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Executive Director

Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

A handwritten signature, likely of the Chief Administrative Law Judge, Hunter Burkhalter.

FROM: Hunter Burkhalter
Chief Administrative Law Judge

RE: **Docket No. 52532** – *Petition of E Real Estate, LLC to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release (Tract 3)*

DATE: June 29, 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 July 13, 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. 52532

PETITION OF E REAL ESTATE, LLC	§	PUBLIC UTILITY COMMISSION
TO AMEND MARILEE SPECIAL	§	
UTILITY DISTRICT'S CERTIFICATE	§	OF TEXAS
OF CONVENIENCE AND NECESSITY	§	
IN COLLIN COUNTY BY EXPEDITED	§	
RELEASE (TRACT 3)	§	

PROPOSED ORDER

This Order addresses the first amended petition by E Real Estate, 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 SUD's certificated service area. In addition, the Commission amends Marilee SUD'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 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 liability company registered with the Texas secretary of state under filing number 803505346.

CCN Holder

2. Marilee SUD is 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, Amended Petition, and Supplemental Filings

5. On September 8, 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 September 7, 2021, of Gregg Allen, president of E Management Corp., which is the petitioner's manager; maps; a metes-and-bounds description of the tract of land; and a special warranty deed with an effective date of January 1, 2020.
7. On October 8, 2022, the petitioner filed supplemental information which includes better copies of the maps and deed provided with the petition.
8. On November 4, 2021, the petitioner filed supplemental information which includes maps, a metes-and-bounds description of the tract of land, 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. Allen; maps; a metes-and-bounds description of the tract of land; a special warranty deed with an effective date of January 1, 2020; and digital mapping data.
10. In Order No. 5 filed on January 14, 2022, the administrative law judge (ALJ) found the petition, as amended, administratively complete.
11. On February 24, 2022, the petitioner filed a reply to the CCN holder's verified response and motion to dismiss, and to Commission Staff's recommendation on final disposition. The reply includes an aerial photograph of the tract of land and surrounding area; an unnotarized affidavit, dated February 24, 2022, of Frank Abbott, Jr., the petitioner's engineer; and photographs of the tract of land and surrounding area.
12. On February 28, 2022, the petitioner filed a notarized version of the affidavit, dated February 24, 2022, of Mr. Abbott.
13. On March 18, 2022, the petitioner filed a response to Order No. 8, which includes an aerial photograph of the tract of land and surrounding area; an affidavit, dated March 11, 2022, of Leah Stout, the petitioner's property manager; and photographs of various structures located on or around the tract of land.

14. On April 28, 2022, the petitioner filed a response to Order No. 9, which includes maps; a metes-and-bounds description of the tract of land; and digital mapping data.

Notice

15. The petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on September 8, 2021.
16. In Order No. 5 filed on January 14, 2022, the ALJ found the notice sufficient.

Intervention

17. In Order No. 3 filed on October 12, 2021, the ALJ granted the CCN holder's motion to intervene.

Response to the Petition and Motion to Dismiss

18. On February 3, 2022, the CCN holder filed a response to the petition and motion to dismiss.
19. The response includes an affidavit, dated February 2, 2022, of Donna Loisel, the CCN holder's general manager; a customer detail sheet for CCH holder account number 361 in the name of Eland Energy; a service application by Eland Energy, Inc. on August 21, 2015 with the CCN holder; an undated service agreement signed by Eland Energy, but not signed by the CCN holder; a cost of service notice dated August 21, 2015; a customer detail sheet for CCN holder account number 911, Eland Energy; a customer detail sheet for account number 1117, Eland Energy; a loan commitment letter dated April 13, 2021; a letter from the United States Department of Agriculture dated July 19, 2021, with attachments; a voting proposition form 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 February 2, 2022, of Eddy Daniel, the CCN holder's engineer; a map; an unsigned and undated affidavit of Chris Boyd, general manager for the Mustang Special Utility District; an active contests options list dated November 2, 2021 for Mustang SUD; and a cumulative results report for a Mustang SUD election held on November 2, 2021, dated November 9, 2021.
20. On February 10, 2022, the CCN holder supplemented its response with an affidavit, dated February 9, 2022, of Mr. Boyd.
21. In Order No. 6 filed on February 28, 2022, the ALJ denied the motion to dismiss.

The Tract of Land

22. In 2020, the petitioner acquired five parcels of land, as follows:
- a 154.059-acre parcel;
 - a 57.414-acre parcel;
 - a 272.545-acre parcel;
 - a 43.777-acre parcel; and
 - a 2.5-acre parcel.
23. The 43.777-acre and 272.545-acre parcels are contiguous with one another, but are not contiguous with the 154.059-acre, 57.414-acre, and 2.5-acre parcels.
24. The 43.777-acre and 272.545-acre parcels comprise a single property owned by the petitioner in Collin County that is approximately 316.322 acres.
25. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 146.75 acres.
26. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

27. The petitioner acquired its property by a special warranty deed with an effective date of January 1, 2020.

Water Service

28. The tract of land is not receiving actual water service from the CCN holder or any other water utility.
29. The petitioner has not requested that the CCN holder provide water service to the tract of land.
30. The petitioner has not paid to the CCN holder any charges or fees to initiate or maintain water service for the tract of land.
31. There are no billing records or other documents indicating an existing account for the provision of water service by the CCN holder to the tract of land.

32. The CCN holder provides water service to portions of the petitioner's property which lie outside of the tract of land.
33. The CCN holder owns and operates two water meters, meter numbers 361 and 911, that are located within the boundaries of the petitioner's property, but outside of and to the southwest of the tract of land.
34. The CCN holder owns and operates a water meter, meter number 1117, that is located within the boundaries of the petitioner's property, but outside of and to the southeast of the tract of land.
35. The CCN holder owns and operates a one-and-a-half-inch water line and an eight-inch water line, both of which run parallel to and just inside the western boundary of the tract of land.
36. The CCN holder owns and operates a two-inch water line that runs parallel to and just inside the northern and northeastern boundaries of the tract of land.
37. The water meters and the water lines do not provide water service to the tract of land.
38. The CCN holder owns and operates additional water system infrastructure located outside of, but in proximity to, the petitioners' property and tract of land. None of this infrastructure provides water service to the tract of land.
39. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
40. The CCN holder has no facilities or lines that provide water service to the tract of land.
41. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Qualifying County

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

Map and Certificate

44. On June 27, 2022, Commission Staff filed its second 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's 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 decertify 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 amended and supplemented 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 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 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. 5. 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

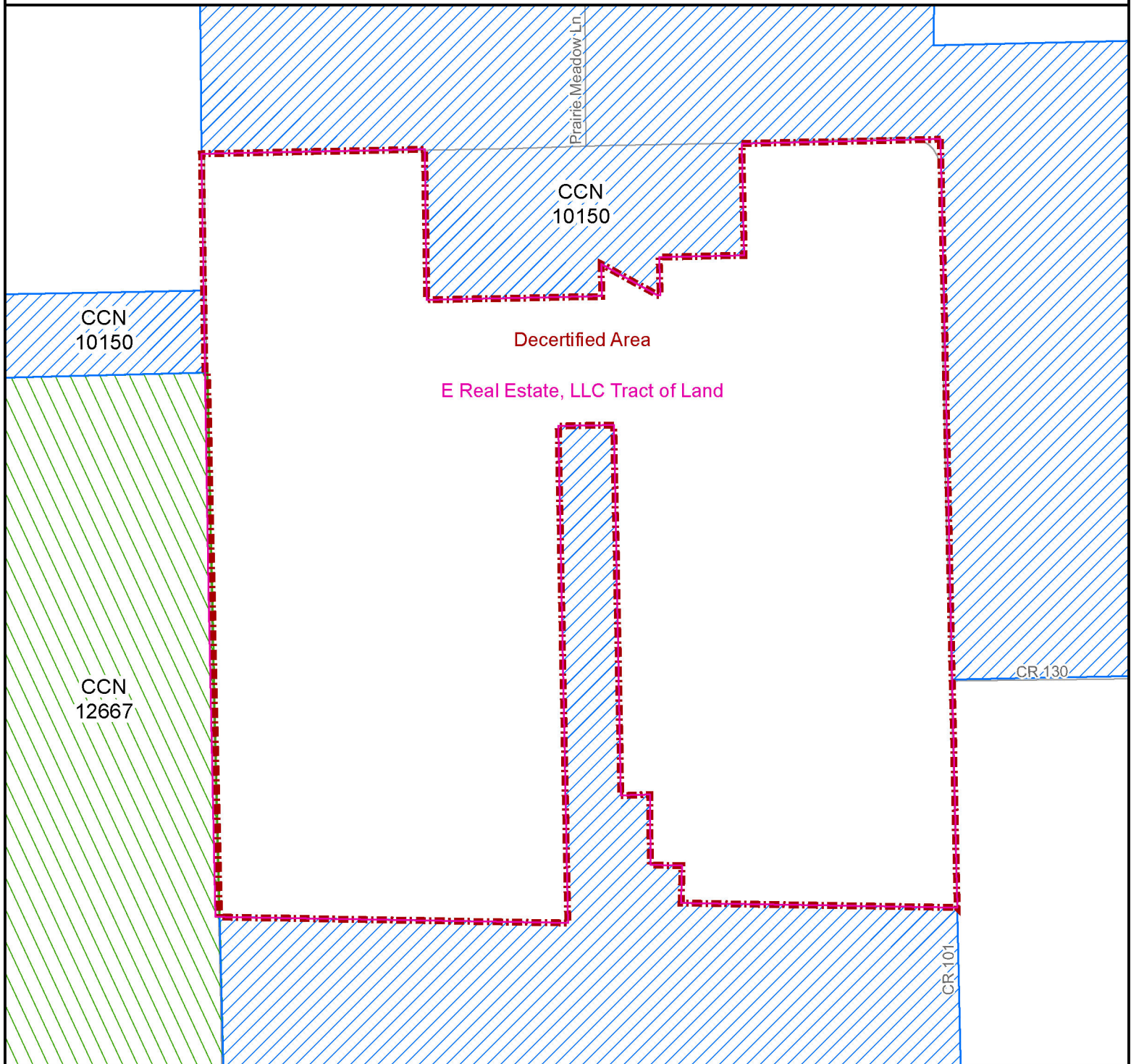
PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

Marilee Special Utility District
Portion of Water CCN No. 10150
PUC Docket No. 52532
Petition by E Real Estate, LLC to Amend
Marilee Special Utility District's CCN by Streamlined Expedited Release in Collin County



Water CCN

-  10150 - Marilee SUD
-  12667 - City of Celina

-  Decertified Area
-  Tract of Land

0 250 500
Feet





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. 52532 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.