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Received - 2022-04-25 11:13:43 AM
Control Number - 52639
ItemNumber - 21

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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. 52639** – *Petition of McCart St, LLC to Amend Bolivar Water Supply Corporation's Certificate of Convenience and Necessity in Denton County by Expedited Release*

DATE: April 25, 2022

The Commission will consider the enclosed Revised Proposed Order in this docket at a future open meeting at the Commission's office, 1701 North Congress Avenue, Austin, Texas.

On April 22, 2022, Commission Staff filed a new proposed map in this matter. The map was updated to reflect the changed circumstances caused by the issuance of orders granting streamlined expedited release in Docket Nos. 52641¹ and 52642.² This Revised Proposed Order has been issued to incorporate the new map.

By copy of this memo, the parties to this proceeding are being served with the Revised Proposed Order.

/lsw

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¹ *Petition of CR Farms, LLC to Amend South Cleveland Water Supply Corporation's Certificate of Convenience and Necessity in Liberty County by Expedited Release*, Docket No. 51641, Order No. 6, Granting Streamlined Expedited Release (Apr. 8, 2022).

² *Petition of CR Farms, LLC to Amend Quadvest, LP's Certificates of Convenience and Necessity in Liberty County by Expedited Release*, Docket No. 52642, Order No. 6, Granting Streamlined Expedited Release (Mar. 1, 2022).



DOCKET NO. 52639

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	§	

REVISED PROPOSED ORDER

This Order addresses the petition of CR Farms, LLC for streamlined expedited release of multiple portions of two tracts of land in Liberty County from Tarkington Special Utility District's service area under certificate of convenience and necessity (CCN) number 11448. For the reasons stated in this Order, the Commission releases the portions of the two tracts of land from Tarkington's certificated service area. In addition, the Commission amends Tarkington's CCN number 11448 to reflect the removal of the portions of the two 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 Tarkington, which will be addressed by a separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. CR Farms is a Texas limited liability company registered with the Texas secretary of state under filing number 803060340.

CCN Holder

2. Tarkington is a special utility district operating under chapter 65 of the Texas Water Code (TWC).
3. Tarkington holds water CCN number 11448 that obligates it to provide retail water service in its certificated service area in Liberty County.

Petition

4. On September 27, 2021, the petitioner filed a petition for streamlined expedited release of multiple portions of two tracts of land from the CCN holder's service area under CCN number 11448.
5. The petition includes an affidavit, dated September 23, 2021, of John Harris, president of T-Rex Management, Inc., which is the petitioner's sole manager; maps; a special warranty deed with timber reservation and with vendor's lien, dated August 19, 2020; an agreement concerning certificate of convenience and necessity dated June 15, 2021; and digital mapping data.
6. On October 5, 2021, the petitioner supplemented the application with digital mapping data.
7. On November 15, 2021, the petitioner filed a supplement in support of the application. The supplement included maps; a special warranty deed dated September 9, 2020; and digital mapping data.
8. In Order No. 3 filed on December 16, 2021, the administrative law judge (ALJ) found the petition, as supplemented, administratively complete.

Notice

9. On September 27, 2021, the petitioner sent a copy of the petition, by certified mail, return receipt requested, to the CCN holder.
10. In Order No. 3 filed on December 16, 2021, the ALJ found the notice sufficient.

Response to the Petition

11. On January 5 and 6, 2022, the CCN holder filed a response to the petition, which included an affidavit, dated January 6, 2022, of Billy V. Chapman, III, the CCN holder's general manager.

The Tracts of Land

12. Because the petitioner is seeking streamlined expedited release of acreages from two non-contiguous tracts of land, the eligibility for release from each tract must be evaluated separately.

The 7,917.805-Acre Tract of Land

13. The petitioner owns a tract of land in Liberty County that is approximately 7,917.805 acres.
14. The portion of the tract of land for which the petitioner seeks streamlined expedited release is approximately 5,421 acres and is located within the CCN holder's certificated service area.

Ownership of the 7,917.805-Acre Tract of Land

15. The petitioner acquired its 7,917.805-acre tract of land through two transactions.
16. The petitioner acquired approximately 7,894.370 acres of the tract of land by a special warranty deed with timber reservation and with vendor's lien, dated August 19, 2020.
17. The petitioner acquired the remainder of the tract of land, approximately 23.435 acres, by a special warranty deed dated September 9, 2020.

