



Control Number: 47811



Item Number: 8

Addendum StartPage: 0

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 §

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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 2, files this Final Recommendation. 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 29, 2017, Staff filed a recommendation that the Petition be found administratively complete. Thereafter, on January 10, 2018, the Administrative Law Judge (ALJ) issued Order No. 2, whereby Staff was required to file a final recommendation by January 24, 2018. 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

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).

petition.” A petition is not considered filed until after a determination of administrative completeness.⁵ BCDE’s petition was deemed administratively complete in Order No. 2, issued on January 10, 2018. Therefore, the sixty (60) day deadline for administrative approval is March 11, 2018.

III. Final Recommendation

As supported by the attached memorandum of Elisabeth English of the Water Utility Regulation Division (Attachment A), Staff has reviewed the petition for expedited release and recommends that it be approved. The maps and digital data filed by BCDE provide adequate information to demonstrate that BCDE satisfies the requirements of 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 acreage of the Property is at least 25 acres, specifically, approximately 65 acres; (2) that the requested areas for release are not receiving water or sewer service; and (3) the location of the requested release areas is within a qualifying county, specifically, Harris County. In addition, the deeds submitted by BCDE provide confirmation of BCDE’s ownership in the Property. Consequently, BCDE has shown through its petition that it meets the requirements for expedited release. Therefore, Staff recommends that BCDE’s petition be approved.

The final Water CCN map (Attachment B), Sewer CCN map (Attachment C), Water CCN certificate (Attachment D), and Sewer CCN Certificate (Attachment E) are attached to this filing.

IV. Conclusion

For the reasons stated above, Staff respectfully recommends that BCDE’s petition be approved.

⁵ *Petition of City of Midlothian to Amend Mountain Peak Special Utility District's Certificate of Convenience and Necessity by Expedited Release in Ellis County*, Docket No. 44394, Conclusion of Law No. 13 (May 1, 2015).

DATED: January 24, 2018

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 24th of January, 2018, in accordance with. 16 TAC § 22.74.



Richard Nemer

Attachment A

PUC Interoffice Memorandum

To: Richard Nemer, Attorney
Legal Division

Thru: Tammy Benter, Director
Heidi Graham, Manager
Water Utilities Division

From: Elisabeth English, Engineering Specialist
Water Utilities Division

Date: January 24, 2018

Subject: **Docket No. 47811**, *BCDE, Ltd. to Amend Aqua Texas, Inc. Water CCN No. 13203 and Sewer CCN No. 21065 in Harris County per 13.254(a-5)*

On November 29, 2017, BCDE, Ltd. (Petitioner) filed a request for an expedited release of approximately 64 acres from Aqua Texas, Inc.'s (Aqua) water certificate of convenience and necessity (CCN) number 13203 and sewer CCN number 21065 in Harris County. The petition is being reviewed under Texas Water Code § 13.254(a-5) (TWC) and 16 Texas Administrative Code § 24.113(1) (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.

The Petitioner has 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 map and digital data are sufficient for determining the location of the requested release area within Aqua's certificated area. Mapping Staff were able to confirm the acreage of the subject property, and determined that the requested release area is 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 area being requested for expedited release is approximately 65 acres.

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.

Staff did not find any evidence supporting the finding of any useless or valueless property as a result of the release, in accordance with 16 TAC § 24.113(n)(3). Subsequently, Staff recommends that the Commission determine that there is not any useless or valueless property, therefore a compensation proceeding will not be required pursuant to 16 TAC § 24.113(n)(7). Aqua did not request to intervene.

On January 10, 2018, Order No. 2 deemed the petition administratively complete, starting the 60 day period which, therefore ends March 11, 2018. The procedural schedule required Staff's final disposition to be filed on January 24, 2018, and set January 31, 2018, as the deadline for the Petitioner's response. In accordance with the TWC, Chapter 13, and 16 TAC, Chapter 24, the Petitioner has met the Commission's requirements to allow for the release of the requested area from Aqua's water CCN number 13203 and sewer CCN number 21065. Therefore, Staff

recommends approval of the petition. Enclosed is a final map and certificate for Commission approval.

Attachment B

Aqua Texas, Inc.
Portion of Water CCN No. 13203
PUC Docket No. 47811
Petition by BCDE, Ltd. to Amend
Aqua Texas, Inc.'s CCN by Expedited Release in Harris County



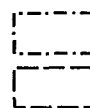
Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCN



13203 - Aqua Texas Inc

13257 - City of Tomball



Area Released

Property Boundary

0 250 500
Feet



Map by Komal Patel
Date created: January 23, 2018
Project Path: n:\finalmapping\47811AquaTexasWater.mxd



Attachment C

Aqua Texas, Inc.
 Portion of Sewer CCN No. 21065
 PUC Docket No. 48711
 Petition by BCDE, Ltd. to Amend
 Aqua Texas, Inc.'s CCN by Expedited Release in Harris County



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

Sewer CCN

-  21065 - Aqua Texas Inc
-  21103 - City of Tomball

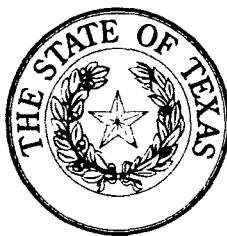
-  Area Released
-  Property Boundary

0 250 500
 Feet



Map by Komal Patel
 Date created January 23, 2018
 Project Path n\finalmapping\47811AquaTexasSewer.mxd

Attachment D



Public Utility Commission of Texas

By These Presents Be It Known To All That

Aqua Texas, Inc.

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, Aqua Texas, Inc., is entitled to this

Certificate of Convenience and Necessity No. 13203

to provide continuous and adequate water utility service to that service area or those service areas in Brazoria, Chambers, Fort Bend, Grimes, Harris, Jefferson, Liberty, Montgomery, Polk, San Jacinto, Trinity, and Wharton Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 47811 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Aqua Texas, Inc., 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, the _____ day of _____ 2018.

Attachment E

5-2019



Public Utility Commission of Texas

By These Presents Be It Known To All That

Aqua Texas Inc.

having obtained certification to provide sewer 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, Aqua Texas Inc., is entitled to this

Certificate of Convenience and Necessity No. 21065

to provide continuous and adequate sewer utility service to that service area or those service areas in Brazoria, Chambers, Fort Bend, Harris, Jefferson, Montgomery, Polk, and Trinity Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 47811 are on file at the Commission offices in Austin, Texas; and are a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty Aqua Texas Inc. 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, the _____ day of _____ 2018.