

Control Number: 46078



Item Number: 17

Addendum StartPage: 0

PETITION OF MONTERREY OAKS, LTD §
TO AMEND THE CITY OF §
SPLENDORA'S CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
MONTGOMERY COUNTY BY §
EXPEDITED RELEASE §

PUBLIC UTILITY COMMISSION 2:06
OF TEXAS PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Commission Staff's Final Recommendation. In support thereof, Staff shows the following:

I. BACKGROUND

On June 20, 2016, Monterrey Oaks, LTD (Monterrey Oaks) filed a petition for expedited release from the City of Splendora's (Splendora) water certificate of convenience and necessity (CCN) No. 111727 in Montgomery County, Texas.

In Order No. 2, issued July 17, 2016, the Administrative Law Judge (ALJ) found the petition administratively incomplete and ordered Monterrey Oaks to file a notarized affidavit stating that the subject property is not receiving water service. On July 21, 2016 Splendora filed a motion to intervene, which was granted in Order No. 3, issued July 29, 2016. Monterrey Oaks filed the affidavit on July 25, 2016. Staff filed a supplemental recommendation on August 4, 2016 recommending that the petition be deemed administratively complete. Order No. 4, issued August 12, 2016 found the application administratively complete and set a procedural schedule for the processing of this matter. Splendora filed a Response to Order No. 4 on August 19, 2016, and Monterrey Oaks filed a Response to Order No. 4 on August 24, 2016. Order No. 4 directed Staff to file a final recommendation by August 26, 2016. Therefore, this pleading is timely filed.

II. FINAL RECOMMENDATION

A. "Receiving Service" Standard

Pursuant to TWC § 13.254(a-5), the tract of land sought to be released from a CCN must not be receiving water or sewer service. 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 . . .”¹ In *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*,² 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.³

The court in *Crystal Clear* further states 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.”⁴ The Commission has held that “even though a utility has facilities available and capable of providing water service, that does not mean the facilities are committed and dedicated to serving that particular tract.”⁵

The Commission has further held that “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 § 13.254(a-5). Whether a tract might have previously received water or sewer service is irrelevant.”⁶

B. Parties’ Proof

Splendora asserted that Monterrey Oaks’ property is receiving water service from Splendora, as supported by the affidavit of Bill Daugette⁷ and Dorothy Welch.⁸ Mr. Daugette’s affidavit asserts that: 1) Splendora has two 2-inch water lines that end on property adjacent to the Monterrey Oaks property within a few feet of the Monterrey property boundary on its northern

¹ TWC § 13.002(21); *see also* 16 TAC § 24.3(44).

² 449 S.W.3d 130, 140 (Tex. App.-Austin 2014, pet. denied).

³ *Id.*

⁴ *Id.*

⁵ *Petition of HMP Ranch, Ltd. to Amend Johnson County Special Utility District’s Certificate of Convenience and Necessity in Johnson and Tarrant Counties by Expedited Release*, Docket No. 45037, Order, Finding of Fact No. 23 (Dec. 18, 2015).

⁶ *Id.* at Conclusion of Law No. 7

⁷ City of Splendora’s Response to Order No. 4 (Exhibit B: Affidavit of Bill Daugette) (Aug. 19, 2016).

⁸ *Id.* (Exhibit C: Affidavit of Dorothy Welch).

side; 2) the Monterrey Oaks property is flanked on the entire length of its eastern border by another 2-inch water line going south of the property; 3) the two 2-inch water lines that abut the Monterrey Oaks property on the northern border were placed such that service could be extended to the Monterrey Oaks property; 4) no other property within the vicinity of the two 2-inch water lines on the northern border of the Monterrey Oaks property could be served by the lines; 5) there is sufficient capacity in the existing water lines to provide retail water service to the property; and 6) Splendora would be able to serve the property. Ms. Welch's affidavit asserts that: 1) approximately two years ago, the Splendora Independent School District was in the final stages of purchasing the Monterrey Oaks property and at the time she, the City Secretary, and the School Superintendent confirmed that the property was within Splendora's service area; 2) Splendora had the necessary capacity to serve the property; and 3) it was her understanding that once the Monterrey Oaks property was purchased, the School District would formally request retail water service from the City.

Monterrey Oaks asserted that it is not receiving water service from Splendora, and filed the affidavit of Mark Martin in support of its assertion.⁹ The affidavit asserts that: 1) the Monterrey Oaks property is not receiving water or sanitary sewer services from any service provider; 2) no water or sanitary sewer service lines lie on the property or in any adjacent public right-of-way or utility easements; and 3) the Monterrey Oaks property lies outside the corporate limits of Splendora and outside its extraterritorial jurisdiction.

C. Staff's Recommendation

Staff has concluded that Monterrey Oaks has adequately proved that its property is not receiving water service under TWC § 13.254(a-5), as defined by TWC § 13.002(21) and further clarified by the Commission and in *Crystal Clear*. Even though Splendora asserts that the water lines located around the property are capable of serving the property, Splendora has not demonstrated that those lines were committed to the service of the property to be released, or that it constructed those lines in furtherance of providing water service to the property. In its Response to Order No. 4, Splendora also states that the aforementioned lines currently provide service to other properties.¹⁰ Further, the Commission has held that the only relevant time period to be

⁹ Sworn Affidavit of Mark Martin (Jul. 25, 2016).

¹⁰ City of Splendora's Response to Order No. 4 at 4.

considered when evaluating whether a tract of land is “receiving water service” is the time after the petition is filed. Therefore, Ms. Welch’s assertions as to what happened two years ago are not relevant to this proceeding.

As supported by the attached memorandum of Janie Kohl and Kristy Nguyen of the Water Utilities Division (Attachment A), Staff recommends that Monterrey Oaks’ petition be approved. The maps, digital data, and affidavit provided by Monterrey Oaks present adequate information to demonstrate that Monterrey Oaks satisfies the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(r). Specifically, the petition and accompanying proof show that the land for which Monterrey Oaks seeks expedited release is located in a qualifying county, is not receiving water service, is all owned by Monterrey Oaks, and is at least 25 acres.

The final map (Attachment B) and CCN certificate (Attachment C) are attached to this filing.

III. CONCLUSION

For the reasons stated above, Staff recommends that Monterrey Oaks’ petition be approved.

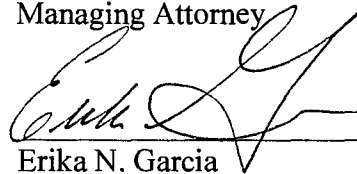
Dated: August 26, 2016

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

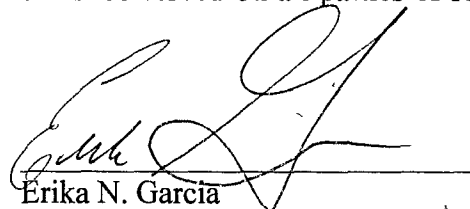
Karen S. Hubbard
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Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

**DOCKET NO. 46078
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record August 26, 2016, in accordance with 16 TAC § 22.74.



Erika N. Garcia

ATTACHMENT A

PUC Interoffice Memorandum

To: Erika Garcia
Legal Division

Thru: Heidi Graham, Engineering Manager
Tammy Benter, Director
Water Utilities Division

From: Janie Kohl, Financial Analyst
Kristy Nguyen, GIS Specialist
Water Utilities Division

Date: August 24, 2016

Subject: **Docket No. 46078**, *Petition of Monterrey Oaks, Ltd. to Amend the City of Splendora's Water Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

On June 20, 2016, Monterrey Oaks, Ltd. (Petitioner) filed with the Public Utility Commission of Texas ("Commission") a petition for expedited release from the City of Splendora's (Splendora) water Certificate of Convenience and Necessity (CCN) No. 11727 in Montgomery County. This petition is being reviewed under Texas Water Code §13.254 (a-5), and 16 Tex. Admin. Code §24.113(r) (TAC). Petitioner asserts that the land is at least 25 acres, is not receiving water or sewer services, and is located in Montgomery County, which is a qualifying county.

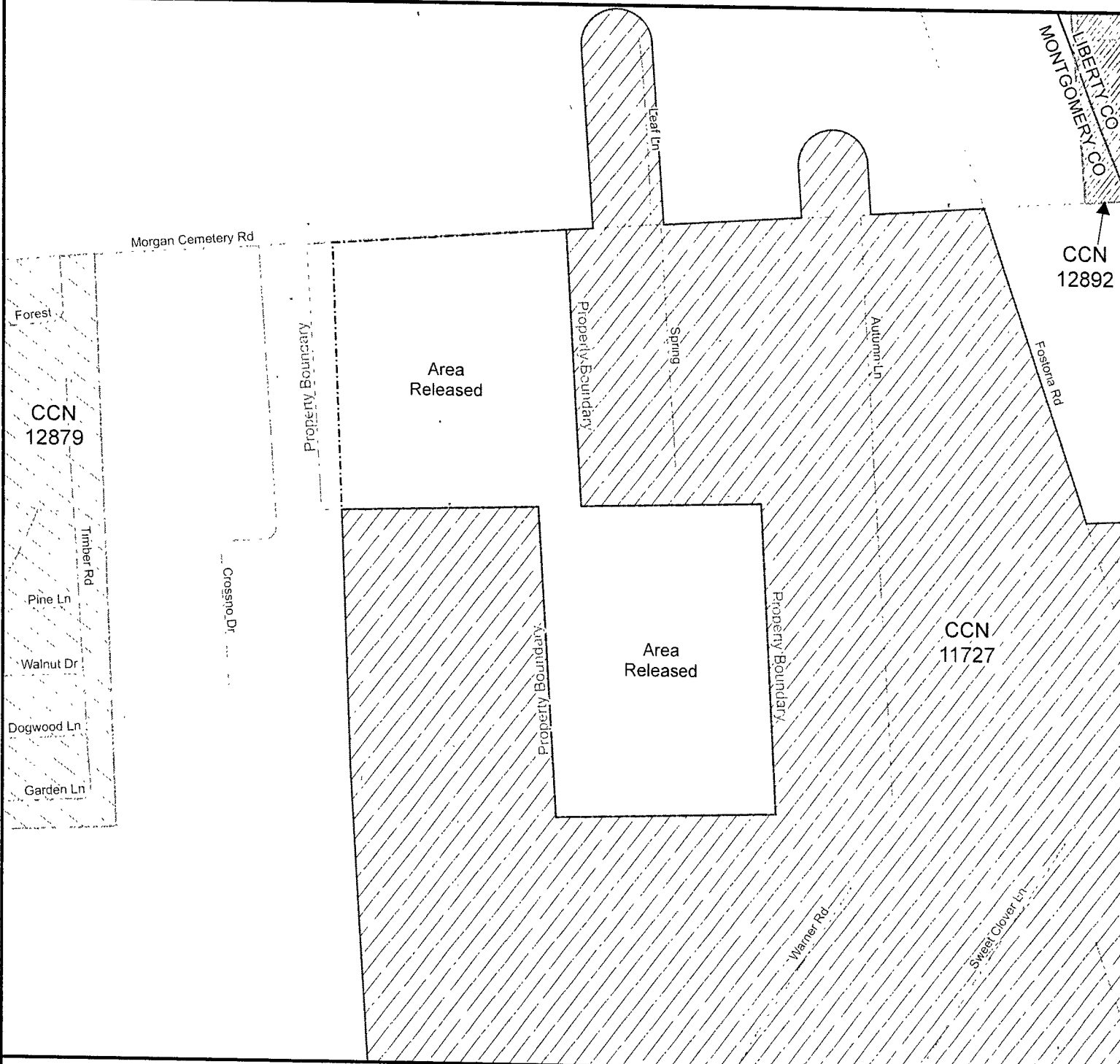
The Petitioner is requesting release of approximately 98 contiguous acres of land from Splendora. The Petitioner submitted an adequate map delineating the requested area for decertification with enough detail to confirm the accurate positioning of its digital data pursuant to 16 TAC § 24.113(r). Staff confirmed the total acreage of the property and determined that the tract of land is located within the subject property and is contiguous. Furthermore, the Petitioner provided a warranty deed confirming the Petitioner's uniform ownership of the tract of land within the subject property.

The Petitioner provided an affidavit stating that the Petitioner is not receiving water service from Splendora and is not aware of any meters, lines or other facilities owned or operated by Petitioner on the property. The property is located in Montgomery County, which is a qualifying county for streamlined expedited release petitions.




Therefore, the Petition meets the criteria set forth in TWC §13.254(a-5) and 16 TAC §24.113(r) and Staff recommends the Petition be approved. Attached is the amended map and certificate for Splendora's water CCN No. 11727.



ATTACHMENT B

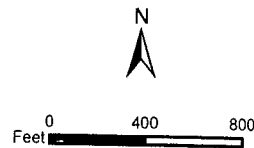
City of Splendor
 Portion of Water Service Area
 CCN No. 11727
 PUC Docket No. 46078
 Petition by Monterrey Oaks, LTD to Amend
 City of Splendor's CCN by Expedited Release in Montgomery County



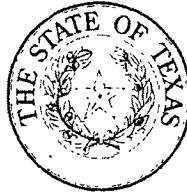
Water CCN Service Areas

-  11727 - City of Splendor
-  12879 - Northwoods WSC
-  12892 - T & W Water Service

-  Property Boundary
-  Area Released



ATTACHMENT C



Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Splendor

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, City of Splendor, is entitled to this

Certificate of Convenience and Necessity No. 11727

to provide continuous and adequate water utility service to that service area or those service areas in Montgomery County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 46078 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 City of Splendor, 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.

Issued at Austin, Texas, this _____ day of _____ 2016.