Water Service on the 7,917.805-Acre Tract of Land

18. The 7,917.805-acre tract of land is not receiving actual water service from the CCN holder or any other water utility.
19. The petitioner has not requested that the CCN holder provide water service to the 7,917.805-acre tract of land.
20. The petitioner has not paid to the CCN holder any fees or charges to initiate or maintain water service at the 7,917.805-acre tract of land.
21. There are no billing records or other documents indicating an existing account with the CCN holder for the 7,917.805-acre tract of land.
22. The CCN holder has not committed or dedicated any facilities or lines to the 7,917.805-acre tract of land for water service.
23. The CCN holder has no facilities or lines that provide water service to the 7,917.805-acre tract of land.
24. The CCN holder has not performed any acts for or supplied anything to the 7,917.805-acre tract of land.

The 2,761.381-Acre Tract of Land

25. The petitioner owns a tract of land in Liberty County that is approximately 2,761.381 acres.
26. The petitioner seeks streamlined expedited release of three separate portions of the 2,761.381-acre tract of land.
27. The first portion of the 2,761.381-acre tract of land for which the petitioner seeks streamlined expedited release is approximately 18 acres and is located within the CCN holder's certificated service area.
28. The second portion of the 2,761.381-acre tract of land for which the petitioner seeks streamlined expedited release is approximately 32 acres and is located within the CCN holder's certificated service area.
29. The third portion of the 2,761.381-acre tract of land for which the petitioner seeks streamlined expedited release is approximately 12 acres and is located within the CCN holder's certificated service area.

Ownership of the 2,761.381-Acre Tract of Land

30. The petitioner acquired its 2,761.381-acre tract of land by a special warranty deed with timber reservation and with vendor's lien, dated August 19, 2020.

Water Service on the 2,761.381-Acre Tract of Land

31. The 2,761.381-acre tract of land is not receiving actual water service from the CCN holder or any other water utility.
32. The petitioner has not requested that the CCN holder provide water service to the 2,761.381-acre tract of land.
33. The petitioner has not paid to the CCN holder any fees or charges to initiate or maintain water service at the 2,761.381-acre tract of land.
34. There are no billing records or other documents indicating an existing account with the CCN holder for the 2,761.381-acre tract of land.
35. The CCN holder has not committed or dedicated any facilities or lines to the 2,761.381-acre tract of land for water service.

36. The CCN holder has no facilities or lines that provide water service to the 2,761.381-acre tract of land.
37. The CCN holder has not performed any acts for or supplied anything to the 2,761.381-acre tract of land.

Qualifying County

38. Liberty County has a population of more than 47,500 and is adjacent to Harris County.
39. Harris County has a population of at least one million.

Map and Certificate

40. On January 20, 2022, Commission Staff filed its recommendation that included a certificate and map on which it identified the tracts of land and the portions of the tracts of land for which the petitioner seeks streamlined expedited release in relationship to the CCN holder's certificated service area.
41. On April 22, 2022, Commission Staff filed a new map which is updated to reflect the changed circumstances caused by the issuance of orders granting streamlined expedited release in Docket Nos. 52641¹ and 52642.² On the new map, Commission Staff identifies the tract of land in relationship 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 this petition for streamlined expedited release under Texas Water Code (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).

¹ *Petition of CR Farms, LLC to Amend South Cleveland Water Supply Corporation's Certificate of Convenience and Necessity in Liberty County by Expedited Release*, Docket No. 51641, Order No. 6, Granting Streamlined Expedited Release (Apr. 8, 2022).

² *Petition of CR Farms, LLC to Amend Quadvest, LP's Certificates of Convenience and Necessity in Liberty County by Expedited Release*, Docket No. 52642, Order No. 6, Granting Streamlined Expedited Release (Mar. 1, 2022).

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 and 13.2541 and 16 TAC § 24.245(h) 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.
6. Under 16 TAC § 24.245(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 service is irrelevant.
9. A landowner is not required to seek the streamlined expedited release of all of its tract of land.
10. Liberty County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
11. The petitioner owns the 7,917.805-acre tract of land, and the petitioner seeks streamlined expedited release of a portion of the tract through the petition.
12. The petitioner owns the 2,761.381-acre tract of land, and the petitioner seeks streamlined expedited release of three portions of the tract through the petition.
13. Neither tract of land is 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).

14. The petitioner is entitled under TWC § 13.2541(b) to the release of the portions of the tracts of land from the CCN holder's certificated water service area.
15. 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 released portions of petitioner's tracts of land.
16. 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).
17. The Commission processed the petition in accordance with the TWC and Commission rules.
18. 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 Liberty County no later than the 31st day after the date the CCN holder receives this Order.
19. A retail public utility may not under TWC §§ 13.254(d) and 13.2541(a) provide retail water service to the public within the released portions of the tracts 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 portions of the tracts of land identified in the petition from the CCN holder's certificated service area under CCN number 11448.
2. The Commission does not decertify any of the CCN holder's equipment or facilities that may lay on or under the released portions of the tracts of land.
3. The Commission amends CCN number 11448 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 recordings 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. 3. 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

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

