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DOCKET NO. 51352

**PETITION OF CARNEGIE
DEVELOPMENT, LLC TO AMEND
CREST WATER COMPANY
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN JOHNSON
COUNTY BY EXPEDITED RELEASE** §
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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**COMMISSION STAFF’S RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS AND PROPOSED NOTICE**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 1, files this Recommendation on Administrative Completeness and Proposed Notice. Staff recommends that the petition be deemed sufficient for further review. In support thereof, Staff shows the following:

I. BACKGROUND

On September 21, 2020, Carnegie Development, LLC (Carnegie Development) filed a petition to amend James A. Dyche dba Crest Water Company’s (Crest) water certificate of convenience and necessity (CCN) No. 12037 in Johnson County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Carnegie Development seeks the streamlined expedited release of a 195.47-acre tract of land within the boundaries of Crest’s water CCN.

In Order No. 1 issued September 23, 2020, Staff was directed to file a recommendation on sufficiency of the application by October 21, 2020. Therefore, this pleading is timely filed.

II. ADMINISTRATIVE COMPLETENESS

As detailed in the attached memorandum of Reginald Tuvilla in the Commission’s Infrastructure Division, Staff has reviewed the petition for streamlined expedited release and recommends that it be found administratively complete.

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III. SUFFICIENCY OF NOTICE

Under 16 TAC § 24.245(h)(3), the landowner must provide proof that a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner submits the petition to the Commission.

Carnegie Development stated in its filing that it mailed a copy of its petition to the CCN holder, Crest, by certified mail on the day the petition was filed with the Commission. Carnegie Development also included an affidavit attesting to this provision of notice to Crest. Accordingly, Staff recommends that the notice be found sufficient.

IV. PROCEDURAL SCHEDULE

In accordance with Staff's administrative completeness recommendation, Staff proposes the following procedural schedule. Under TWC § 13.2541(c), there is an expedited statutory deadline of 60 days for approval that begins once the administrative law judge (ALJ) issues an order finding a petition administratively complete. Therefore, Staff proposes the following procedural schedule.

Event	Date
Deadline for responses to the administratively complete Petition	November 4, 2020
Deadline for Commission Staff's recommendation on final disposition	November 11, 2020
Deadline for Crest Water to file a reply to both Carnegie Development's response and Commission Staff's recommendation on final disposition ¹	November 18, 2020

V. REQUEST TO RESTYLE THE DOCKET

As currently styled, this docket indicates that the CCN holder is Crest Water Company. After reviewing the petition, Staff recommends that the docket be restyled to reflect that the legal name of the CCN holder is James A. Dyche dba Crest Water Company.² Staff respectfully requests that the Docket be restyled to: "*Petition of Carnegie Development, LLC to Amend James A. Dyche*

¹ Staff notes that such a reply must be limited to briefing and argument. Submission of any additional proof will be deemed a new petition.

² See *Application of Crest Water Company to Amend a Certificate of Convenience and Necessity in Johnson County*, Docket No. 48405, Order at Findings of Fact Nos. 1, 3, and 4 (Mar. 25, 2019).

dba Crest Water Company Certificate of Convenience and Necessity in Johnson County by Expedited Release.”

VI. RESPONSE TO CREST’S MOTION TO DISMISS

Staff recommends that dismissal of the petition is not warranted at this time. However, Staff acknowledges the unique circumstances that led to Crest’s motion to dismiss. Specifically, Crest sought approval of a CCN amendment in Docket No. 48405 in response to a request to serve the 195-acre tract that Carnegie Development now seeks to have released from Crest’s CCN.³ Crest argues that Carnegie Development does not meet the statutory requirements for a streamlined expedited release because the Commission has previously found that Carnegie Development requested water services from Crest.⁴ Further, Crest argues that collateral estoppel and res judicata prevent Carnegie Development from now saying that it did not request water services.⁵ Finally, Crest argues that Carnegie Development’s petition is moot because the Commission has already found that Crest can provide services to Carnegie Development.⁶

To be eligible for a streamlined expedited release under TWC § 13.2541(b), a landowner must own a tract of land that is at least 25 acres and it must be located in a qualifying county. Crest acknowledges that Carnegie Development’s tract of land is more than 25 acres and is located in Johnson County,⁷ which is a qualifying county.

Further, to be eligible for an expedited release under TWC § 13.2541(b), the tract of land must be one that “is not *receiving* water or sewer services.” Although, “receiving” is not defined by statute, courts have used the plain meaning of “receiving,” and interpreted it to mean “taking possession or delivery of” or “knowingly accepting” water services.⁸ In its motion to dismiss, Crest provided no evidence that Carnegie Development had *received* water services—Crest only

³ *Id.*, Order at Finding of Fact No. 22.

⁴ James A. Dyche d/b/a/ Crest Water Company’s Motion to Intervene and Motion to Dismiss at 4 (Sep. 30, 2020) (Crest Motion to Dismiss).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Johnson Cty Special Util. Dist. v. Pub Util. Comm’n*, No. 03-17-00160-CV, 2018 WL 2170259, at *8 (Tex. App.—Austin May 11, 2018, pet. denied) (mem. op.) (interpreting TWC § 13.2541’s predecessor statute, § 13.254(a-5); in 2019, the Legislature transferred § 13.245(a-5) to § 13.2451, its current place in the Water Code, See Tex. S.B. 2272, 86th Leg., R.S. (2019)).

provided evidence showing that Carnegie Development had *requested* water services. Because requesting water services is not taking possession or accepting water services, Crest has not shown that Carnegie Development does not meet the statutory requirements for an expedited release.

Crest also argues that Carnegie Development's petition is moot because the Commission has already found that Crest has the ability to provide water services to Carnegie Development.⁹ However, courts have distinguished between "receiving" water services and "providing" water services.¹⁰ The Notice of Approval in Docket No. 48405 found that Carnegie Development proposed a phased development of its 195-acre tract, and that the first phase would consist of four single family residences.¹¹ The Notice also stated that Crest's existing water system had capacity adequate to serve the first phase of construction¹² and that installation of a new water system sized to accommodate the remaining 124 single-family residences that will be constructed during the subsequent phase buildouts.¹³

Crest has not provided any evidence demonstrating that it has taken steps to install the distribution lines or water taps needed to serve the first phase of construction, nor has it provided evidence that it has submitted plans to the Texas Commission on Environmental Quality or taken other actions necessary to prepare to construct the water system improvements needed to serve the additional three phases of development. Accordingly, Crest has failed to show that Carnegie Development's property is receiving water service under the standards of TWC §§ 13.002(21) and 13.2541, and 16 TAC § 24.245(h), as interpreted in *Crystal Clear*.

Crest has failed to show that the Commission lacks jurisdiction over this proceeding simply because Carnegie Development previously requested water service for the 195-acre tract that is the subject of its petition. While it is unusual (1) for a landowner to expressly request service from a utility; (2) for the utility to obtain a CCN amendment in response to the request for service; and (3) for the landowner to file a petition requesting streamlined expedited release from the CCN, there is nothing in the applicable statutes or Commission rules that prevents the approval of

⁹ Crest Motion to Dismiss at 4.

¹⁰ See *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 170 (Tex. App.—Austin 2014, pet. denied) (explaining that the question is not whether the water utility is providing services but whether the decertified property is receiving services).

¹¹ Docket No. 48045, Order at Findings of Fact Nos. 22 and 29.

¹² *Id.*, Order at Finding of Fact No. 20.

¹³ *Id.*, Order at Finding of Fact No. 30.

Carnegie Development's petition unless Crest can show that the property is receiving water service. Therefore, Staff recommends that Crest's motion to dismiss be denied.

VII. CONCLUSION

For the reasons stated above, Staff respectfully requests the entry of an order finding the petition administratively complete and notice sufficient, adopting the proposed procedural schedule, restyling the docket to reflect the CCN holder's legal name, and denying Crest's motion to dismiss.

Dated: October 21, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

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/s/ Daniel Moore

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DOCKET NO. 51352

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on October 21, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Daniel Moore
Daniel Moore

Public Utility Commission of Texas

Memorandum

TO: Daniel Moore, Attorney
Legal Division

FROM: Reginald Tuvilla, Senior Infrastructure Analyst
Infrastructure Division

DATE: October 21, 2020

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

On September 21, 2020, Carnegie Development, LLC (Carnegie Development) filed an application for streamlined expedited release from James A. Dyche dba Crest Water Company's (Crest) water certificate of convenience and necessity (CCN) No. 12037 in Johnson County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Carnegie Development asserts that the land is at least 25 contiguous acres, that it is not receiving water service, and that it is located in Johnson County, which is a qualifying county.

Carnegie Development submitted a sworn affidavit attesting that the property is not receiving water service from Crest and a warranty deed confirming Carnegie Development's ownership of the tract of land. In addition, Carnegie Development submitted sufficient maps and digital data for determining the location of the requested release area within Crest's certificated service area. Gary Horton, GIS Specialist, Infrastructure Division, confirmed that the tract of land is approximately 195 acres.

The petition also includes a statement indicating a copy of the petition was sent via certified mail to Crest on the date the petition was filed with the Commission.

Based on the mapping review by Gary Horton and my technical and managerial review of the information provided by Carnegie Development, I recommend the petition be deemed administratively complete and accepted for filing.