



Control Number: 50404



Item Number: 78

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 §

PUBLIC UTILITY COMMISSION
 OF TEXAS

ORDER ON REHEARING

This Order addresses the first amended 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 for streamlined expedited release of a tract of land in Collin County from Marilee Special Utility District's service area under certificate of convenience and necessity (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 tract of land 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 (TWC).

3. Marilee holds CCN number 10150 that obligates it to provide retail water service in its certificated service area in Collin County.
4. Marilee is the successor to Gunter Special Utility District and Gunter Rural Water Supply Corporation.

Original Petition and Petitioners' Supplemental Filings

5. On January 2, 2020, the petitioners filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10150.
6. The petition includes an affidavit, dated December 23, 2019, of Sterling Deason O'Donnell, one of the petitioners; a metes-and-bounds description of the tract of land; a survey map; and a general warranty deed dated February 7, 2019.
7. On February 7, 2020, the petitioners filed supplemental information, which 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, which includes maps of the tract of land, and a computer disc containing mapping data.
9. On April 1, 2020, the petitioners again supplemented the application, which includes maps of the tract of land, and digital mapping data.
10. On April 8, 2020, the petitioners filed a reply to the CCN holder's response to the petition, which includes a metes and bounds description and a map.
11. In Order No. 5 filed on June 12, 2020, the administrative law judge (ALJ) found the petition administratively complete.

Intervention and Response to the Petition

12. In Order No. 2 filed on January 30, 2020, the ALJ granted the CCN holder's motion to intervene.
13. On February 11, 2020, the CCN holder filed a response to the petition, which includes an affidavit, dated February 7, 2020, of Donna Loisel, the CCN holder's general manager; maps identifying the tract of land and the CCN holder's waterlines and meters in relation

thereto; billing statements from the CCN holder to Alvaro Arias, Neil Mowles, and Haley Johnston; records from the Collin County Central Appraisal District related to the tract of land; and a map, dated 2017, of the CCN holder's waterlines and meters.

14. On July 2, 2020, the CCN holder filed an objection to Commission Staff's recommendation on final disposition, which includes an affidavit, dated July 2, 2020, of Eddy Daniel, the CCN holder's consulting engineer; and a map of the property and the CCN holder's water infrastructure.
15. On December 9, 2020, the CCN holder filed a response to Order No. 7, which includes an affidavit, dated December 8, 2020, of Ms. Loiselle; a right of way easement dated June 29, 1993; a warranty deed with vendor's lien dated July 30, 1997; a membership transfer authorization; a map of petitioners' property; a right-of-way easement dated November 13, 1992; a Gunter Special Utility District service application and agreement dated March 29, 2004; a letter, dated April 19, 2004, from Ms. Loiselle, then-general manager of Gunter Special Utility District, to Patricia Deason; and a check, dated April 30, 2004, from LMI Landscapes to Gunter SUD.

The Motions to Dismiss

16. 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).
17. In Order No. 6 filed on November 19, 2020, the ALJ denied the first motion to dismiss.
18. 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.
19. In Order No. 8 filed on January 8, 2021, the ALJ denied the second motion to dismiss.

Commission Consideration and Remand

20. On January 27, 2021, the ALJ filed a revised proposed order which would grant expedited release.

21. On April 7, 2021, the Commission declined to adopt the revised proposed order and, instead, remanded the proceeding to docket management to give the petitioners an opportunity to amend the petition.

First Amended Petition Following Remand

22. On April 27, 2021, the petitioners filed a first amended petition.
23. The first amended petition includes an affidavit, dated April 26, 2021, of Sterling Deason O'Donnell; maps; a metes and bounds description of the tract of land for which release is sought; and a general warranty deed dated February 7, 2019.
24. On April 28, 2021, the petitioners supplemented the first amended petition with a location map, a detailed map, a metes and bounds description of the tract of land for which release is sought, and digital mapping data.
25. In light of the fact that the petitioners amended their petition, the ALJ, in Order No. 10 filed on May 26, 2021, withdrew the administrative-completeness determination made in Order No. 5.
26. In Order No. 12 filed on June 10, 2021, the ALJ found the first amended petition administratively complete.

Response to the First Amended Petition

27. The CCN holder filed a response to the first amended petition on May 13, 2021.
28. The response includes an affidavit, dated May 13, 2021, of Ms. Loiselle; maps and aerial photographs of the tract of land; a Gunter Special Utility District service application and agreement dated March 29, 2004; a membership transfer authorization; a letter, dated April 19, 2004, from Ms. Loiselle, then-general manager of Gunter Special Utility District to Patricia Deason; a check, dated April 30, 2004, from LMI Landscapes to Gunter SUD; water bills from the CCN holder to Alvaro Arias and Patricia Deason; customer account details for Alvaro Arias, Neil Mowles, and Haley Johnston; a right of way easement dated June 29, 1993; a right of way easement dated November 13, 1992; an audit history of billing by the CCN holder to Neil Mowles; a warranty deed with vendor's lien dated July 30, 1997; maps identifying the tract of land and the CCN holder's waterlines and meters in relation thereto; and a right of way easement dated November 13, 1992.

29. On June 17, 2021, the CCN holder filed a response and objection to the administrative completeness of the first amended petition, which includes the same attachments as its May 13, 2021 response.

Notice

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

The Tract of Land

32. The petitioners own property in Collin County that is approximately 265.679 acres.
33. The tract of land for which the petitioners seek expedited release is a portion of the petitioners' property that is approximately 259.5 acres.
34. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

35. The petitioners acquired their property by a general warranty deed dated February 7, 2019.

Qualifying County

36. Collin County abuts Dallas County and has a population greater than 47,500.
37. Dallas County has a population of at least one million.

Water Service

38. The tract of land is not receiving actual water service from the CCN holder.
39. The petitioners have never requested that the CCN holder provide water service to the tract of land.
40. The petitioners have never paid any charges or fees to the CCN holder to initiate or maintain water service for the tract of land, and there are no billing records or other documents indicating an existing account for the tract of land.
41. The CCN holder owns and operates an eight-inch waterline running through the southern end of the tract of land, and a four-inch waterline running through the northwestern corner of the tract of land, but neither of those lines provides water service to the tract of land.

- 42. The CCN holder owns and operates a six-inch waterline running parallel to, but outside of, the northeastern boundary of the tract of land, and a two-inch waterline running parallel to, but outside of, the southeastern boundary of the tract of land. Neither of these lines provides water service to the tract of land.
- 43. The CCN holder owns and operates additional water system infrastructure located outside of, but in proximity to, the tract of land. None of this infrastructure provides water service to the tract of land.
- 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 tract of land, and none provide water service to the tract of land.
- 45. The CCN holder provides, or has provided, water service to three separate parcels within the petitioners' tract of land, but none of those parcels lies within the tract of land.
- 46. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
- 47. The CCN holder has no facilities or lines that provide water service to the tract of land.
- 48. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

- 49. On June 25, 2021, Commission Staff filed its recommendation on final disposition regarding the petitioners' first amended petition, that included a certificate and a map on which it identified the tract of land 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 the petition for streamlined expedited release under 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 and under 16 TAC § 24.245(h)(7) no hearing will be held on such a petition.
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. Under 16 TAC § 24.245(h)(7), the Commission's decision is based on the information submitted by the landowner, the CCN holder, and Commission Staff.
7. 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.
8. The time that the petition is filed is the only relevant time period to consider when evaluating whether a tract of land is receiving water service under TWC § 13.2541(b). Whether a tract of land might have previously received water or sewer service is irrelevant.
9. A landowner is not required to seek the streamlined expedited release of all of its property.
10. The petitioners own the tract of land that is at least 25 acres for which they seek streamlined expedited release.
11. Collin County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
12. The tract of land 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).
13. The petitioners are entitled under TWC § 13.2541(b) to the release of the tract of land from the CCN holder's certificated service area.
14. After the date of this Order, the CCN holder has no obligation to provide retail water service to the petitioners' tract of land.

15. The Commission may release only the property of the landowner from a CCN under TWC § 13.2541(b). The Commission has no authority to decertificate any facilities or equipment owned and operated by the CCN holder to provide retail water service through the streamlined-expedited-release process under Texas Water Code § 13.2541(b).
16. The Commission processed the petition in accordance with the TWC and Commission rules.
17. 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.
18. A retail public utility may not under TWC § 13.254(d) provide retail water 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

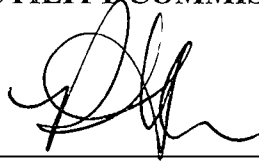
In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission releases the tract of land identified in the first amended 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 tract of land.
3. The Commission amends CCN number 10150 in accordance with this Order.
4. The Commission approves the map attached to this Order.
5. The Commission issues the certificate attached to this Order.
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 the schedule adopted in Order No. 12. 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 14th day of January 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTTELY, COMMISSIONER