



Control Number: 52090



Item Number: 62

**DOCKET NO. 52090**

<b>PETITION OF REDBIRD</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>DEVELOPMENT, LLC TO AMEND</b>	<b>§</b>	
<b>DOBBIN PLANTERSVILLE WATER</b>	<b>§</b>	<b>OF TEXAS</b>
<b>SUPPLY CORPORATION'S</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	
<b>AND NECESSITY IN MONTGOMERY</b>	<b>§</b>	
<b>COUNTY BY EXPEDITED RELEASE</b>	<b>§</b>	

2022 MAY 15 01:14:19  
 PUBLIC UTILITY COMMISSION  
 STATE OF TEXAS

**ORDER ON REHEARING**

This Order addresses the petition by Redbird Development, LLC for streamlined expedited release of a tract of land in Montgomery County from Dobbin Plantersville Water Supply Corporation's service area under certificate of convenience and necessity (CCN) number 11052. For the reasons stated in this Order, the Commission releases the tract of land from Dobbin Plantersville's certificated service area. In addition, the Commission amends Dobbin Plantersville's CCN number 11052 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 Dobbin Plantersville, which will be addressed by separate order.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Petitioner**

1. Redbird is a Texas limited liability company registered with the Texas secretary of state under filing number 804010621.

**CCN Holder**

2. Dobbin Plantersville is a Texas non-profit corporation registered with the Texas secretary of state under filing number 37131501.
3. Dobbin Plantersville holds CCN number 11052 that obligates the utility to provide retail water service in its certificated service area in Montgomery and Grimes Counties.

**Petition**

4. On May 6, 2021, the petitioner filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 11052.

5. The petition includes an affidavit, dated May 3, 2021, of Perry Senn, the petitioner's manager; maps of the subject property and digital mapping data; and a special warranty deed with vendor's lien dated April 14, 2021.
6. On May 28, 2021, Redbird filed supplemental digital mapping data.
7. In Order No. 3 filed on June 24, 2021, the administrative law judge (ALJ) found the petition, as supplemented, administratively complete.
8. On July 12, 2021, the petitioner filed a supplemental response to the CCN holder's motion to dismiss, which included an affidavit, dated July 12, 2021, of Mr. Senn.

#### **Notice**

9. The petitioner sent a copy of the petition by certified mail to the CCN holder on May 6, 2021.
10. In Order No. 3 filed on June 24, 2021, the ALJ found the notice sufficient.

#### **Intervention**

11. In Order No. 2 filed on June 9, 2021, the ALJ granted the CCN holder's motion to intervene.

#### **Response to Petition**

12. On June 29, 2021, the CCN holder filed a response to the petition.
13. The CCN holder's response included an affidavit, dated June 28, 2021, of Steve Duncan, the CCN holder's engineering consultant, with attachments; an affidavit, dated June 28, 2021, of Janie Legge, the CCN holder's general manager, with attachments; and United States Department of Agriculture loan documents.

#### **Motion to Dismiss**

14. On June 29, 2021, the CCN holder filed a motion to dismiss.
15. In Order No. 5 filed on July 19, 2021, the ALJ denied the motion to dismiss.

#### **Tract of Land**

16. The petitioner owns property in Montgomery County that is approximately 388.5 acres.
17. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 372.2 acres.

18. The tract of land is located within the CCN holder's certificated service area.

**Ownership of the Tract of Land**

19. The petitioner acquired its property by a special warranty deed with vendor's lien dated April 14, 2021.

**Qualifying County**

20. Montgomery County has a population of more than 47,500 and is adjacent to Harris County.

21. Harris County has a population of at least one million.

**Water Service**

22. The tract of land is not receiving actual water service from the CCN holder.

23. The petitioner has not requested that the CCN holder provide water service to the tract of land.

24. There is no contractual arrangement, either verbal or written, whereby the CCN holder has committed to constructing facilities to serve the tract of land.

25. There are no water or sewer meters, lines, or other facilities owned by the CCN holder located within the tract of land.

26. A six-inch water line and a four-inch water line owned and operated by the CCN holder run parallel to, but just outside of, the extreme western edge of the tract of land for a distance of roughly 60 feet.

27. The CCN holder's water plant number four is located approximately 640 feet north of the extreme western edge of the tract of land.

28. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.

29. The CCN holder has no facilities or lines that provide water service to the tract of land.

30. The CCN holder has not performed any acts for or supplied anything to the tract of land

**Map and Certificate**

31. On July 28, 2021, Commission Staff filed its final recommendation that included a certificate and a map on which it identified the tract of land in relation 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 Texas Water Code (TWC) §§ 13.254 and 13.2541.
2. The petitioner 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 that must be verified by a notarized affidavit.
6. Under 16 TAC § 24.245(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 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 petitioner owns the tract of land that is at least 25 acres for which it seeks streamlined expedited release through the petition.
11. Montgomery 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 petitioner is 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 under TWC § 13.254(h) to provide retail water service to the petitioner's 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 TWC § 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 Montgomery 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 release property 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 11052.
2. The Commission does not decerticate 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 11052 in accordance with this Order.
4. The Commission approves the attached map.
5. The Commission issues 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. 3. 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 14<sup>th</sup> day of January 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



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PETER M. LAKE, CHAIRMAN



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WILL MCADAMS, COMMISSIONER



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LORI COBOS, COMMISSIONER



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JIMMY GLOTFELTY, COMMISSIONER