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Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

JJA

FROM: Jeffrey J. Huhn
Administrative Law Judge

RE: **Docket No. 52442** – *Petition of Meritage Homes of Texas, LLC to Amend North Collin Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

DATE: January 17, 2023

Enclosed is the Revised Proposed Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the Revised 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 Revised Proposed Order by January 31, 2023.

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.

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DOCKET NO. 52442

PETITION OF MERITAGE HOMES	§	PUBLIC UTILITY COMMISSION
OF TEXAS, LLC TO AMEND NORTH	§	
COLLIN SPECIAL UTILITY	§	OF TEXAS
DISTRICT'S CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
COLLIN COUNTY BY EXPEDITED	§	
RELEASE	§	

REVISED PROPOSED ORDER

This Order addresses the first amended petition of Meritage Homes of Texas, LLC for streamlined expedited release of a tract of land in Collin County from North Collin Special Utility District's service area under certificate of convenience and necessity (CCN) number 11035. For the reasons stated in this Order, the Commission releases the tract of land from North Collin SUD's certificated service area. In addition, the Commission amends North Collin SUD's CCN number 11035 to reflect the removal of the tract of land from the service area.

Following entry of the Order, the Commission will determine the amount of compensation, if any, to be awarded to North Collin SUD, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Meritage Homes is an Arizona limited liability company registered with the Texas secretary of state under filing number 800832535.

CCN Holder

2. North Collin SUD is a special utility district operating under chapter 65 of the Texas Water Code (TWC).
3. North Collin SUD holds CCN number 11035 that obligates it to provide retail water service in its certificated service area in Collin and Grayson counties.

4. In Docket No. 46452,¹ the Commission approved North Collin SUD's purchase of all of Altoga Water Supply Corporation's water facilities and certificated service area in Collin County.

Original Petition, Severed Petition, and Petitioner's Supplemental Filings

5. On June 30, 2021, in Docket No. 52293,² the petitioner filed its original petition for streamlined expedited release from the CCN holder's CCN number 11035 and the City of Melissa's CCN number 11482.
6. In Order No. 1 filed on August 19, 2021, the administrative law judge (ALJ) severed the original petition into two proceedings: (1) Docket No. 52293, which would address the petitioner's petition for streamlined expedited release from the City of Melissa's CCN number 11482; and (2) Docket No. 52442, which would address the petitioner's petition for streamlined expedited release from the CCN holder's CCN number 11035.
7. On August 23, 2021, petitioner filed a clean copy of the petition at issue in this proceeding seeking streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 11035.
8. The petition includes an affidavit, dated August 23, 2021, of David Aughinbaugh, vice president of land for petitioner; maps; a special warranty deed dated December 23, 2020; and digital mapping data.
9. On September 8, 2021, the petitioner supplemented the petition with proof of service and duplicates of the petition and materials filed with the petition.
10. On March 28, 2022, the petitioner supplemented the petition with revised maps and digital mapping data.
11. In Order No. 13 filed on May 17, 2022, the ALJ found the supplemented petition administratively complete.

¹ *Application of Altoga Water Supply Corporation and North Collin Special Utility District for Sale, Transfer, or Merger of Facilities and Certificate Rights in Collin County*, Docket No. 46452, Order (Mar. 13, 2019).

² *Petition by Meritage Homes of Texas, LLC to Amend the City of Melissa's Certificates of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 52293, Notice of Approval (Sept. 13, 2022).

Notice

12. The petitioner sent a copy of the petition via certified mail, return receipt requested, to the CCN holder on September 8, 2021.
13. In Order No. 5 filed on September 24, 2021, the ALJ found the notice sufficient.

Intervention and Response to the Petition

14. In Order No. 6 filed on September 28, 2021, the ALJ granted the CCN holder's motion to intervene.
15. On September 13, 2021, the CCN holder filed a response to the petition and a motion to dismiss.
16. The response included an affidavit, dated September 13, 2021, of Allen Knight, the CCN holder's general manager; a map identifying the tract of land and the CCN holder's facilities and waterlines in relation thereto; United States Department of Agriculture community programs assumption agreements; an order issued by the Texas Commission on Environmental Quality (TCEQ) on August 25, 2015; and a Commission Order filed in Docket No. 46452 on March 13, 2019, approving the CCN holder's purchase of Altoga.
17. On September 29, 2021, the CCN holder filed a supplemental response to the petition and a motion to dismiss, which included an affidavit, dated September 29, 2021, of Mr. Knight; a copy of a service agreement, dated December 27, 1965, between Woodrow Walker and Altoga; and a handwritten note, dated August 14, 1999, from Mrs. Woodrow Walker.
18. On October 4, 2021, the petitioner filed a reply to the CCN holder's motion to dismiss.
19. On October 11, 2021, the CCN holder re-filed its supplemental response to the petition and motion to dismiss, including attachments.
20. On November 12, 2021, the CCN holder filed a supplemental response and objection to the administratively complete petition, which included duplicates of materials filed with previous responses, and re-urged its motion to dismiss.
21. In Order No. 11 filed on February 23, 2022, the ALJ denied the motion to dismiss.
22. On February 25, 2022, the ALJ filed a proposed order for the Commission's consideration.
23. On March 28, 2022, the petitioner filed revised maps.

24. On May 6, 2022, the ALJ withdrew the proposed order.
25. On June 6, 2022, the CCN holder filed a supplemental response and second motion to dismiss.
26. On June 13, 2022, the petitioner filed a reply to the CCN holder's second motion to dismiss.
27. On June 23, 2022, the CCN holder filed a response to Commission Staff's recommendation on final disposition.
28. In Order No. 16 filed on June 22, 2022, the ALJ denied the CCN holder's second motion to dismiss.
29. On July 6, 2022, a revised proposed order which would grant expedited release was filed.
30. On July 18, 2022, the CCN holder filed objections and corrections to the proposed order.
31. On August 25, 2022, the Commission declined to adopt the proposed order and remanded the proceeding to docket management to give the petitioner an opportunity to amend the petition, including amended maps if necessary, and for Commission Staff to file an amended recommendation on final disposition.

First Amended Petition Following Remand

32. On September 29, 2022, the petitioner filed its first amended petition.
33. The amended petition includes an affidavit, dated September 28, 2022, of David Aughinbaugh, division vice president for petitioner; maps; a metes and bounds description; a special warranty deed dated December 23, 2020; and digital mapping data.
34. On October 6, 2022, the CCN holder filed a response and objection to the first amended petition and its third motion to dismiss.
35. The response included an affidavit, dated September 13, 2021, of Allen Knight, the CCN holder's general manager; an affidavit, dated August 22, 2022, of Mr. Knight, photographs, a map identifying the tract of land and the CCN holder's facilities and waterlines in relation thereto; digital mapping; a map showing the location of CCN Holder facilities in relation to the tract of land; United States Department of Agriculture community programs assumption agreements; an order issued by the TCEQ on August 25, 2015; a TCEQ letter

dated August 4, 2015; and a Commission Order filed in Docket No. 46452 on March 13, 2019, approving the CCN holder's purchase of Altoga.

36. On October 12, 2022, the petitioner responded to the CCN holder's response and objection and to its third motion to dismiss.
37. In Order No. 18 filed on November 15, 2022, the ALJ found the amended petition administratively complete.
38. On December 28, 2022, the CCN holder filed a response and objection to the first amended petition, a motion to abate , and re-urged its motion to dismiss.
39. On January 6, 2023, the petitioner filed a reply to the CCN holder's third motion to dismiss and motion to abate.
40. In Order No. 20 filed on January 11, 2023, the ALJ declined to rule on the CCN holder's third motion to dismiss.
41. In Order No. 21 filed on January 12, 2023, the ALJ denied the CCN holder's motion to abate.

The Tract of Land

42. The petitioner owns property in Collin County that is approximately 273.5 acres.
43. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 272.23 acres.
44. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

45. The petitioner acquired the tract of land by a special warranty deed dated December 23, 2020.

Qualifying County

46. Collin County is adjacent to Dallas County and has a population of more than 47,500.
47. Dallas County has a population of at least one million.

Water Service

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

49. The petitioner has not requested that the CCN holder provide water service to the tract of land.
50. The petitioner has not paid any charges or fees to initiate or maintain water service for the tract of land and there are no billing records or other documents indicating an existing account for the tract of land.
51. Altoga provided water service to the tract of land approximately 15 years ago.
52. The CCN holder owns and operates additional water system infrastructure located outside of, but in proximity to, the petitioner's tract of land. None of this infrastructure provides water service to the tract of land.
53. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
54. The CCN holder has no facilities or lines that provide water service to the tract of land.
55. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

56. On November 30, 2022, Commission Staff filed its revised recommendation on final disposition 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 and 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 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. Under TWC §§ 13.254(h) 13.2541(a), after the date of this Order the CCN holder has no obligation 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 decerticate 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 first amended petition from the CCN holder's certificated service area under CCN number 11035.
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 11035 in accordance with this Order.
4. The Commission approves the map attached to this Order.
5. The Commission issues the certificate attached to this Order.
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 on the date of this Order in accordance with the schedule adopted in Order No. 19. 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 _____ 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

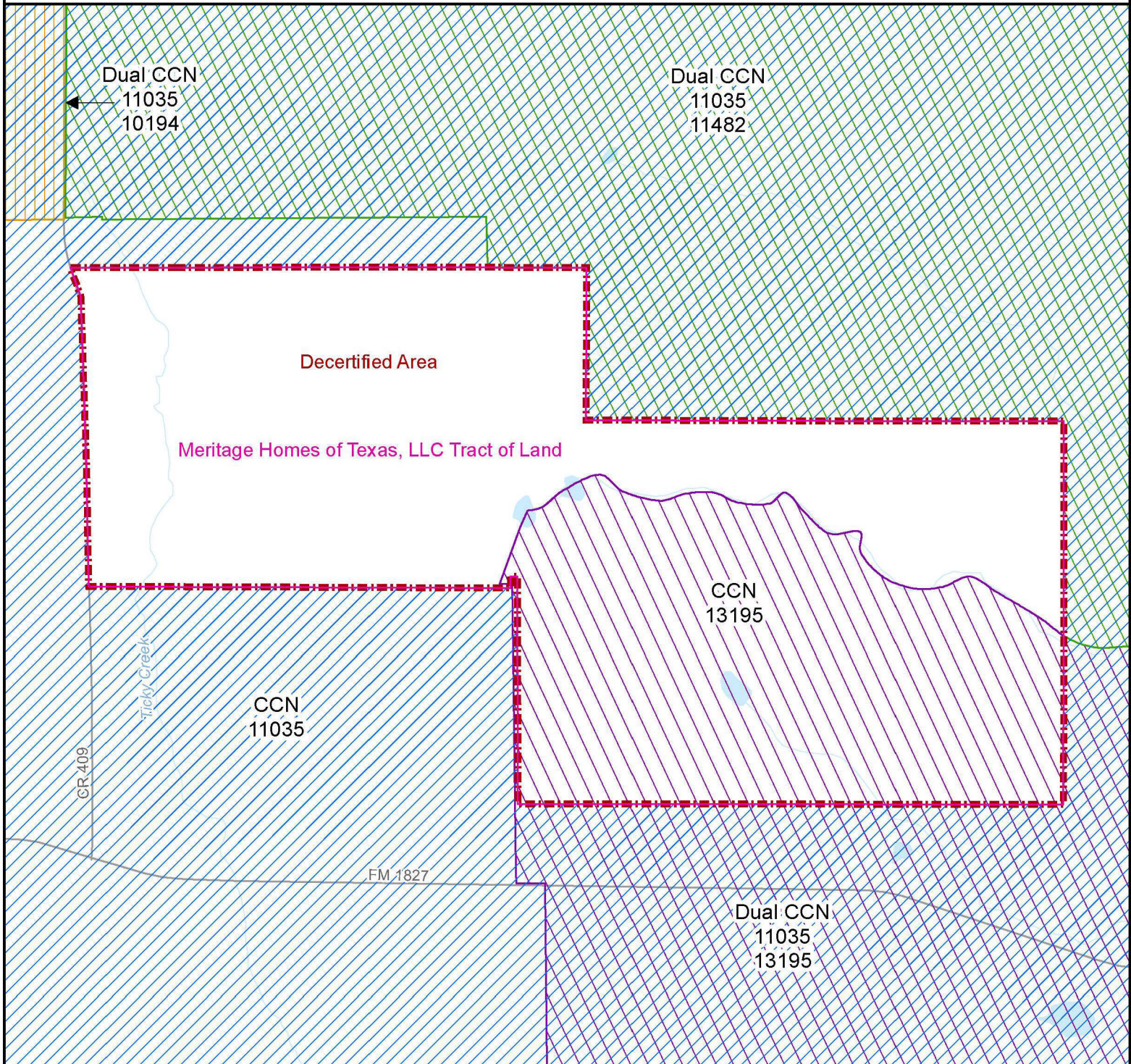
WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER





KATHLEEN JACKSON, COMMISSIONER



North Collin Special Utility District
Portion of Water CCN No. 11035
PUC Docket No. 52442
Petition by Meritage Homes of Texas, LLC to Amend
North Collin Special Utility District's CCN by Streamlined Expedited Release in Collin County



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

Water CCN

-  11035 - North Collin SUD
-  10194 - City of McKinney
-  11482 - City of Melissa
-  13195 - City of Princeton

-  Decertified Area
-  Tract of Land

0 400 800
Feet



Map by: Komal Patel
Date: November 28, 2022
Project: 52442NorthCollinSUDRemap.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

North Collin SUD

having obtained certification to provide water or sewer 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, North Collin SUD is entitled to this

Certificate of Convenience and Necessity No. 11035

to provide continuous and adequate water utility service to that service area or those service areas in Collin County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 52442 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 North Collin SUD 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.