



Control Number: 46648



Item Number: 6

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<p>PETITION BY MCALISTER OPPORTUNITY FUND 2012, L.P. TO AMEND HMW SPECIAL UTILITY DISTRICT'S WATER CERTIFICATE OF CONVENIENCE AND NECESSITY IN HARRIS COUNTY BY EXPEDITED RELEASE</p>	<p>§ § § § § § §</p>	<p>PUBLIC UTILITY COMMISSION OF TEXAS PUBLIC UTILITY COMMISSION FILING CLERK</p>
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**COMMISSION STAFF'S RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Recommendation on Administrative Completeness in response to Order No. 1 and would show the following:

I. Background

On December 7, 2016, McAlister Opportunity Fund 2012, L.P. (McAlister), filed a petition for expedited release from HMW Special Utility District's (HMW SUD) water certificate of convenience and necessity (CCN) No. 10342 in Harris County, pursuant to Tex. Water Code § 13.254(a-5) (TWC) and 16 Tex. Admin. Code § 24.113(r) (TAC). On December 8, 2016, McAlister filed a supplemental pleading providing digital map data with metadata.

In its application, McAlister asserted that it owns 585.23 acres in Harris County which it seeks to decertify.¹ McAlister further asserted that the property is not currently receiving water service from HMW SUD.² On December 9, 2016, the administrative law judge (ALJ) issued Order No. 1 which required that Staff file comments on the administrative completeness of McAlister's application and proposed notice by January 6, 2017.

II. Jurisdiction and Legal Authority

As an alternative to decertification, the TWC and TAC permit a landowner to petition the Commission for an expedited release of land from a CCN. The TWC and TAC have separate provisions for landowners seeking an expedited release.³ As it relates to McAlister's application, the relevant portion of the TWC states:

¹ Petition, p. 1.

² Petition, Exhibit A, p.2.

³ See generally TWC § 13.254(a-1), (a-5); 16 TAC § 24.113(b), (r).

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[T]he owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release from a certificate of public convenience and necessity and is entitled to that release if the landowner's property is located in a county with a population of at least one million, a county adjacent to a county with a population of at least one million, or a county with a population of more than 200,000 and less than 220,00 that does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more, and not in a county that has a population of more than 45,500 and less than 47,500.⁴

The TAC similarly states:

[T]he owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may petition for expedited release of the area from a CCN and is entitled to that release if the landowner's property is located in Atascosa, Bandera, Bastrop, Bexar, Blanco, Brazoria, Burnet, Caldwell, Kaufman, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilson, or Wise County.⁵

Pursuant to TWC § 13.254(a-5) and 16 TAC § 24.113(r), the Commission must render a decision on an application for expedited release "not later than the 60th day after the date the landowner files the petition." However, at its March 31, 2015 Open Meeting, the Commission decided that counting for a determination of the 60th day does not begin until after a determination of the administrative completeness is made.⁶

III. Comments on Administrative Completeness

Staff has reviewed McAlister's application and, as supported by the attached memorandum of Debbie Reyes Tamayo and Gary Horton of the Water Utilities Division, Staff recommends that the application be found administratively complete. The maps and digital data provided by McAlister are sufficient for determining the location of the requested release area within HMW SUD's certificated area and provide adequate information for Staff to continue its review of the amended application to make a recommendation on whether it satisfies the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(r). Additionally, as required under 16 TAC § 24.113(s), McAlister filed proof that a copy of the petition was sent via certified mail to HMW SUD.

⁴ TWC 13.254(a-5).

⁵ 16 TAC § 24.113(r).

⁶ OM Transcript, at p. 114 (Mar. 31, 2015).

IV. Proposed Procedural Schedule

If the ALJ issues an order in accordance with Staff's recommendation, Staff proposes the following procedural schedule:

Event	Deadline
Order regarding administrative completeness of Petition	Date of Order
Deadline for HMW SUD to file a Response	Seven (7) days from the date of the Order deeming the Petition administratively complete
Deadline for Staff's Final Recommendation	Seven (7) days from the deadline for HMW SUD to file its Response
Deadline for McAlister to file a Reply to HMW SUD's Response and Staff's Final Recommendation ⁷	Seven (7) days from the deadline for Staff to file its Final Recommendation
Sixty (60) Day Administrative Approval	Sixty (60) days from the Order deeming the Petition administratively complete

V. Conclusion

For the reasons stated above, Staff respectfully requests than an order be issued finding McAlister's application administratively complete and adopting the above procedural schedule.

⁷ Please note that a Reply must be limited to briefing and argument, as any additional proof shall be deemed a new petition.

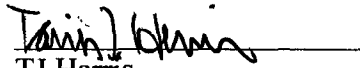
Dated: January 6, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

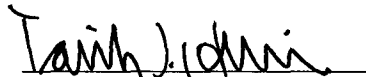
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DOCKET NO. 46648

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 6, 2017 in accordance with 16 TAC § 22.74.


TJ Harris

PUC Interoffice Memorandum

To: TJ Harris, Attorney
Legal Division

Thru: Lisa Fuentes, Work Leader
Tammy Benter, Director
Water Utilities Division

From: Debbie Reyes Tamayo, Program Specialist
Gary Horton, GIS Specialist
Water Utilities Division

Date: December 29, 2016

Subject: **Docket No. 46648:** *Petition of McAlister Opportunity Fund 2012, L.P. to Amend H-M-W SUD's Water Certificate of Convenience and Necessity by Expedited Release in Harris County*

On December 7, 2016, McAlister Opportunity Fund 2012, L.P. (Petitioner) filed with the Public Utility Commission of Texas (Commission) a petition for expedited release from H-M-W SUD's water Certificate of Convenience and Necessity (CCN) No. 10342 in Harris County, pursuant to Tex. Water Code § 13.254(a-5) (TWC) and 16 Tex. Admin. Code §§ 24.113(r) and (s) (TAC). The Petitioner asserts that the land is at least 25 acres, is not receiving water service, and is located in Harris County which is a qualifying county.

Order No. 1, filed December 9, 2016, requests for Staff to provide a recommendation on administrative completeness no later than January 6, 2017.

The Petitioner submitted an adequate map delineating the requested area for decertification with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.113(r). The map and digital data are sufficient for determining the location of the requested release area within H-M-W SUD's certificated area. Staff was able to confirm the acreage of the total property, and determined that the tract is located within the subject property. Furthermore, the Petitioner provided a warranty deed confirming the Petitioner's ownership of the tract of land within the subject property. The area being requested for expedited release is approximately 585 contiguous acres of land. The petition also included a statement that pursuant to Commission rules, a copy of the Petition was sent via certified mail to H-M-W SUD, the current holder of CCN No. 10342.

The petition meets the criteria set forth in TWC §13.254 (a-5) and TAC §24.113(r). Therefore, Staff recommends that the petition be deemed sufficient for filing.