



## Filing Receipt

**Received - 2021-08-24 02:53:26 PM**

**Control Number - 50404**

**ItemNumber - 61**

DOCKET NO. 50404

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

**MARILEE SPECIAL UTILITY DISTRICT'S CORRECTIONS AND EXCEPTIONS TO THE PROPOSED ORDER FOLLOWING REMAND**

COMES NOW, MARILEE SPECIAL UTILITY DISTRICT ("Marilee") and files these Corrections and Exceptions to the Proposed Order Following Remand and Memorandum filed on August 10, 2021 (the "Proposed Order"). The Proposed Order requires the parties of this proceeding to file corrections or exceptions by August 24, 2021.<sup>1</sup> Thus, this Response is timely filed. In support thereof, Marilee respectfully would show as follows:

**I. CORRECTIONS AND EXCEPTIONS TO FINDINGS OF FACT**

There are imperative facts that were omitted or require corrections, and others to which Marilee is objecting and providing exceptions to regarding the events in this proceeding, Marilee's certificated service area, and—most importantly—current water service to the subject property.

**A. Marilee's Certificated Service Area Covers Collin and Grayson Counties**

Finding of Fact No. 3 states that Marilee holds Certificate of Convenience and Necessity (CCN) No. 10150 that obligates it to provide retail water service in Collin County.<sup>2</sup> However, Marilee's certificated service area under CCN No. 10150 actually includes areas located in Collin County and Grayson County.

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<sup>1</sup> Proposed Order Following Remand, at Memorandum (Aug. 10, 2021).

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

The Proposed Order correctly states that the 265.679-acre tract of land owned 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 ("Petitioner") is located in Collin County only, as provided in Finding of Fact No. 32.<sup>3</sup>

However, Marilee's certificated service area under CCN No. 10150 is located in both Collin and Grayson Counties. Thus, Finding of Fact No. 3 must be corrected to accurately state the counties in which Marilee's certificated service area are located under its CCN.

**B. This Proceeding Should Be Dismissed In Violation Of 16 TAC § 24.245(h)(7)**

16 Texas Administrative Code (TAC) § 24.245(h)(7) requires the Commission to issue a decision on a petition for streamlined expedited release "no later than 60 calendar days after the presiding officer by order determines that the petition is administratively complete."<sup>4</sup> Order No. 5 was issued on June 12, 2020, and 60 days thereafter was August 11, 2020.

Finding of Fact No. 11 states that the administrative law judge (ALJ) found the petition in this proceeding filed by Petitioner on January 2, 2020 (the "Petition") administratively complete, as provided in Order No. 5 filed on June 12, 2020.<sup>5</sup> Finding of Fact No. 11 should be revised to reflect that the Commission did not issue a decision within 60 calendar days after the Petition was determined to be administratively complete.

Additionally, Finding of Fact No. 26 states that the ALJ found the first amended petition administratively complete, as provided in Order No. 12 filed on June 10, 2021.<sup>6</sup> Order No. 12 was issued on June 10, 2021, and 60 calendar days thereafter was August 9, 2021. Finding of Fact No. 26 should be revised to reflect that the Commission did not issue a decision within 60 calendar days after the first amended petition was determined to be administratively complete.

This proceeding should be dismissed and the petitions should be denied as a decision was not issued within 60 calendar days of either petitions being determined as administratively complete.

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<sup>3</sup> *Id.* at 5.

<sup>4</sup> 16 Tex. Admin. Code § 24.245(h)(7).

<sup>5</sup> Proposed Order at 2.

<sup>6</sup> *Id.* at 4.

**C. This Proceeding Should Be Dismissed Under The Doctrines Of Res Judicata Or Collateral Estoppel**

Marilee maintains that this proceeding should be dismissed under the doctrines of res judicata or collateral estoppel, as the Commission denied the petition for streamlined expedited release filed by the previous landowner in Docket No. 46866.<sup>7</sup> In Docket No. 46866, the Commission denied a nearly identical petition filed by the former landowner in 2017 (the “2017 Petition”) finding that Patricia Miller Deason failed to sufficiently demonstrate that Marilee has not committed facilities or lines providing water service to the subject property, performed acts and/or supplied things to the subject property, nor that the subject property was not receiving water service from Marilee.<sup>8</sup> In Docket No. 46866, Marilee provided the Commission information regarding the same 2” 4”, 6”, and 8” waterlines and meters on and near the Property, and the Commission found these facts were sufficient to agree that Marilee was providing water service to the subject property and to deny the 2017 petition.<sup>9</sup>

Similar to the Petition in this proceeding, the 2017 Petition excluded portions of land where Marilee’s Meters #1528 and #309 were located.<sup>10</sup> Like Marilee submitted in Docket No. 46866, Marilee provided the current billing statements for Meters #1528 and #309 in this proceeding. Even though the 2017 Petition excluded the land where Meters #1528 and #309 were located, the billing statements were evidence that the subject property was receiving current water service.

