



Control Number: 48727



Item Number: 11

Addendum StartPage: 0

RECEIVED

PETITION OF CHARMAINE MIRANDER WILKE TO AMEND TRI-COMMUNITY WSC'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN GUADALUPE COUNTY BY EXPEDITED RELEASE	§ § § § § § §	PUBLIC UTILITY COMMISSION	NOV 26 AM 11:29
		OF TEXAS	PUBLIC UTILITY COMMISSION FILING CLERK

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 3 files this Recommendation on Final Disposition. Staff recommends that the petition be approved. In support thereof, Staff shows the following:

I. BACKGROUND

On October 2, 2018, Charmaine Mirander Wilke (Wilke) filed an application for the expedited release of land from Tri-Community Water Supply Corporation's (Tri-Community) water Certificate of Convenience and Necessity (CCN) No. 10313 in Guadalupe County, pursuant to Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(l) (formerly 16 TAC § 24.113(l)). The Notice of Petition for Amendment to CCN by Expedited Release issued on October 9, 2018, indicated that Wilke sought the expedited release of acreage located within the boundaries of Crystal Clear Special Utility District's (Crystal Clear) water CCN No. 10297. On October 15, 2018, Wilke filed supplemental information clarifying that she was requesting to "opt out" of Tri-Community's service area, not Crystal Clear's service area, and the docket was re-styled to correctly reflect the substance of Wilke's petition. On November 12, 2018, the Administrative Law Judge (ALJ) issued Order No. 3, establishing a deadline of November 26, 2018, for Staff to file a recommendation on final disposition. This pleading is therefore timely filed.

II. JURISDICTION AND LEGAL AUTHORITY

As an alternative to decertification, the Texas Water Code and the Texas Administrative Code permit a landowner to petition the Commission for an expedited release of land from a CCN. The Texas Water Code (TWC) and the Texas Administrative Code (TAC) have separate, though

similar, provisions for landowners seeking an expedited release.¹ The relevant portion of the Texas Water Code states:

The owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a certificate of public convenience and necessity 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 47,500.²

The Texas Administrative Code States:

The owner of a tract of land may petition the Commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if the following conditions are met: (A) the tract of land is at least 25 acres in size; (B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and (C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county. (D) A qualifying county under subparagraph (C) of this paragraph does not have a population of more than 45,000 and less than 47,500 and is in a county (i) with a population of at least one million, (ii) adjacent to a county with a population of at least one million, or (iii) 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. The commission will maintain on its website a list of counties that are presumed to meet the requirements of this subparagraph.³

Pursuant to TWC § 13.254(a-6), the Commission shall grant a petition for expedited release "not later than the 60th day after the date the landowner files the petition." A petition is not considered filed until after a determination of administrative completeness. Wilke's petition was

¹ See generally TWC § 13.254 (a-5); 16 TAC § 24.245(l).

² TWC § 13.254 (a-5).

³ TAC § 24.245(l)(2).

deemed administratively complete in Order No. 3, issued on November 12, 2018. Therefore, the sixty (60) day deadline for administrative approval is January 11, 2019.

III. FINAL RECOMMENDATION

As supported by the attached memorandum of Jolie Mathis of the Water Utility Regulation Division (Attachment A), Staff has reviewed the petition for the expedited release of certain acreage from Wilke's 150-acre tract and recommends that it be approved. The maps and digital data filed by Wilke provide adequate information to demonstrate that Wilke satisfies the requirements of TWC § 13.254(a-5) and 16 TAC § 24.245(l). Specifically, the maps and digital data provided by Wilke enable Staff to determine that: (1) the acreage of the property is at least 25 acres; (2) the area requested for release is not receiving water or sewer service; (3) 77 acres of the area requested for release is located within Tri-Community's certificated areas; and (4) the location of the area requested for release is within a qualifying county, specifically Guadalupe County. In addition, the deed submitted by Wilke confirms Wilke's ownership of the property. Consequently, Wilke has shown through her petition that 77 acres of her 150-acre tract meet the requirements for expedited release. Therefore, Staff recommends that Wilke's petition be approved.

The final water CCN map (Attachment B) and water CCN (Attachment C) are attached to this filing.

