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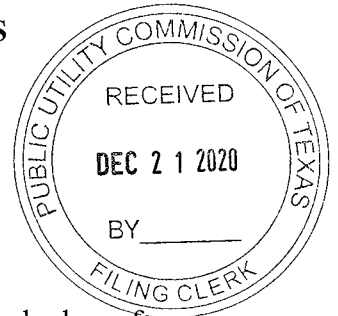


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**DOCKET NO. 51455**

<b>PETITION OF CLAY ROAD 628</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>DEVELOPMENT, LP TO AMEND T&amp;W</b>	<b>§</b>	
<b>WATER SERVICE COMPANY'S</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	
<b>AND NECESSITY IN MONTGOMERY</b>	<b>§</b>	
<b>COUNTY BY EXPEDITED RELEASE</b>	<b>§</b>	



**ORDER NO. 2**  
**CERTIFYING AN ISSUE TO THE COMMISSION**

In this matter, Clay Road 628 Development, LP seeks streamlined expedited release from T&W Water Service Company's water certificate of convenience and necessity (CCN) in Montgomery County. Specifically, Clay Road 628 seeks the release of the portion of its 269-acre tract that lies within the boundaries of T&W Water's water CCN number 12892.

This is not the first proceeding in which Clay Road has sought the release of the tract from T&W Water's CCN. In Docket No. 50261,<sup>1</sup> Clay Road sought the release of the same tract. In that case, the Commission denied the petition and found Clay Road was not entitled to expedited release from T&W Water's CCN.

The only factual difference between the two dockets is that T&W Water's position has changed: in Docket No. 50261, T&W Water opposed Clay Road's application; in the present docket, it does not. T&W Water has never contended, in either docket, that the tract of land is receiving water service from T&W Water. It is the understanding of the administrative law judge (ALJ) that, in Docket No. 50261, the Commission denied the petition for streamlined expedited release primarily because T&W Water has a significant amount of its infrastructure located within the tract to be released. That infrastructure apparently remains in place.

According to the application in the present docket, Clay Road and T&W Water have now executed an agreement between themselves in which T&W Water has agreed to the release of the tract and stipulated that the tract does not receive water service from T&W Water. Also, as part of the agreement, Clay Road and T&W Water agreed to the amount of compensation Clay Road must pay T&W Water for the release, and Clay Road has already paid that amount to T&W Water.

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<sup>1</sup> *Petition of Clay Road 628 Development, LP to Amend T&W Water Service Company's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 50261, Order Denying Streamlined Expedited Release (April 29, 2020)

The ALJ believes the question of whether Clay Road may pursue a second attempt at streamlined expedited release for the tract is an appropriate issue for certification to the Commission. Commission Staff and Clay Road both take the position that Clay Road's second attempt is not barred by res judicata or collateral estoppel because: (1) the issues in Docket No. 50261 were not "actually litigated," due to the fact that proceedings for streamlined expedited release are not contested cases and there is no right to a hearing in such cases; (2) the factual circumstances have changed, in that T&W Water no longer opposes the application; and (3) the Commission has the discretion to consider another application involving the same parties and facts. The ALJ is concerned that the factual difference between the first and second docket (*i.e.*, T&W Water's changed position) does not alter the basis for denial in the first docket (*i.e.*, the presence of T&W Water's infrastructure on the tract).

Accordingly, under 16 TAC § 22.127, the ALJ certifies the following issue to the Commission:

If a landowner's petition for streamlined expedited release for a tract of land has been denied by the Commission, may the landowner re-petition for streamlined expedited release of the same tract based on the fact that the utility's position on the petition has changed?

If any party wishes to file briefing on the certified issue, it must do so by January 4, 2021.

**Signed at Austin, Texas the 21st day of December 2020.**

PUBLIC UTILITY COMMISSION OF TEXAS

  
HUNTER BURKHALTER  
CHIEF ADMINISTRATIVE LAW JUDGE