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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. 52534** – *Petition of Central Frisco, Ltd. to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*

DATE: August 2, 2022

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 August 12, 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. 52534

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

This Order addresses the petition of Central Frisco, Ltd. 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 denies the petition.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Central Frisco is a Texas limited partnership registered with the Texas secretary of state under filing number 11665310.

CCN Holder

2. Marilee SUD is 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.

Petition, Supplemental Filings, and Amended Petition

4. 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.
5. The petition includes an affidavit, dated September 7, 2021, of Gregg Allen, president of Eland Energy, Inc., a subsidiary of Central Frisco; general location and detailed maps; metes-and-bounds descriptions; and two special warranty deeds with vendor's liens, effective February 20, 2008.

6. On October 8, 2021, the petitioner filed a supplement to the application, which included high resolution and full-sized maps.
7. On November 3, 2021, the petitioner filed a supplement to the application, which included a general location map, a detailed map, a metes-and-bounds description of the tract of land, and shapefiles.
8. In Order No. 3 filed on December 10, 2021, the administrative law judge (ALJ) found the petition, as supplemented, administratively complete.
9. On June 17, 2022, the petitioner filed its first amended petition.

Notice

10. The petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on September 8, 2021.
11. In Order No. 3 filed on December 10, 2021, the ALJ found the notice sufficient.

Intervention and Response to the Petition

12. In Order No. 2 filed on October 15, 2021, the ALJ granted the CCN holder's motion to intervene.
13. On December 29, 2021, the CCN holder filed a response to the petition, which includes an affidavit, dated December 22, 2021, 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 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 December 22, 2021, of Eddy Daniel, 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 December 28, 2021, of Chris Boyd, general manager of Mustang Special Utility District; an active contests options list dated November 2, 2021; and a cumulative results report for a Mustang SUD election held on November 2, 2021, dated November 9, 2021.

The Tract of Land

14. The petitioner owns property in Collin County that is approximately 451 acres.
15. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 197 acres.
16. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

17. The petitioner acquired the property by two special warranty deeds with vendor's liens dated February 20, 2008.

Qualifying County

18. Collin County abuts Dallas County and has a population greater than 47,500.
19. Dallas County has a population of at least one million.

Water Service

20. On December 29, 2021, the CCN holder filed the affidavit of Eddy Daniel, engineer of record for the CCN Holder, attesting that the CCN holder maintains a 2½-inch waterline and two inactive service connections within the boundaries of the tract of land on the east side.
21. The 2½ inch line ends in two inactive meters.
22. Each of the two inactive meters are capable of being re-activated.
23. On June 17, 2022, petition filed a copy of its Request to Discontinue Service, effective February 16, 2018, as an attachment to petitioner's first amended petition.
24. The CCN holder terminated service the tract of land in response to petitioner's request.
25. On June 17, 2022, petitioner filed the affidavit of Leah Stout, employee of the petitioner, as an attachment to petitioner's first amended petition.
26. In her affidavit, Ms. Stout acknowledged the existence of the southern-most line and meter.
27. The CCN holder owns and operates a six-inch waterline running parallel to, but outside of, the northern boundary of the tract of land, a six-inch waterline running parallel to, but outside of, the eastern boundary of the of the tract of land, and a six-inch waterline, running southwest to northeast, outside the western side of 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.
29. The CCN holder has committed or dedicated facilities or lines to providing water service to the tract of land for which streamlined expedited release is sought.
30. The CCN holder has performed acts or supplied things of value to the tract of land for which streamlined expedited release is sought.

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. Central Frisco failed to demonstrate that the tract of land it seeks to decertify by streamlined expedited release 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 Commission processed the petition in accordance with the TWC and Commission rules.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission denies the petition of Central Frisco to remove its 197-acre tract of land from Marilee SUD's water CCN number 10150 in Collin County.
2. 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

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