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

**COMMISSION STAFF'S SUPPLEMENTAL 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. 2, files this Supplemental Recommendation on Administrative Completeness and Proposed Notice. Staff recommends that the petition be deemed sufficient for further review. 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).

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 water 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.

In Order No. 2, the Commission ALJ also established a deadline for Staff to file a supplemental recommendation on the sufficiency of Petitioners' petition by January 19, 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.<sup>1</sup> 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.<sup>2</sup>

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

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

<sup>2</sup> TWC § 13.254(a-5).

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.<sup>3</sup>

Pursuant to TWC § 13.254(a-6), the Commission must render a decision on a petition for expedited release “not later than the 60<sup>th</sup> 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 Petitioners’ petition administratively complete. Therefore, the sixty (60) day count has not yet begun.

### **III. ADMINISTRATIVE COMPLETENESS**

Staff has reviewed the supplemental documentation filed by Petitioners on November 14, 2018, and December 18, 2018. As it relates to the filing on November 14, 2018, Petitioners requested that TFGP Properties, LLC, the other owner of the subject property, as identified in the submitted warranty deeds, be added as an additional petitioner.

Petitioners’ supplemental filing on December 18, 2018, included a notarized affidavit for streamlined expedited release. The notarized affidavit provided the information required pursuant to 16 TAC § 24.245(l)(4)(A).

Therefore, as supported by the attached memorandum of Greg Charles in the Commission’s Water Utility Regulation Division, Staff has reviewed the petition for expedited release, and Petitioners’ supplemental information, and recommends that it be found administratively complete.

### **IV. 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.

On November 14, 2018, Petitioners provided proof, via their supplemental filing, that they mailed a copy of the petition to the CCN holder, Aqua Texas, by certified mail on the day the

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<sup>3</sup> 16 TAC § 24.245(l)(2).

petition was filed with the Commission. Also, on December 18, 2018, in Petitioners' subsequent supplemental filing, the affidavit included a statement attesting to this provision of notice to Aqua Texas. In addition, the Commission published notice of this petition in the *Texas Register* on November 2, 2018. Such notice meets the requirement of 16 TAC § 24.245(l). Accordingly, Staff recommends that Petitioners' notice be found sufficient and that no additional notice be required.

## V. PROCEDURAL SCHEDULE

In accordance with Staff's administrative completeness recommendation, Staff proposes the following procedural schedule:

Event	Date
Order regarding administrative completeness of the Petition	Date of Order
Deadline for Aqua Texas 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 Texas and/or intervenors to file a response
Deadline for Petitioners to file a reply to both Aqua Texas' response and Commission Staff's recommendation on final disposition <sup>4</sup>	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 recommends that TFLP Investments, LP's, and TFGP Properties, LLC's petition be deemed administratively complete, their notice be found sufficient, and the proposed procedural schedule be adopted.

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

Dated: January 15, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

Karen S. Hubbard  
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 January 15, 2019, in accordance with 16 TAC § 22.74.



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Richard Nemer

## PUC Interoffice Memorandum

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**To:** Richard Nemer, Attorney  
Legal Division

**Thru:** Lisa Fuentes, Manager  
Water Utilities Regulation Division

**From:** Greg Charles, Engineer  
Water Utilities Regulation Division

**Date:** January 15, 2019

**Subject:** **Docket No. 48788:** *Petition of TFLP Investments, LP 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 (Petitioner) 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)). The Petitioner asserts that the land is at least 25 acres, is not receiving sewer service, and is located in Hays County, which is a qualifying county.

On November 14, 2018, in response to Staff's Recommendation on Administrative Completeness and Proposed Notice, the Petitioner filed a supplement to the petition requesting that TFGP Properties, LLC, as joint owner of the subject property, be added as an additional petitioner requesting expedited release from Aqua Texas' sewer CCN. The supplemental filing also provided proof that a copy of the petition was mailed to the CCN holder via certified mail on the day that the petition was submitted to the Commission.

On December 18, 2018, TFLP Investments, LP, and TFGP Properties, LLC (collectively, Petitioners), filed a second supplement to the petition, consisting of a notarized affidavit for streamlined expedited release.

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. Mapping Staff has determined that the area requested for expedited release is approximately 38 acres, as opposed to 26.7 acres, the acreage stated by the Petitioners in their petition.

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