



Control Number: 51249



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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

Thomas Gleeson
Executive Director




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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 29, 2021**
Docket No. 51249 – *Petition of Crook Rose, Inc. to Amend Lindale Rural Water Supply Corporation's Certificate of Convenience and Necessity in Smith County by Expedited Release*

DATE: January 21, 2021

I do not believe any changes to the Proposed Order are warranted in response to Lindale Rural Water Supply Corporation's January 15, 2021 corrections and exceptions.

However, there was an error in the numbering of the findings of fact in the Proposed Order. Attached is a Revised Proposed Order that corrects the numbering error.

/tha
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DOCKET NO. 51249

PETITION OF CROOK ROSE, INC. TO	§	PUBLIC UTILITY COMMISSION
AMEND LINDALE RURAL WATER	§	
SUPPLY CORPORATION'S	§	OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN SMITH COUNTY	§	
BY EXPEDITED RELEASE	§	

REVISED PROPOSED ORDER

This Order addresses the petition of Crook Rose, Inc. for streamlined expedited release of a tract of land in Smith County from the service area under water certificate of convenience and necessity (CCN) number 10758. Lindale Rural Water Supply Corporation is the holder of CCN number 10758. For the reasons stated in this Order, the Commission releases the tract of land from Lindale Rural's certificated service area. In addition, the Commission amends Lindale Rural's CCN number 10758 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 Lindale Rural, which will be addressed by a separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Crook Rose is a Texas for-profit corporation registered with the Texas secretary of state under filing number 59069700.

CCN Holder

2. Lindale Rural is a Texas nonprofit corporation registered with the Texas secretary of state under filing number 23858901.
3. Lindale Rural holds CCN number 10758 that obligates it to provide retail water service in its certificated service area in Smith County.

Petition

4. On September 3, 2020, the petitioner filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10758.

5. The petition includes an affidavit, dated September 2, 2020, of William B. Crook, III, the petitioner's president; location maps for the tract; a special warranty deed with vendor's lien dated April 23, 1990, but effective April 25, 1990, which includes a metes and bounds description of the tract of land; digital mapping data; and information from the Smith County appraisal district about the tract of land.
6. On November 30, 2020, the petitioner filed supplemental information in response to comments filed by the CCN holder.
7. The supplemental information includes an affidavit, dated November 30, 2020, of Rea Boudreaux, an engineer working on behalf of the petitioner; and a title survey of the tract of land.
8. In Order No. 2 filed on October 6, 2020, the administrative law judge (ALJ) found the petition administratively complete.

Notice

9. The petitioner sent a copy of the petition by certified mail to the CCN holder on September 3, 2020.
10. In Order No. 2 filed on October 6, 2020, the ALJ found the notice sufficient.

Intervention and Response to Petition

11. On November 5, 2020, the CCN holder filed a response to the petition.
12. The response includes an affidavit, dated November 4, 2020, of Jamie Davlin, the CCN holder's general manager; a map of the tract of land; and a promissory note, dated April 18, 2002, between the CCN holder and various federal agencies and bureaus.
13. In Order No. 3 filed on December 1, 2020, the ALJ granted the CCN holder's motion to intervene.
14. On December 7, 2020, the CCN holder filed a supplemental response to the petition.
15. The supplemental response includes an affidavit, dated December 7, 2020, of Mr. Davlin, and a map of the tract of land.
16. On December 29, 2020, the CCN holder filed a response to Commission Staff's amended recommendation.
17. There are no attachments to the December 29, 2020 response.

The Motion to Dismiss

18. On November 5, 2020, 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. 5 filed on January 5, 2021, the ALJ denied the CCN holder's motion to dismiss.

The Tract of Land

20. The tract of land for which the petitioner seeks expedited release is 69.197 acres and is in Smith County.
21. The petitioner's tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

22. The petitioner acquired the tract of land by a special warranty deed with vendor's lien dated April 23, 1990, but effective April 25, 1990.

Qualifying County

23. Smith County has a population greater than 200,000 and less than 220,000 people.
24. Smith County does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more students.

Water Service

25. The tract of land is not receiving actual water service from the CCN holder.
26. An 8-inch water line owned by the CCN holder runs through the south side of the tract of land for approximately 2,260 feet.
27. Another 8-inch water line owned by the CCN holder runs roughly parallel to, but outside of, the western boundary of the tract of land.
28. The CCN holder has three wells that are located within several thousand feet of the tract of land, and a 6-inch water line that runs roughly parallel to, but roughly 1,000 feet north of, the northern boundary of the tract of land.
29. The CCN holder has existing capacity that exceeds its current customer demand.
30. The CCN holder has not committed or dedicated any facilities or lines to the tract of land.

31. The CCN holder has no facilities or lines that provide water service to the tract of land.
32. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

33. On December 18, 2020, Commission Staff filed its amended recommendation that included a certificate and a map on which it identified the tract of land in relationship to the CCN holder's 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 petitioner provided notice of the petition in compliance with compliance with 16 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 and 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. Smith County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
8. The petitioner owns the tract of land, which is at least 25 acres, for which it seeks streamlined expedited release through the petition.

9. The tract is not receiving water service under the standards of 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 petitioner is entitled under TWC § 13.2541(b) to the release of its tract of land from the CCN holder's certificated service area.
11. After the date of this Order, the CCN holder has no obligation under TWC § 13.254(h) to provide retail water service to the petitioner's tract of land.
12. The Commission has no authority to decertify 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 Smith 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 69.197-acre tract of land identified in the petition from the CCN holder's service area under CCN number 10758.
2. The Commission does not decertify 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 10758 in accordance with this Order.
4. The Commission approves the map filed by Commission Staff on December 18, 2020.

5. The Commission approves the certificate filed by Commission Staff on December 18, 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 the schedule adopted in Order No. 2. 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 January 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER