



Control Number: 48788



Item Number: 11

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DOCKET NO. 48788

RECEIVED

PETITION OF TFLP INVESTMENTS, §
LP AND TFGP PROPERTIES, LLC TO §
AMEND AQUA TEXAS, INC.'S SEWER §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN HAYS COUNTY §
BY EXPEDITED RELEASE §

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS
CLERK

2019 JAN 31 PM 3:15

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

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 Final Disposition. Staff recommends that the petition be approved. In support thereof, Staff shows the following:

I. BACKGROUND

On October 16, 2018, TFLP Investments, LP (Petitioner), filed a petition with the Public Utility Commission of Texas (Commission) for expedited release from Aqua Texas, Inc.'s (Aqua Texas), sewer Certificate of Convenience and Necessity (CCN) No. 20867 pursuant to Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(l) (formerly 16 TAC § 24.113(l)).

Petitioner asserts that it owns 68.96 acres of contiguous property in Hays County, Texas (Property). Furthermore, Petitioner states that 26.7 acres of the Property is located within the boundaries of sewer CCN No. 20867. Additionally, Petitioner claims that the Property is not receiving service from any sewer service provider.

On November 9, 2018, Staff filed a recommendation of deficiency, wherein it identified two issues. First, the petition did not identify all owners of the subject property requesting expedited release from Aqua Texas' sewer CCN. Second, the Petitioner did not provide proof that a copy of the petition was mailed to Aqua Texas via certified mail on the day that the petition was submitted to the Commission.

On November 15, 2018, the Administrative Law Judge (ALJ) issued Order No. 2, finding the petition incomplete based on the two aforementioned issues identified by Staff and requiring the Petitioner to cure the deficiencies by December 18, 2018.

On November 14, 2018, Petitioner filed supplemental information to cure the deficiencies, including documentation related to notice, and a request to add TFGP Properties, LLC, as an additional petitioner.

On December 18, 2018, following informal communication with Commission Staff, TFLP Investments, LP, and TFGP Properties, LLC (collectively, Petitioners), filed a second supplement to the petition. The supplement provided a notarized affidavit for streamlined expedited release.

On January 15, 2019, Staff filed a recommendation that the petition be found administratively complete. Thereafter, on January 22, 2019, the Commission ALJ issued Order No. 3, whereby the docket was restyled to add TFGP Properties, LLC, as a petitioner. Additionally, Order No. 3 required Staff to file a recommendation on final disposition by February 5, 2019. 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

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

² TWC § 13.254(a-5).

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.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. Petitioners' petition was deemed administratively complete in Order No. 3, issued on January 22, 2019. Therefore, the sixty (60) day deadline for administrative approval is March 25, 2019.⁴

III. RECOMMENDATION ON FINAL DISPOSITION

As supported by the attached memorandum of Greg Charles 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 Petitioners provide adequate information to demonstrate that Petitioners satisfy the requirements of TWC § 13.254(a-5) and 16 TAC § 24.245(l). Specifically, the maps and digital data provided by Petitioners enable Staff to determine: (1) the acreage of the Property is at least 25 acres; (2) that the requested area for release is not receiving sewer service; (3) that the requested area for release is located within Aqua Texas' certificated area;⁵ and (4) the location of the requested release area is within a qualifying county, specifically, Hays County. In addition, the deeds submitted by Petitioners provide confirmation of Petitioners' ownership in the Property. Consequently, the Petitioners have shown through their petition that they meet the requirements for expedited release. Therefore, Staff recommends that Petitioners' petition be approved.

³ 16 TAC § 24.245(l)(2).

⁴ Sixty days following the determination of administrative completeness is Saturday, March 23, 2019, a day the Commission is not open for business. Therefore, the designated period runs until the end of the next day on which the Commission is open for business, Monday, March 25, 2019. See 16 TAC § 22.4(a).

⁵ As stated in Mr. Charles memorandum, Staff has determined that the area for expedited release is approximately 38 acres. Staff's revised acreage updates the Petitioners' assertion in their petition that 26.7 acres of the Property is located within Aqua Texas' sewer CCN boundary.

Based on Mr. Charles' memorandum, Staff further recommends that no property be deemed useless or valueless should the ALJ grant approval of the petition for expedited release.

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

IV. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that TFLP Investments, LP's, and TFGP Properties, LLC's petition be approved.

Dated: January 31, 2019

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 January 31, 2019, in accordance with 16 TAC § 22.74.



Richard Nemer

Attachment A

PUC Interoffice Memorandum

To: Richard Nemer, Attorney
Legal Division

Thru: Heidi Graham, Manager
Water Utility Regulation Division

From: Greg Charles, Engineer
Water Utility Regulation Division

Date: January 31, 2019

Subject: **Docket No. 48788:** *Petition of TFLP Investments, LP and TFGP Properties, LLC to Amend Aqua Texas, Inc.'s Sewer Certificate of Convenience and Necessity in Hays County by Expedited Release*

On October 16, 2018, TFLP Investments, LP, filed a petition for expedited release from Aqua Texas, Inc.'s (Aqua Texas) sewer Certificate of Convenience and Necessity (CCN) No. 20867 in Hays County, under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(l) (formerly 16 TAC § 24.113(l)). On November 14, 2018, TFLP Investments, LP, filed supplemental information, including a request to add TFGP Properties, LLC, as an additional petitioner. TFLP Investments, LP, and TFGP Properties, LLC (collectively, Petitioners), assert that the land is at least 25 acres, is not receiving sewer service, and is located in Hays County, which is a qualifying county.

The Petitioners submitted 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 Texas' certificated area. Mapping Staff was able to confirm the acreage of the subject property, and determined that the requested area is located within Aqua Texas' sewer CCN. Furthermore, the Petitioners provided warranty deeds confirming the Petitioners' ownership of the tract of land within Aqua Texas' certificated area. In addition, the Petitioners submitted a notarized affidavit attesting that the property was not receiving sewer service from the CCN holder. The area requested for expedited release is approximately 38 acres.

Aqua Texas did not request to intervene. Therefore, in accordance with 16 TAC § 24.245(n)(3) (formerly 16 TAC § 24.113(n)(3)), Staff recommends that there is no useless or valueless property. If the Commission determines that there is no useless or valueless property, pursuant to 16 TAC § 24.245(n)(7) (formerly 16 TAC § 24.113(n)(7)), Staff further recommends that a compensation proceeding is not necessary.

In accordance with TWC § 13.254(a-5) and 16 TAC § 24.245(l), the Petitioners have met the Commission's requirements to allow for the release of the requested area from Aqua Texas's CCN No. 20867. Therefore, Staff recommends approval of the petition. Enclosed is a final map and certificate for Commission approval.

Additionally, Staff recommends that a final map and certificate be provided to the CCN holder. Pursuant to TWC § 13.257 (r)-(s), Staff further recommends that Aqua Texas file the following information in the Hays County Clerk's office: (1) a certified copy of the CCN map; (2) a certified copy of the amended certificate; and (3) a boundary description of the CCN service area.


Attachment B

Aqua Texas, Inc.
Portion of Sewer CCN No. 20867
PUC Docket No. 48788
Petition by TFLP Investments, LP and TFGP Properties, LLC to Amend
Aqua Texas, Inc.'s CCN by Expedited Release in Hays County



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

Sewer CCN

 20867 - Aqua Texas Inc

 Area Released

 Property Boundary

0 250 500
Feet



Map by: Komal Patel
Date created: January 11, 2019
Project Path: n:\finalmapping\
48788AquaTexas.mxd

Attachment C



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. 20867

to provide continuous and adequate sewer utility service to that service area or those service areas in Burnet, Hays, Travis, Victoria, and Williamson Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48788 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 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, this _____ day of _____ 2019.