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DeAnn T. Walker
Chairman
Arthur C. D'Andrea
Commissioner
Shelly Botkin
Commissioner
Thomas J. Gleeson
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record 

FROM: Hunter Burkhalter
Chief Administrative Law Judge

RE: **Open Meeting of January 14, 2021**
Docket No. 49863 – *Petition of Alamo Mission LLC to Amend Rockett Special Utility District's Water Certificate of Convenience and Necessity in Ellis County by Expedited Release*

DATE: December 22, 2020

Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, January 14, 2021, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file corrections or exceptions to the Proposed Order on or before Monday, January 4, 2021.

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

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DOCKET NO. 49863

PETITION OF ALAMO MISSION LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND ROCKETT SPECIAL	§	
UTILITY DISTRICT'S WATER	§	OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN ELLIS COUNTY	§	
BY EXPEDITED RELEASE	§	

PROPOSED ORDER

This Order addresses the petition of Alamo Mission LLC for streamlined expedited release of a tract of land in Ellis County from the service area under water certificate of convenience and necessity (CCN) number 10099. Rockett Special Utility District is the holder of CCN number 10099. For the reasons stated in this Order, the Commission releases the tract of land from Rockett's certificated service area. In addition, the Commission amends Rockett's CCN number 10099 to reflect the removal of this tract of land from the service area.

Because the petition in this case was filed prior to September 1, 2019, there will be no compensation phase and, with issuance of this Order, this docket will be closed.

I. Change in Law

The petition in this matter was filed on August 16, 2019. Subsequent to this filing, an amendment to chapter 13 of the Texas Water Code related to streamlined expedited release became effective, on September 1, 2019.¹ However, the changes made by this amendment apply only to a streamlined-expedited-release proceeding that commenced on or after September 1, 2019, the effective date of the amendment.² A streamlined-expedited-release proceeding that commenced before September 1, 2019 "is governed by the law in effect on the date the proceeding is commenced" and that law was continued in effect for that purpose.³

The Commission has previously determined that a proceeding for a petition for streamlined expedited release commences when the petition is first physically filed with the Commission.⁴ Thus, this proceeding commenced on August 16 and this petition is governed by the law in effect

¹ Act of May 25, 2019, 86th Leg., R.S., ch. 688 (SB 2272), §§ 1-5, 2019 Tex. Gen. Laws ____ (codified at Tex. Water Code §§ 13.254, 13.2541).

² *Id.* § 6, 2019 Tex. Gen. Laws at ____.

³ *Id.*

⁴ *Petition of Republic Business Center LLC to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 49904, Order on Certified Issue (Jan. 28, 2020).

on that date. Accordingly, in this Order, all references and citations are made to the statutes and rules in effect at the time the petition was filed.

II. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Alamo Mission is a Delaware limited liability company registered with the Texas secretary of state under filing number 803230992.

CCN Holder

2. Rockett is a special utility district operating under chapter 65 of the Texas Water code.
3. Rockett holds water CCN number 10099 that obligates it to provide retail water service in its certificated service area in Ellis County.

Petition

4. On August 16, 2019, the petitioner filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10099.
5. The petition includes an affidavit dated August 15, 2019 of David Thomas, manager of the petitioner, a special warranty deed, a metes and bounds description of the tract, maps confirming the tract's location, and a compact disc with mapping information.
6. In Order No. 2 filed on September 17, 2019, the administrative law judge (ALJ) found the petition administratively complete.
7. On October 4, 2019, the petitioner provided supplemental information in a reply to the CCN holder's response to the petition.
8. The petitioner's reply to the CCN holder's response to the petition includes an affidavit dated September 26, 2019 of Travis Snook, an engineer for Google LLC, a company affiliated with the petitioner; various photographs; an affidavit dated September 26, 2019 of Mr. Thomas; and email correspondence with the CCN holder.
9. On October 29, 2019, the petitioner provided supplemental information in a response to a surreply by the CCN holder.
10. The petitioner's response to the surreply includes an affidavit dated October 29, 2019 of Stephanie Sunico, an environmental scientist employed by the petitioner, and

documentation relevant to the petitioner's discussions with the CCN holder about the possibility for the CCN holder to provide water service to the tract of land.

Notice

11. The petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on August 16, 2019.
12. In Order No. 2 filed on September 17, 2019, the ALJ found the notice sufficient.

Intervention and Response to Petition

13. In Order No. 3 filed on September 30, 2019, the ALJ granted the CCN holder's motion to intervene.
14. On September 24, 2019, the CCN holder filed a response to the petition.
15. The response includes an affidavit dated September 23, 2019 of Kay Phillips, the CCN holder's general manager, with copies of a receipt for payment for deposit by Roy Lee Filgo, a service agreement between the CCN and Goodloe Farms with receipts, an invoice from Westfall Engineering, and minutes of the board of directors of the CCN holder.
16. The CCN holder filed a supplemental response to the petition on September 30, 2019.
17. The supplemental response includes an affidavit dated September 27, 2019 of Ms. Phillips, with copies of a receipt for funds received by the CCN holder, a conditional guarantee of the United States Department of Agriculture dated July 25, 2019, the acceptance conditions, the request for obligation of funds guaranteed land and certification approval, minutes of the board of directors of the CCN holder for October 17, 2017, and minutes of the board of directors of the CCN holder for August 20, 2019.

The Motion to Dismiss and Abatement

18. On November 12, 2019, the CCN holder moved to have the petition dismissed, asserting that it is federally-indebted and, therefore, eligible for protection under 7 U.S.C. § 1926(b).
19. In Order No. 7 filed on November 15, 2019, the ALJ abated this proceeding pending resolution of certain federal litigation concerning issues of preemption under 7 U.S.C. § 1926(b).
20. In Order No. 12 filed on November 12, 2020, the ALJ lifted the abatement.

21. In Order No. 13 filed on December 22, 2020, the ALJ denied the CCN holder's motion to dismiss.

The Tract of Land

22. The tract of land for which the petitioner seeks expedited release is approximately 166.594 acres and is located in Ellis County.
23. The petitioner's tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

24. The petitioner acquired the tract of land by a special warranty deed dated August 15, 2019.

Qualifying County

25. Ellis County abuts Dallas County.
26. Dallas County has a population greater than one million people.

Water Service

27. The tract of land is not receiving actual water service from the CCN holder.
28. No fees or charges to initiate or maintain water service have been paid by the petitioner to the CCN holder.
29. No water service meters exist on the tract.
30. There is an old water meter box located just outside the southern boundary of the tract, and the meter box has not been in use for years.
31. The meter box is filled with dirt and covered in dead vegetation, and there is no water meter inside the box.
32. There is a large lock on a closed valve on the utility side of the meter box.
33. There are no billing records or other documents indicating an existing account for the provision of water service to the tract.
34. A 12-inch water line owned by the CCN holder runs parallel to the southern boundary of the tract of land.
35. The CCN holder has informed the petitioner that it does not have a sufficient water supply necessary to serve the petitioner's needs on the tract of land and will not be capable of procuring a sufficient water supply within a time period acceptable to the petitioner, and

that the CCN holder does not have any existing water lines that can provide service to the tract as requested by the petitioner.

36. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
37. The CCN holder has no facilities or lines that provide water service to the tract of land.
38. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Determination of Useless or Valueless Property

39. No property of the CCN holder is rendered useless or valueless by the decertification.
40. Because no property of the CCN holder is rendered useless or valueless by the decertification, compensation is not necessary.
41. The CCN holder's existing water facilities can still be used and useful to provide service in the remainder of its certificated service area.

Map and Certificate

42. On September 26, 2019, Commission Staff filed a recommendation on final disposition that included a certificate and a map on which it identified the tract of land in relationship to the CCN holder's service area.

III. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition under TWC §§ 13.254(a-5).
2. The petitioner provided notice of the petition in compliance with 16 TAC § 24.245(l).
3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC § 13.254(a-5) and (a-6) or 16 TAC § 24.245(l).
4. Petitions for streamlined expedited release filed under TWC § 13.254(a-5) and 16 TAC § 24.245(l) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC § 13.254(a-5) and 16 TAC § 24.245(l) are required to submit a verified petition through a notarized affidavit, and the CCN holder may submit a response to the petition.

6. To obtain release under TWC § 13.254(a-5), a petitioner 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 service of the type that the current CCN holder is authorized to provide under the applicable CCN.
7. The petitioner owns the tract of land, which is at least 25 acres, for which it seeks streamlined expedited release through the petition
8. Ellis County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.245(l).
9. The tract of land is not receiving water service under TWC §§ 13.002(21) and 13.254(a-5) and 16 TAC § 24.245(l), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
10. The petitioner is entitled under TWC § 13.254(a-5) and 16 TAC § 24.245(l) to the release of its tract of land from the CCN holder's certificated service area.
11. The CCN holder failed to prove that any of its property will be rendered useless or valueless by the decertification under the standards of TWC § 13.254(a-6) and (d), and 16 TAC § 24.245(l) and (n); therefore, under TWC § 13.254(d) through (g) and 16 TAC § 24.245(n)(3), no compensation is owed to the CCN holder.
12. Because no compensation is owed under TWC § 13.254(d) through (g) and 16 TAC § 24.245(n)(3), a retail public utility may render retail water service directly or indirectly to the public in the decertified area without providing compensation to the CCN holder.
13. After the date of this Order, the CCN holder has no obligation to provide retail water service to the petitioner's tract of land.
14. The Commission has no authority to decertificate any facilities or equipment owned and operated by the CCN holder to provide retail water service or retail sewer service through the streamlined-expedited-release process under Texas Water Code § 13.254(l).
15. The Commission processed the petition in accordance with the TWC and Commission rules.
16. Under TWC § 13.257(r) and (s), the CCN holder is required to record certified copies of the approved certificate and map, along with a boundary description of the service area, in

the real property records of Ellis County no later than the 31st day after the date the CCN holder receives this Order.

IV. Ordering Paragraphs

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

1. The Commission releases the tract of land identified in the petition from the CCN holder's service area under CCN number 10099.
2. The Commission does not decertificate any of the CCN holder's equipment or facilities that may lay on or under the petitioner's tract of land.
3. The Commission amends CCN number 10099 in accordance with this Order.
4. The Commission approves the map filed by Commission Staff on September 26, 2019.
5. The Commission approves the certificate filed by Commission Staff on September 26, 2019.
6. The CCN holder must file in this docket proof of the recording required in TWC § 13.257(r) and (s) within 45 days of the date of this Order.
7. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of January 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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