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DOCKET NO. 53018

PETITION OF MICHAEL D. DRY TO	§	PUBLIC UTILITY COMMISSION
AMEND MONARCH UTILITIES I LP'S	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY IN TARRANT	§	
COUNTY BY STREAMLINED	§	
EXPEDITED RELEASE	§	

**COMMISSION STAFF'S SUPPLEMENTAL RECOMMENDATION ON
ADMINISTRATIVE COMPLETENESS AND NOTICE AND REQUEST FOR
CERTIFICATION OF ISSUE**

On December 22, 2021, Michael D. Dry (Mr. Dry) filed a petition for streamlined expedited release from Monarch Utilities I LP's (Monarch) water Certificate of Convenience and Necessity (CCN) No. 12983 under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h). Mr. Dry asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Tarrant County, which is a qualifying county.

On January 26, 2022, the administrative law judge (ALJ) filed Order No. 2, establishing a deadline of March 25, 2022 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a supplemental recommendation on the administrative completeness of the petition and the sufficiency of notice and to propose a procedural schedule. Therefore, this pleading is timely filed.

I. ADMINISTRATIVE COMPLETENESS

Staff has reviewed the petition and, as detailed in the attached memorandum from Patricia Garcia, Infrastructure Division, recommends that the petition is administratively incomplete. Staff further recommends that Mr. Dry be ordered to cure the deficiencies identified in Ms. Garcia's memorandum by April 22, 2022 and that Staff be given a deadline of May 23, 2022 to file a supplemental recommendation on the administrative completeness of the petition. Staff respectfully requests adoption of these proposed deadlines as some of the noted deficiencies are related to mapping information and Staff's mapping experts may be required to assist Mr. Dry regarding the supplemental mapping information needed to cure the mapping deficiencies and will require at least thirty days to review same.

II. PROCEDURAL SCHEDULE

In accordance with Staff's deficiency recommendation, Staff does not propose a procedural schedule for further processing of the docket at this time. Staff intends to propose a procedural schedule alongside a subsequent recommendation that the petition be found administratively complete.

III. REQUEST FOR CERTIFICATION OF ISSUE

Under 16 TAC § 22.127(a), the ALJ "may certify to the Commission an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law." There are three types of issues that are appropriate for certification: (1) the Commission's interpretation of its rules and applicable statutes; (2) which rules or statutes are applicable to a proceeding; and (3) whether Commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.¹ Staff respectfully recommends that the issue at hand involves the first and third types of issues that are appropriate for certification. Specifically, on February 23, 2022 and pursuant to Order No. 2, Mr. Dry filed supplemental information regarding the ownership deficiencies identified by Ms. Garcia in Staff's previous recommendation on January 24, 2022. Notably, Staff indicated that the tract of land requested for release comprised of four parcels with four different landowners. As such, Staff determined that the tract of land at issue lacked common ownership and that each parcel was its own tract of land under 16 TAC § 24.3(38).

Staff has reviewed Mr. Dry's supplemental filing and the arguments therein and recommends that, to the extent Mr. Dry alternatively requests for a good cause exception in this docket, there is an issue appropriate for certification whether Commission policy should be established or clarified as to a substantive issue of significance to this proceeding. Staff notes that the arguments for how each of the four parcels are under common ownership is a potential issue for certification as to how the Commission interprets its rules, particularly the definitions of a landowner under 16 TAC § 24.3(18) and a tract of land under 16 TAC § 24.3(38), as well as how the Commission interprets those definitions in relation to each other and the Commission's rules for streamlined expedited release dockets under 16 TAC § 24.245(h). However, under Staff's interpretations of the rules, Staff recommends that the parcels are not under common ownership,

¹ 16 TAC § 22.127(b)

but does not oppose this issue being certified to the Commission for the Commission to clarify its interpretations.

On the other hand, Staff recommends that Mr. Dry's request for a good cause exception is more appropriate for certification to the Commission, given the circumstances in this docket in which Mr. Dry is either the sole owner, manager, or trustee of several contiguous tracts of land that are legally owned by different landowners, as that term is defined under 16 TAC § 24.3(18). Specifically, to satisfy the requirements for the tract of land to be under common ownership by a landowner, Mr. Dry could simply re-deed all of the separately deeded tracts to himself to make them one deeded tract and thus qualify for streamlined expedited release in one docket. Staff recommends however that this would be an unnecessary and expensive complication and frustration of the streamlined expedited process, as well as Mr. Dry's own personal and business decisions for having the parcels under different ownership.²

Therefore, Staff respectfully recommends and requests that this matter be certified to the Commission under 16 TAC § 22.127(a). The Commission's guidance would help establish and clarify the substantive ownership issue presented by this docket and give the Commission precedent for similar dockets moving forward, whether the Commission's interpretations are modified or a good cause exception is granted. Under the procedure set forth in 16 TAC § 22.127(c), once the issues are certified to the Commission, parties will have an opportunity to provide briefs to the Commission.

IV. CONCLUSION

For the reasons detailed above, Staff recommends that the petition be found administratively incomplete, that Mr. Dry be ordered to file supplemental information to cure the deficiencies in the petition by April 22, 2022, that Staff be given a deadline of May 23, 2022 to file a supplemental recommendation on the administrative completeness of the petition, and that the ALJ consider Staff's request for certification of an issue to the Commission. Staff respectfully requests the entry of an order consistent with these recommendations.

² 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 (Sep. 11, 2015).

Dated: March 25, 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 March 25, 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: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: March 25, 2022

RE: Docket No. 53018 – *Petition of Michael D. Dry to Amend Monarch Utilities I LP's Certificate of Convenience and Necessity in Tarrant County by Streamlined Expedited Release*

On December 22, 2021, Michael D. Dry (Mr. Dry) filed a petition for streamlined expedited release from Monarch Utilities I LP's (Monarch) water Certificate of Convenience and Necessity (CCN) No. 12983 in Tarrant County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Mr. Dry asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Tarrant County, which is a qualifying county.

Based on the mapping review by Tracy Montes, Infrastructure Division, and my technical review of the information provided by Mr. Dry, I recommend the petition be deemed insufficient for filing and found administratively incomplete.

Petition Content:

The petition and affidavit do not appear to state the same total acreage as conveyed in the deeds. Specifically, there are discrepancies between the acreage in the deeds included as Exhibit 3 in the petition and the acreage for the four tracts of land as indicated by the mapping document included as Exhibit 6 in the supplemental filing. Please include the acreage and complete property description for the fourth deed that is incomplete in Exhibit "A." Please also address the discrepancies and state if Mr. Dry is seeking to release the landowner's total property or only a portion of the tract of land.

Mapping Content:

The maps and digital mapping data submitted with Item 5 on February 23, 2022, are deficient.

Michael D. Dry must submit the following items to resolve the mapping deficiencies:

- A revised detailed map identifying each tract of land conveyed by each deed, in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads.
- Digital mapping data for each tract of land conveyed by each deed, each provided as a single polygon record, in a shapefile (SHP) format, georeferenced in either NAD83

Texas Statewide Mapping System (Meters) or NAD83 Texas State Plane Coordinate System (US Feet).

Staff recommends the Petitioner obtain additional mapping guidance from the PUC's mapping staff, Tracy Montes by email at tracy.montes@puc.texas.gov to resolve the mapping deficiencies.

Staff will need at least 30 days to review the documentation, maps, and digital data provided by Mr. Dry and draft a recommendation.