



Control Number: 48770



Item Number: 15

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OPEN MEETING COVER SHEET

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PUBLIC UTILITY COMMISSION
FILED CLERK

MEETING DATE: December 20, 2018

DATE DELIVERED: December 13, 2018

AGENDA ITEM NO.: 45

CAPTION: **Docket No. 48770** – Petition of AIRW 2017-7, LP to Amend the City of McKinney's Certificate of Convenience and Necessity in Collin County by Expedited Release

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

Distribution List:
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Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Mayson Pearson **MP**
Administrative Law Judge

RE: **Open Meeting of December 20, 2018**
Docket No. 48770— *Petition of AIRW 2017-7, LP to Amend the City of McKinney's Certificate of Convenience and Necessity in Collin County by Expedited Release*

DATE: December 13, 2018

On November 29, 2018, a proposed order was issued 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 Thursday, December 20, 2018, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas.

On December 12, 2018, Commission Staff proposed corrections to the proposed order.

The administrative law judge finds the correction appropriate. The following correction has been made to the order:

Findings of Fact No. 6. is corrected as follows:

6. Timothy Adam Willis, independent executor of the Estate of Patsy Willis, deceased, provided an affidavit signed on October 3, 2018, affirming that the tract of land is owned by AIRW 2017-7, is more than 25 acres, is not receiving water service, is subject to CCN number 10194, which is currently held by McKinney and is located entirely in Collin County.

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DOCKET NO. 48770

PETITION OF AIRW 2017-7, LP., TO	§	PUBLIC UTILITY COMMISSION
AMEND THE CITY OF MCKINNEY'S	§	
CERTIFICATE OF CONVENIENCE	§	OF TEXAS
AND NECESSITY IN COLLIN COUNTY	§	
BY EXPEDITED RELEASE	§	

PROPOSED ORDER

This Order addresses the petition of AIRW 2017-7, L.P. to amend the City of McKinney's water certificate of convenience and necessity (CCN) by expedited release. The Commission approves the petition and removes approximately 138 acres from McKinney's CCN.

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

I. Findings of Fact

Petitioner

1. AIRW 2017-7 is a domestic limited partnership registered with the Texas Secretary of State on March 15, 2017, under file number 0802720661.
2. AIRW 2017-7 owns an approximately 138-acre tract of land that is part of a 145-acre parcel of land and is located in Collin County within the boundaries of McKinney's CCN number 10194.

Petition

3. On October 11, 2018, AIRW 2017-7 filed a petition for expedited release of the tract of land within McKinney's CCN number 10194 in Collin County.
4. Collin County is adjacent to Dallas County, which is a county with a population of over 1,000,000.
5. AIRW 2017-7 provided warranty deeds and location maps confirming ownership of the tract of land.
6. Timothy Adam Willis, independent executor of the Estate of Patsy Willis, deceased, provided an affidavit signed on October 3, 2018, affirming that the tract of land is owned by AIRW 2017-7, is more than 25 acres, is not receiving water service, is subject to CCN

number 10194, which is currently held by McKinney and is located entirely in Collin County.

7. In Order No. 2 issued on November 13, 2018, the administrative law judge (ALJ) found the petition administratively complete.

Intervenor

8. In Order No. 3 issued on November 19, 2018, the ALJ granted McKinney's intervention.

Notice

9. On October 11, 2018, AIRW 2017-7 certified that it sent a true and correct copy of the petition via certified mail, with return receipt requested, to McKinney.
10. Notice of the petition appeared in the October 26, 2018 issue of the *Texas Register*.
11. In Order No. 2 issued on November 13, 2018, the ALJ found the notice sufficient.

Water Service

12. There is no evidence that McKinney has committed or dedicated facilities or lines providing water service to the tract of land.
13. There is no evidence that McKinney has performed acts or supplied anything to the tract of land.
14. McKinney has not committed facilities or lines providing water service to the tract of land.
15. McKinney has not performed acts or supplied anything to the tract of land.
16. The tract of land is not receiving actual water service from McKinney.

Determination of Useless or Valueless Property

17. McKinney did not identify any property that is rendered useless or valueless by the decertification.

Informal Disposition

18. More than 15 days have passed since the completion of notice in this docket.
19. Commission Staff, AIRW 2017-7, and McKinney are the only parties to this proceeding.
20. No party requested a hearing.
21. On November 26, 2018, Commission Staff recommended approval of the petition.

II. Conclusions of Law

1. The Commission has jurisdiction over this petition under Texas Water Code § 13.254(a-5).
2. Notice of the petition was provided in compliance with 16 TAC § 24.245(l)(4)(A)(vi) and 16 TAC § 22.54.
3. To obtain a release under TWC § 13.254(a-5), a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving water service.
4. Collin County is a qualifying county under TWC § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245.
5. The tract of land is not receiving water service from McKinney, as that term has been defined by the Austin Court of Appeals,¹ in accordance with TWC § 13.254(a-5).
6. No property has been rendered useless or valueless by the decertification; therefore, under TWC § 13.254(d) through (g) no compensation is owed to McKinney.
7. Because no compensation is owed under TWC § 13.254(d) through (g), a retail public utility may render retail water service directly or indirectly to the public in the decertified area without providing compensation to McKinney.
8. AIRW 2017-7 has sufficiently satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.245 by adequately demonstrating ownership of a tract of land that is at least 25 acres, is located in a qualifying county, and is not receiving water service.
9. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,² and Commission rules.
10. Under TWC § 13.257(r) and (s), McKinney 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.

¹ *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130, 140-41 (Tex. App.—Austin 2014, pet. denied).

² Administrative Procedure Act, Tex. Gov't Code §§ 2001.001–.902.

III. Ordering Paragraphs

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

1. The Commission grants the petition and removes the approximately 138-acre tract of land from McKinney's water CCN number 10194.
2. The Commission amends McKinney's CCN number 10194 in accordance with this Order.
3. The Commission's official service-area boundary maps for McKinney will reflect this change, as shown in the attached map.
4. McKinney must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Collin County affected by the petition and submit to the Commission evidence of the recording no later than 31 days after receipt of this Order.
5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the _____ day of December 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER