



Filing Receipt

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DOCKET NO. 52639

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| PETITION OF CR FARMS, LLC TO | § | PUBLIC UTILITY COMMISSION |
| AMEND TARKINGTON SPECIAL | § | |
| UTILITY DISTRICT'S CERTIFICATE | § | OF TEXAS |
| OF CONVENIENCE AND NECESSITY | § | |
| IN LIBERTY COUNTY BY EXPEDITED | § | |
| RELEASE | § | |

**COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION AND
REQUEST FOR PROPOSED ORDER**

On September 27, 2021, CR Farms, LLC (CR Farms) filed a petition for streamlined expedited release from Tarkington Special Utility District's (Tarkington SUD) water Certificate of Convenience and Necessity (CCN) No. 11448 under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h). CR Farms asserts that the land to be released is at least 25 contiguous acres, is not receiving water service, and is located in Liberty County, which is a qualifying county.¹ According to the 2010 Census,² Liberty County has a population of 75,643.³ Additionally, Liberty County is adjacent to Harris County, which has a population of 4,092,459.⁴ CR Farms filed supplemental information on October 5, 2021 and November 15, 2021.

On December 16, 2021, the administrative law judge (ALJ) filed Order No. 3, establishing a deadline of January 20, 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

Staff has reviewed the petition and supplemental information and, as detailed in the attached memorandum from Pai Liu, Infrastructure Division, recommends that the petition satisfies the requirements of TWC § 13.2541 and 16 TAC § 24.245(h). On January 6, 2022,

¹ TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).

² See Tex. Gov't Code § 2058.0021 for applicability of 2010 Census in determination whether the land is in a qualifying county.

³ U.S. Census Bureau, Census Data for Liberty County, QuickFacts Liberty County, Texas (2010) <https://www.census.gov/quickfacts/fact/table/libertycountytexas/POP010210> (last accessed Jan. 18, 2022)

⁴ U.S. Census Bureau, Census Data for Harris County, QuickFacts Harris County, Texas (2020) <https://www.census.gov/quickfacts/fact/table/harriscountytexas/POP010210> (last accessed Jan. 18, 2022).

Tarkington SUD filed a limited response to the petition, stating that it did not oppose the petition, pursuant to the June 15, 2021 “Agreement Concerning Certificate of Convenience and Necessity” (Agreement) between CR Farms and Tarkington SUD, attached as Exhibit D to the petition. Accordingly, Staff recommends that the petition for streamlined expedited release be approved. Further, the final water CCN map and certificate are attached to this filing. Staff recommends that the final map and certificate be provided to Tarkington SUD and for Tarkington SUD to file a certified copy of the CCN map and a boundary description of the CCN service area in the Liberty County Clerk's office, as required under TWC § 13.257(r)-(s).

Additionally, Staff notes that pursuant to the June 15, 2021 Agreement, CR Farms and Tarkington SUD agreed on compensation in the amount of \$337,423.80, calculated on the basis that initially there was an estimated 5,635 acres of property owned by CR Farms within Tarkington SUD's CCN. As such, CR Farms and Tarkington SUD agreed to the price of \$59.88 per acre. Staff recommends that this Agreement be taken into consideration for the Commission's subsequent order, in the event streamlined expedited release is granted, and that CR Farms and Tarkington SUD be ordered to make a joint filing, either confirming the amount of compensation pursuant to the Agreement or providing an update to the amount of compensation upon which CR Farms and Tarkington SUD have subsequently agreed, if applicable.

II. REQUEST FOR PROPOSED ORDER

On January 12, 2022, the Commission filed memoranda in Docket Nos. 50404, 51545, and 52090 recommending that the Commission grant rehearing for each for the limited purpose of modifying certain language to be more consistent with statutory language and to add several conclusions of law that should be standard in the Commission's order for streamlined expedited release proceedings.⁵ Specifically, the memoranda stated that the term *tract of land* as used in TWC § 13.2541(b) and as defined in 16 TAC § 24.3(38) refers to the area being released from a certificated service area, that the orders currently use the term to refer not only to the statutory

⁵ *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, Commissioner Glotfelty's Memo (Jan. 12, 2022); *Petition of Compass Datacenters DFW III, LLC to Amend Rockett Special Utility District's Certificate of Convenience and Necessity in Ellis County by Expedited Release*, Docket No. 51545, Commissioner Glotfelty's Memo (Jan. 12, 2022); *Petition of Redbird Development, LLC to Amend Dobbin Plantersville Water Supply Corporation's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 52090, Commissioner Glotfelty's Memo (Jan. 12, 2022).

tract of land being released in each proceeding but also to the larger area of property owned by the landowner, and that the orders should be modified to use the statutory term *tract of land* in contrast to the landowner's total property.⁶ Accordingly, on January 14, 2022, the Commission filed an Order on Rehearing in each docket to modify the language of the orders in accordance with the memoranda.⁷ Specifically, under the Findings of Fact section titled *The Tract of Land*, the orders used the term *tract of land* to refer to the portion of the petitioner's overall property that is sought for release and located within the CCN holder's certificated service area.⁸ Additionally, the orders concluded that 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.⁹

Staff has concerns that this may cause issues with the interpretation of the requirements in TWC § 13.2541(b). Specifically, by using the term *tract of land* to only refer to the release area, the conclusion of law referenced above can be interpreted to mean that the release area is required to be at least 25 acres and located in a qualifying county, in addition to not receiving service from the CCN holder. Staff agrees that the release area cannot be receiving service, but does not agree that the release area is required to be at least 25 acres. Relevantly, the Commission previously confirmed its interpretation of the TWC § 13.2541 requirements in Project No. 50028, in response to public comments that were made on the corresponding proposed Commission substantive rule, 16 TAC § 24.245(h)(1)(C).¹⁰ Specifically, 16 TAC § 24.245(h)(1) states that the owner of a tract of land may petition the Commission for streamlined expedited release of all or a portion of the

⁶ *Id.*

⁷ Docket No. 50404, Order on Rehearing (Jan. 14, 2022); Docket No. 51545, Order on Rehearing (Jan. 14, 2022); Docket No. 52090, Order on Rehearing (Jan. 14, 2022).

⁸ Docket No. 50404, Order on Rehearing at Finding of Fact Nos. 33-34 (Jan. 14, 2022); Docket No. 51545, Order on Rehearing at Finding of Fact Nos. 30-31 (Jan. 14, 2022); Docket No. 52090, Order on Rehearing at Finding of Fact Nos. 17-18 (Jan. 14, 2022).

⁹ Docket No. 50404, Order on Rehearing at Conclusion of Law No. 7 (Jan. 14, 2022); Docket No. 51545, Order on Rehearing at Conclusion of Law No. 7 (Jan. 14, 2022); Docket No. 52090, Order on Rehearing at Conclusion of Law No. 7 (Jan. 14, 2022).

¹⁰ *Revision of Rules and Forms Relevant to Expedited Release*, Project No. 50028, Order Adopting Repeal of 16 TAC § 24.245 and New Rule 16 TAC § 24.245 as Approved at the June 12, 2020 Open Meeting at 6-7 (Jun. 12, 2020).

tract of land from the current CCN holder's certificated service area if all the following conditions are met:

- (A) the tract of land is at least 25 acres in size;
- (B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and
- (C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county.

In Project No. 50028, the Texas Association of Water Companies (TAWC) commented that the rule should require that the entire 25 acres should be required to be in a targeted CCN and qualifying county to be eligible for removal.¹¹ In response, the Commission declined to modify the rule as proposed by TAWC, as the provision was in the current Commission rule and reflected the Commission's interpretation of the TWC § 13.2541 requirements.¹² Therefore, pursuant to 16 TAC § 24.245(h)(1) and the Commission's previously confirmed interpretation of the rule, the release area is not required to be at least 25 acres. Accordingly, Staff interprets the modified orders in Docket Nos. 50404, 51545, and 52090 to potentially confuse the Commission's interpretation of this specific requirement.

As such, Staff respectfully requests that, in the event streamlined expedited release is granted in this docket, the ALJ propose an order for the Commission's review, such that Staff is given an opportunity to file comments or exceptions.

III. CONCLUSION

For the reasons detailed above, Staff recommends that the petition be approved and respectfully requests the entry of a proposed order for the Commission's review, such that Staff is given an opportunity to file comments or exceptions.

¹¹ *Id.*

¹² *Id.* at 7.

Dated: January 20, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 on January 20, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles
Scott Miles

Public Utility Commission of Texas

Memorandum

TO: Scott Miles, Attorney
Legal Division

FROM: Pai Liu, Infrastructure Analyst
Infrastructure Division

DATE: January 20, 2022

RE: Docket No. 52639 – *Petition of CR Farms, LLC to Amend Tarkington Special Utility District's Certificate of Convenience and Necessity in Liberty County by Expedited Release*

On September 27, 2021, CR Farms, LLC (CR Farms) filed a petition for streamlined expedited release from Tarkington Special Utility District's (Tarkington SUD) water Certificate of Convenience and Necessity (CCN) No. 11448 in Liberty County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). CR Farms asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Liberty County, which is a qualifying county.

Gary Horton, Infrastructure Division, determined the maps and digital data are sufficient for determining the location of the tract of land considered for streamlined expedited release is located within Tarkington SUD's water CCN. Furthermore, CR Farms provided a warranty deed confirming ownership of the tract of land within Tarkington SUD's certificated service area. In addition, CR Farms 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 determined that the landowner's total property is approximately 10,679 acres, which consists of two non-contiguous tracts owned by CR Farms, each of which meet the 25-acre requirement. Specifically, the first tract of land is approximately 7,918 acres, of which approximately 5,421 acres overlap and are to be decertified from Tarkington SUD's CCN No. 11448. The second tract of land is approximately 2,761 acres, of which approximately 62 acres overlap and are to be decertified from Tarkington SUD's CCN No. 11448.

Tarkington SUD did not request to intervene.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), CR Farms has met the Commission's requirements to allow for the release of the tract of land from Tarkington SUD's CCN No. 11448. 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 Tarkington SUD.



Public Utility Commission of Texas

By These Presents Be It Known To All That

Tarkington 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, Tarkington Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 11448

to provide continuous and adequate water utility service to that service area or those service areas in Liberty County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 52639 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 Tarkington 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.

Tarkington Special Utility District
Portion of Water CCN No. 11448
PUC Docket No. 52639

Petition by CR Farms, LLC to Amend

Tarkington Special Utility District's CCN by Streamlined Expedited Release in Liberty County

Water CCN

-  11448 - Tarkington SUD
-  13217 - City of Cleveland
-  12566 - South Cleveland WSC
-  11612 - Quadvest LP
-  12671 - Utilities Investment Company Inc

-  Area Released
-  Property Boundary

