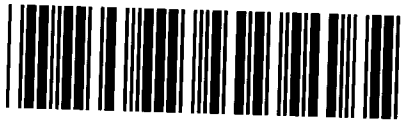


Control Number: 45778



Item Number: 16

Addendum StartPage: 1

DOCKET NO.45778

PETITION OF THE LAMPASAS  
ECONOMIC DEVELOPMENT  
CORPORATION TO AMEND  
KEMPNER WATER SUPPLY  
CORPORATION'S CERTIFICATE  
OF CONVENIENCE AND  
NECESSITY IN LAMPASAS  
COUNTY BY EXPEDITED RELEASE

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**COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Order No. 3 and Recommendation on Final Disposition. The previously filed Recommendation on Final Disposition inadvertently left off pages 12 – 13. Attached is the complete filing of Commission Staff's Recommendation on Final Disposition.

**DOCKET NO. 45778**

**PETITION OF THE LAMPASAS  
ECONOMIC DEVELOPMENT  
CORPORATION TO AMEND  
KEMPNER WATER SUPPLY  
CORPORATION'S CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN  
LAMPASAS COUNTY BY  
EXPEDITED RELEASE**

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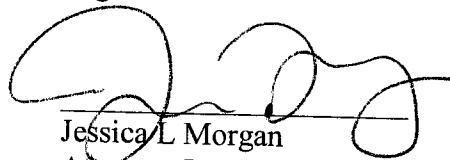
**PUBLIC UTILITY COMMISSION  
OF TEXAS**

**COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION**

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Karen S. Hubbard  
Managing Attorney  
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**DATE: MAY 16, 2016**

## TABLE OF CONTENTS

I.	BACKGROUND .....	3
II.	RECOMMENDATION ON FINAL DISPOSITION .....	3
A.	TRACT OF LAND AT LEAST 50 ACRES NOT IN A PLATTED SUBDIVISION.....	4
B.	WRITTEN REQUEST FOR SERVICE .....	4
C.	TIME TO REVIEW AND RESPOND .....	8
D.	ABILITY OF CERTIFICATE HOLDER .....	9
E.	ABILITY OF ALTERNATE PROVIDER.....	10
III.	RECOMMENDATION ON COMPENSATION .....	12
IV.	CONCLUSION .....	12

**DOCKET NO. 45778**

<b>PETITION OF THE LAMPASAS</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>ECONOMIC DEVELOPMENT</b>	<b>§</b>	
<b>CORPORATION TO AMEND</b>	<b>§</b>	
<b>KEMPNER WATER SUPPLY</b>	<b>§</b>	
<b>CORPORATION'S CERTIFICATE OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>LAMPASAS COUNTY BY</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	

**COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Order No. 3 and Recommendation on Final Disposition.

**I. BACKGROUND**

On March 29, 2016, Lampasas Economic Development Corporation (LEDC) filed a petition for expedited release pursuant to Tex. Water Code Ann. § 13.254(a-1) (TWC) and 16 Tex. Admin. Code § 24.113(b) (TAC), from Kempner Water Supply Corporation's (Kempner WSC) water certificate of convenience and necessity (CCN) No. 10456 in Lampasas County. On April 21, 2016, Kempner WSC filed a Request for Finding that the Petition is Administratively Incomplete. On April 26, 2016, LEDC amended its petition and filed a Response to Kempner WSC. On April 28 and May 9, 2016, Kempner WSC filed additional responses to LEDC's petition. On May 2, 2016, the Administrative Law Judge (ALJ) issued Order No. 2 granting Kempner WSC's Motion to Intervene.

On May 2, 2016, the ALJ issued Order No. 3 finding the petition administratively complete and adopting a procedural schedule. Order No. 3 required Staff to file a recommendation on final disposition by May 16, 2016. Therefore, this Recommendation is timely filed.

**II. RECOMMENDATION ON FINAL DISPOSITION**

Staff reviewed LEDC's petition, amended petition, Kempner WSC's responses, and LEDC's response to Kempner WSC and finds it meets the requirements of TWC § 13.254(a-1) and 16 TAC § 24.113(b). Based on the attached memorandum (Attachment A) of Elisabeth English, in the Commission's Water Utilities Division, Staff recommends approval of the

petition, including the attached final map (Attachment B) and CCN certificate (Attachment C). As discussed below, LEDC's petition, as amended, provided adequate information to demonstrate that the approximately 151 acre area satisfies the requirements of TWC § 13.254(a-1) and 16 TAC § 24.113(b) such that the area should be released from Kempner WSC's certificated area pursuant to TWC § 13.254(a-3).

#### **A. Tract of Land at Least 50 Acres not in a Platted Subdivision**

Pursuant to TWC § 13.254(a-1), a tract of land at least 50 acres not in a platted subdivision actually receiving water or sewer service is eligible for release from a CCN. LEDC requests approximately 151 acres be released from Kempner WSC's certificated area.<sup>1</sup> The area is over 50 acres and not receiving service in a platted subdivision.<sup>2</sup> LEDC provided warranty deeds confirming ownership of the proposed area.<sup>3</sup> In its amendment to the petition, LEDC removed approximately 2 acres owned by West Texas Gas Fuels, Inc. (WTG Fuels) from the proposed area for release.<sup>4</sup> Kempner WSC does not dispute that the tract of land is at least 50 acres and is not in a platted subdivision actually receiving water or sewer service.<sup>5</sup> Therefore, Staff recommends that the Commission find that the proposed area, as modified by the amendment to the petition, is eligible for release from Kempner WSC's certificated area.

#### **B. Written Request for Service**

Pursuant to TWC § 13.254(a-1)(1), the petitioner must demonstrate it has made a written request for service identifying the area for service, timeframe for service, level and manner of service, approximate cost for the alternative provider to provide the same level of service, flow and pressure requirements and specific infrastructure needs, and any additional information requested reasonably related to the determination of capacity or cost for providing service. In support of its petition, LEDC provided copies of the correspondence it believes constitute a

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<sup>1</sup> The Lampasas Economic Development Corporation's Petition for Expedited Release at 1 (March 29, 2016) (Petition).

<sup>2</sup> Petition at Exhibit 1, Affidavit of Kathi Masonheimer, ¶ 4-5.

<sup>3</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix B-1, B-2, and B-3.

<sup>4</sup> The Lampasas Economic Development Corporation's First Amendment to Petition for Expedited Release at 1 (April 26, 2016).

<sup>5</sup> Kempner WSC disputes the inclusion of the 2 acres owned by WTG Fuels. However, that acreage was removed from the petition in LEDC's amendment to the petition.

written request for service.<sup>6</sup> The letters from LEDC to Kempner WSC identify the area for service by including a map, the timeframe for service, level and manner of service needed, approximate cost for the City of Lampasas to provide the same level of service, the flow and pressure requirements, and specific infrastructure needs. Further, it responded to Kempner WSC's requests for additional information with follow up correspondence.<sup>7</sup> Kempner WSC asserts LEDC's letters do not constitute a written request for service.<sup>8</sup> For the reasons discussed below, Staff recommends the Commission find LEDC's letters constitute a written request for service pursuant to TWC § 13.254(a-1)(1).

*1. Area to be served*

A written request for service must identify "the area for which service is being sought."<sup>9</sup> In its December 11, 2015 letter, LEDC provided a map identifying the approximately 151 acre business park for which it was seeking service.<sup>10</sup> In addition, LEDC provided the deeds for the proposed area as attachments to its January 14, 2016 letter.<sup>11</sup> Kempner WSC asserts the map attached to the letter did not accurately describe the area to be served because the map included a two acre tract not owned by LEDC.<sup>12</sup> However, LEDC acknowledged in both letters the request for service included the 2 acres owned by WTG Fuels and identified that the owner of the two acres is seeking service as well.<sup>13</sup> LEDC's letters also identified the area for service. The fact that two of the acres for which service was requested are ineligible for release does not negate LEDC's identification of the area to be served. Therefore, Staff recommends the Commission find LEDC adequately identified the area to be served.

*2. Timeframe for service*

Pursuant to TWC § 13.254(a-1)(1)(B), the written request must identify the timeframe for service. LEDC asserts service is needed in 90 days to have utilities immediately available to

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<sup>6</sup> Petition at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-1, C-2, C-3, C-4, C-5.

<sup>7</sup> *Id.*

<sup>8</sup> Kempner Water Supply Corporation's Response to the LEDC's Petition at 4-7 (April 28, 2016) (Kempner WSC's Response).

<sup>9</sup> TWC § 13.254(a-1)(1)(A).

<sup>10</sup> Petition at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-1.

<sup>11</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-3.

<sup>12</sup> Kempner WSC's Response to the LEDC's Petition at 4.

<sup>13</sup> Petition at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-1 and C-3.

occupants of the soon to be developed business park.<sup>14</sup> LEDC claims a lack of utilities are an impediment to effectively market and develop the proposed area.<sup>15</sup> Kempner WSC challenges the reasonableness of the timeframe requested by LEDC because the proposed area has no current or prospective customers.<sup>16</sup> The reasonableness of the timeframe is not a factor required by the statute. LEDC, as the petitioner, is only required to identify “the timeframe within which service is needed.” LEDC identified a need for service in 90 days. Thus, Staff recommends the Commission find LEDC identified a timeframe for service without consideration of the reasonableness of such a request.

### *3. Level and Manner of service*

The petitioner’s written request for service must identify the level and manner of service needed.<sup>17</sup> LEDC’s December 11, 2015 letter requested Kempner WSC provide “[w]ater service from a 12 inch line for 560 gpm flow, with 1500 gpm fire flow.”<sup>18</sup> LEDC also provided the city ordinance establishing the fire flow requirements.<sup>19</sup> Kempner WSC again challenges the reasonableness of LEDC’s request for the level and manner of service.<sup>20</sup> The statute does not address consideration or identification of the reasonableness of the level and manner of service requested. Other sections of TWC § 13.254(a-1) specifically identify when to consider reasonableness in determining whether the area is eligible for release.<sup>21</sup> LEDC identified the level and manner of service needed for the proposed area, and therefore, Staff recommends the Commission find LEDC satisfied this requirement for a written request for service.

### *4. Cost for the Alternative Provider to serve*

Pursuant to TWC § 13.254(a-1)(1)(D), the written request for service needs to identify “the approximate cost for the alternative provider to provide the service at the same level and

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<sup>14</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, ¶ 7-8; *Id.* at Appendix C-1 and C-3.

<sup>15</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, ¶ 8.

<sup>16</sup> Kempner WSC’s Response at 5.

<sup>17</sup> TWC § 13.254(a-1)(1)(C).

<sup>18</sup> Petition at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-1.

<sup>19</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-3.

<sup>20</sup> Kempner WSC’s Response at 6.

<sup>21</sup> TWC § 13.254(a-1)(1)(F) requires the petitioner to identify any additional information requested by the certificate holder that is “reasonably related” to determining the capacity or cost of service requested. TWC § 13.254(a-1)(3) requires the petitioner to demonstrate that the certificate holder is not capable of providing service “in a manner reasonably needed or requested.”



manner that is requested from the certificate holder.” In its December 11, 2015 letter, LEDC stated the City of Lampasas could provide the requested service at a total cost of \$127,950.<sup>22</sup> LEDC also included affidavits from Kathi Masonheimer, Director of LEDC, and Finley deGraffenried, City Manager of the City of Lampasas, attesting that the City of Lampasas can provide water service to the proposed area at a cost of \$127,950.<sup>23</sup> LEDC, in its written request for service, identified the cost for the City of Lampasas to provide the requested service as \$127,950. Thus, Staff recommends the Commission find LEDC satisfied this requirement of the statute.

*5. Flow, Pressure Requirements, and Specific Infrastructure needs*

The written request for service must also identify “the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested.”<sup>24</sup> LEDC’s December 15, 2015 letter requested a specific flow with pressure requirements, including the line size.<sup>25</sup> In addition, LEDC’s January 6, 2016 letter provided Kempner WSC with the specific city ordinance for the fire flow requirements.<sup>26</sup> Kempner WSC asserts the flow, pressure requirements, and infrastructure needs of LEDC are “unreasonable and set to make it as difficult as possible.”<sup>27</sup> The statute does not address consideration or identification of the reasonableness of the flow, pressure requirements, and specific infrastructure needed. In other sections of TWC § 13.254(a-1), the statute specifically identifies when to consider reasonableness.<sup>28</sup> Therefore, Staff recommends the Commission find LEDC’s written request identifies the flow, pressure requirements, and specific infrastructure, as required by TWC §13.254(a-1)(1)(E).

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<sup>22</sup> Petition at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-1.

<sup>23</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, ¶ 8; *Id.* at Exhibit 2, Affidavit of Finley deGraffenried, ¶ 5.

<sup>24</sup> TWC § 13.254(a-1)(1)(E).

<sup>25</sup> LEDC’s letter requested Kempner WSC provide water from a “12 inch line for 560 gpm flow, with 1500 gpm fire flow.” Petition at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-1.

<sup>26</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-3.

<sup>27</sup> Kempner WSC’s Response at 7.

<sup>28</sup> TWC § 13.254(a-1)(1)(F) requires the petitioner to identify any additional information requested by the certificate holder that is “reasonably related” to determining the capacity or cost of service requested. TWC § 13.254(a-1)(3) requires the petitioner to demonstrate that the certificate holder is not capable of providing service “in a manner reasonably needed or requested.”

#### *6. Any Additional Information Requested*

A petitioner's written request for service must identify any additional information requested by the certificate holder that is reasonably related to determination of capacity or cost for service.<sup>29</sup> LEDC responded to Kempner's letters with additional information on January 14 and March 24, 2016.<sup>30</sup> However, Kempner WSC asserts LEDC failed to provide the additional information that is normally requested by Kempner WSC under non-standard service requests including a site plan and timing and location of demand.<sup>31</sup> LEDC did not provide all of the additional information requested by Kempner WSC. However, LEDC satisfied this requirement of the statute because the additional information requested by Kempner WSC, and not provided by LEDC, is not reasonably related to determining capacity or cost. Staff recommends finding that LEDC provided sufficient information for Kempner WSC to provide a response to the written request for service.

Kempner WSC also asserts the letters from LEDC fail to constitute a written request for service because LEDC's correspondence does not comply with Kempner WSC's tariff requirements for a request for service.<sup>32</sup> Contrary to Kempner WSC's claim, the statute does not require the petitioner to submit a request for non-standard service rather LEDC need only identify the six elements required by the statute. LEDC provided a written letter identifying all of the elements required by TWC § 13.254(a-1)(1)(A-F). Consistent with the discussion above, LEDC's correspondence with Kempner WSC constitutes a written request for service, pursuant to TWC § 13.254(a-1)(1). Therefore, Staff recommends the Commission find LEDC provided a written request for service to Kempner WSC.

#### **C. Time to Review and Respond**

To be eligible for release, the certificate holder must be allowed at least 90 calendar days to review and respond to the written request.<sup>33</sup> LEDC mailed a written request to Kempner WSC on December 11, 2015 and followed up with additional information on January 14 and March

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<sup>29</sup> TWC § 13.254(a-1)(1)(F).

<sup>30</sup> Petition at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-3 and C-5.

<sup>31</sup> Kempner WSC's Response at 7; *Id.* at Exhibit 2, Affidavit of Delores Goode, ¶ 8.

<sup>32</sup> Kempner WSC's Response at 4.

<sup>33</sup> TWC § 13.254(a-1)(2).

24, 2016.<sup>34</sup> Kempner WSC responded to LEDC's written request on January 6 and March 3, 2016.<sup>35</sup> Thus, Staff recommends the Commission find Kempner WSC had over 90 days to review and respond to LEDC's written request for service.

#### **D. Ability of Certificate Holder**

Pursuant to TWC § 13.254(a-1)(3), the petitioner must demonstrate that the certificate holder refused to provide service, is incapable of providing the service as requested, or placed conditions on the cost that are not properly allocable to the petitioner's service request. LEDC states that the City of Lampasas is capable of providing water service to the proposed area within 90 days at a cost of \$127,950.<sup>36</sup> Kempner WSC's letter dated March 3, 2016, indicates Kempner WSC is able to provide water service within 36 months at a cost of \$2,293,910.<sup>37</sup> LEDC asserts the additional time and cost proposed by Kempner WSC is inadequate because utilities need to be immediately available for the successful marketing and development of the proposed area.<sup>38</sup> Kempner WSC did offer to waive fees and provide the requested water service for no cost so long as LEDC completed a formal application for service.<sup>39</sup> The formal application for service requires LEDC to enter into a service agreement with Kempner WSC among other conditions.<sup>40</sup> In addition, Kempner WSC offered to wheel water or extend a 6 inch water line into the proposed area as an option to reduce the cost and timeframe for Kempner WSC to be able to provide the requested service.<sup>41</sup>

After reviewing the detailed evidence provided by both Kempner WSC and LEDC, Staff recommends LEDC has demonstrated that Kempner WSC is incapable of providing continuous and adequate service to LEDC within the timeframe, the approximate cost, or in the manner

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<sup>34</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-1, C-3, and C-5.

<sup>35</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-2 and C-4.

<sup>36</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer ¶ 8.

<sup>37</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-4.

<sup>38</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, ¶ 8.

<sup>39</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-4.

<sup>40</sup> Kempner WSC's Response at Exhibit 2, Affidavit of Delores Goode, Exhibit A-4.

<sup>41</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-2 and C-4; Kempner WSC's Response at Exhibit 2, Affidavit of Delores Goode, ¶ 9.

reasonably needed.<sup>42</sup> The City of Lampasas can provide the requested level of service cheaper and quicker than Kempner WSC. Although Kempner WSC indicated it was willing to waive the cost of providing service, LEDC is not precluded from expedited release under the statute simply because Kempner WSC offers a conditional lower price. While Kempner WSC indicates a willingness to reduce the price, Kempner WSC has not indicated an ability to provide water service in the manner requested in a shorter timeframe. LEDC provided evidence to support the reasonableness of the 90 day timeline for requesting service.<sup>43</sup> LEDC is not required to accept Kempner WSC's other options for wheeling water or extending a 6 inch water line into the proposed area for service when the alternative provider is capable of providing a 12 inch water line at the requested pressure and flow.<sup>44</sup> In addition, the City of Lampasas is willing to provide service that meets the city ordinance for fire flow.<sup>45</sup> The options proposed by Kempner WSC affect the manner and level of service as requested by LEDC. Thus, Staff recommends the Commission find LEDC demonstrated Kempner WSC is incapable of providing water service with the timeframe, at the level, or in the manner requested.

#### **E. Ability of Alternate Provider**

To be eligible for release, the petitioner must demonstrate the alternative provider "possesses the financial, managerial, and technical capability to provide continuous and adequate service within the timeframe, at the level, at the cost, and in the manner reasonably" requested.<sup>46</sup> LEDC demonstrated that the City of Lampasas is capable of providing water service to the proposed area within 90 days, for a lower cost, and at the level and manner requested.<sup>47</sup> LEDC's petition includes an affidavit from Finley deGraffenried, City Manager of the City of Lampasas, attesting to the financial, managerial, and technical capability of the City of Lampasas to provide adequate service to the proposed area.<sup>48</sup> Staff reviewed the financial, managerial, and technical

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<sup>42</sup> Kempner WSC has not refused to provide service nor made conditions on the costs that are not allocable to LEDC's request. Petition at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-4.

<sup>43</sup> *Id.* at Exhibit 1, Affidavit of Kathi Masonheimer, ¶ 8.

<sup>44</sup> Petition at Exhibit 1, Affidavit of Kathi Masonheimer, Appendix C-2 and C-4; Kempner WSC's Response at Exhibit 2, Affidavit of Delores Goode, ¶ 9.

<sup>45</sup> Petition at Exhibit 2, Affidavit of Finley deGraffenried, ¶ 8

<sup>46</sup> TWC § 13.254(a-1)(4).

<sup>47</sup> Petition at Exhibit 2, Affidavit of Finley deGraffenried, ¶¶ 5 and 9.

<sup>48</sup> *Id.* at Exhibit 2, Affidavit of Finley deGraffenried, ¶¶ 7-8.

capability of the City of Lampasas and recommends LEDC has demonstrated that the City of Lampasas is capable of providing the service as requested.

Kempner WSC asserts LEDC, pursuant to TWC § 13.254(a-8), must demonstrate that the City of Lampasas is capable of providing better service because Kempner WSC has provided planning and design to the proposed area.<sup>49</sup> The Commission is not required to find a proposed alternative provider is capable of providing better service than the certificate holder, “if the certificate holder has never made service available through planning, design, construction of facilities, or contractual obligations to serve the area.”<sup>50</sup> Service is defined as “any act performed, anything furnished or supplied, and any facilities or lines committed or used by the retail public utility in the performance of its duties . . . .”<sup>51</sup> The court held that:

The mere existence of water lines or facilities on or near a tract would not necessarily mean that a tract was ‘receiving water service.’ Rather . . . such a determination is essentially a fact-based inquiry requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water *to the particular tract* or has performed acts or supplied anything *to the particular tract* in furtherance of its obligation to provide water to that tract pursuant to its CCN.<sup>52</sup>

The court in *Crystal Clear* further stated that a tract of land would not be considered to be receiving service “simply because the retail public utility has performed an act, such as entering into a contract to secure water supply, unless the act was performed in furtherance of providing water to the tract seeking decertification.”<sup>53</sup>

The affidavit of Perry Steger, on behalf of Kempner WSC, attests to all of the planning and design activities performed by Kempner WSC.<sup>54</sup> Among other activities, Kempner WSC entered into agreements to provide sufficient raw water and built infrastructure to deliver water to the entirety of its certificated service area.<sup>55</sup> Kempner WSC claims to have provided service

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<sup>49</sup> Kempner WSC’s Response at 8; *Id.* at Exhibit 3, Affidavit of Perry Steger, ¶ 8.

<sup>50</sup> TWC § 13.254(a-8).

<sup>51</sup> TWC § 13.002(21); *see also* 16 TAC § 24.3(44).

<sup>52</sup> *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 at 140 (Tex. App. 2014), *reh’g overruled* (Oct. 28, 2014).

<sup>53</sup> *Id.*

<sup>54</sup> Kempner WSC’s Response at Exhibit 3, Affidavit of Perry Steger, ¶ 8.

<sup>55</sup> *Id.* at Exhibit 3, Affidavit of Perry Steger, ¶ 8.

to the proposed area “in the form of planning and construction of infrastructure with excess capacity available for service” to the proposed area.<sup>56</sup> None of the actions described by Kempner WSC are for the planning and design to provide water specifically to the proposed area. The actions described by Kempner WSC are those that should be taken by any responsible certificate holder in conducting its responsibility to provide continuous and adequate water service to its certificated area. Since Kempner WSC’s planning and design activities were not specifically performed for the proposed area, Staff recommends the Commission is not required to find that the City of Lampasas is capable of providing better service than Kempner WSC. LEDC is only required to demonstrate that the City of Lampasas “is capable of providing the requested service.”<sup>57</sup> As discussed above, LEDC has demonstrated that the City of Lampasas is capable of providing the requested service.<sup>58</sup> Thus, Staff recommends LEDC’s petition, as amended, demonstrates that the approximately 151 acre area satisfies the requirements of TWC § 13.254(a-1) and 16 TAC § 24.113(b) such that the area should be released from Kempner WSC’s certificated area pursuant to TWC § 13.254(a-3).

### **III. RECOMMENDATION ON COMPENSATION**

Staff recommends that the City of Lampasas be ordered to file an intent to serve the proposed area in a separate docket to ensure compliance with TWC § 13.254(e). Any possible compensation award for Kempner WSC should be determined pursuant to TWC § 13.254(g).

### **IV. CONCLUSION**

For reasons stated above, Staff respectfully requests that an order be issued consistent with Staff’s recommendation.

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<sup>56</sup> Kempner WSC’s Response at Exhibit 3, Affidavit of Perry Steger, ¶ 9.

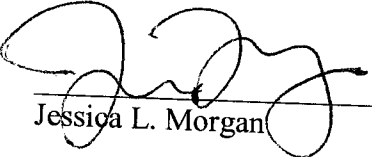
<sup>57</sup> TWC § 13.254(a-8).

<sup>58</sup> Petition at Exhibit 2, Affidavit of Finley deGraffenried, ¶¶ 5, 7-8, and 9

**DOCKET NO. 45778**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this May 16, 2016 in accordance with 16 TAC § 22.74.

  
Jessica L. Morgan

# Attachment A



PUC Interoffice Memorandum

**To:** Jessica Morgan  
Legal Division

**Thru:** Tammy Benter, Director  
Lisa Fuentes, Manager  
Water Utilities Division

**From:** Elisabeth English, Engineering Specialist  
Gary Horton, Jr., GIS Specialist  
Water Utilities Division

**Date:** May 13, 2016

**Subject:** **Docket No. 45778:** *Petition of the Lampasas Economic Development Corporation to amend Kempner Water Supply Corporations Certificate of Convenience and Necessity in Lampasas County by expedited release*

On March 29, 2016, Lampasas Economic Development Corporation (LEDC or Petitioner) filed a petition for expedited release from Kempner Water Supply Corporation's (Kempner) water Certificate of Convenience and Necessity (CCN) No. 10456 in Lampasas County, Texas, pursuant to Tex. Water Code § 13.254(a-1) (TWC) and 16 Tex. Admin. Code § 24.113(b) (TAC).

The petition requests the release of approximately 151 acres from Kempner's water CCN. The petition was amended on April 26, 2016, to exclude two acres of the requested area for release that is not owned by the petitioner. The area to be released is not currently receiving water service in a platted subdivision and has common ownership of a tract of land that is at least 50 acres, meeting the requirements of TWC § 13.254(a-1). On April 29, 2016, Staff recommended that the petition be deemed sufficient for filing and administratively complete. On May 2, 2016, Order No. 3 deemed the application administratively complete.

Staff reviewed the contents of the petition and amended petition pursuant to the requirements set forth in TWC § 13.254(a-1). Staff also reviewed Kempner's responses to the petition filed on April 21, April 28, and May 9, 2016. After a thorough review of all of the documents provided by both LEDC and Kempner, Staff believes LEDC has demonstrated that it is entitled to expedited release from Kempner's water CCN. Therefore, Staff recommends approval of the petition, pursuant to TWC § 13.254(a-3).

**TWC § 13.254(a-1)(1): Written Request for Service**

After reviewing the correspondence between LEDC and Kempner, provided as exhibits to the petition, Staff recommends finding that the LEDC provided a written request for service identifying all of the elements required by TWC § 13.254(a-1)(1). The petition included a copy of the letter sent to Kempner requesting service sent on December 11, 2015. The letter included a map of the area seeking service, the timeframe within which service was being requested, the level and manner of service sought for the business park, the approximate cost for the alternative provider to provide the same service, and the flow and pressure requirements for the area. In addition, LEDC provided copies of its letter on January 14, 2016 in response to Kempner's request for additional information. LEDC also provided copies of Kempner's responses on January 6, 2016 and March 3, 2016.

In Kempner's responses to the petition, filed April 21, April 28, and May 9, 2016, Kempner asserts LEDC did not provide a written request for service because LEDC failed to submit a request for non-standard

service on the forms required under Kempner's tariff. Kempner also claims LEDC failed to provide additional information requested by Kempner. The written request for service, as required by TWC § 13.254(a-1)(1), does not require the petitioner to complete a CCN holder's non-standard request for service. LEDC provided a written letter identifying all of the elements in compliance with TWC § 13.254(a-1)(1)(A-F). The information provided by LEDC to Kempner was sufficient for Kempner to be able to provide LEDC with a cost estimate and timeframe for providing service, as illustrated by the timeframe and cost-estimate shown in correspondence from Kempner in the petition. Therefore, LEDC's letter constitutes a written request for service.

#### **TWC § 13.254(a-1)(2): CCN Holder's Time to Respond**

Staff recommends Kempner had 90 days to review and respond to the written request for service. LEDC submitted a written request to Kempner on December 11, 2015. Kempner responded on January 6, 2016. LEDC provided supplemental information to Kempner on January 14, 2016. Kempner responded on March 3, 2016. Thus, Kempner was permitted over 90 days to review and respond to the written request in compliance with TWC § 13.254(a-1)(2).

#### **TWC § 13.254(a-1)(3)(B): CCN Holder's Ability to Provide Service**

Staff recommends finding that Kempner cannot provide service on a continuous and adequate basis in at the cost, in the timeframe, or in the manner reasonably needed or requested by current and projected service demands. Kempner's response to LEDC's request for service states that they are capable of providing water service within 36 months at a cost of \$2,293,910 or for no cost if the LEDC agrees to enter into a service agreement. Kempner states that the timeframe would also be decreased if the City agreed to "wheel" water; however, the petition nor the responses from Kempner indicate that an agreement has been reached (or sought) to facilitate this process of delivery. Thus, in accordance with Kempner's responses to the written request for service, and responses to the filed petition, Kempner cannot provide service in the timeframe, at the level and at the approximate cost that the City of Lampasas is capable of providing.

LEDC states that the alternate provider, City, is capable of providing water service within 90 days at a cost of \$127,950. LEDC believes that obtaining water service within the timeframe and cost offered by the City meets the immediate need to market and develop the business park, and the projected service demands in the area. LEDC is currently marketing the property to prospective tenants. The timeframe proposed by the City allows LEDC to state that water service will be available within a shorter timeframe. The business park will be developed for sewer service which will be available during the same timeframe as proposed by the City. Additionally, the area subject to this petition has been annexed by the City and is within the municipal boundaries which is subject to city ordinance. The City is willing to provide service that meets the city ordinance, including meeting fire-flow and fire-hydrant requirements. Therefore, Staff recommends that Kempner is not capable of providing service on a continuous and adequate basis within the timeframe, at the level, at the approximate cost that the alternative provider is capable of providing for a comparable level of service. This determination is supported by the correspondence provided in the original petition.

#### **TWC § 13.254(a-1)(4): Alternative Provider's Ability**

Staff recommends the City possesses the financial, managerial, and technical capability to provide continuous and adequate service within the timeframe, at the level, at the cost, and in the manner reasonably needed by the projected service demands in the area. The petition includes a detailed statement, signed by the City Manager, Finley Degraffenreid, demonstrating the financial, managerial, and technical capability of the City as the alternate provider. The City has a Texas Commission on Environmental Quality (TCEQ) approved public water system, (PWS ID No. 1410001) and a review of TCEQ's Central Registry database indicates that the City is in compliance with applicable PWS regulations. A financial review found that the City has adequate financial and managerial capability to provide continuous and adequate service to the

area subject to this application in addition to the area already certificated to the City.

Staff recommends that that the petition for expedited relief be granted as provided by TWC § 13.254(a-3). Staff further recommends that the City be ordered to file an intent to serve the area in a separate docket to ensure compliance with TWC § 13.254(e). The possible award of compensation to Kempner should be determined pursuant to TWC § 13.254(g)-(g-1).

# Attachment B

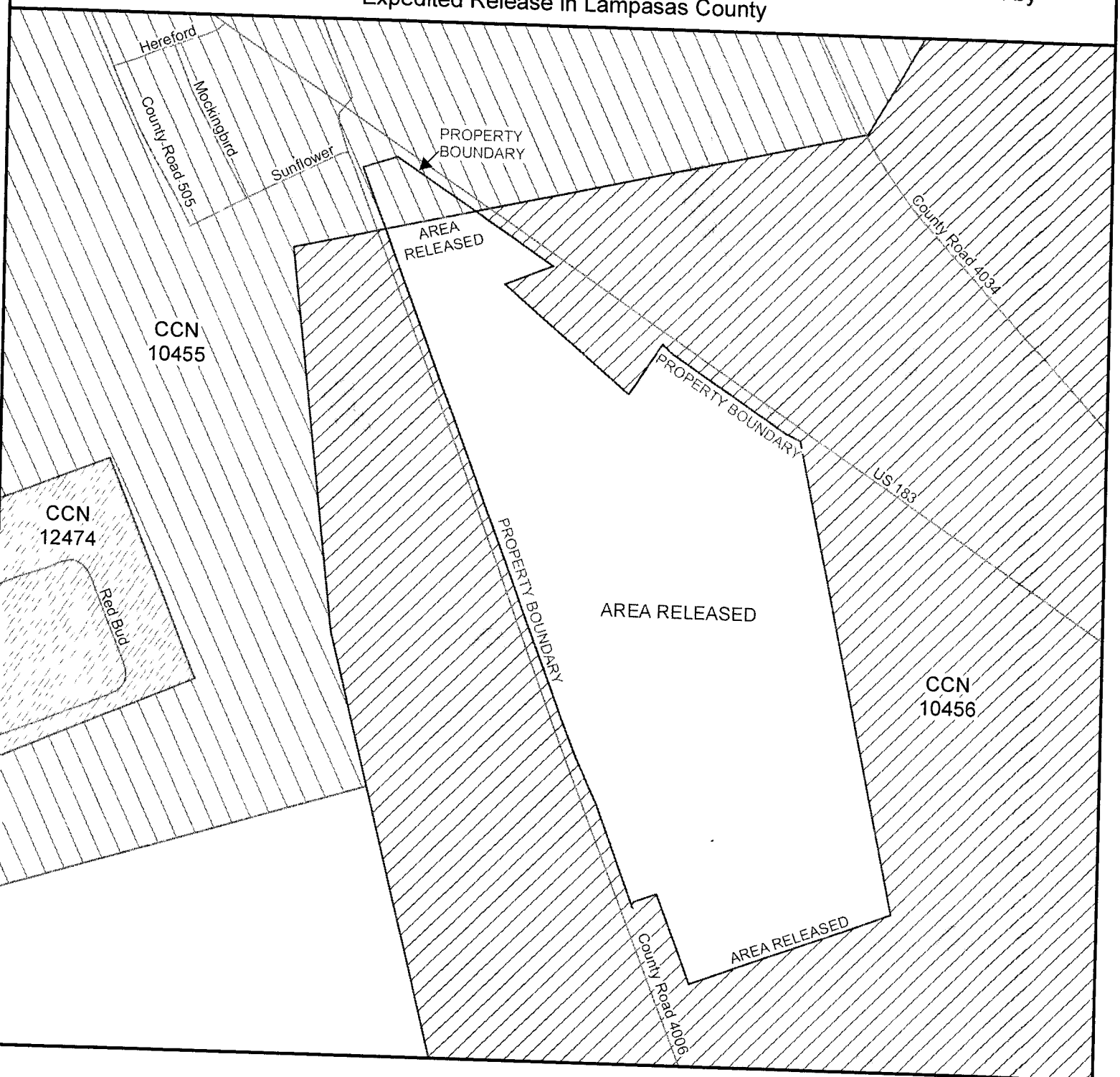
Kempner Water Supply Corporation

Water Service Area

CCN No. 10456

PUC Docket No. 45778

Petition by Lampasas Economic Development Corporation to Amend Kempner WSC's CCN by Expedited Release in Lampasas County



Public Utility Commission of Texas  
1701 N. Congress Ave  
Austin, TX 78701

**Water CCN Service Areas**



10456 - Kempner WSC



10455 - City of Lampasas



12474 - Woodland Acres POA



Area Released



Property Boundary

0 400 800  
Feet



Map by: Komal Patel  
Date created: May 5, 2016  
Project Path: n\finalmapping\45778KempnerWSC  
00000020

# Attachment C



# Public Utility Commission Of Texas

**By These Presents Be It Known To All That**

## **Kempner WSC**

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, Kempner WSC is entitled to this

### **Certificate of Convenience and Necessity No. 10456**

to provide continuous and adequate water utility service to that service area or those service areas in Bell, Burnet, Coryell, and Lampasas Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 45778 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 Kempner WSC, to provide such water 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.

Issued at Austin, Texas, this \_\_\_\_\_ day of \_\_\_\_\_ 2016.