



Control Number: 50404



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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

Thomas J. Gleeson
Executive Director



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PUBLIC UTILITY COMMISSION
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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 February 12, 2021**
Docket No. 50404 – *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD-2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate Of Convenience and Necessity in Collin County by Expedited Release*

DATE: January 15, 2021

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 Friday, February 12, 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, February 1, 2021.

If a party proposes a correction or exception, the party must fully explain the correction or exception and must provide a citation to the record to support the correction or exception.

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

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DOCKET NO. 50404

PETITION OF STERLING DEASON	§	PUBLIC UTILITY COMMISSION
O'DONNELL AND DARWIN DEASON,	§	
CO-TRUSTEES OF THE STERLING	§	OF TEXAS
DEASON O'DONNELL DD 2012 TRUST	§	
UNDER AGREEMENT OF THE DD	§	
2014-B GRANTOR RETAINED	§	
ANNUITY TRUST TO AMEND	§	
MARILEE SPECIAL UTILITY	§	
DISTRICT'S CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
COLLIN COUNTY BY EXPEDITED	§	
RELEASE	§	

PROPOSED ORDER

This Order addresses the petition by Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust under agreement of the DD 2014-B Grantor Retained Annuity Trust dated September 5, 2012, for streamlined expedited release of a portion of a tract of land in Collin County from the service area under certificate of convenience and necessity (CCN) number 10150. Marilee Special Utility District is the holder of CCN number 10150. For the reasons stated in this Order, the Commission releases the tract of land from Marilee's certificated service area. In addition, the Commission amends Marilee's CCN number 10150 to reflect the removal of this property from the service area.

Following entry of this Order, the Commission will determine the amount of compensation, if any, to be awarded to Marilee, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioners

1. Sterling Deason O'Donnell and Darwin Deason are the co-trustees of the Sterling Deason O'Donnell DD 2012 Trust dated September 5, 2012.

CCN Holder

2. Marilee is a special utility district operating under chapter 65 of the Texas Water Code.

3. Marilee holds CCN number 10150 that obligates it to provide retail water service in its certificated service area in Collin County.

Petition and Petitioners' Replies

4. On January 2, 2020, the petitioners filed a petition for streamlined expedited release of a portion of a tract of land from the CCN holder's service area under CCN number 10150.
5. The petition includes an affidavit, dated December 23, 2019, of Sterling Deason O'Donnell, one of the petitioners; a metes and bounds description; and a general warranty deed dated February 7, 2019.
6. On February 7, 2020, the petitioners filed supplemental information.
7. The supplemental information includes a certificate of authority dated February 4, 2020, signed by Darwin Deason and authorizing Sterling Deason O'Donnell to execute, on Darwin Deason's behalf, all documents necessary to support the petition.
8. On February 12, 2020, the petitioners again supplemented the application.
9. The supplement includes maps of the subject property, and a computer disc containing mapping data.
10. On April 1, 2020, the petitioners again supplemented the application.
11. The supplement includes maps of the subject property, and computerized mapping data.
12. On April 8, 2020, the petitioners filed a reply to the CCN holder's response to the petition.
13. The reply includes a metes and bounds description and a map.
14. In Order No. 5 filed on June 12, 2020, the administrative law judge (ALJ) found the petition administratively complete.
15. On December 8, 2020, the petitioners filed a response to Order No. 7.
16. The response includes an affidavit, dated December 4, 2020, of Mr. O'Donnell; and maps.

Notice

17. The petitioners sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on December 30, 2019.
18. In Order No. 5 filed on June 12, 2020, the ALJ found the notice sufficient.

Intervention and Response to Petition

19. In Order No. 2 filed on January 30, 2020, the ALJ granted the CCN holder's motion to intervene.
20. The CCN holder filed a response to the petition on February 11, 2020.
21. The response includes an affidavit, dated February 7, 2020, of Donna Loiselle, the general manager of the CCN holder; maps; billing statements for three water customers of the CCN holder; and records from the Collin County Central Appraisal District.
22. On July 2, 2020, the CCN holder filed an objection to Commission Staff's final recommendation.
23. The objection includes an affidavit, dated July 2, 2020, of Eddy Daniel, an engineer retained by the CCN holder; and a map.
24. On December 9, 2020, the CCN holder filed a response to Order No. 7.
25. The response includes an affidavit, dated December 8, 2020, of Ms. Loiselle; right of way easements; a warranty deed with vendor's lien; a membership transfer authorization; a map; and a service application and agreement with Gunter Special Utility District.

The Motions to Dismiss

26. On April 16, 2020, the CCN holder filed what effectively constituted a motion to dismiss, arguing that dismissal was warranted under the doctrines of *res judicata* or *collateral estoppel* (the first motion to dismiss).
27. In Order No. 6 filed on November 19, 2020, the ALJ denied the first motion to dismiss.
28. On November 30, 2020, the CCN holder filed a second motion to dismiss, contending that the way in which the petition has been processed has deprived the CCN holder of its right to due process under the state and federal constitutions.
29. In Order No. 8 filed on January 8, 2021, the ALJ denied the second motion to dismiss.

Petitioners' Entire Acreage

30. The petitioners own a 265.679-acre tract of land (the petitioners' entire acreage).

31. The following infrastructure owned and operated by the CCN holder is located on or in close proximity to the petitioners' entire acreage:

- an 8-inch waterline running through the southern end of the entire acreage;
 - a 2-inch waterline running off the 8-inch line and just outside of and parallel to the southeastern edge of the entire acreage; and
 - a small line running off the 2-inch waterline to a meter designated as meter number 309 that lies within the entire acreage and serves a defined lot within the entire acreage;
- a 4-inch waterline running through the northwestern corner of the entire acreage;
 - that is connected to a meter that lies within the entire acreage and serves a defined lot within the entire acreage; and
- a 6-inch waterline running just east of the northeast corner of the entire acreage;
 - that is connected to a meter designated as meter number 1528 that lies within the entire acreage and that serves a defined lot within the entire acreage.

Docket No. 46866

32. In Docket No. 46866,¹ the prior owner of the petitioners' entire acreage sought streamlined expedited release of an approximately 258-acre portion of the petitioners' entire acreage.

33. In that docket, because the Commission concluded that the 258-acre portion for which the prior owner sought streamlined expedited release included at least two of the three lots that were actively receiving metered water service from the CCN holder, the Commission concluded that the tract for which release was sought was receiving water service from the CCN holder and denied the petition.

¹ *Petition of Patricia Miller Deason to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 46866, Order (May 19, 2017).

The Tract of Land for Which the Petitioners Seek Streamlined Expedited Release

34. The portion the petitioners' entire acreage for which the petitioner seeks expedited release (the release property) is 260.372 acres.
35. The release property is located within the CCN holder's certificated service area.

Ownership of the Land

36. The petitioners acquired the petitioners' entire acreage by a general warranty deed dated February 7, 2019.

Qualifying County

37. Collin County abuts Dallas County and has a population greater than 47,500.
38. Dallas County has a population greater than one million people.

Water Service

39. The release property is not receiving actual water service from the CCN holder.
40. The petitioners have never requested that the CCN holder provide water service to the release property.
41. The petitioners have never paid any charges or fees to the CCN holder to initiate or maintain water service for the release property, and there are no billing records or other documents indicating an existing account for the release property.
42. The CCN holder owns and operates an 8-inch waterline running through the southern end of the release property, and a 4-inch waterline running through the northwestern corner of the release property.
43. None of the meters or the defined lots they serve on the petitioners' entire acreage are within the release property.
44. The CCN holder owns and operates several wells, an elevated tank, and a pump station that are within several thousand feet of the release property.
45. The CCN holder has not committed or dedicated any facilities or lines to the release property for water service.
46. The CCN holder has no facilities or lines that provide water service to the release property.

47. The CCN holder has not performed any acts for or supplied anything to the release property.

Map and Certificate

48. On June 26, 2020, Commission Staff filed its recommendation that included a certificate and a map on which it identified the release property in relationship to the CCN holder's certificated service area.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition for streamlined expedited release under Texas Water Code (TWC) §§ 13.254 and 13.2541.
2. The petitioners provided notice of the petition in compliance with 16 Texas Administrative Code (TAC) § 24.245(h)(3)(F).
3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 or 13.2541 or 16 TAC § 24.245(h)(7).
4. Petitions for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) 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 § 13.2541(b), a landowner must demonstrate that the landowner 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 petitioners own a tract of land, which is at least 25 acres and includes the release property, for which they seek streamlined expedited release through the petition.
8. Collin County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).

9. The tract is not receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), 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 petitioners are entitled under TWC § 13.2541(b) to the release of the release property from the CCN holder's certificated service area.
11. After the date of this Order, the CCN holder has no obligation to provide retail water service to the petitioners' release property.
12. 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 § 13.2541(b).
13. The Commission processed the petition in accordance with the TWC and Commission rules.
14. 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 Collin County no later than the 31st day after the date the CCN holder receives this Order.
15. A retail public utility may not under TWC § 13.254(d) provide retail water service or retail sewer service to the public within the tract of land unless just and reasonable compensation under TWC § 13.254(g) has been paid to the CCN holder.

III. Ordering Paragraphs

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

1. The Commission releases the release property identified in the petition from the CCN holder's certificated service area under CCN number 10150.
2. The Commission does not decertificate any of the CCN holder's equipment or facilities that may lay on or under the petitioners' release property.
3. The Commission amends CCN number 10150 in accordance with this Order.
4. The Commission approves the map filed by Commission Staff on June 26, 2020.

5. The Commission approves the certificate filed by Commission Staff on June 26, 2020.
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 proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with Order No. 5. Any decision on compensation will be made by a separate order.
8. The Commission denies all other motions and any other requests for general or specific relief not expressly granted by this Order.

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

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER