



Control Number: 48700



Item Number: 12

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PETITION OF DENTON SORRELLS, §
 LLC TO AMEND AQUA TEXAS, INC.'S §
 CERTIFICATE OF CONVENIENCE AND §
 NECESSITY IN DENTON COUNTY BY §
 EXPEDITED RELEASE §

PUBLIC UTILITY COMMISSION

OF TEXAS

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

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 3, files this Recommendation on Administrative Completeness and Proposed Notice. Staff recommends that the application be deemed sufficient for further review. In support thereof, Staff shows the following:

I. BACKGROUND

On September 19, 2018, Denton Sorrells, LLC and Punkadilly, LTD jointly filed a petition with the Commission for expedited release of two tracts of land from the service area of Aqua Texas, Inc. under certificate of convenience and necessity (CCN) number 13201 in Denton County under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.113(1) (which section was subsequently repealed and readopted at 16 TAC § 24.245(1)). Denton Sorrells owns a tract of land that is approximately 324 acres and Punkadilly owns a tract of land that is approximately 62 acres. Both tracts are located within the boundaries of Aqua's service area.

On September 25, 2018, Order No. 1 was issued, establishing a deadline of October 19, 2018, for Staff to file a recommendation on the administrative completeness of the application and notice and propose a procedural schedule for further processing of the application. On October 24, 2018, Order No. 2 was issued, finding the petition to be incomplete and deficient and Denton Sorrells and Punkadilly were ordered to cure the deficiencies on or before November 19, 2018. On December 3, 2018, Denton Sorrells and Punkadilly jointly filed a motion to sever the joint petition into two separate petitions: one for the 324-acre tract of land owned by Denton Sorrells and the other for the 62-acre tract of land owned by Punkadilly. An amended petition for the tract of land owned by Denton Sorrells and a separate petition for the tract of land owned by Punkadilly were attached to the motion to sever. On December 6, 2018, Commission

Staff filed a response to the motion to sever in which it agreed that processing the two petitions in separate dockets would be appropriate. On December 14, 2018, Order No. 3 was issued, granting the request to sever the Denton Sorrels request from the Punkadilly request. Docket No. 3 established that Docket 48700 would remain the docket in which the Denton Sorrels request is considered. Commission Staff was directed to file a supplemental recommendation regarding administrative completeness of the Denton Sorrels request on or before December 19, 2018. Therefore, this pleading is timely 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.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

¹ See generally TWC § 13.254(a-5); 16 TAC § 24.245(l).

² TWC § 13.254(a-5).

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.³

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. The ALJ has not yet deemed the petition of Denton Sorrels administratively complete. Therefore, the sixty (60) day count has not yet begun.

III. RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS

As detailed in the attached memorandum from Elisabeth English in the Commission’s Water Utility Regulation Division, Staff has reviewed the petition for expedited release and recommends that it be found administratively complete.

IV. RECOMMENDATION ON NOTICE SUFFICIENCY

Under 16 TAC § 24.245(l)(4)(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.

Petitioner states in its filing that it mailed a copy of its petition to the CCN holder, Aqua, by certified mail on the day after the petition was filed with the Commission. Petitioner also included an affidavit attesting to this provision of notice to Aqua. Accordingly, Staff recommends that the notice issued be found sufficient.

V. PROPOSED PROCEDURAL SCHEDULE

In accordance with Staff’s administrative completeness recommendation, Staff proposes that the below procedural schedule be used. Under TWC § 13.254(a-6), there is an expedited statutory deadline of 60 days for approval that begins once the Administrative Law Judge (ALJ) issues an order finding an application administratively complete. Therefore, Staff requests that the ALJ populate the following deadlines accordingly when the ALJ issues that order.

³ 16 TAC § 24.245(l)(2).

| Event | Date |
|---|--|
| Order regarding administrative completeness of the Petition | Date of Order |
| Deadline for Petitioner and/or intervenors to file a response to the administratively complete Petition | Seven (7) days from date of the Order deeming the Petition administratively complete |
| Deadline for Commission Staff's recommendation on final disposition | Seven (7) days from the deadline for Aqua and/or intervenors to file a response |
| Deadline for Petitioner to file a reply to both Aqua's response and Commission Staff's recommendation on final disposition ⁴ | 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 detailed above, Staff respectfully requests that an order be issued that (1) finds Petitioner's petition to be administratively complete and its notice sufficient and (2) adopts the above proposed procedural schedule.

Dated: December 19, 2018

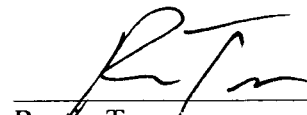
⁴ Staff notes that such a reply must be limited to briefing and argument. Submission of any additional proof will be deemed a new petition.

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney

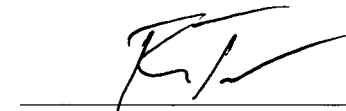


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DOCKET NO. 48700

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 19, 2018, in accordance with 16 TAC § 22.74.



Rustin Tawater

PUC Interoffice Memorandum

To: Rustin Tawater, Attorney
Legal Division

Thru: Lisa Fuentes, Manager
Water Utility Regulation Division

From: Elisabeth English, Engineering Specialist
Water Utility Regulation Division

Date: December 18, 2018

Subject: **Docket No. 48700**, *Petition of Denton Sorrells, LLC to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release.*

On September 19, 2018, Denton Sorrells, LLC (Denton Sorrells) and Punkadilly, LTD (Punkadilly) (collectively "Petitioners") filed a petition requesting the expedited release of approximately 386 acres of land located within the boundaries of Aqua Texas, Inc.'s (Aqua) water certificate of convenience and necessity (CCN) No. 13201 in Denton County. The petition is being reviewed under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) TAC § 24.245(l) (formerly 16 TAC § 24.119). The Petitioners assert that the land is at least 25 acres, is not receiving water service, and is located in Denton County, which is a qualifying county.

On December 3, 2018, the Petitioners filed a request to sever the expedited release into two separate petitions due to the request involving two landowners. On December 14, 2018, the request to sever was granted. The above referenced docket is now solely for the release of Denton Sorrells property within the boundaries of Aqua's CCN. Punkadilly's request for release was assigned Docket No. 48975.

Denton Sorrells 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 § 24.257 (formerly 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 Aqua's water CCN. Furthermore, Denton Sorrells provided a deed confirming the Petitioner's ownership of the subject property. Denton Sorrells submitted a sworn affidavit attesting that the subject property was not receiving water utility service from Aqua. The area being requested for expedited release Aqua is approximately 324 acres.

The petition also included a statement indicating a copy of the petition was sent via certified mail to Aqua.

Staff has reviewed the information provided by the Petitioner and recommends the petition be deemed administratively complete and accepted for filing.