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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	§	

**COMMISSION STAFF'S SUPPLEMENTAL RECOMMENDATION ON
ADMINISTRATIVE COMPLETENESS, NOTICE, AND SEVERANCE, AND
PROPOSED PROCEDURAL SCHEDULE**

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 U.S. Census Bureau, Liberty County has a population of 91,628.² Additionally, Liberty County is adjacent to Harris County, which has a population of 4,731,145.³ CR Farms filed supplemental information on October 5, 2021 and November 15, 2021.

On October 28, 2021, the administrative law judge (ALJ) filed Order No. 2, establishing a deadline of December 15, 2021 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a supplemental recommendation on the administrative completeness of the petition, notice, and whether the petition should be severed into multiple petitions addressing multiple tracts, and to propose a procedural schedule. Therefore, this pleading is timely filed.

I. ADMINISTRATIVE COMPLETENESS

Staff has reviewed the petition and supplemental information and, as detailed in the attached memorandum from Pai Liu, Infrastructure Division, recommends that the petition is

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

² U.S. Census Bureau, Census Data for Liberty County, QuickFacts Liberty County, Texas (2020) <https://www.census.gov/quickfacts/fact/table/libertycountytexas/POP010220>

³ U.S. Census Bureau, Census Data for Harris County, QuickFacts Harris County, Texas (2020) <https://www.census.gov/quickfacts/fact/table/harriscountytexas/POP010220>

administratively complete. Staff's recommendation on administrative completeness is not a comment on the merits of the petition.

II. NOTICE SUFFICIENCY

Under 16 TAC § 24.245(h)(3)(f), a landowner seeking streamlined expedited release must provide proof that a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner submits the petition to the Commission. CR Farms stated and included a certificate of service in its petition that it mailed a copy of the petition to the CCN holder, Tarkington SUD, by certified mail on the day the petition was filed with the Commission. Accordingly, Staff recommends that the notice is sufficient.

III. SEVERANCE

Based on the supplemented petition, the entire tract of land owned by CR Farms is approximately 10,679 acres of land and consists of two separate and non-contiguous tracts of land. Specifically, the first tract consists of approximately 7,918 acres and the second consists of approximately of 2,761 acres. As such, each tract is greater than 25 acres and thus independently qualifies for streamlined expedited release. According to Commission precedent, streamlined expedited release is an option available for *a contiguous tract of land* that is at least 25 acres in size and:

“[T]o constitute a single tract of land under TWC § 13.25(a-5) [now TWC § 13.2541] the property must have common ownership and be contiguous, meaning that all portions of the property must be in uninterrupted physical contact. *A single tract cannot be separated by other property with different ownership, such as road [sic] and railroads, whether owned by governmental entities or private interests.*”⁴

Furthermore, in Docket No. 44667, the Commission found that it was appropriate for the landowner to seek release of three separate and non-contiguous tracts in a single petition.⁵ As such, the Commission concluded that a landowner may request the release of more than one tract

⁴ *Petition of Colorado River Project, LLC to Amend SWWC Utilities, Inc. dba Hornsby Bend Utility's Certificate of Convenience and Necessity in Travis County By Expedited Release*, Docket No. 51166, Order No. 4 Finding Application Administratively Incomplete and Providing an Opportunity to Cure (Sep. 30, 2020) (citing *Petition of SLF IV-114 Assemblage, L.P. to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 44667, Final Order at 5-6 (Sep. 11, 2015)(emphasis added)).

⁵ Docket No. 44667, Final Order at Findings of Fact No. 27.

of land if all of the tracts are in the same certificated area.⁶ Lastly, the Commission concluded that a landowner is not required to request the release of all the landowner's property that is within a certificated area.⁷ The area that CR Farms seeks for streamlined expedited release from Tarkington SUD in this docket is located on both of the non-contiguous tracts, both of which independently qualify for streamlined expedited release. Based on the Commission precedent in Docket No. 44667, Staff recommends that it is appropriate for CR Farms to seek release of area that is within Tarkington SUD's certificated area on both tracts under a single petition in this docket. Therefore, Staff recommends that the petition should not be severed.

IV. PROPOSED PROCEDURAL SCHEDULE

Under 16 TAC § 24.245(h)(7), there is an expedited deadline of 60 days for approval of the requested release that begins once the ALJ issues an order finding a petition administratively complete. Staff recommends that the petition be found administratively complete. Therefore, Staff proposes the following procedural schedule and requests that the ALJ populate the deadlines accordingly when the ALJ issues that order.

Event	Date
Deadline for Tarkington SUD and intervenors to file a response to the administratively complete petition	20 days from the date of the order finding the petition administratively complete
Deadline for Staff's recommendation on final disposition	34 days from the date of the order finding the petition administratively complete
Deadline for petitioner to file a reply to both Tarkington SUD response and Staff's recommendation on final disposition	41 days from the date of the order finding the petition administratively complete
Sixty-day administrative approval of streamlined expedited release	60 days from the date of the order finding the petition administratively complete
<i>In the event streamlined expedited release is granted and petitioner and Tarkington SUD can select an agreed-upon appraiser</i>	
Deadline for petitioner and Tarkington SUD to make a filing stating that they have selected an agreed-upon appraiser	Within 10 days after the Commission approves streamlined expedited release

⁶ *Id.* at Conclusions of Law No. 5.

⁷ *Id.* at Conclusions of Law No. 6; *see also* 16 TAC § 24.245(h)(1).

Deadline for appraiser's report	Within 70 days after the Commission approves streamlined expedited release
Deadline for Commission's final order determining the amount of monetary compensation, if any, owed by petitioner to Tarkington SUD	Within 60 days after appraiser's report
Deadline for petitioner to pay any compensation due to Tarkington SUD	Within 90 days of the Commission's final order on compensation
<i>In the event streamlined expedited release is granted and petitioner and Tarkington SUD are unable to select an agreed-upon appraiser</i>	
Deadline for petitioner and Tarkington SUD to make a filing stating that they have been unable to select an agreed-upon appraiser and affirming that they will pay half of the cost of Commission Staff's appraiser ⁸	Within 10 days after the Commission approves streamlined expedited release ⁹
Deadline for reports from petitioner's appraiser and Tarkington SUD's appraiser	Within 70 days after the Commission approves streamlined expedited release
Deadline for Staff's appraiser's report	Within 100 days after the Commission approves streamlined expedited release
Deadline for Commission's final order determining the amount of monetary compensation, if any, owed by petitioner to Tarkington SUD	Within 60 days after the Commission receives the final appraisal
Deadline for petitioner to pay any compensation due to Tarkington SUD	Within 90 days of the Commission's final order on compensation

V. CONCLUSION

For the reasons detailed above, Staff recommends that the petition be found administratively complete, that the notice be found sufficient, and that the proposed procedural schedule be adopted. Staff respectfully requests the entry of an order consistent with these recommendations.

⁸ TWC § 13.2541(i).

⁹ It is critical for Staff to know as soon as possible after the Commission grants the petition whether Staff needs to secure the services of a third appraiser. If the petitioner and CCN holder are unable to agree, and fail to make this filing, Staff may need additional time to file its appraiser's report.

Dated: December 15, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Rustin Tawater
Managing Attorney

/s/ Scott Miles
Scott Miles
State Bar No. 24098103
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7228
(512) 936-7268 (facsimile)
Scott.Miles@puc.texas.gov

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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 December 15, 2021, 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: December 15, 2021

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.

CR Farms submitted a sworn affidavit attesting that the property was not receiving water service from Tarkington SUD and a warranty deed confirming CR Farms' ownership of the tract of land. Based on the mapping review Gary Horton, Infrastructure Division, the maps submitted on November 15, 2021 are sufficient for determining the location of the tract of land considered for streamlined expedited release is located within Tarkington SUD's water CCN.

Based on the mapping review by Mr. Horton, it was determined that the entire tract of land is approximately 10,679 acres, which consists of two separate and non-contiguous tracts owned by CR Farms. Specifically, the first tract consists of approximately 7,918 acres and the second consists of approximately of 2,761 acres. As such, each tract is greater than 25 acres and thus independently qualifies for streamlined expedited release. Further, each tract is associated with petitions and maps that CR Farms separately filed in Docket Nos. 52641 and 52642. For purposes of the petition in this docket, the area to be released from Tarkington SUD (CCN No. 11448) is approximately 5,483 acres and is located on both tracts owned by CR Farms.

The petition also includes a statement indicating a copy of the petition was sent via certified mail to Tarkington SUD on the date the petition was filed with the Commission.

Based on the mapping review by Mr. Horton and my technical and managerial review of the additional information provided by CR Farms on November 15, 2021, I recommend the petition be deemed administratively complete and accepted for filing.