IV. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that Wilke's petition be approved.

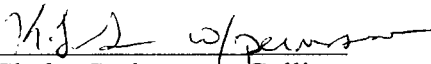
Dated: November 26, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

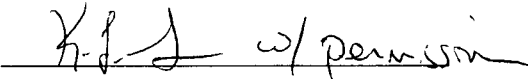
Katherine Lengieza Gross
Managing Attorney


Skyler Springsteen Collins
State Bar No. 24105618
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7203
(512) 936-7268 (facsimile)
Skyler.Collins@puc.texas.gov

DOCKET NO. 48727

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on November 26, 2018, in accordance with 16 TAC § 22.74.


Skyler Springsteen Collins

Attachment A

PUC Interoffice Memorandum

To: Skyler Collins, Attorney
Legal Division

Thru: Lisa Fuentes, Manager
Water Utility Regulation Division

From: Jolie Mathis, Engineering Specialist
Water Utility Regulation Division

Date: November 19, 2018

Subject: **Docket No. 48727:** *Petition of Charmaine Mirander Wilke to Amend Tri-Community WSC's Certificate of Convenience and Necessity in Guadalupe County by Expedited Release*

On October 2, 2018, Charmaine Mirander Wilke (Petitioner) filed an application for the expedited release of land from Tri-Community WSC's (Tri-Community WSC) water Certificate of Convenience and Necessity (CCN) No. 10313 in Guadalupe County, under Texas Water Code (TWC) Chapter § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(I), formerly § 24.113(I). On October 15, 2018, the Petitioner filed supplemental information clarifying her request. The Petitioner asserts that the land requested for release is at least 25 contiguous acres, is not receiving water service, and is located in Guadalupe County, which is a qualifying county.

The Petitioner submitted adequate maps delineating the requested area for expedited release with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.257, formerly § 24.119. The map and digital data are sufficient for determining the locations of the requested release are within Tri-Community WSC's certificated area. Mapping Staff was able to confirm the acreage of the subject properties and to determine that the requested areas are located within the subject property. Furthermore, the Petitioner provided warranty deeds confirming the Petitioners' ownership of the tracts of land within the subject property. In addition, the Petitioner submitted a sworn affidavit attesting that the property was not receiving water from the CCN holder. The area being requested for expedited release is approximately 77 acres. The petition also included a statement indicating a copy of the petition was sent via certified mail to Tri-Community WSC, the current holder of CCN No. 10313, on the date the petition was filed with the Commission.

In addition, Staff recommends that there is no useless or valueless property, in accordance with § 24.245(n)(3), formerly § 24.113(n)(3). Staff further recommends that a compensation proceeding is not necessary, if the Commission determines that there is no useless or valueless property, pursuant to 24.245(n)(7), formerly § 24.113(n)(7).

In accordance with TWC § 13.254(a-5) and 16 TAC § 24.245(I), formerly 16 TAC § 24.113(I), the Petitioner has met the Commission's requirements to allow for the release of the requested area from Tri-Community WSC's CCN No. 10313. Therefore, Staff recommends approval of the petition. Enclosed is a final map and certificate for Commission approval.



Attachment B

Tri-Community Water Supply Corporation
 Portion of Water CCN No. 10313
 PUC Docket No. 48727
 Petition by Charmaine Mirander Wilke to Amend
 Tri-Community Water Supply Corporation's CCN by Expedited Release in Guadalupe County



Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Water CCN

-  10313 - Tri Community WSC
-  10297 - Crystal Clear SUD

-  Area Released
-  Property Boundary

0 300 600
 Feet



Map by Komal Patel
 Date created November 15, 2018
 Project Path n\finalmapping\
 48727TriCommunityWSC.mxd

Attachment C



Public Utility Commission Of Texas

By These Presents Be It Known To All That

Tri Community Water Supply Corporation

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Tri Community Water Supply Corporation, is entitled to this

Certificate of Convenience and Necessity No. 10313

to provide continuous and adequate water utility service to that service area or those service areas in Caldwell and Guadalupe County(ies) as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48727 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Tri Community Water Supply Corporation, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____ day of _____ 2018.