Finding of Fact No. 13 states that Marilee’s Response filed on February 11, 2020 included maps identifying Marilee’s waterlines and meters in relation to Petitioner’s tract of land, and also included a map dated 2017 of Marilee’s waterlines and meters (the “2017 Marilee map”),<sup>11</sup> but omits that the 2017 map of Marilee’s waterlines and meters is the same map that Marilee submitted

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<sup>7</sup> Marilee Special Utility District’s Surreply to Petitioner’s Reply at 2-7 (Apr. 16, 2020).

<sup>8</sup> *Id.* at 3-4; *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 at 5, ¶¶ 19-23 (May 19, 2017).

<sup>9</sup> Marilee’s Surreply at 4; *Petition of Patricia Miller Deason*, Docket No. 46866, Order at 2, ¶ 5 (May 19, 2017).

<sup>10</sup> Marilee’s Surreply at 4; *Petition of Patricia Miller Deason*, Docket No. 46866, Order at 2-3, ¶ 8 (May 19, 2017).

<sup>11</sup> Proposed Order at 2-3.

in PUC Docket No. 46866, where the Commission found that the property was receiving water service from Marilee.<sup>12</sup>

Finding of Fact No. 15 lists documents that Marilee submitted a right of way easements dated June 29, 1993, a 1997 warranty deed with vendor's lien, a membership transfer authorization, a right of way easement dated November 13, 1992, a service application and agreement dated March 29, 2004, a letter dated April 19, 2004 and check dated April 30, 2004, as attachments (exhibits) to its Response to Order No. 7 filed on December 9, 2020.<sup>13</sup> Marilee also provided copies of these documents in Docket No. 46866, which the Commission considered in determining that Marilee was providing water service to the property.<sup>14</sup>

Because Docket No. 46866, where the 2017 Petition was filed by the previous landowner and denied by the Commission, is so closely related to the subject property of the Petition in this proceeding, especially as Marilee raised the issue that dismissal was warranted under the doctrines of *res judicata* and *collateral estoppel*,<sup>15</sup> it is imperative that Finding of Fact Nos. 13 and 15 should be corrected to include that these documents were also submitted by Marilee in Docket No. 46866.

**D. The Petition And First Amended Petition Should Be Denied As The Property Is Receiving Water Service**

Marilee objects to Finding of Fact Nos. 38-48 in the Proposed Order, as the property is receiving water service from Marilee. 16 TAC § 24.245(h) authorizes the streamlined expedited release if all conditions provided thereunder are met, including subsection "(B) the tract of land is

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<sup>12</sup> See Marilee Special Utility District's Response to Petition for Expedited Release at 5-6, and Exhibit E (Feb. 11, 2020).

<sup>13</sup> Proposed Order at 3.

<sup>14</sup> See Marilee Special Utility District's Response to Order No. 7 at Attachments 2-A, 2-C and 4 (Dec. 9, 2020); see also *Petition of Patricia Miller Deason*, Docket No. 46866, Marilee Special Utility District's Response to Petition for Expedited Decertification at Exhibit B, p. 3-10 (Mar. 15, 2017).

<sup>15</sup> See Proposed Order at 3 (referring to Marilee Special Utility District's Surreply to Petitioner's Reply at 2-7 (Apr. 16, 2020) arguing that the Petition in this proceeding should be dismissed as it is related to the 2017 Petition in time, space, origin, or motivation).

not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN . . . .”<sup>16</sup> 16 TAC § 24.3(33) and TWC § 13.002(21) define “service” as follows:

**Any act performed, anything furnished or supplied, and any facilities or lines committed or used** by a retail public utility **in the performance of its duties** under TWC Chapter 13 to its patrons, employees, other retail public utilities and the public, as well as the interchange of facilities between two or more retail public utilities (emphasis added).

Further, the *Crystal Clear* decision provides that “a tract of land would not necessarily be ‘receiving’ water service simply because the retail public utility has performed an act . . . , unless the act was performed in furtherance of providing water to the tract seeking decertification.”<sup>17</sup>

**1. Neither state statutes nor *Crystal Clear* require Petitioner to request water service from Marilee to prove water “service” is being provided.**

Finding of Fact No. 39 states that Petitioner has never requested water service from Marilee. However, there is no requirement in 16 TAC § 24.245(h), TWC § 13.2541, or *Crystal Clear* that require Petitioner to request water service from Marilee for the Commission to find that the property is receiving “service” or actual water service.

Under *Crystal Clear*, the Commission must review the present facts and circumstances, including the service application and agreements (including transfer agreement) that cover all the acres of the property. As also provided in Docket No. 46866, Marilee provided actual water service when easements were conveyed to Marilee and it installed waterlines, received request for the meters, and provided—and continues to provide actual water—through the various waterlines and meters.

Marilee has not discontinued providing water service to the property, and especially since the Commission’s decision in Docket No. 46866, Petitioner has not proven that Marilee is no longer providing water through the 2”, 4”, 6”, 8” waterlines and the related meters. Marilee has only continued to fulfill its obligation to provide water service to the property as the CCN holder. Thus, Finding of Fact No. 39 should be removed as it is irrelevant to this proceeding given all the other facts surrounding water service.

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<sup>16</sup> 16 TAC § 24.245(h) (emphasis added).

<sup>17</sup> *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied).

**2. Neither state statutes nor *Crystal Clear* require Petitioner to pay for water service from Marilee to prove water “service” is being provided.**

Finding of Fact No. 40 states that Petitioner has never paid any charges or fees to Marilee to initiate or maintain water service for the release property. However, there is no requirement in 16 TAC § 24.245(h), TWC § 13.2541, or *Crystal Clear* that require the Petitioner to pay any charges or fees for the Commission to find that the property is receiving “service” or actual water service. In Docket No. 46866, Marilee provided the check for boring and installation from LMI Landscapes and a current billing statement of a tenant Alvaro Arias who was paying for water service from Meter #309.<sup>18</sup> Neither were the petitioner Patricia Miller Deason. Additionally, Marilee provided a copy of the Membership Transfer Authorization, where J.R. McIlroy *initiated* the water service at Meter #309 and transferred the service to the landowner Patricia Miller Deason (petitioner), who leased the dwelling to Arias.<sup>19</sup>

With those documents submitted, the Commission found that the property was receiving water service in Docket No. 46866—even though Patricia Miller Deason had not initiated or paid for water service from Meter #309.

Marilee has continued providing water service to the property, and especially since the Commission’s decision in Docket No. 46866, and Petitioner has not proven that Marilee is no longer providing water through the 2”, 4”, 6”, 8” waterlines and the related meters. Marilee has only continued to fulfill its obligation to provide water service to the property as the CCN holder. Thus, Finding of Fact No. 40 should be removed as it is irrelevant to this proceeding given all the other facts surrounding water service.

**3. The Commission has found that Marilee’s facilities, waterlines, and meters on and near the Property currently provide water service.**

Marilee excepts to Finding of Fact Nos. 41-48, as the Commission has previously found that Marilee provides water service to the property and Marilee continues to use the same facilities, waterlines, and meters to provide actual water service, and at minimum qualify as “service” as defined by TWC § 13.002. In *Crystal Clear*, the Court determined that the relevant standard for

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<sup>18</sup> *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, Marilee Special Utility District’s Response to Petition for Expedited Decertification at Exhibit B, p. 10-11 (Mar. 15, 2017).

<sup>19</sup> *Id.* at Exhibit B, p. 7-8.

purposes of determining whether the property is receiving “service” and therefore eligible for expedited decertification is whether any “facilities or lines are committed *or* used” in the performance of the CCN holder’s duties as a retail public utility.<sup>20</sup> Marilee has facilities or waterlines committed, and currently uses its facilities and waterlines, to provide water “service” to the Property.

In Docket No. 46866, Marilee presented that it installed an 8-inch (8”) waterline directly on the south side of the 2017 property, had connected it to an adjacent 2-inch (2”) waterline that serves the 2017 property through Meter #309, and a 6-inch (6”) waterline adjacent to a portion of the east side of the 2017 property provides water thereto through Meter #1528.<sup>21</sup> Marilee provided a copy of the Transfer Agreement dated October 31, 1997 (“Transfer Agreement”), where Meter #309 was *transferred* from J.R. McIlroy to Deason.<sup>22</sup> Meaning, *prior* to Deason’s request to transfer, Marilee *was already providing* water at address 8887 CR 132 through Meter #309.

Marilee also submitted a copy of the Service Application and Agreement with Deason, dated March 29, 2004 (“Service Agreement”), where Deason requested water service to 166 acres at address 9379 CR 132.<sup>23</sup> Marilee provided a copy of the letter to Deason dated April 19, 2004 and check #25030 in the amount of \$4,600 for a service bore and service line crossing, evidencing that service was initiated at 9379 CR 132 as Marilee installed a service bore and service line crossing and assigned and installed Meter #1528 to receive water from Marilee’s 2” waterline across CR 132.<sup>24</sup> Marilee also submitted billing statements for Meters #309 and #1528 dated February 23, 2017, which was after Deason filed her petition in Docket No. 46866.<sup>25</sup>

Notably, Marilee submitted a map of its system and facilities, including the 8”, 2”, and 6” waterlines, as related to the location of the 2017 property, which showed that areas where Meters #309 and #1528 are installed *were excluded from* the 2017 property.<sup>26</sup> With all the evidence

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<sup>20</sup> *Crystal Clear*, 449 S.W.3d at 137 (emphasis added).

<sup>21</sup> *Petition of Patricia Miller Deason*, Docket No. 46866, Marilee’s Response at 2, Exhibit A (Mar. 15, 2017).

<sup>22</sup> *Id.* at 2 and Exhibit B, p. 7-8.

<sup>23</sup> *Id.* at 2 and Exhibit B, p. 3-6.

<sup>24</sup> *Id.* at 2, Exhibits A and B, p. 9-10.

<sup>25</sup> *Id.* at 2-3 and Exhibit B, p. 11-12.

<sup>26</sup> *Id.* at 2-3 and Exhibit A.



presented, including the fact that the locations of Meters #309 and #1528 were *not included in* the 2017 property, Staff recommended denial of the 2017 Petition because “Marilee has adequately proven that the 257.68-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>27</sup> Meaning, Marilee *proved* it was providing water service to the *entire* 2017 property, not just the areas where Meters #309 and #1528 are located. Further, Staff stated that the billing statements dated February 23, 2017 showed that Meters #309 and #1528 were actively providing water service to the entire 2017 property and “therefore would be considered ‘active water tap[s]’ under the *Crystal Clear* standard.”<sup>28</sup>

**a. Deason failed to sufficiently demonstrate that the 2017 property was not receiving water service from Marilee under TWC § 13.254(a-5).**

In Docket No. 46866, Deason asserted that under the 1997 Transfer Agreement and the 2004 Service Agreement Meters #309 and #1528 were associated with the houses, not the 257.86 acres requesting release (the 2017 property).<sup>29</sup> Staff and Commission concluded that:

19. Deason has not demonstrated that Marilee has not committed facilities or lines providing water service to the [2017 property].
  20. Deason has not demonstrated that Marilee has not performed acts and/or supplied things to the [2017 property].
  21. Deason has not demonstrated that [the 2017 property] is not receiving water service from Marilee, as that term has been defined by the courts.
  22. Deason has not demonstrated that [the 2017 property] is not receiving water service from Marilee.
- ....
5. Deason is not entitled to approval of the petition, having failed to sufficiently demonstrate that [the 2017 property] in Collin County is not receiving water service from Marilee under TWC § 254(a-5).<sup>30</sup>

Thus, the Commission denied the 2017 Petition.<sup>31</sup>

**b. Based on the Commission’s conclusions in Docket No. 46866, the property is receiving water service through the waterlines and the meters.**

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<sup>27</sup> *Petition of Patricia Miller Deason*, Docket No. 46866, Order at 3, ¶ 12 (May 19, 2017).

<sup>28</sup> *Id.* at ¶ 12-13.

<sup>29</sup> *Id.* at ¶ 13-14.

<sup>30</sup> *Id.* at 5 ¶ 19-22, 6 ¶ 5.

<sup>31</sup> *Id.* at 6.

Like Patricia Miller Deason in 2017, Petitioner does not include three areas (each comprised of a few acres and where the Meters installed) as part of the property.<sup>32</sup> Marilee currently provides water through the meters and the waterlines, as it did before 2017 and during the proceeding of Docket No. 46866 in 2017.

As the Staff pointed out in Docket No. 46866, the billing period in the statements provided by Marilee includes the date that Deason's petition was filed, and because Marilee provided such statements, the 2017 property was receiving service during the relevant period of time and was not eligible for expedited release.<sup>33</sup>

Marilee submitted the most recent billing statements; thus, consistent with the Commission's ruling in Docket No. 46866, the Commission should deny the Amended Petition, for the same reasons it denied the 2017 Petition.

**c. Marilee has performed acts, furnished and supplied water, and has committed or used its facilities and lines to provide "service" to the property as defined by TWC § 13.002(21).**

In 2017, Staff pointed out 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."<sup>34</sup> In *Crystal Clear*, the court determined that "a tract of land would not necessarily be 'receiving' water service simply because the retail public utility has performed an act . . . , unless the act was performed *in furtherance* of providing water to the tract seeking decertification."<sup>35</sup>

With all the evidence presented, the Commission found, in 2017, that Marilee sufficiently demonstrated it had performed acts and/or supplied things, committed facilities or lines providing water service to the 2017 property, which is the definition of "service" under TWC § 13.002(21). Even though Deason did not include the small portions of its 265.679-acre tract containing the Meters to be part of the 2017 property, the Commission still found the *entire* 2017 property was

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<sup>32</sup> *Id.*

<sup>33</sup> *Petition of Patricia Miller Deason*, Docket No. 46866, Order at 3-4, ¶ 12 (May 19, 2017).

<sup>34</sup> *Petition of Patricia Miller Deason*, Docket No. 46866, Commission Staff's Recommendation on Final Disposition at 4 (Apr. 10, 2017).

<sup>35</sup> *Crystal Clear*, 449 S.W.3d at 140.

receiving “service” from Marilee. There are no material factual differences between the 2017 Petition and the Amended Petition.

Here, Petitioner has also excluded the small portions of its 265.679-acre tract containing the Meters from the property. The Commission should again find that Marilee is providing “service” as defined by TWC § 13.002(21), since Marilee has continued to supply water through the meters and the waterlines. The actions performed by Marilee prior to Docket No. 46866 can’t be undone, nor are those actions now negated merely because the 265.679-acre tract has a new landowner.

**d. Marilee performed acts, committed and used its facilities and lines, and provided (and currently provides) water through the 4” waterline and Meter #721, even though it was not addressed in Docket No. 46866.**

Like Meters #309 and #1528, Petitioner excluded the small acres where Meter #721 is installed. Even though Meter #721 was not addressed in Docket No. 46866, Marilee has provided sufficient evidence that it provides actual water and “service” because Meter #721 is connected to the 4” waterline, actual water is being provided to the 21.335 acres (of the 265.679-acre tract) at address 9298 Myrtle Drive (CAD Property ID 2121255). Marilee was providing water through the 4” waterline and Meter #721 prior to the 2017 Petition and continued to provide continuous and adequate water service after the 2017 Petition was denied. Further, Marilee also provided the most recent billing statements for Meter #721, which is the relevant time period when the Amended Petition was filed.

**e. Easements granted by previous landowners of the property also demonstrate that Marilee has committed or used facilities or lines to provide “service.”**

As defined by TWC § 13.009(2), “[f]acilities’ means all the plant and equipment of a retail public utility, including all tangible and *intangible* real and personal property without limitation, and *any and all means and instrumentalities in any manner owned*, operated, leased, licensed, *used, controlled, furnished, or supplied for, by, or in connection* with the business of any retail public utility.”<sup>36</sup> By this definition (and in addition to Marilee’s waterlines, bores and meters), any easement (tangible real property interest) granted by the property’s previous landowners to Marilee for the installation of waterlines also support that Marilee has “facilities” committed or used to provide water “service” to the property.

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<sup>36</sup> TWC § 13.002(9) (emphasis added).

Easements, being an intangible property interest, is included within the definition of “facilities.” Easements granted by the property’s previous landowners to install specific waterlines and meters to receive water (and which continue to exist) demonstrate that Marilee committed or used its “facilities” to provide “service.”

Marilee is formerly known as Gunter Special Utility District and Gunter Rural Water Supply Corporation and operated as a retail public utility under those names. In 1993, Marilee (as Gunter Rural Water Supply Corporation) was granted an easement by the Property’s previous landowner J.R. McIlroy, conveying to Marilee “the *right* to erect, construct, install and lay a waterline and thereafter use, operate . . . water distribution waterlines and appurtenances[.]”<sup>37</sup> Marilee then installed its 8-inch waterline on the property as authorized by the easement and Meter #309, and began providing water to McIlroy.<sup>38</sup>

Additionally, Jimmie Hardisty (the previous landowner of the tract containing approximately 21.335 acres, more or less) granted Marilee (as Gunter Rural Water Supply Corporation) an easement for the installation of Marilee’s 4” waterline along the northwesterly portion of the property.<sup>39</sup>

**f. Finding of Fact Nos. 41-48 must be revised to provide that the property is receiving water service**

For the reasons above, Marilee takes exception to Findings of Fact Nos. 41-48 in the Proposed Order, which must be corrected, as it is imperative along with other findings to conclude that the Property was receiving *actual* water service and also “service.” Findings of Fact 41-48 should be revised as follows:

“41. The CCN holder owns and operates an eight-inch waterline turning through the southern end of the release property, and a four-inch waterline running through the northwestern corner of the release property. These same waterlines were determined to be providing water service to petitioners’ tract of land in Docket No. 46866.

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<sup>37</sup> Marilee’s Response to Order No. 7 at Attachment 2-A (emphasis added).

<sup>38</sup> Marilee Special Utility District’s Response and Objection to the Administratively Complete Amended Petition, at Attachment A, p. 2 (Jun. 17, 2021).

<sup>39</sup> *Id.*

42. The CCN holder owns and operates a six-inch waterline running parallel to the northeastern boundary of the release property, and a two-inch waterline running parallel to the southeastern boundary of the release property. These same waterlines were determined to be providing water service to petitioners' tract of land in Docket No. 46866.

43. The CCN holder owns and operates additional water system infrastructure in proximity to the release property, which were determined to be providing water service to petitioners' tract of land in Docket No. 46866.

44. The CCN holder owns and operates three water meters on the petitioners' tract of land, but none of those meters are located within the release property. These same water meters were determined to be providing water service to petitioners' tract of land in Docket No. 46866.

45. The CCN holder provides water service to three separate parcels within the petitioners' tract of land but none of those parcels lies within the release property. The parcels were determined to be receiving water service from Marilee in Docket No. 46866.

46. The CCN holder has committed or dedicated any facilities or lines to the release property for water service.

47. The CCN holder has facilities or lines that provide water service to the release property.

48. The CCN holder has performed acts for or supplied anything to the release property.”

## II. CORRECTIONS AND EXCEPTIONS TO CONCLUSIONS OF LAW

The Proposed Order incorrectly states that the “[Property] 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).”<sup>40</sup> The facts in this proceeding and Docket No. 46866, as thoroughly explained herein, show the Property is receiving water service under these statutes and as interpreted by the court in *Crystal Clear*.

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<sup>40</sup> Proposed Order at 7, ¶ 9.

**A. Like Docket No. 46866, Petitioner Has Not Demonstrated That The Property Is Not Currently Receiving Water “Service”**

Since the 2017 Petition was denied in Docket No. 46866, Marilee has continued to provide actual water and “service” to the property, as supported by, among other things, the current billing statements. Petitioner has not provided “statement of facts that *demonstrate* that the Property is not currently receiving service” as required by 16 TAC § 24.245.<sup>41</sup> Petitioner merely states “[t]he Property is not receiving water service from Marilee Special Utility District or any other water service provider.”<sup>42</sup>

Petitioner also does not provide authority with the facts that the Commission previously denied a petition for streamlined expedited release including finding that the subject property was receiving water service, where the property was conveyed to a subsequent landowner who filed for streamlined expedited release and where the CCN was still using the same facilities, waterlines, and meters and currently providing water service.

**B. The Proposed Order Does Not Compare Or Contrast the Facts From Docket No. 46866 To Conclude That The Property Is Not Receiving Water Service**

The Proposed Order does not reference Docket No. 46866 or the Commission’s findings and conclusions of law related thereto, the similarities or differences of the facts in Docket No. 46866 or this proceeding, and does not provide how the circumstances have changed since 2017 or why it was determined that the Marilee was providing water service to petitioner’s tract of land or the 2017 property under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), and *Crystal Clear*, but now it no longer found that Marilee is providing water service to petitioner’s tract of land and the property in this proceeding.

**C. Various Conclusions of Law Must Be Revised Or Removed, Consistent With The Commission’s Decision In Docket No. 46866**

Conclusion of Law No. 9 should be revised consistent with the final Order issued in Docket No. 46866 on May 19, 2017, and as follows: “The release property is receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General*

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<sup>41</sup> 16 TAC § 24.245(h)(3)(D) (emphasis added)

<sup>42</sup> Amended Petition at Exhibit A, ¶ 3 (Apr. 27, 2021).

*Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).”

Conclusion of Law No. 10 should be revised to reflect that petitioners are not entitled to release of the release property from Marilee’s certificated service area, consistent with the Commission’s ruling in the final Order of Docket No. 46866.

Conclusion of Law Nos. 11-12, 14-15 should be omitted or removed, as the release property is receiving water service consistent with the Commission’s findings in Docket No. 46866.

### III. CORRECTIONS AND EXCEPTIONS TO ORDERING PARAGRAPHS

As Marilee has thoroughly explained in this Response and its filings in this proceeding, tract of land owned by Petitioner, and therefore also the property, is receiving water service as determined by the Commission in Docket No. 46866.

Accordingly, and consistent with the Commission’s final Order in Docket No. 46866 issued on May 19, 2017, the Ordering Paragraphs in the Proposed Order Following Remand should be removed and revised as follows:

- “1. The petition and first amended petition for expedited 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.”

### IV. CONCLUSION

Marilee has established that it is providing water service to the property under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted by *Crystal Clear*, providing ample evidence that the property is receiving water “service” not only because Marilee provided *actual* water service to the 2017 property using Meter #1528 and its 6-inch waterline, and its 8-inch waterline installed on the entire 2017 property (thus, the 268.679-acre tract) as authorized by the easement granted by the property’s previous landowner; Meter #309 and the connected 6-inch waterline; Meter #721 and its 4-inch waterline located on the Petitioner’s tract of land; but also because Marilee has committed or dedicated its facilities and these waterlines and meters to provide water service to the entire tract of land owned by Petitioner by previously furnishing and currently supplying water through them. Petitioner has not provided that Marilee is no longer

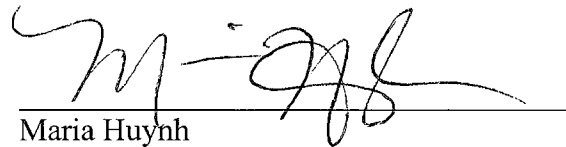
providing water service to the property or cited any caselaw with the same circumstances, including the Commission's previous denial of a petition submitted by a previous landowner.

**V. PRAYER**

WHEREFORE, PREMISES CONSIDERED, the property does not qualify for streamlined expedited release from Marilee's CCN according to TWC § 13.2541(b) and 16 TAC § 24.245(h). Marilee respectfully requests that its exceptions and corrections to the Proposed Order be granted, that the Commission deny the petition and first amended petition and dismiss this proceeding. Marilee also respectfully requests all other relief in law and equity to which it may be entitled.

Respectfully submitted,

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ATTORNEYS FOR MARILEE SPECIAL  
UTILITY DISTRICT



**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of this document was served on the following parties of record on August 24, 2021, via e-mail in accordance with the Commission's Order.<sup>43</sup>

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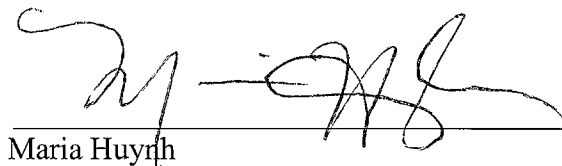
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Maria Huyrnh

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<sup>43</sup> *Issues Related to the State of Disaster for Coronavirus Disease 2019*, Docket No. 50664, Second Order Suspending Rules (Jul. 16, 2020).