



Control Number: 46078



Item Number: 19

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**Donna L. Nelson**  
Chairman

**Kenneth W. Anderson, Jr.**  
Commissioner

**Brandy Marty Marquez**  
Commissioner

**Brian H. Lloyd**  
Executive Director



**Greg Abbott**  
Governor

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**Public Utility Commission of Texas**

TO: Donna L. Nelson, Chairman  
Kenneth W. Anderson, Jr., Commissioner  
Brandy Marty Marquez, Commissioner  
  
All Parties of Record

FROM: Stephanie Frazzell *SF*  
Administrative Law Judge

RE: **Open Meeting of October 7, 2016**  
**Docket No. 46078** – *Petition of Monterrey Oaks, Ltd to Amend the City of Splendora's Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

DATE: September 16, 2016

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Friday, October 7, 2016, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Thursday, September 29, 2016.

**If there are no corrections or exceptions, no response is necessary.**

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**DOCKET NO. 46078**

<b>PETITION OF MONTERREY OAKS,</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>LTD TO AMEND THE CITY OF</b>	<b>§</b>	
<b>SPLENDORA'S CERTIFICATE OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>MONTGOMERY COUNTY BY</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the petition of Monterrey Oaks, Ltd for expedited release of 102.291 acres from the City of Splendor's water certificate of convenience and necessity (CCN) No. 11727 in Montgomery County. Public Utility Commission of Texas Staff recommended approval of the petition. The petition is approved.

**I. Background**

On June 20, 2016, Monterrey Oaks filed the petition, pursuant to Texas Water Code § 13.254(a-5) (TWC) and 16 Texas Administrative Code § 24.113(r) (TAC), for expedited release of an approximately 102.291-acre tract of land owned by Monterrey Oaks from Splendor's CCN No. 11727 in Montgomery County.<sup>1</sup> Monterrey Oaks affirmed that the petitioned property is not developed, does not receive water or sanitary sewer services from any provider, and that no water or sanitary sewer service lines lie on the property or in any adjacent public right-of-way or utility easements.<sup>2</sup>

Splendor moved to intervene, opposing the petition and requested a public hearing.<sup>3</sup> Splendor contended that it is providing water service to the petitioned property by a 2" water line at and near two separate locations on the petitioned property's northern boundary.<sup>4</sup> In addition, Splendor stated that a 2" water line parallels the entire eastern portion of the petitioned property, which ultimately connects to a 4" water line southeast of the petitioned property and is positioned

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<sup>1</sup> Petition of Monterrey Oaks, Ltd to Amend the City of Splendor's Certificate of Convenience and Necessity in Montgomery County by Expedited Release (June 21, 2016).

<sup>2</sup> Affidavit of Mark Martin (July 25, 2016).

<sup>3</sup> Motion to Intervene and Request for Public Hearing (July 21, 2016).

<sup>4</sup> *Id* at 3.

such that the 4" water line can be directly connected to the petitioned property.<sup>5</sup> Splendora argued that its ability to serve was confirmed approximately two years ago when the Splendora Independent School District (Splendora ISD) approached Splendora as a prospective purchaser of the tract of land to confirm that existing water infrastructure has the capacity to serve a school once built; therefore, immediate and adequate service by Splendora could be provided once the property was purchased.<sup>6</sup> Splendora contends that the proximity of the water lines coupled with its capability to provide water service should it be requested constitutes "service" within the meaning of TWC §§ 13.001 and 13.254(a-5). Splendora argued that the petitioned property is ineligible for decertification and Monterrey Oaks' petition should be denied.

On August 26, 2016, Commission Staff recommended approval of the petition.<sup>7</sup> Commission Staff argued that the Texas Third Court of Appeals in *Tex. Gen. Land Office v. Crystal Clear Water Supply Corporation* affirmed 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>8</sup> Commission Staff noted that although 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.<sup>9</sup> Further, in its response to Order No. 4, Splendora stated that the aforementioned lines currently provide service to other properties.<sup>10</sup> Finally, Commission Staff argued that the Commission has held that the only relevant time period to be considered when evaluating whether

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Commission Staff's Final Recommendation at 4 (Aug. 26, 2016).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> City of Splendora's Response to Order No. 4 at 4 (Aug. 19, 2016).

a tract of land is "receiving water service" is the time after the petition is filed; therefore, evidence of an inquiry two years prior are not relevant to this proceeding.<sup>11</sup>

Based on the preceding, the Commission finds that Monterrey Oaks has adequately shown that the portion of the petitioned property within Splendora's CCN No. 11727 is not receiving water service and meets all other criteria under TWC § 13.254(a-5), and approves the petition.

The Commission adopts the following findings of fact and conclusions of law:

## **II. Findings of Fact**

### **Procedural History**

1. On June 20, 2016, Monterrey Oaks filed a petition to amend Splendora's water CCN No. 11727 in Montgomery County by expedited release.
2. On July 19, 2016, Order No. 2 was issued, finding the petition administratively insufficient. Monterrey Oaks was given additional time to cure deficiencies in the petition.
3. On July 21, 2016, Splendora filed a motion to intervene and request for public hearing.
4. Monterrey Oaks filed supplemental information on July 25, 2016.
5. On July 29, 2016, Order No. 3 was issued, granting Splendora's motion to intervene.
6. On August 4, 2016, Order No. 4 was issued, finding the petition administratively complete and adopting a procedural schedule.
7. On August 19, 2016, Splendora responded to Order No. 4, requesting that the petition be denied.
8. On August 24, 2016, Monterrey Oaks requested that Splendora's intervention and protest to the petition be denied.
9. On August 26, 2016, Commission Staff recommended approval of the petition and provided an amended certificate and map for Splendora's CCN No. 11727. The amended map and certificate are provided with this Order as Attachments 1 and 2, respectively.
10. On August 31, 2016, Monterrey Oaks filed a response in agreement with Commission Staff's final recommendation.

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<sup>11</sup> *Id* at 3-4.

**Notice**

11. Monterrey Oaks sent a copy of the petition to Splendor by certified mail the same day the petition was filed with the Commission.
12. Notice of the petition was published in the *Texas Register* on July 1, 2016.

**Project Description**

13. Monterrey Oaks owns the 102.291-acre tract.
14. The 102.291-acre tract is located in Montgomery County.

**Water Service**

15. Splendor has a 2" water line at and near two separate locations on the petitioned property's northern boundary, as well as a 2" water line that parallels the entire eastern portion of the petitioned property. The eastern portion connects to a 4" water line southeast of the petitioned property and is positioned such that the 4" water line can be directly connected to the petitioned property.
16. Splendor has not committed facilities or lines providing water service to the 102.291-acre tract.
17. Splendor has not performed acts or supplied anything to the 102.291-acre tract.
18. The 102.291-acre tract is not receiving sewer service from Splendor as that term has been defined by the courts.
19. The 102.291-acre tract is not receiving actual sewer service from Splendor.

**III. Conclusions of Law**

1. The Commission has jurisdiction over this matter pursuant to TWC §§ 13.041 and 13.254(a-5).
2. Notice of the petition was provided in compliance with 16 TAC § 24.113(s) and 16 TAC §§ 22.54 and 22.55.
3. Montgomery County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.113(r).

4. The presence infrastructure capable of providing adequate water service upon request through connection to pre-existing, non-dedicated lines running along the north, east, and southeast sides of the 102.291-acre tract is not proof that that the petitioned property is "receiving water service" under TWC § 13.254(a-5).
5. The petition property is not "receiving water service" from Splendor under TWC § 13.254(a-5).
6. Monterrey Oaks is entitled to approval of the petition, having sufficiently satisfied the requirements of TWC § 13.254(a-5) and 16 TAC §§ 24.113(r) and (s) by adequately demonstrating ownership of a tract of land that is at least 25 acres, is located in a qualifying county, and is not receiving water service.
7. Under TWC § 13.257(r) and 16 TAC § 24.106(f), Splendor is required to record a certified copy of the approved CCN and map, along with a boundary description of the service area in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.

#### **IV. Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. Monterrey Oaks, Ltd's petition is approved.
2. Monterrey Oaks, Ltd's 102.291-acre tract is removed from Splendor's water CCN No. 11727.
3. Splendor's water CCN No. 11727 is amended in accordance with this Order.
4. Splendor shall comply with the recording requirements of TWC § 13.257(r) for the area in Montgomery County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Order.
5. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

**SIGNED AT AUSTIN, TEXAS the \_\_\_\_ day of October 2016.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**





# **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, the 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.




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
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

**ATTACHMENT 2**



**Water CCN Service Areas**

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

-  Property Boundary
-  Area Released

