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DOCKET NO. 52534

**PETITION OF CENTRAL FRISCO, § PUBLIC UTILITY COMMISSION
LTD. TO AMEND MARILEE SPECIAL §
UTILITY DISTRICT'S CERTIFICATE § OF TEXAS
OF CONVENIENCE AND NECESSITY §
IN COLLIN COUNTY BY EXPEDITED §
RELEASE §**

COMMISSION STAFF'S FINAL RECOMMENDATION

On September 8, 2021, Central Frisco, Ltd. (Central Frisco) filed a petition for expedited release from Marilee Special Utility District's (Marilee SUD) water certificate of convenience and necessity (CCN) number 10150 under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h). Central Frisco asserts that the land to be released is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, which is a qualifying county. Collin County is a qualifying county, as its population was 782,341, according to the 2010 census.¹ Central Frisco filed supplemental information on October 8, 2021 and November 3, 2021.

On January 13, 2022, the administrative law judge (ALJ) filed Order No. 5, establishing a deadline of January 21, 2022 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on final disposition. Therefore, this pleading is timely filed.

I. RECOMMENDATION ON FINAL DISPOSITION

As detailed in the attached memorandum of Jolie Mathis of the Commission's Infrastructure Division, Staff has reviewed the petition and recommends that it be approved. The affidavit, maps and digital data, and deeds filed by Central Frisco provide adequate information to demonstrate that the petition satisfies the requirements of TWC § 13.2541(b) and 16 TAC § 24.245(h). Specifically, the petition shows that the property for which Central Frisco seeks expedited release is located in Collin County, which is a qualifying county, is not receiving water utility service, and is at least 25 contiguous acres. The final water CCN map and water CCN certificate are attached to this filing. Therefore, Staff recommends that the petition be approved.

¹ U.S. Census Bureau, Census Data for Collin County, QuickFacts Collin County, Texas (2010), <https://www.census.gov/quickfacts/fact/table/collincountytexas,TX/PST045219> (accessed on Jan. 4, 2022).

In its response to the petition, Marilee SUD contends that the application should be denied. Staff will address those arguments here.

A. Receiving Water Service

Marilee SUD argues that Central Frisco has not met its burden of proof to provide verified statements of facts required under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D) because it did not provide any statement of facts and only provided a “conclusory one-page affidavit” stating that the requested property is not receiving service.² However, in Docket No. 50404, on October 12, 2021, the Commission granted the release of a tract of land from Marilee SUD’s CCN area, partly on the basis of an affidavit that is, in relevant part, identical to the affidavit filed in this docket.³ Staff therefore recommends that Central Frisco has met its burden of proof under TWC § 13.2541 and 16 TAC § 24.245(h)(3)(D).

Marilee SUD further asserts that Central Frisco cannot meet its burden of proof, because the requested area is receiving service. Marilee SUD’s argument hinges on the fact that Marilee SUD has multiple waterlines that do and can provide water services.⁴ However, Central Frisco requests release of 197 acres, an area which does not include meters or service lines. In Docket No. 50404, the Commission rejected the same argument, in which Marilee SUD conflated the petitioner’s total property with the release property, arguing that the location of meters and lines on the total property made release inappropriate.⁵ The Commission approved the release of the property from Marilee SUD’s certificated service area.

Staff recommends that these elements are not sufficient to meet the standard of “receiving” water service. To receive water service, a retail water utility must have “facilities or lines committed to providing water to the particular tract or has performed acts or supplied anything to the particular tract”⁶

² Marilee Special Utility District’s Verified Response to Petition for Expedited Release from Its Water CCN No. 10150 at 6 (Dec. 29, 2021) (Response).

³ *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD 2012 Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 50404, Petition at Exhibit A (Jan. 2, 2020) (Deason Petition); *Id.*, Order (Oct. 12, 2021).

⁴ Response at 7.

⁵ Deason Petition at 8; *Id.*, Order at Conclusion of Law No. 9.

⁶ *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d. 130, 140 (Tex. App. - Austin 1014, pet. denied); *Petition of LGI Homes-Texas, LLC to Amend Bolivar Water Supply Corporation's Water Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 49433, Findings of

The water lines running through and adjacent to the property have not been shown to be committed to providing water to the particular tract. Through its various responses, Marilee SUD has not demonstrated that these water lines are committed to the requested area. In *Crystal Clear*, the CCN holder raised the issue of existing water lines and facilities.⁷ The court looked to whether those lines or facilities were constructed for the purpose of providing water to the property in question. Finding that the facilities were constructed to serve the greater area, and not the particular property, the court determined that the facilities were not committed to the particular tract of land, and therefore, the property in question was not receiving service.⁸ Similarly, Marilee SUD does not demonstrate that the water lines were installed for the purpose of providing water to the requested area. As such, they cannot be considered to be committed to the particular property and the requested area is not, therefore, receiving water service from Marilee SUD. Accordingly, Staff recommends that the requested area is not receiving water service.

B. Marilee’s Federal Debt

Marilee SUD states that it consolidated with Mustang Special Utility District (Mustang SUD) on November 2, 2021 and that the two districts are in the 90-day statutory period required to settle the affairs of the districts.⁹ Marilee SUD asserts that Mustang SUD was indebted to the United States of America Department of Agriculture (USDA), Rural Utilities Service, which purchased bonds from Mustang SUD in 2016 in the amount of \$2,442,000 and 2018 in the amount of \$1,000,000.¹⁰ Marilee SUD states that it assumed Mustang SUD’s federal indebtedness when the two districts were consolidated and asserts that releasing the requested area would impair its ability to service the debt on the Water and Wastewater Guaranteed loan of \$1,553,000 that was approved by the United States Department of Agriculture (USDA) on July 12, 2021.¹¹ In its response, Marilee SUD states that, under the Consolidated Farm and Rural Development Act of 1961 and 7 U. S. Code § 1926(b), “it is prohibited by federal law to ‘curtail or limit’ the service

Fact Nos. 17-18 (Mar. 2, 2020); *Petition of Frost Bank National Bank as Trustee of the Freeman Educational Foundation to Amend the City of San Marcos’ Water Certificate of Convenience and Necessity in Hays County by Expedited Release*, Docket No. 49366, Findings of Fact Nos. 17-18 (Dec. 13, 2019).

⁷ *Crystal Clear*, 449 S.W.3d at 140.

⁸ *Id.*

⁹ Response at 9.

¹⁰ *Id.*

¹¹ *Id.*

area of a USDA debtor.”¹² Marilee SUD claims that, because it can show federal indebtedness and the physical ability to serve a portion of Central Frisco’s total property, the protections of 7 U.S.C. § 1926(b) prohibit the Commission from granting the release of the proposed area.

Staff recommends that Marilee SUD’s claim of protection under 7 U.S.C. § 1926(b) is moot. The TWC explicitly states that “[t]he utility commission may not deny the petition based on the fact that the certificate holder is a borrower under a federal loan program.”¹³ While a federal district court had previously held that 7 U.S.C. § 1926(b) preempted TWC § 13.2541 (formerly, TWC § 13.254(a-5) and (a-6)), that decision has been vacated by the Fifth Circuit.¹⁴ Further, the Fifth Circuit decision in *Green Valley Special Utility District v. City of Schertz* specifically dismissed Green Valley SUD’s preemption claim and determined that the court lacked jurisdiction to consider such a claim.¹⁵ Absent any federal court ruling on preemption, Staff’s recommendation must comply with state law. As such, Staff’s recommendation does not take Marilee SUD’s federally indebted status into consideration.

II. CONCLUSION

Staff respectfully requests the entry of an order consistent with the foregoing recommendations.

¹² *Id.* at 7.

¹³ TWC § 13.2541(d).

¹⁴ *Crystal Clear Special Util. Dist. v. Marquez*, No. 19-50556 (5th Cir. Nov. 6, 2020) (per curiam).

¹⁵ *Green Valley Special Util Dist. v. City of Schertz*, 969 F. 3d 460, 411 and 418 (5th Cir. Aug. 1, 2020) (en banc).

Dated: January 21, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 52534

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 21, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Mildred Anaele
Mildred Anaele

Public Utility Commission of Texas

Memorandum

TO: Mildred Anaele, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: January 21, 2022

RE: Docket No. 52534 – *Petition of Central Frisco, LTD. to Amend Marilee Special Utility District’s Certificate of Convenience and Necessity in Collin County by Expedited Release*

On September 8, 2021, Central Frisco, LTD. (Central Frisco) filed a petition for streamlined expedited release from Marilee Special Utility District’s (Marilee SUD) water certificate of convenience and necessity (CCN) No. 10150 in Collin County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Central Frisco asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Collin County, which is a qualifying county.

Gary Horton, Infrastructure Division, determined that the map and digital data are sufficient for determining the location of the tract of land considered for streamlined expedited release is located within Marilee SUD’s water CCN. Furthermore, Central Frisco provided a warranty deed confirming ownership of the tract of land within Marilee SUD’s certificated service area. In addition, Central Frisco submitted a sworn affidavit attesting that the property was not receiving water service from the CCN holder.

Based on the mapping review by Mr. Horton it was established:

The landowner’s total property is approximately 451 acres. The tract of land considered for release is approximately 197 acres, of which approximately 196.5 acres overlap Marilee SUD (CCN No. 10150) and are to be decertified from CCN No. 10150.

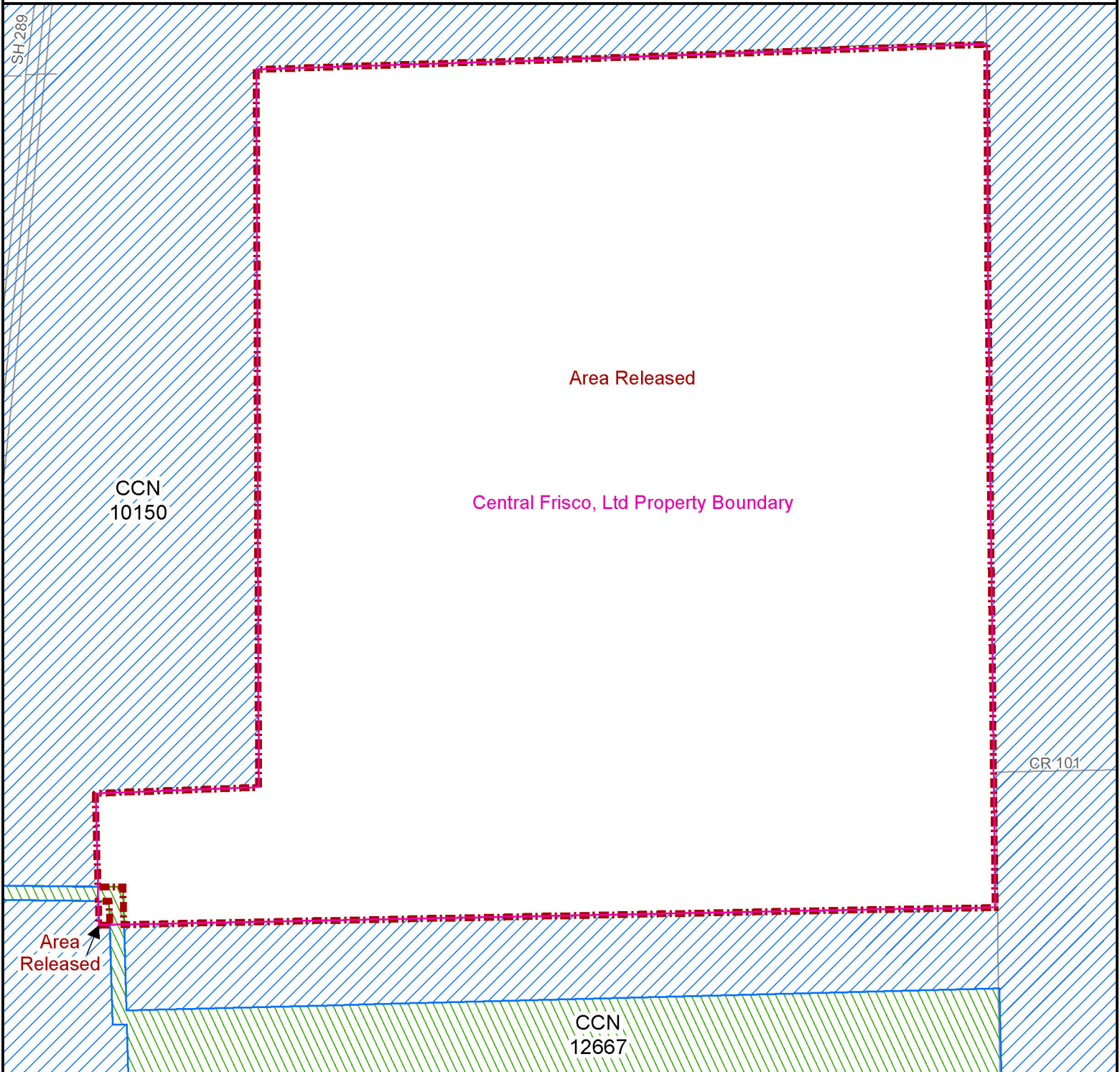
Marilee SUD requested to intervene. Marilee SUD claims the property is receiving water service from the District, and that decertifying the requested area will curtail and limit the district’s ability to service its Federal debt.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Central Frisco has met the Commission’s requirements to allow for the release of the tract of land from Marilee SUD’s

CCN No. 10150. Therefore, I recommend approval of the petition. Enclosed is a final map and certificate for Commission approval.



Additionally, I recommend that a final map and certificate be provided to the CCN holder.

Marilee Special Utility District
Portion of Water CCN No. 10150
PUC Docket No. 52534
Petition by Central Frisco, Ltd. to Amend
Marilee 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

-  10150 - Marilee SUD
-  12667 - City of Celina

-  Area Released
-  Property Boundary

0 250 500
Feet



Map by: Komal Patel
Date: January 19, 2022
Project: 52534MarileeSUD.mxd



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. 52534 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.