brandy Marty Marquez, Commissioner  
  
All Parties of Record

**FROM:** Susan E. Goodson *SEG*  
Administrative Law Judge

**RE:** **Open Meeting of May 18, 2017**  
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*

**DATE:** April 24, 2017

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission is currently scheduled to consider this docket at an open meeting to begin at 9:30 a.m. on Thursday, May 18, 2017, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Wednesday, May 10, 2017.

**If there are no corrections or exceptions, no response is necessary.**

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**DOCKET NO. 46866**

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

**PROPOSED ORDER**

This Order addresses the petition of Patricia Miller Deason to amend Marilee Special Utility District's water certificate of convenience and necessity (CCN) No. 10150 in Collin County by expedited release. Commission Staff recommended denial of the petition. For reasons discussed in this Order, the petition is denied.

The Commission adopts the following findings of fact and conclusions of law:

**I. Findings of Fact**

**Procedural History**

1. On February 17, 2017, Deason filed a petition for the expedited release of 257.86 acres of land from Marilee's water CCN No. 10150 in Collin County.<sup>1</sup> Deason stated that its 257.86-acre tract of land is wholly located within CCN No. 10150 and is not receiving water service from Marilee.<sup>2</sup>
2. On February 21, 2017, Order No. 1 was issued, requiring Commission Staff to comment on the administrative completeness of the petition and notice, establishing a procedural schedule for Commission Staff's comments and for Marilee and other affected persons to file a written protest, motion to intervene and/or file comments on the petition.
3. On March 2, 2017, Marilee filed a motion to intervene.
4. On March 9, 2017, Order No. 2 was issued, granting Marilee's motion to intervene.

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<sup>1</sup> Petition of Patricia Miller Deason to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release at 1 (Feb. 17, 2017).

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

5. On March 15, 2017, Marilee filed a response to the petition, stating that the 257.86-acre tract of land is not eligible for expedited decertification because Marilee provides “service” to the property, as that term is defined under Texas Water Code § 13.002(21) (TWC).<sup>3</sup> Marilee stated that it has provided many acts in furtherance of the provision of retail water service to the 257.86-acre tract, including without limitation, the following:
- a) Marilee constructed an 8-inch waterline directly on the south side of the property;
  - b) Marilee constructed a 2-inch waterline off of the 8-inch waterline that serves the property;
  - c) Marilee 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;
  - d) Marilee transferred retail water service to Deason in 1997, at Deason’s request, with the meter located at the corner of County Roads 130 and 132;
  - e) Marilee initiated water service at the request of Deason to 166 acres of the property in 2004;
  - f) Marilee maintains two active water meters through which water service is provided to the property; and
  - g) Marilee bills Deason for water usage or active account billing, as reflected in billing statements provided.

Marilee also provided a map of the property, depicting all of the described waterlines, and an affidavit attesting to the provision of water service to the property.<sup>4</sup>

6. On March 20, 2017, Commission Staff recommended that the petition be deemed administratively complete.
7. On March 22, 2017, Order No. 3 was issued, finding the petition administratively complete and adopting a procedural schedule for final processing.
8. On March 31, 2017, Deason filed a response to Marilee’s response to the petition, stating the 257.86-acre tract of land is not being provided service, as defined by TWC § 13.002(21).<sup>5</sup> Deason stated that any improvements made by Marilee are not dedicated solely to serving the 257.86-acre tract of land,<sup>6</sup> further that Marilee’s water meters are not

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<sup>3</sup> Marilee Special Utility District’s Response to Petition for Expedited Decertification at 1 (Mar. 15, 2017).

<sup>4</sup> *Id.* at 1-2, and Exhibits A and B.

<sup>5</sup> Patricia Miller Deason’s Reply to Marilee Special Utility District’s Response to Petition for Expedited Decertification at 1 (Mar. 31, 2017).

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

located on the 257.86-acre tract.<sup>7</sup> Deason provided an affidavit to support these statements.<sup>8</sup>

9. On April 4, 2017, Marilee filed a reply to Deason’s response to the petition, stating that Marilee does not have to demonstrate that its improvements are dedicated solely to serve the 257.86-acre tract, but instead must show that it has performed any act or supplied anything to the property to be decertified relating to providing water to that property.<sup>9</sup> Marilee stated that in this case, its facilities are both used and committed for service to the 257.86-acre tract, and that Marilee is currently providing service to a significant portion of the property.<sup>10</sup> Marilee stated that it currently provides active retail water service to approximately 166 acres of the 257.86-acre tract under a Service Application and Agreement executed by Deason.<sup>11</sup>
10. On April 5, 2017, Commission Staff requested additional time to file its recommendation on final disposition.
11. On April 6, 2017, Order No 4 was issued, extending Commission Staff’s deadline for a final recommendation and Deason’s deadline to respond to Commission Staff.
12. On April 10, 2017, Commission Staff recommended denial of the petition, stating that Marilee has adequately proven that the 257.86-acre tract of land is receiving water service under TWC § 13.254(a-5), as the term service is defined in TWC § 13.002(21).<sup>12</sup> Commission Staff stated that a billing statement provided by Marilee shows that the referenced meters are actively providing water service to the property, and therefore would be considered “active water tap[s]” under the *Crystal Clear* standard.<sup>13</sup> Further, Commission Staff stated that the billing period in the statements provided by Marilee

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<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at Exhibit A

<sup>9</sup> Marilee Special Utility District’s Response to Reply of Patricia Miller Deason at 2 (Apr. 4, 2017).

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> Commission Staff’s Recommendation on Final Disposition at 4 (Apr. 10, 2017)

<sup>13</sup> *Id.*, citing to *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex.App.-Austin, pet denied).

includes the date that Deason's petition was filed; therefore, Commission Staff stated that the property was receiving service during the relevant period of time and is not eligible for expedited release.<sup>14</sup>

13. On April 10, 2017, Deason filed a supplemental reply to Marilee's response to the petition, stating that it relies on the correct legal standard, whether the property is receiving service,<sup>15</sup> and disputing that the parties are contracted for service to 166 acres and that Marilee provides active water service to such 166 acres.<sup>16</sup> Deason stated that the water meter associated with the contract is connected to a house, not on the property seeking decertification.<sup>17</sup> Deason states that under the contract, that meter is for one dwelling, not 166 acres of land;<sup>18</sup> therefore, that the 257.86-acre tract of land is not receiving water service from Marilee.<sup>19</sup>
14. On April 12, 2017, Deason responded to Commission Staff's recommendation on final disposition, again arguing that the houses and water meters reflected on the billing statements presented by Marilee are not included in the area seeking decertification and disputing that the contract to which Marilee refers is for service to 166 acres.<sup>20</sup> Deason states that the first page of the contract with Marilee contains general information such as acreage, number in family, household size and livestock number as a description of the property requesting service and that the information provided on that page is not binding.<sup>21</sup> Deason states that the express terms of the agreement are on the next page of the application, which states that the connection is for the sole use of the customer and to

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<sup>14</sup> *Id.*

<sup>15</sup> Patricia Miller Deason's Supplemental Reply to Marilee Special Utility District's Response to Petition for Expedited Decertification at 2 (Apr. 10, 2017).

<sup>16</sup> *Id.* at 3.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 4.

<sup>20</sup> Patricia Miller Deason's Response to PUC Staff's Recommendation on Final Disposition at 2 (Apr. 12, 2017).

<sup>21</sup> *Id.* at 3.

provide service to only one dwelling or one business.<sup>22</sup> Finally, Deason states that the meters and dwellings associated with the bills submitted by Marilee are not included in the area of proposed decertification.<sup>23</sup>

### Notice

15. Deason provided a copy of the petition to Marilee on February 16, 2017.
16. Notice of the petition was published in the *Texas Register* on March 3, 2017.

### Project Description

17. Deason owns approximately 257.86 acres of land in Collin County.
18. Deason seeks to have the 257.86-acre tract of land removed from Marilee's water CCN No. 10150.

### Water Service

19. Deason has not demonstrated that Marilee has not committed facilities or lines providing water service to the 257.86-acre tract of land.
20. Deason has not demonstrated that Marilee has not performed acts and/or supplied things to the 257.86-acre tract of land.
21. Deason has not demonstrated that the 257.86-acre tract of land is not receiving water service from Marilee, as that term has been defined by the courts.
22. Deason has not demonstrated that the 257.86-acre tract of land is not receiving water service from Marilee.

## **II. Conclusions of Law**

1. The Commission has jurisdiction over this petition under TWC §§ 13.041 and 13.254(a 5).
2. Notice of the petition was provided in compliance with 16 TAC § 24.11(s) and 16 TAC §§ 22.54 and 22.55.

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 3-4.

- 3. To obtain a release under TWC § 13.254(a-5), an owner must demonstrate that it owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving water service.
- 4. Collin County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.113(r).
- 5. Deason is not entitled to approval of the petition, having failed to sufficiently demonstrate that its 257.68-acre tract of land in Collin County is not receiving water service from Marilee under TWC § 13.254(a-5).
- 6. The 20-day notice requirement in 16 TAC § 22.35(b)(2) has been met in this proceeding.

**III. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

- 1. Deason’s petition for expedite release is denied.
- 2. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

**Signed at Austin, Texas the \_\_\_\_\_ day of May 2017.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**