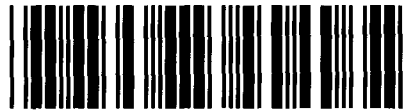


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DOCKET NO. 47811

RECEIVED

PETITION OF BCDE, LTD. TO §
AMEND AQUA TEXAS, INC.'S §
CERTIFICATES OF CONVENIENCE §
AND NECESSITY IN HARRIS §
COUNTY BY EXPEDITED RELEASE §

2017 DEC 29 AM 10:55
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS

**COMMISSION STAFF'S RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS AND NOTICE**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 1, files this Recommendation on Administrative Completeness and Notice. Staff recommends that the petition be deemed sufficient for further review. In support thereof, Staff shows the following:

I. Background

On November 29, 2017, BCDE, Ltd. (BCDE) filed a petition with the Public Utility Commission of Texas (Commission) for expedited release from Aqua Texas Inc.'s (Aqua) water certificate of convenience and necessity (CCN) No. 13203 and sewer CCN No. 21065 pursuant to Texas Water Code § 13.254(a-5) (TWC) and 16 Texas Administrative Code § 24.113(l) (TAC). On December 28, 2017, BCDE filed a supplement to the petition in order to correct the requested acreage for expedited release.

BCDE asserts that it owns approximately sixty-five (65) acres of contiguous property in Harris County, Texas (Property).¹ Furthermore, BCDE states that the entirety of the Property is located within the boundaries of water CCN No. 13203 and sewer CCN No. 21065. Additionally, BCDE claims that the Property is not receiving service from any water or sewer service provider.

On December 4, 2017, the Administrative Law Judge (ALJ) issued Order No. 1, whereby Staff was required to file a recommendation on the administrative completeness and notice of the petition by December 29, 2017. Therefore, this pleading is timely filed.

¹ The initial petition, filed on November 29, 2017, asserted BCDE owned approximately sixty-four (64) acres of contiguous property in Harris County, Texas. The supplement, filed on December 28, 2017, corrected the acreage owned by BCDE. The supplement was supported by deeds, each of which was submitted to correspond with the digital data originally filed.

II. Jurisdiction and Legal Authority

As an alternative to decertification, the Texas Water Code and the Texas Administrative Code permit a landowner to petition the Commission for an expedited release of land from a CCN. The Texas Water Code and the Texas Administrative Code have separate, though similar, provisions for landowners seeking an expedited release.² The relevant portion of the Texas Water Code 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 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 220,000 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 47,500.³

Comparatively, the Texas Administrative Code states:

[T]he owner of a tract of land may petition the commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if the following conditions are met: (A) the tract of land is at least 25 acres in size; (B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and (C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county. (D) A qualifying county under subparagraph (C) of this paragraph does not have a population of more than 45,000 and less than 47,500 and is a county (i) with a population of at least one million, (ii) adjacent to a county with a population of at least one million, or (iii) with a population of more than 200,000 and less than 220,000 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. (iv) The commission will maintain on its website a list of counties that are presumed to meet the requirements of this subparagraph.⁴

Pursuant to TWC § 13.254(a-6), the Commission must render a decision on a petition for expedited release “not later than the 60th calendar day after the date the landowner files the petition.” A petition is not considered filed until after a determination of administrative

² See generally TWC § 13.254(a-1), (a-5); 16 TAC § 24.113(l).

³ TWC § 13.254(a-5).

⁴ 16 TAC § 24.113(l)(2).

completeness. The ALJ has not yet deemed BCDE's petition administratively complete. Therefore, the sixty (60) day count has not yet begun.

III. Recommendation on Administrative Completeness

As supported by the attached memorandum of Elisabeth English of the Water Utility Regulation Division, Staff has reviewed the petition for expedited release and recommends that it be found administratively complete. The maps and digital data provided by BCDE provide adequate information for Staff to continue its review of BCDE's petition and make a recommendation as to whether it satisfies the requirements established pursuant to TWC § 13.254(a-5) and 16 TAC § 24.113(l). Specifically, the maps and digital data provided by BCDE enable Staff to determine: (1) the location of the requested release areas within Aqua's certificated areas; (2) the acreage of the Property; and (3) that the requested areas for release are located within the Property. In addition, the deeds submitted by BCDE provide confirmation of BCDE's ownership in the Property. Therefore, Staff recommends that BCDE's petition be deemed administratively complete.

IV. Recommendation on Notice Sufficiency

Pursuant to 16 TAC § 24.113(l)(3)(A)(vi), the landowner must provide proof that a copy of the petition has been mailed to the current CCN holder via certified mail on the day that the landowner submits the petition with the Commission.

BCDE asserts in its filing that notice was provided to Aqua, the CCN holder, via certified mail on November 29, 2017. The Commission also published notice of BCDE's petition in the *Texas Register* on December 4, 2017. Such notice meets the requirement of 16 TAC § 24.113(l). Accordingly, Staff recommends that BCDE's notice be found sufficient and that no additional notice be required.

V. Proposed Procedural Schedule

If the ALJ issues an order in accordance with Staff's recommendation that the petition be deemed administratively complete, Staff proposes the following procedural schedule:

Event	Date
Order regarding administrative completeness of petition	Date of Order
Deadline for Aqua and/or intervenors to file a response to the administratively complete petition	Seven (7) days from the date of the Order deeming the petition administratively complete
Deadline for Commission Staff's final recommendation on final disposition	Seven (7) days from the deadline for Aqua and/or intervenors to file a response
Deadline for BCDE to file a reply to Aqua's and/or intervenors' response and Commission Staff's recommendation on final disposition	Seven (7) days from the deadline for Commission Staff to file its final recommendation
Sixty (60) day administrative approval	Sixty (60) days from the Order deeming the petition administratively complete

VI. Conclusion

For the reasons stated above, Staff respectfully recommends that BCDE's petition be deemed administratively complete, its notice be found sufficient, and the proposed procedural schedule be adopted.

DATED: December 29, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 29th of December, 2017, in accordance with. 16 TAC § 22.74.



Richard Nemer

PUC Interoffice Memorandum

To: Richard Nemer, Attorney
Legal Division

Thru: Tammy Benter, Director
Lisa Fuentes, Manager
Water Utilities Division

From: Elisabeth English, Engineering Specialist
Water Utilities Division

Date: December 29, 2017

Subject: **Docket No. 47811**, *Petition of BCDE, Ltd. to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*

On November 29, 2017, BCDE, Ltd. (Petitioner) filed a request for an expedited release from Aqua Texas, Inc.'s (Aqua) Certificates of Convenience and Necessity (CCN) No. 13203 (water) and CCN No. 21065 (sewer) in Harris County. The petition is being reviewed under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.113(1). The Petitioner asserts that the land is at least 25 acres, is not receiving water and sewer service, and is located in Harris County, which is a qualifying county.

On December 28, 2017, the Petitioner submitted supplemental information correcting the requested acreage as supported by the deed, to correspond with the digital data originally filed. The supplemental information requests an expedited release of approximately 65 acres in accordance with the records provided.

The Petitioner provided an adequate map delineating the requested area for expedited release with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.119. The maps and digital data are sufficient for determining the location of the requested release areas within Aqua's certificated areas. Mapping Staff were able to confirm the acreage of the subject property, and determined that the requested areas for release are located within the subject property. Furthermore, the Petitioner provided a deed confirming the Petitioner's ownership of the subject property. The Petitioner submitted a sworn affidavit attesting that the subject property was not receiving water or sewer utility service from Aqua.

The petition also included a statement that pursuant to Commission rules, a copy of the Petition was sent via certified mail to Aqua, the current holder of CCN No.'s 13203 and 21065.

As summarized above, the petition meets the criteria set forth in TWC § 13.254(a-5) and TAC § 24.113(1). Therefore, Staff recommends that the petition be deemed sufficient for filing.