

Control Number: 48484



Item Number: 8

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DOCKET NO. 48484

**PETITION OF EQK BRIDGEVIEW
PLAZA, LLC TO AMEND HIGH POINT
WATER SUPPLY CORPORATION'S
CERTIFICATE OF CONVENIENCE
AND NECESSITY IN KAUFMAN
COUNTY BY EXPEDITED RELEASE** §
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§

PUBLIC UTILITY COMMISSION

OF TEXAS

2018 AUG 9 AM 9:40
FILING CLERK

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. Staff recommends that the application be deemed sufficient for further review. In support thereof, Staff shows the following:

I. BACKGROUND

On June 22, 2018, EQK Bridgeview Plaza, LLC (EQK Bridgeview) filed a petition with the Public Utility Commission of Texas (Commission) for expedited release from High Point Water Supply Corporation's (WSC) water certificate of convenience and necessity (CCN) No. 10841, pursuant to Tex. Water Code (TWC) § 13.254(a-5) and 16 Tex. Admin. Code (TAC) § 24.113(l).

EQK Bridgeview asserts that it owns over 25 acres of contiguous property in Kaufman County, Texas (Property). Furthermore, EQK Bridgeview states that the entirety of the Property is located within the boundaries of water CCN No. 10841. Additionally, EQK Bridgeview claims that the Property is not receiving service from any water service provider.

On July 23, Staff filed a recommendation that the petition be found administratively complete.

On July 24, 2018, WSC filed a motion to intervene, one day after the July 23, 2018 deadline for intervention.

On July 26, 2018, the Administrative Law Judge (ALJ) issued Order No. 2, finding EQK Bridgeview's petition administratively complete and notice sufficient and establishing a deadline of August 9, 2018 for Staff to file a recommendation on final disposition. Therefore, this pleading is timely filed. Furthermore, Order No. 2 set August 2, 2018 as the deadline for EQK Bridgeview

and intervenors to file a response to the administratively complete petition. No party has filed a response to the administratively complete petition.

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.¹ 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 47,500.²

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.³

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

² TWC § 13.254(a-5).

³ 16 TAC § 24.113(l)(2).

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 completeness. EQK Bridgeview's petition was deemed administratively complete in Order No. 2, issued on July 26, 2018. Therefore, the sixty (60) day deadline for administrative approval is September 24, 2018.

III. FINAL RECOMMENDATION

As supported by the attached memorandum from Patricia Garcia of the Commission's 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 EQK Bridgeview provide adequate information to demonstrate that EQK Bridgeview satisfies the requirements of TWC § 13.254(a-5) and 16 TAC § 24.113(l). Specifically, the maps and digital data provided by EQK Bridgeview enable Staff to determine: (1) the acreage of the Property is at least 25 acres; (2) that the request areas for release are not receiving water or sewer service; (3) that the requested areas are located within WSC's certificated areas; and (4) the location of the requested release areas is within a qualifying county, specifically, Kaufman County. In addition, the deeds submitted by EQK Bridgeview provide confirmation of EQK Bridgeview's ownership in the Property. Consequently, EQK Bridgeview has shown through its petition that it meets the requirements for expedited release. Therefore, Staff recommends that EQK Bridgeview's petition be approved.

The final Water CCN map (Attachment B) and Water CCN certificate (Attachment C) are attached to this filing.

IV. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that EQK Bridgeview's petition be approved.

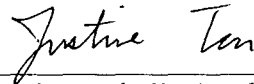
Dated: August 9, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney

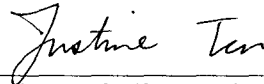


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on August 9, 2018, in accordance with 16 TAC § 22.74.



Justine Isabelle Caedo Tan

Attachment A

PUC Interoffice Memorandum

To: Justine Isabelle Tan, Attorney
Legal Division

Thru: Lisa Fuentes, Manager
Water Utility Regulation Division

From: Patricia Garcia, Engineering Specialist
Water Utility Regulation Division

Date: August 6, 2018

Subject: **Docket No. 48484:** *Petition of EQK Bridgeview Plaza, LLC to Amend High Point Water Supply Corporation's Certificate of Convenience and Necessity in Kaufman County by Expedited Release*

On June 22, 2018, EQK Bridgeview Plaza, LLC (EQK Bridgeview or Petitioner) filed a petition for expedited release from High Point Water Supply Corporation's (WSC) water Certificate of Convenience and Necessity (CCN) No. 10841 in Kaufman County, under Texas Water Code (TWC) Chapter § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.113(l). The Petitioner asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Kaufman County which is a qualifying county.

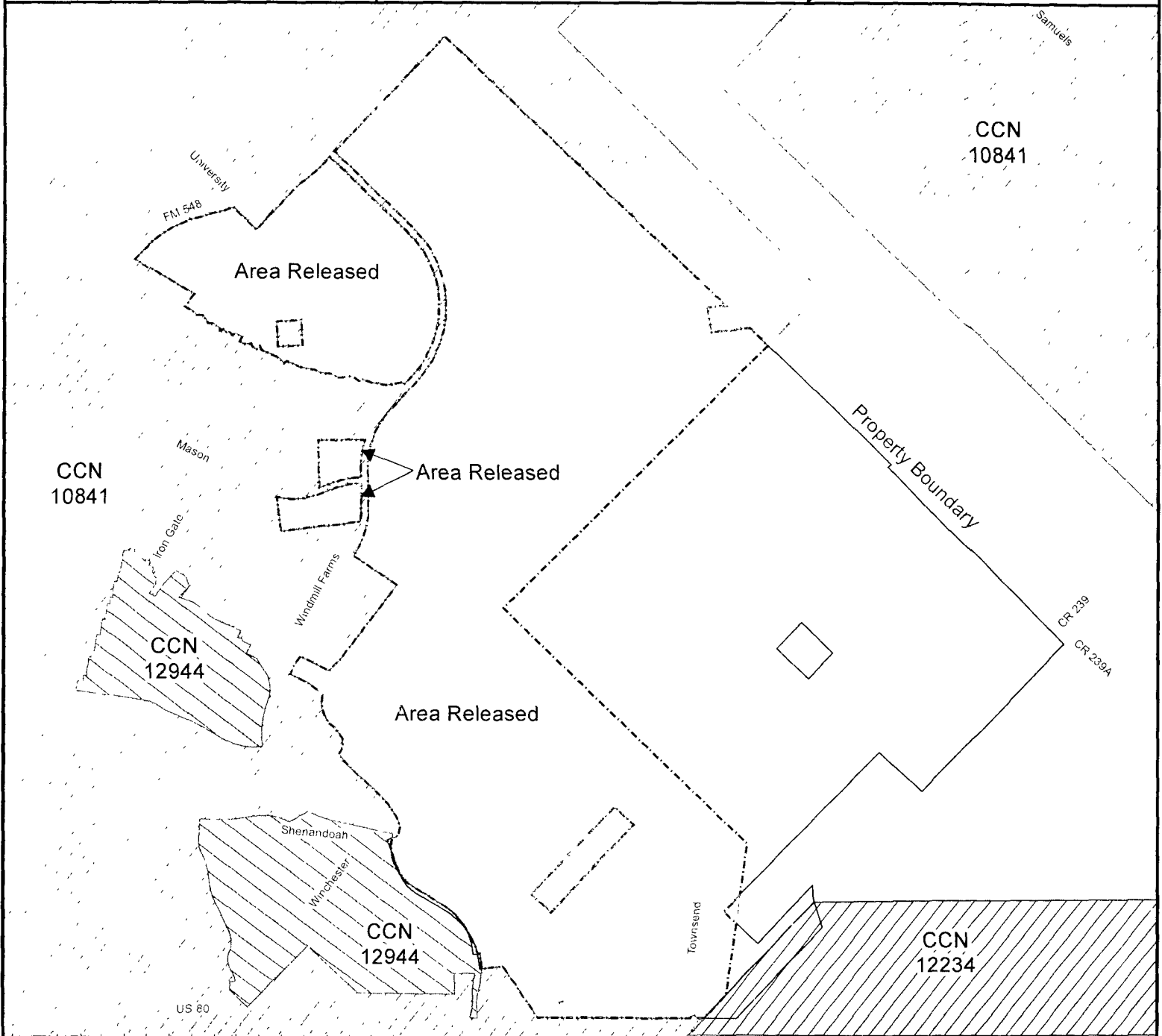
The Petitioner has provided an adequate map delineating the requested area for expedited release with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.119. The map and digital data are sufficient for determining the locations of the requested release areas within High Point WSC's certificated area. Mapping Staff was able to confirm the acreage of the subject properties, and determined that the requested areas are located within the subject property. Furthermore, the Petitioner provided warranty deeds confirming the Petitioners' ownership of the tracts of land within the subject property. In addition, the Petitioner submitted a sworn affidavit attesting that the property was not receiving water from the CCN holder. The area being requested for expedited release is approximately 1819.9 acres.

Staff recommends that there is no useless or valueless property, in accordance with 24.113(n)(3). Staff further recommends that a compensation proceeding is not necessary, if the Commission determines that there is no useless or valueless property, pursuant to 24.113(n)(7). On July 24, 2018, High Point WSC requested to intervene.

On July 26, 2018, Order No. 2 deemed the petition administratively complete, starting the 60 day period which, therefore ends September 24, 2018. The procedural schedule required Staff's final disposition to be filed on August 9, 2018, and set August 16, 2018, as the deadline for the Petitioner's response to High Point WSC and Staff's recommendation on final disposition. In accordance with the TWC, Chapter 13, and 16 TAC, the Petitioner has met the Commission's requirements to allow for the release of the requested area from High Point WSC's CCN No. 10841. Therefore, Staff recommends approval of the petition. Enclosed is a final map and certificate for Commission approval.

Attachment B

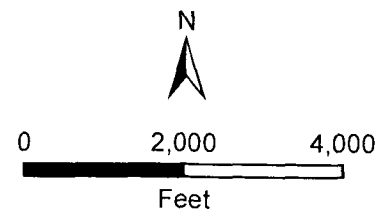
High Point WSC
Portion of Water CCN No. 10841
PUC Docket No. 48484
Petition by EQK Bridgeview Plaza LLC to Amend High Point WSC's CCN by
Expedited Release in Kaufman County



- Area Released
- Property Boundary

Water CCNs

- 10841 - High Point WSC
- 12234 - Lawrence WSC
- 12944 - Kaufman Co Development District No. 1



Attachment C



Public Utility Commission of Texas

By These Presents Be It Known To All That

High Point WSC

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, High Point WSC is entitled to this

Certificate of Convenience and Necessity No. 10841

to provide continuous and adequate water utility service to that service area or those service areas in Kaufman and Rockwall Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48484 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 High Point WSC 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 _____ 2018.