



Control Number: 52531



Item Number: 56

RECEIVED

PETITION OF E REAL ESTATE, LP TO §
AMEND MARILEE SPECIAL UTILITY §
DISTRICT'S CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
COLLIN COUNTY BY EXPEDITED §
RELEASE §

PUBLIC UTILITY COMMISSION

2022 OCT 17 11:3:16
PUBLIC UTILITY COMMISSION
OFFICE CLERK

ORDER

This Order addresses the petition of E Real Estate, LP for streamlined expedited release of two tracts of land in Collin County from Marilee Special Utility District's (Marilee SUD's) certificate of convenience and necessity (CCN) number 10150. For the reasons stated in this Order, the Commission releases the tracts of land from Marilee SUD's certificated service area. In addition, the Commission amends Marilee SUD's CCN number 10150 to reflect removal of the tracts 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. E Real Estate is a Texas limited partnership registered with the Texas secretary of state under filing number 804818518.

CCN Holder

2. Marilee SUD is a Texas water district and a special utility district operating under chapter 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. On November 2, 2021, Marilee SUD and Mustang Special Utility District were consolidated into a single entity.

Petition, Supplemental Materials, and Amended Petitions

5. On September 8, 2021, the petitioner filed a petition for streamlined expedited release of two tracts of land from the CCN holder's service area under CCN number 10150.
6. The petition includes an affidavit, dated September 7, 2021, of Gregg Allen, president of E Management Corp., the petitioner's manager; maps; a metes-and-bounds description of the tracts; and three special warranty deeds with effective dates of January 1, 2020.
7. On October 8, 2021, the petitioner filed revised maps and duplicates of documents previously filed.
8. On November 4, 2021, the petitioner filed revised maps, a revised metes-and-bounds description, and digital mapping data.
9. On December 13, 2021, the petitioner filed a first amended petition—which includes an affidavit, dated December 10, 2021, of Mr. Gregg—and duplicates of documents previously filed.
10. On February 18, 2022, the petitioner filed supplemental information which includes a special warranty deed with vendor's lien dated September 4, 2019; three special warranty deeds, each dated September 4, 2019; a corrected special warranty deed dated September 4, 2019; and duplicates of documents previously filed.
11. On April 4, 2022, the petitioner filed supplemental information that includes digital mapping data and an affidavit, dated March 30, 2022, of Mr. Gregg.
12. On June 15, 2022, the petitioner filed supplemental information that includes a revised metes-and-bounds description of the tracts of land and digital mapping data.
13. In Order No. 9 filed on July 26, 2022, the administrative law judge (ALJ) found the petition administratively complete.
14. In Order No. 14 filed on November 21, 2022, the ALJ withdrew the finding of administrative completeness based on Commission Staff's recommendation that the maps provided by the petitioner remained deficient.
15. On December 19, 2022, the petitioner filed a second amended petition, which includes maps; an affidavit, dated December 19, 2022, of Van Nichols, whose relation to the petitioner is not specified; and digital mapping data.

16. In Order No. 15 filed on January 19, 2023, the ALJ found the petition, as supplemented and amended, administratively complete.
17. On March 20, 2023, the petitioner supplemented the petition with an affidavit, dated March 20, 2023, of Mr. Nichols, who is the manager of the tracts of land, with attachments; a warranty deed with an effective date of August 31, 2011; maps; and an affidavit, dated March 20, 2023, of Leah Stout, a resident of property owned by the petitioner that is near the tracts of land, with attachments.
18. In Order No. 17 filed on April 24, 2023, the ALJ again withdrew the finding of administrative completeness based on Commission Staff's recommendation that new maps provided by the petitioner were deficient.
19. On May 22, 2023, the petitioner supplemented the petition with an affidavit, dated May 19, 2023, of Frank Abbott Jr., the petitioner's engineer, with attachments.
20. In Order No. 19 filed on July 6, 2023, the ALJ found the petition, as supplemented and amended, administratively complete.

Notice

21. On September 8, 2021, the petitioner sent a copy of the petition to the CCN holder by certified mail.
22. In Order No. 2 filed on October 11, 2021, the ALJ found notice sufficient.

Intervention and Response to the Petition

23. In Order No. 2 filed on October 11, 2021, the ALJ granted the CCN holder's motion to intervene.
24. On August 15, 2022, the CCN holder filed a response to the petition, which includes an affidavit, dated August 15, 2022, of Michael Garrison, the CCN holder's assistant 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 completed request for obligation of funds guaranteed loans form; 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 August 15, 2022, of Eddy Daniel, the CCN holder's engineer of record; maps identifying the tract of land and the CCN holder's facilities in relation thereto; customer account records from Mustang SUD, Gunter SUD, and the CCN holder related to various customer accounts; an affidavit, dated August 15, 2022, of Chris Boyd, general manager of Mustang SUD; and a cumulative results report for a Mustang SUD election held on November 2, 2021, dated November 9, 2021.

The Tracts of Land

25. The petitioner is seeking streamlined expedited release for two tracts of land, one lying to the west of County Road (CR) 101, and one lying to the east of CR 101.
26. Because the petitioner is seeking streamlined expedited release for two, non-contiguous tracts of land, the eligibility for release for each tract must be evaluated separately.

The 114.5-Acre Tract of Land

27. The petitioner owns property in Collin County that lies immediately to the west of CR 101 and is approximately 272.545 acres.
28. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 114.5 acres.
29. The 114.5-acre tract of land is located within the CCN holder's certificated service area.

Ownership of the 114.5-Acre Tract of Land

30. The petitioner acquired the 272.545-acre property, of which the 114.5-acre tract of land is a part, by a special warranty deed with an effective date of January 1, 2020.

Water Service on the 114.5-Acre Tract of Land

31. The 114.5-acre tract of land is not receiving actual water service from the CCN holder or any other water service provider.
32. The petitioner has not requested water service from the CCN holder for the 114.5-acre tract of land or paid any fees or charges to initiate or maintain such service.
33. There are no billing records or other documents indicating an existing account with the CCN holder for the 114.5-acre tract of land.

34. The CCN holder operates and maintains (a) an 8" waterline that runs just inside the western boundary of the 114.5-acre tract of land; and (b) a 4" waterline and a 2" waterline that run parallel to, but outside of, the eastern boundary of the 114.5-acre tract of land, and on the east side of CR 101. None of these waterlines provides water service to the 114.5-acre tract of land.
35. The CCN holder has not committed or dedicated any facilities or lines to the 114.5-acre tract of land for water service.
36. The CCN holder has no facilities or lines that provide water service to the 114.5-acre tract of land.
37. The CCN holder has not performed any acts for, or supplied anything to, the 114.5-acre tract of land.

The 370.5-Acre Tract of Land

38. The petitioner owns property in Collin County that lies immediately to the east of CR 101 and is approximately 388.5 acres.
39. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 370.5 acres.
40. The 370.5-acre tract of land is located within the CCN holder's certificated service area.

Ownership of the 370.5-Acre Tract of Land

41. The petitioner acquired the 388.5-acre property, of which the 370.5-acre tract of land is a part, through a series of transactions:
 - via a special warranty deed with an effective date of January 1, 2020, the petitioner acquired a 57.414-acre parcel;
 - via a second special warranty deed with an effective date of January 1, 2020, the petitioner acquired a 78.613-acre parcel, a 66.676-acre parcel, and an 18.748-acre parcel; and
 - via a third special warranty deed with an effective date of January 1, 2020, the petitioner acquired a 167.027-acre parcel.

42. These five parcels are contiguous and comprise a property owned by the petitioner that is 388.5 acres.

Water Service on the 370.5-Acre Tract of Land

43. The 370.5-acre tract of land is not receiving actual water service from the CCN holder or any other water service provider.
44. The petitioner has not requested water service from the CCN holder for the 370.5-acre tract of land or paid any fees or charges to initiate or maintain such service.
45. There are no billing records or other documents indicating an existing account with the CCN holder for the 370.5-acre tract of land.
46. There are no water meters on the 370.5-acre tract of land.
47. The CCN holder operates and maintains (a) a 4" waterline and a 2" waterline that both run parallel to, and just inside of, the western boundary of the 370.5-acre tract of land, and on the east side of CR 101; (b) a 2" waterline that runs just inside the north-central boundary of the 370.5-acre tract of land; (c) an 8" waterline that runs parallel to, but outside of, the northern boundary of the 370.5-acre tract of land; (d) a 1 1/2" waterline that runs just inside the northeast corner of the 370.5-acre tract of land; and (e) various waterlines and meters to the east of the 370.5-acre tract of land that serve a small subdivision located there. None of these facilities provides water service to the 370.5-acre tract of land.
48. The CCN holder has not committed or dedicated any facilities or lines to the 370.5-acre tract of land for water service.
49. The CCN holder has no facilities or lines that provide water service to the 370.5-acre tract of land.
50. The CCN holder has not performed any acts for or supplied anything to the 370.5-acre tract of land.

Qualifying County

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

Map and Certificate

53. On August 16, 2023, Commission Staff filed its recommendation on the final disposition that included a certificate and map on which it identified the tracts 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 the 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 this 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 the petitioner's petition.
4. This petition for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) is not a contested case.
5. The petitioner, under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h), is 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 in this proceeding is based on the information submitted by the petitioner, the CCN holder, and Commission Staff.
7. To obtain streamlined expedited release under TWC § 13.2541(b), the petitioner must demonstrate that it owns the tracts of land that are at least 25 acres, that the tracts of land are located in a qualifying county, and that the tracts of land are not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.

8. The time that this petition was filed is the only relevant time period to consider when evaluating whether the tracts of land are receiving water service under TWC § 13.2541(b). Whether the tracts of land might have previously received water service is irrelevant.
9. The petitioner is not required to seek the streamlined expedited release of all of its property.
10. The petitioner owns the tracts of land for which it seeks streamlined expedited release and the tracts of land are each at least 25 acres.
11. Collin County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
12. The tracts of land are 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 tracts of land from the CCN holder's certificated service area.
14. Under TWC § 13.254(h) and 13.2541(a), after the date of this Order, the CCN holder has no obligation to provide retail water service to the tracts of land.
15. The Commission may release only the petitioner's tracts of land from CCN number 10150 under TWC § 13.2541(b). The Commission has no authority to decertificate any facilities or equipment owned and operated by the holder of CCN number 10150 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 tracts of land unless just and adequate compensation under TWC § 13.254(g) has been paid to the holder of CCN number 10150.

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 tracts of land identified in the petition from the CCN holder's certificated service area under CCN number 10150.
2. The Commission does not decertify any of the CCN holder's equipment or facilities that may lay on or under the released tracts 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 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 on the 12th day of October 2023.

PUBLIC UTILITY COMMISSION OF TEXAS


KATHLEEN JACKSON, INTERIM CHAIR


WILL MCADAMS, COMMISSIONER


LORI COBOS, COMMISSIONER


JIMMY GLOTFELTY, COMMISSIONER