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Executive Director

Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Gregory R. Siemankowski
Administrative Law Judge

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

RE: **Docket No. 52518** – *Petition of VPTM Cross Creek LB, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

DATE: March 9, 2022

Enclosed is the Proposed Order in the above-referenced case. By copy of this memo, the parties to this proceeding are being served with the 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 Proposed Order by March 21, 2022.

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. 52518

**PETITION OF VPTM CROSS CREEK § PUBLIC UTILITY COMMISSION
LB, LLC TO AMEND MARILEE §
SPECIAL UTILITY DISTRICT'S § OF TEXAS
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN COLLIN §
COUNTY BY EXPEDITED RELEASE §**

PROPOSED ORDER

This Order addresses the second amended petition of VPTM Cross Creek LB, LLC for streamlined expedited release of a tract of land in Collin County from Marilee Special Utility District's service area under certificate of convenience and necessity (CCN) number 10150. For the reasons stated in this Order, the Commission releases the tract of land from Marilee's certificated service area. In addition, the Commission amends Marilee's CCN number 10150 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 to Marilee, which will be addressed by a separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. VPTM Cross Creek is a Minnesota limited liability company registered with the Texas secretary of state under filing number 804238579.

CCN Holder

2. Marilee is a special utility district operating under chapter 65 of the Texas Water Code (TWC).
3. Marilee holds CCN number 10150 that obligates it to provide retail water service in its certificated service area in Collin County.

Petition and Motion to Dismiss

4. On September 3, 2021, Clifton Van McKnight and Bryan Jeffrey McKnight filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10150.
5. On September 15, 2021, the petitioner acquired the tract of land.
6. On December 1, 2021, Marilee filed a motion to dismiss arguing that because Clifton McKnight and Bryan McKnight no longer own the tract of land, the petition fails to state a claim for which relief may be granted and that the petitioner should be required to file a new petition in a new docket.
7. In Order No. 7 filed on March 2, 2022, the administrative law judge (ALJ) denied Marilee's motion to dismiss.

First and Second Amended Petitions

8. On October 6, 2021, the petitioner filed an amended petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10150.
9. On November 4, 2021, the petitioner supplemented the application with revised mapping.
10. On December 9, 2021, the petitioner filed a second amended petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10150.
11. The second amended petition includes an affidavit, dated October 1, 2021, of Brendan Bosman, managing director of the petitioner; a general location map and detailed map; a special warranty deed, dated September 15, 2021, with a metes-and bounds description of the tract of land; and digital mapping data.
12. In Order No. 6 filed on December 29, 2021, the ALJ found the second amended petition administratively complete.

Notice

13. Clifton McKnight and Bryan McKnight sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on September 3, 2021.

14. On October 6, 2021, the petitioner certified that a true and correct copy of the amended petition was sent, via electronic service, to the CCN holder's attorney of record.
15. On December 9, 2021, the petitioner certified that a true and correct copy of the second amended petition was sent, via certified mail, return receipt requested, to the CCN holder.
16. In Order No. 6 filed on December 29, 2021, the ALJ found the notice sufficient.

Intervention and Response to the Petition

17. In Order No. 2 filed on October 5, 2021, the ALJ granted the CCN holder's motion to intervene.
18. On January 18, 2022, the CCN holder filed a response to the petition, which included an affidavit, dated January 18, 2022, of Donna Loisel, the CCN holder's general manager; 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; a voting proposition from the CCN holder dated November 2, 2021; a summary results report of general and special elections held by the CCN holder on November 2, 2021, dated November 8, 2021; an affidavit, dated January 17, 2022, of Jacob Dupuis, the CCN holder's engineer of record; maps identifying the tract of land and the CCN holders' waterlines, meters, and wells in relation thereto; an affidavit, dated January 18, 2022, of Chris Boyd, general manager of Mustang Special Utility District regarding the release; an active contests options list dated November 2, 2021 for Mustang; and a cumulative results report for a Mustang election held on November 2, 2021, dated November 9, 2021.

The Tract of Land

19. The tract of land for which petitioner seeks streamlined expedited release is approximately 62.7 acres.
20. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

21. The petitioner acquired the tract of land by a special warranty deed dated September 15, 2021.

Qualifying County

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

Water Service

24. The tract of land is not receiving actual water service from the CCN holder.
25. The petitioner has not requested that the CCN holder provide water service to the tract of land.
26. The petitioner has not paid any fees or charges to the CCN holder to initiate or maintain water service to the tract of land, and there are no billing records or other documents indicating an existing account with the CCN holder for the tract of land.
27. The CCN holder owns and operates an eight-inch waterline running parallel to, but outside of, the northern boundary of the tract of land, and a four-inch waterline running parallel to, but outside of, the western boundary of the tract of land. Neither of these lines provides water service to the tract of land.
28. The CCN holder owns and operates additional water system infrastructure located outside of, but in proximity to, the tract of land. None of this infrastructure provides water service to the tract of land.
29. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
30. The CCN holder has no facilities or lines that provide water service to the tract of land.
31. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

32. On February 1, 2022, Commission Staff filed its recommendation on final disposition that included a certificate and 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) 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.
6. Under 16 TAC § 24.245(h)(7), the Commission's decision is based on the information submitted by the landowner, the CNN 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 CNN.
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. Collin County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
11. The petitioner owns the tract of land that is at least 25 acres for which it seeks streamlined expedited release.

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 water service area.
14. 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 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 amended 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) and 13.2541(a) 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 second amended 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 tract of land.
3. The Commission amends CCN number 10150 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 recordings 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. 6. 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

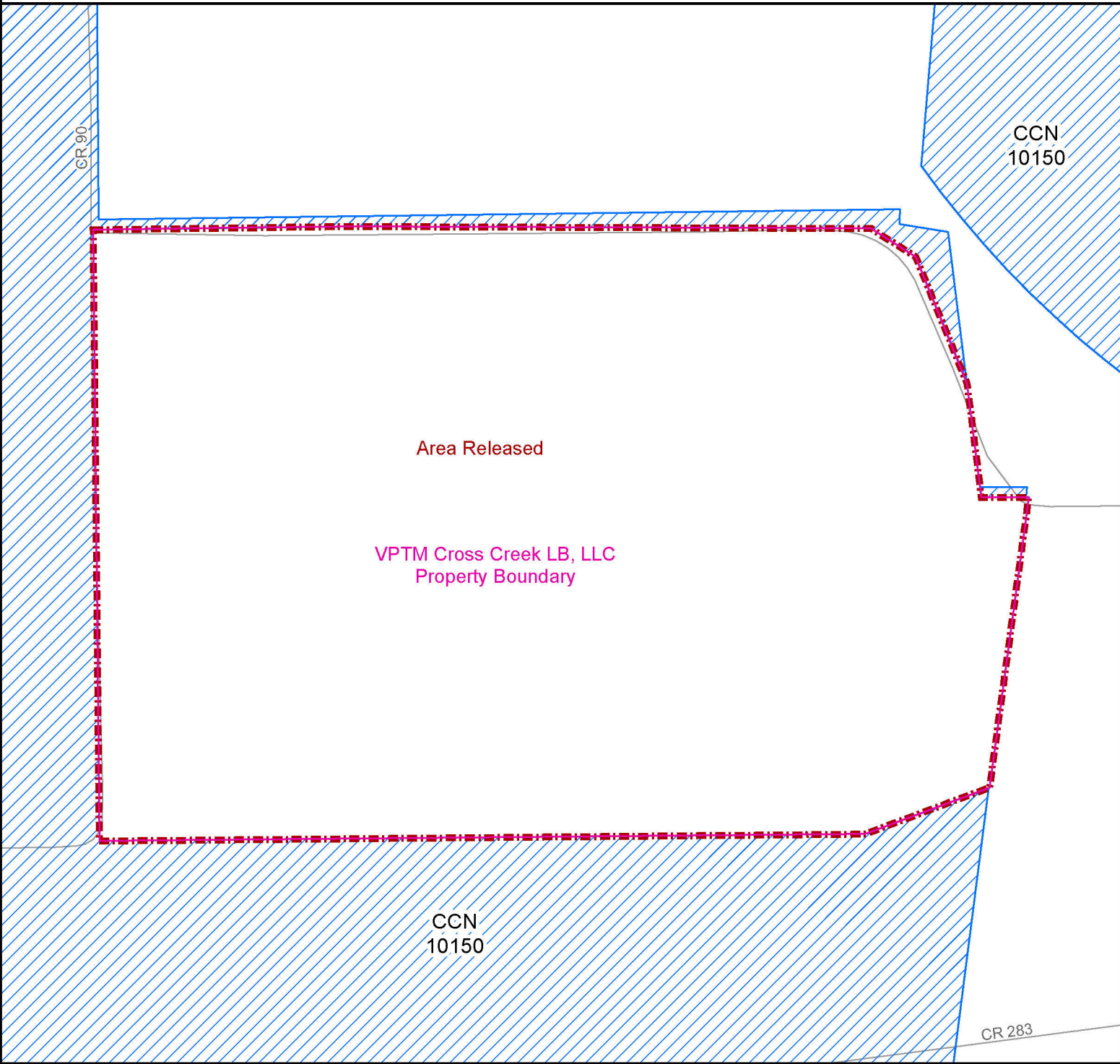
PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

Marilee Special Utility District
Portion of Water CCN No. 10150
PUC Docket No. 52518
Petition by VPTM Cross Creek LB, LLC to Amend
Marilee Special Utility District's CCN by Expedited Release in Collin County



Water CCN
 10150 - Marilee SUD

 Area Released
 Property Boundary



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. 52518 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.