



Control Number: 51352



Item Number: 13

Addendum StartPage: 0

Arthur C. D'Andrea
Chairman

Thomas J. Gleeson
Executive Director



RECEIVED

2021 APR -6 PM 3:38

Greg Abbott
Governor

Public Utility Commission of Texas

TO: Arthur C. D'Andrea Chairman
All Parties of Record

FROM: Gregory Siemankowski
Administrative Law Judge

A handwritten signature in black ink, appearing to be "G. Siemankowski".

RE: **Docket No. 51352** – *Petition of Carnegie Development, LLC to Amend James A. Dyche DBA Crest Water Company Certificate of Convenience and Necessity In Johnson County by Streamlined Expedited Release*

DATE: April 6, 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 the Proposed Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Proposed Order.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date. The parties must file corrections or exceptions to the Proposed Order on or before April 22, 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.

tha
Q:\CADM\Docket Management\Water\CCN_EXPEDITED\51xxx\51352 PO Memo.docx



13

DOCKET NO. 51352

PETITION OF CARNEGIE	§	PUBLIC UTILITY COMMISSION
DEVELOPMENT, LLC TO AMEND	§	
JAMES A. DYCHE DBA CREST	§	OF TEXAS
WATER COMPANY CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
JOHNSON COUNTY BY	§	
STREAMLINED EXPEDITED	§	
RELEASE	§	

PROPOSED ORDER

This Order addresses the petition by Carnegie Development, LLC for streamlined expedited release of a tract of land in Johnson County from the service area under certificate of convenience and necessity (CCN) number 12037. James A. Dyche dba Crest Water Company is the holder of CCN number 12037. For the reasons stated in this Order, the Commission releases the tract of land from Crest Water’s certificated service area. In addition, the Commission amends Crest Water’s CCN number 12037 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 Crest Water, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Carnegie Development’s status as an LLC was forfeited on February 14, 2003.
2. Carnegie Development is operating as a general partnership in the State of Texas.

CCN Holder

3. James A. Dyche is an individual doing business as Crest Water Company.
4. Crest Water holds CCN number 12037 that obligates Crest Water to provide retail water service in its certificated service area in Johnson County.

Petition

5. On September 21, 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 12037.

6. The petition includes a special warranty deed with vendor's lien dated December 28, 2018, which includes a metes-and-bounds description of the tract of land; a vicinity map of the tract of land and compact disk with mapping information; a copy of the notice provided to the CCN holder; and the affidavit, dated September 15, 2020, of Tim Barton, Carnegie Development's president.
7. On September 24, 2020, Carnegie Development supplemented the petition with electronic shapefiles.
8. In Order No. 2 filed on October 30, 2020, the administrative law judge (ALJ) found the petition administratively complete.

Notice

9. The petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder, on or about September 17, 2020.
10. In Order No. 2 filed on October 30, 2020, the ALJ found the notice sufficient.

Intervention and Response to Petition

11. On September 30, 2020, Crest Water filed motions to intervene and dismiss.
12. In Order No. 2 filed on October 30, 2020, the ALJ granted the CCN holder's motion to intervene.

The Tract of Land

13. The tract of land for which the petitioner seeks expedited release is 195.47 acres and is in Johnson County.
14. The petitioner's tract of land is located within the CCN holder's certificated service area for water service.

Ownership of the Land

15. The petitioner acquired the tract of land by special warranty deed with vendor's lien dated December 28, 2018.

Qualifying County

16. Johnson County abuts Tarrant County.
17. Tarrant County has a population greater than one million people.

Water Service

18. The tract of land is not receiving actual water service from the CCN holder.
19. There are no water connections or meters on the tract of land.
20. The petitioners have never paid any fees or charges to the CCN holder to initiate or maintain water service and do not have an account with the CCN holder for water service.
21. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
22. The CCN holder has no facilities or lines that provide water service to the tract of land.
23. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

24. On November 12, 2020, Commission Staff filed its recommendation on final disposition that included a certificate and 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 this petition for streamlined expedited release under TWC §§ 13.254 and 13.2541.
2. The petitioner is currently operating as a general partnership as per Texas Business Organizations Code §§ 152.051 and 152.052.
3. The petitioner provided notice of the petition in compliance with 16 TAC § 24.245(h)(3)(F).
4. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC § 13.2541 or 16 TAC § 24.245(h)(7).
5. Petitions for streamlined expedited release filed under TWC § 13.2541 and 16 TAC § 24.245(h) are not contested cases.
6. Landowners seeking streamlined expedited release under TWC § 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.

7. To obtain release under TWC § 13.2541, 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 petitioner owns the tract of land, which is at least 25 acres, for which it seeks streamlined expedited release through the petition.
9. Johnson County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
10. 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).
11. 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.
12. 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.
13. 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).
14. The Commission processed the petition in accordance with the TWC and Commission rules.
15. 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 Johnson County no later than the 31st day after the date the CCN holder receives this Order.
16. 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 petition from the CCN holder's service area under CCN number 12037.
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 12037 in accordance with this Order.
4. The Commission approves the attached map.
5. The Commission approves the attached certificate.
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 ____ 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



ARTHUR C. D'ANDREA, CHAIRMAN



James A. Dyche dba Crest Water Company
Portion of Water CCN No. 12037
PUC Docket No. 51352
Petition by Carnegie Development, LLC to Amend
James A. Dyche dba Crest Water Company's CCN by Expedited Release in Johnson County



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCN

-  12037 - James A Dyche
-  12917 - Mauka Water LTD
-  10908 - Mountain Peak SUD

-  Area Released
-  Property Boundary

0 350 700
Feet



Map by: Komal Patel
Date created: November 9, 2020
Project Path: n:\finalmapping\
51352JamesADyche.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

James A. Dyche dba Crest Water Company

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, James A. Dyche dba Crest Water Company is entitled to this

Certificate of Convenience and Necessity No. 12037

to provide continuous and adequate water utility service to that service area or those service areas in Ellis, Hill, Johnson and Somervell Counties as by Final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51352 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of James A. Dyche dba Crest Water Company to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____ day of _____ 2021.