



Control Number: 47556



Item Number: 17

Addendum StartPage: 0

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OPEN MEETING COVER SHEET

MEETING DATE: November 17, 2017

DATE DELIVERED: November 10, 2017

AGENDA ITEM NO.: 31

CAPTION: **Docket No. 47556** – Petition of HMSC, LLC to Amend McCoy Water Supply Corporation's Water Certificate of Convenience and Necessity in Atascosa County by Expedited Release

ACTION REQUESTED: Discussion and possible action with respect to Proposed Order

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Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Kenneth W. Anderson, Jr., Commissioner
Brandy Marty Marquez, Commissioner

All Parties of Record

FROM: Jeffrey J. Huhn *JJA*
Administrative Law Judge

RE: **Open Meeting of November 17, 2017**
Docket No. 47556 – *Petition of HMSC, LLC to Amend McCoy Water Supply Corporation's Water Certificate of Convenience and Necessity in Atascosa County by Expedited Release*

DATE: November 10, 2017

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission is currently scheduled to consider this docket at an open meeting to begin at 9:30 a.m. on Friday, November 17, 2017, 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 Monday, November 13, 2017.

Under 16 Texas Administrative Code (TAC) § 22.5(b)(2), good cause exists to waive the requirements of 16 TAC § 22.35(b)(2), so that this proceeding may be considered at the Commission's next regularly scheduled Open Meeting of November 17, 2017 and meet the 60-day deadline in Texas Water Code § 13.254(a-5).

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

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DOCKET NO. 47556

PETITION OF HMSC, LLC TO AMEND	§	PUBLIC UTILITY COMMISSION
MCCOY WATER SUPPLY	§	
CORPORATION'S WATER	§	OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN ATASCOSA	§	
COUNTY BY EXPEDITED RELEASE	§	

PROPOSED ORDER

This Order addresses the petition of HMSC, LLC for expedited release from McCoy Water Supply Corporation's water certificate of convenience and necessity (CCN) number 10649 in Atascosa County. Commission Staff recommended approval of the petition. The petition is approved.

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

I. Findings of Fact

Procedural History, Description, and Background

1. On August 29, 2017, HMSC filed a petition for the expedited release of a 292.16-acre tract of land from McCoy WSC's water CCN No. 10649 in Atascosa County. The petition included an affidavit by Clay Morgan.¹ Morgan affirmed ownership of the 292.16-acre tract of land, that McCoy does not provide retail water service to the 292.16-acre tract of land, and that the 292.16-acre tract of land is located in Atascosa County.
2. On September 28, 2017, McCoy WSC filed a motion to intervene and written protest. McCoy WSC requested that the Commission deny HMSC's petition for failure to satisfy the statutory requirements of Texas Water Code (TWC) § 13.254(a-5) and due to federal preemption of TWC § 13.254(a-5)-(a-6).²

¹ Petition, Affidavit of Clay Morgan (Exhibit F) at 22 (Aug. 29, 2017).

² Motion to Intervene and Written Protest of McCoy Water Supply Corporation, at 4-5 (Sep. 28, 2017).

3. On September 29, 2017, Commission Staff recommended that the petition and notice be deemed administratively complete and proposed a procedural schedule for final processing.
4. On October 5, 2017, Order No. 2 was issued granting McCoy WSC's motion to intervene.
5. On October 10, 2017, Order No. 3 was issued deeming HMSC's petition administratively complete and establishing a procedural schedule.
6. On October 17, 2017, McCoy WSC filed a response to Commission Staff's recommendation on administrative completeness of the petition. McCoy WSC again argued that the Commission should deny HMSC's petition due to failure to satisfy the statutory requirements of TWC § 13.254(a-5) and due to federal preemption of TWC § 13.254(a-5)-(a-6).³ McCoy WSC contended that prior to HMSC's ownership, the 292.16-acre tract of land received and continues to receive water service from the City of Jourdanton.⁴ McCoy WSC attached the affidavits of Robert Garza, a McCoy WSC field supervisor, and Rex Brown, president of Harold Brown & Sons, Inc. to support its assertion.
7. On September 28, 2017, a 6" water line was installed for McCoy WSC immediately adjacent to the HMSC property on County Road 430.⁵
8. McCoy WCS contends that TWC § 13.254(a-5) does not stipulate that the service must be provided by the CCN holder.⁶
9. McCoy WSC did not identify any property that would be rendered useless or valueless by decertification.
10. On October 31, 2017, Commission Staff recommended (1) approval of the petition, (2) that no property would be rendered useless or valueless by the decertification, and (3) that no compensation proceeding is necessary.⁷ Staff disagreed with McCoy WSC's position that

³ McCoy Water Supply Corporation's Response to the PUC's Determination of Administrative Completeness at 5-7. (Oct. 17, 2017).

⁴ *Id.* at 4.

⁵ *Id.*

⁶ *Id.* at 6.

⁷ Commission Staff's Recommendation on Final Disposition (Oct. 31, 2017).

the “not receiving water or service” requirement refers to service from any provider, not only the CCN holder.⁸

11. Commission Staff provided a certificate and service area map for McCoy WSC.
12. The certificate and map referenced in Finding of Fact No. 11 are attached to this Order.
13. On November 8, 2017, HMSC filed a request for an extension until November 14, 2017, to file a reply to both McCoy WSC’s response and Commission Staff’s final recommendation.
14. On November 8, 2017, Order No. 5 was issued granting HMSC an extension until November 9, 2017 to file a reply to both McCoy WSC’s response and Commission Staff’s final recommendation.
15. On November 9, 2017, HMSC filed a reply agreeing with Commission Staff’s final recommendation that the petition be granted.

Notice

16. HMSC provided a copy of the petition to McCoy WSC on August 29, 2017.
17. Notice of the petition was published in the *Texas Register* on September 15, 2017.

Project Description

18. HMSC owns the 292.16-acre tract of land.
19. The 292.16-acre tract of land is located within McCoy WSC’s certificated service area.
20. The 292.16-acre tract of land is located in a qualifying county and is not receiving water service.

Water Service

21. The 292.16-acre tract of land is not receiving water service from McCoy WSC, as that term has been defined by the Courts.
22. The 292.16-acre tract is not receiving actual water service from McCoy WSC.

⁸ *Id.* at 5.

Useless or Valueless

23. McCoy has no property that is rendered useless or valueless by the decertification.

Good Cause Waiver

24. The need to meet the 60-day statutory deadline applicable to the petition, serves as good cause to waive the 20-day notice requirement in 16 TAC § 22.35(b)(2) and consider the petition at the Commission's next regularly scheduled open meeting of November 17, 2017.⁹

II. Conclusions of Law

1. The Commission has jurisdiction over this petition under TWC §§ 13.041 and 13.254(a-5).
2. Notice of the petition was provided in compliance with 16 TAC § 24.113(l)(3)(A)(vi) and 16 TAC §§ 22.54-.55.
3. Atascosa County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.113(l)(2)(D).
4. 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 service is irrelevant.
5. The construction of the 6" water line immediately adjacent to the HMSC property is not proof that the 292.16-acre tract of land is receiving water service under TWC § 13.254(a-5).
6. The 292.16-acre tract of land to be decertified under TWC § 13.254(a-5) is owned by HMSC, is located in a qualifying county, is at least 25 acres in size, and is not receiving water service from McCoy WSC.
7. Under TWC § 13.254(a-6), the Commission may not deny the petition based on the fact that McCoy WSC is a borrower under a federal loan program.

⁹ Under TWC § 13.254(a-3), the 60-day statutory deadline to grant this petition is December 9, 2017. The proposed order was scheduled to be considered at the December 6, 2017 Open Meeting, which has been cancelled and rescheduled for December 14, 2017.

8. No property of McCoy WSC was rendered useless or valueless by the decertification, therefore, under TWC § 13.254(d)-(g), no compensation is owed to McCoy WSC.
9. Because no compensation is owed, under TWC § 13.254(d)-(g), a retail public utility may render retail water or water service directly or indirectly to the public in the decertified area without providing compensation to McCoy WSC.
10. HMSC is entitled to approval of the petition, having sufficiently satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(l) by adequately demonstrating ownership of a tract of land that is at least 25 acres, located in a qualifying county, and not receiving water service.
11. Under TWC § 13.257(r), McCoy WSC is required to record a certified copy of the approved certificate 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.
12. The 20-day notice requirement in 16 TAC § 22.35(b)(2) is waived for good cause.

III. Ordering Paragraphs

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

1. The petition is approved.
2. HMSC's 292.16-acre tract of land is removed from McCoy WSC's water CCN No. 10649.
3. McCoy WSC's water CCN No. 10649 is amended in accordance with this Order.
4. The Commission's official service area boundary maps for McCoy WSC shall reflect this change.
5. McCoy WSC shall submit to the Commission evidence of the recording of a certified copy of the map of CCN No. 10649 in the real property records of Atascosa County no later than 31 days after receipt of this Order.

6. 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 November 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER

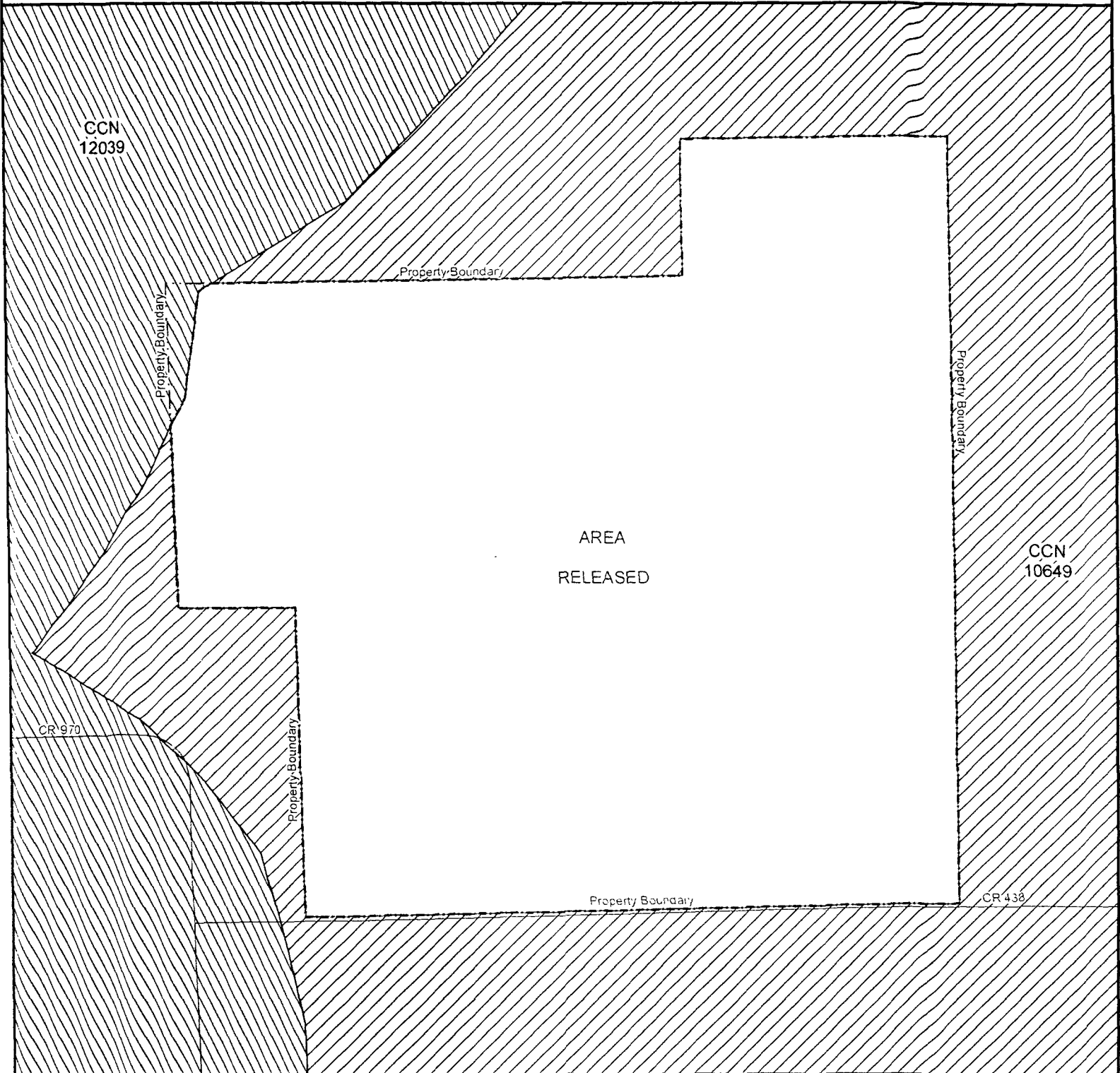
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McCoy Water Supply Corporation

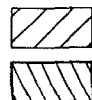
Portion of Water CCN No. 10649

PUC Docket No. 47556

Petition by HMSC, LLC to Amend McCoy WSC's CCN by Expedited Release in Atascosa County

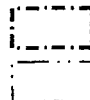


Water CCN



10649 - McCoy WSC

12039 - City of Jourdanton



Area_Released

Property Boundary

0 350 700
Feet



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

Map by: Komal Patel
Date created: October 19, 2017
Project Path: n:\finalmapping\47556HMSC\LLC mxd

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Public Utility Commission of Texas

By These Presents Be It Known To All That

McCoy Water Supply Corporation

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, McCoy Water Supply Corporation is entitled to this

Certificate of Convenience and Necessity No. 10649

to provide continuous and adequate water utility service to that service area or those service areas in Atascosa, Live Oak and Wilson Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 47556 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 McCoy Water Supply Corporation, 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 _____ 2017.