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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 §
MONTGOMERY COUNTY COMMISS §
OF TEXAS §
FILING CLERK

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. Commission Staff recommended approval of the petition. The petition is approved.

I. Background

On June 20, 2016, Monterrey Oaks filed the petition under 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.¹ Monterrey Oaks affirmed that the 102.291-acre tract 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.²

Splendor moved to intervene, opposed the petition, and requested a public hearing.³ Splendor contended that it is providing water service to the 102.291-acre tract by a 2-inch water line "at and near" two separate locations on the tract's northern boundary.⁴ In addition, Splendor stated that a 2-inch water line parallels the entire eastern portion of the tract, which ultimately connects to a 4-inch water line southeast of the tract and is positioned such that the 4-inch water

¹ 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).

² Affidavit of Mark Martin (July 25, 2016).

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

⁴ *Id* at 3.

line can be directly connected to the 102.291-acre tract of land.⁵ 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.⁶ 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 102.291-acre tract is ineligible for decertification and Monterrey Oaks' petition should be denied.

On August 26, 2016, Commission Staff recommended approval of the petition.⁷ Commission Staff argued that the Texas Third Court of Appeals in *Texas General 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 under its CCN."⁸ 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.⁹ Further, in its response to Order No. 4, Splendora stated that the aforementioned lines currently provide service to other properties.¹⁰ Finally, Commission Staff argued that the Commission has held that the only relevant time period to be considered when evaluating whether

⁵ *Id.*

⁶ *Id.*

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

⁸ *Id.* at 2.

⁹ *Id.* at 3.

¹⁰ 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 is not relevant to this proceeding.¹¹

The Commission finds that Monterrey Oaks has adequately shown that the portion of the 102.291-acre tract of land within Splendor's CCN No. 11727 is not receiving water service and meets all other criteria under TWC § 13.254(a-5). Therefore, the Commission 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 Splendor's water CCN No. 11727 in Montgomery County by expedited release.
2. On July 19, 2016, Order No. 2 was issued, and the petition was found administratively insufficient. Monterrey Oaks was given additional time to cure deficiencies in the petition.
3. On July 21, 2016, Splendor filed a motion to intervene and a request for a public hearing.
4. Monterrey Oaks filed supplemental information on July 25, 2016.
5. On July 29, 2016, Order No. 3 was issued, and Splendor's motion to intervene was granted.
6. On August 4, 2016, in Order No. 4, the petition was found administratively complete, and a procedural schedule was adopted.
7. On August 19, 2016, Splendor responded to Order No. 4 by requesting that the petition be denied.
8. On August 24, 2016, Monterrey Oaks requested that Splendor'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 Splendor's CCN No. 11727. The amended map and certificate are provided with this Order as Attachments 1 and 2, respectively.

¹¹ *Id* at 3-4.

10. On August 31, 2016, Monterrey Oaks filed a response in agreement with Commission Staff's final recommendation.

Notice

11. Monterrey Oaks sent a copy of the petition to Splendor by certified mail on 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; approximately 98 acres of the tract are within Splendor's certificated service area.
14. The 102.291-acre tract is located within Montgomery County.
- 14A. Montgomery County is adjacent to Harris County, which has a population of over 1,000,000.

Water Service

15. Splendor has a 2-inch water line that ends at least 75 feet from one location on the 102.291-acre tract of land's northern boundary and at least 150 feet from another location. Splendor also has a 2-inch water line that parallels the entire eastern portion of the tract but is approximately 650 feet east of it. The water line to the east connects to a 4-inch water line southeast of the 102.291-acre tract.
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 actual water service from Splendor.
19. The 102.291-acre tract is not receiving water service from Splendor as the term *receiving water service* has been defined by the courts.¹²

¹² TWC § 13.254(a-5); *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130, 140-141 (Tex. App. –Austin 2014, pet. denied).

III. Conclusions of Law

1. The Commission has jurisdiction over this matter under 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 of 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 the tract is receiving water service under TWC § 13.254(a-5).
- 4A. The requirement that facilities are committed and dedicated to serving a tract of land is not satisfied just by facilities that are available and capable of providing water service.
- 4B. 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.
5. The 102.291-acre tract is not receiving water service from Splendora 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), Splendora 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.

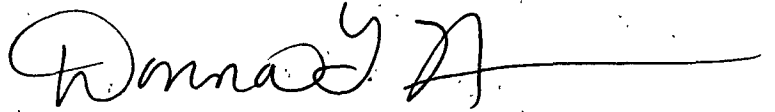
IV. Ordering Paragraphs

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. The portion of the 102.291-acre tract that is located within Splendor's water CCN No. 11727 is removed from the CCN.
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 7th day of October 2016.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER