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Public Utility Commission of Texas

TO: Stephen Journey
Commission Counsel

All Parties of Record

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

FROM: Hunter Burkhalter
Chief Administrative Law Judge

RE: **Docket No. 52101** – *Petition of CCD-North Sky, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

DATE: January 20, 2022

On November 1, 2021, a Proposed Order was filed in the above-styled and numbered docket.

The attached Revised Proposed Order is being filed to incorporate changes adopted by the Commission in other recently-filed orders granting streamlined expedited release. The Revised Proposed Order is ready for the Commission's consideration.

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DOCKET NO. 52101

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|---------------------------------------|----------|----------------------------------|
| PETITION OF CCD-NORTH SKY, LLC | § | PUBLIC UTILITY COMMISSION |
| TO AMEND MARILEE SPECIAL | § | |
| UTILITY DISTRICT'S CERTIFICATE | § | OF TEXAS |
| OF CONVENIENCE AND NECESSITY | § | |
| IN COLLIN COUNTY BY EXPEDITED | § | |
| RELEASE | § | |

REVISED PROPOSED ORDER

This Order addresses the petition of CCD-North Sky, LLC for streamlined expedited release of a tract of land in Collin County from Marilee Special Utility District’s service area under water certificate of convenience and necessity (CCN) number 10150. For the reasons stated in this Order, the Commission releases the tract of land from Marilee SUD’s certificated service area. In addition, the Commission amends Marilee SUD’s CCN number 10150 to reflect the removal of the 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 Marilee SUD, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. CCD-North Sky, LLC is a Texas limited liability company registered with the Texas secretary of state under filing number 803975061.

CCN Holder

2. Marilee SUD is a Texas water district and special utility district under chapters 49 and 65 of the Texas Water Code (TWC).
3. Marilee SUD holds CCN number 10150 that obligates it to provide retail water service in its certificated service area in Collin County.
4. Marilee SUD is the successor to Gunter Special Utility District and Gunter Rural Water Supply Corporation.

Petition and Supplemental Filings

5. On May 10, 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 10150.
6. The petition includes an affidavit, dated May 10, 2021, of Brian Cramer, co-manager of the petitioner; maps; a metes-and-bounds description; and a special warranty deed with vendor's lien dated March 24, 2021.
7. On July 6, 2021, the petitioner filed an amended application, which includes an affidavit, dated July 6, 2021, of Lawrence Corson, co-manager of the petitioner; maps; a special warranty deed with vendor's lien dated March 24, 2021; and digital mapping data.
8. In Order No. 10 filed on September 15, 2021, 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 May 10, 2021.
10. The petitioner sent a copy of the amended petition via electronic mail and by filing on the PUC Interchange System on July 6, 2021.
11. In Order No. 10 filed on September 15, 2021, the ALJ found the notice sufficient.

Intervention

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

Response to the Petition

13. On June 16, 2021, the CCN holder filed a response to the petition, which includes an affidavit, dated June 16, 2021, of Donna Loiselle, the CCN holder's general manager; an affidavit, dated June 16, 2021, of Eddy Daniel, the CCN holder's engineer; maps identifying infrastructure operated by the CCN holder in relationship to the petitioner's property; a December 5, 1981 Service Agreement between Gunter Rural Water Corp. and A. L. Mahan; meter readings from unspecified dates apparently maintained by Gunter Rural Water Corp. for meter number 120 and Bill Mahan; a service application by Chi Chu

Chan to Gunter SUD, dated May 24, 2004; a cost of service notice, a service application, and a service agreement between Gunter SUD and Chi Chu Chan dated May 25, 2004; a \$225 check from Chi-Chu Chan to Gunter SUD dated May 25, 2004; a cost of service notice and service application between the CCN holder and Eduardo Brena and Serafina Gonzalez, dated October 15, 2019; an undated service agreement between the CCN holder and Mr. Brena and Ms. Gonzalez; billing records from the CCN holder for Mr. Brena; and extended notes about the CCN holder's account number 241.

14. On July 28, 2021, the CCN holder filed supplemental information in response to the petition, which includes an affidavit, dated July 27, 2021, of Mr. Daniel; and additional maps and aerial photographs.
15. On August 17, 2021, the CCN holder filed an additional aerial photograph.
16. On October 7, 2021, the CCN holder filed an additional response to the petition, which includes an affidavit, dated October 6, 2021, of Ms. Loisel; duplicates of documents provided by the CCN holder on June 16, 2021; a resolution dated February 11, 2021 by the CCN holder's board of directors authorizing Ms. Loisel to prepare and submit application documents to secure funding for construction of a water tank; an April 13, 2021 commitment letter committing to provide the CCN holder a loan through the United States Department of Agriculture (USDA) Water and Environmental Guaranteed Loan Program; a USDA letter dated July 19, 2021 approving the loan; an affidavit, dated October 6, 2021, of Jacob Dupuis, the CCN holder's engineer of record; and maps identifying the petitioner's property and the CCN holders' waterlines, meters, and wells in relationship thereto.

Motion to Dismiss

17. On June 16, 2021, the CCN holder filed a motion to dismiss.
18. In Order No. 9 filed on September 14, 2021, the ALJ denied the motion to dismiss.

The Tract of Land

19. The petitioner owns property in Collin County that is approximately 220.04 acres.
20. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 219.67 acres.

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

Ownership of the Tract of Land

22. The petitioner acquired the property by a special warranty deed with vendor's lien dated March 24, 2021.

Qualifying County

23. Collin County has a population of more than 47,500 and is adjacent to Dallas County.

24. Dallas County has a population of at least one million.

Water Service

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

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

27. The petitioner has not paid to the CCN holder any fees or charges to initiate or maintain water service for the tract of land.

28. There are no billing records or other documents indicating an existing account with the CCN holder for the provision of water service to the tract of land.

29. The CCN holder owns and operates a two-inch waterline running through the extreme eastern edge of the tract of land.

30. The two-inch waterline is connected to a water meter on the petitioner's property, but the meter is not located within the tract of land and does not provide water service to the tract of land.

31. The CCN holder provides water service to a small lot within the petitioner's property, but this lot does not lie within the tract of land.

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

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

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

Map and Certificate

35. On October 25, 2021, Commission Staff filed its amended final recommendation that included a certificate and a 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 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 or 13.2541 and 16 TAC § 24.245(h)(7) 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(h)(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 of land 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.
11. Collin 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 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 Collin 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 tract of land unless just and adequate 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 certificated service area under CCN number 10150.
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 10150 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. 10. 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 _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

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Public Utility Commission of Texas

By These Presents Be It Known To All That

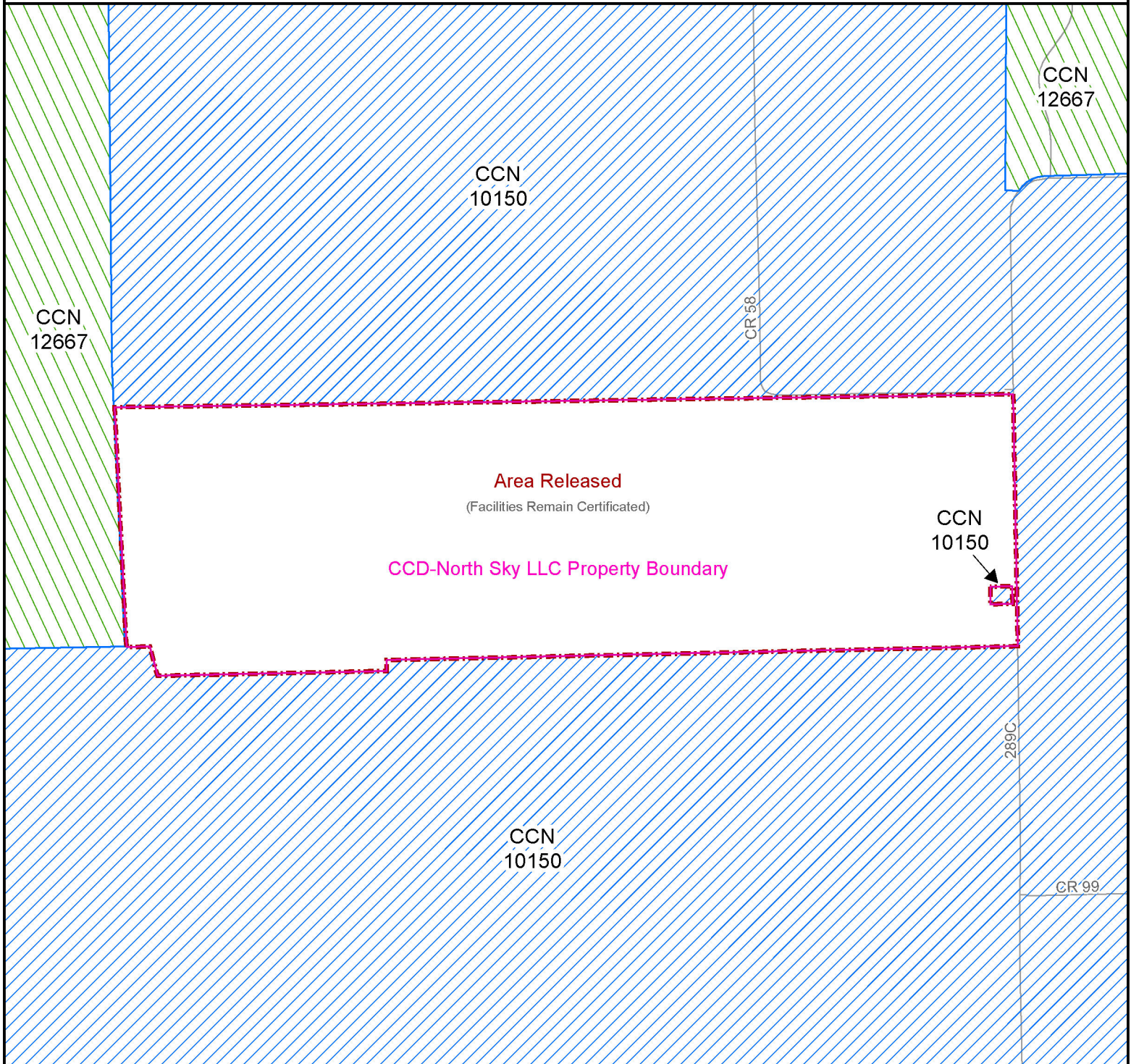
Marilee Special Utility District

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, Marilee Special Utility District is entitled to this



Certificate of Convenience and Necessity No. 10150

to provide continuous and adequate water utility service to that service area or those service areas in Collin and Grayson Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 52101 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 the Marilee Special Utility District 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.

Marilee Special Utility District
Portion of Water CCN No. 10150
PUC Docket No. 52101
Petition by CCD-North Sky, LLC to Amend
Marilee Special Utility District's CCN by Expedited Release in Collin County



Water CCN

-  10150 - Marilee SUD
-  12667 - City of Celina

-  Area Released
-  Property Boundary

