



Control Number: 48824



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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

2019 FEB 11 PM 12:42

Public Utility Commission of Texas

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

All Parties of Record

FROM: Office of Policy & Docket Management

RE: **Open Meeting of February 28, 2019**
PUC Docket No. 48824 – *Petition of Tejas Creek, Ltd. to Amend Aqua Texas, Inc.'s*
Certificates of Convenience and Necessity in Montgomery County by Expedited
Release

DATE: February 11, 2019

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting presently scheduled to begin at 9:30 a.m. on Thursday, February 28, 2019, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties shall file corrections or exceptions to the Proposed Order on or before Wednesday, February 20, 2019.

The need to have Tejas Creek's petition considered within the 60-day timeline set forth in TWC § 13.254(a-6) serves as good cause to waive the 20-day requirement in 16 Texas Administrative Code (TAC) § 22.35 and have the petition considered at the next regularly scheduled open meeting.

If there are no corrections or exceptions, no response is necessary.

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DOCKET NO. 48824

PETITION OF TEJAS CREEK, LTD. TO	§	PUBLIC UTILITY COMMISSION
AMEND AQUA TEXAS, INC.'S	§	
CERTIFICATES OF CONVENIENCE	§	OF TEXAS
AND NECESSITY IN MONTGOMERY	§	
COUNTY BY EXPEDITED RELEASE	§	

PROPOSED ORDER

This Order addresses the petition of Tejas Creek, Ltd. to amend Aqua Texas, Inc.'s water and sewer certificates of convenience and necessity (CCN) by expedited release. The Commission approves the petition and removes an approximately 108-acre tract of land from Aqua's water and sewer CCNs.

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

I. Findings of Fact

Petitioner

1. Tejas Creek is a domestic limited partnership registered with the Texas secretary of state on September 5, 2014, under file number 802058318.
2. Tejas Creek owns an approximately 108-acre tract of land located within the boundaries of Aqua's water CCN number 13203 and sewer CCN number 21065 in Montgomery County.

Petition

3. On October 30, 2018, Tejas Creek filed a petition for expedited release of its 108-acre tract of land in Montgomery County.
4. The 108-acre tract of land comprises the following parcels: (a) a 5.278-acre parcel; (b) a 50.571-acre parcel, (c) two 5-acre parcels; and (d) 42.3461 acres out of a 44.9607-acre parcel.
5. Tejas Creek provided three deeds confirming its ownership of the 108-acre tract of land and maps confirming its location.
6. The 108-acre tract of land is within Aqua's service areas for CCN numbers 13203 and 21065.

7. Montgomery County is adjacent to Harris County, which is a county with a population of over one million.
8. Daniel K. Signorelli, manager of Tejas Creek, provided a notarized affidavit signed on October 23, 2018, attesting that the 108-acre tract of land is owned by Tejas Creek, is not receiving water or sewer service, appears to be within the boundaries of CCN numbers 13203 and 21065 held by Aqua, and is located in Montgomery County.
9. In Order No. 3 issued on December 12, 2018, the administrative law judge (ALJ) found the petition administratively complete.

Notice

10. In the petition, Tejas Creek stated that it had sent a copy of the petition by certified mail to Aqua.
11. Notice of the petition appeared in the November 16, 2018 issue of the *Texas Register*.
12. In Order No. 3 issued on December 12, 2018, the ALJ found the notice sufficient.

Intervention

13. In Order No. 2 issued on December 12, 2018, the ALJ granted Aqua's motion to intervene.

Response to the Petition

14. On November 29 and December 19, 2018, Aqua filed responses to the petition in which it requested that the petition be denied. Aqua also requested that, if the petition were granted, the Commission would identify property rendered useless or valueless by the decertification.

Water Service

15. Aqua's Adobe Terrace and Tejas Boulevard water treatment plants are less than a mile from the 108-acre tract of land. Those water plants have a combined capacity to serve 252 additional residential connections.
16. Aqua has pipes near the 108-acre tract of land and provides actual water service to a property that is adjacent to the 108-acre tract of land.
17. In 2013 and 2014, Aqua was in contact with various entities regarding providing water service to part of the 108-acre tract of land but was not in contact with Tejas Creek.

18. Aqua has a groundwater permit and maintains public water system number 1700134, but those are not limited to the 108-acre tract of land.
19. Aqua has not committed facilities or lines providing water service to the 108-acre tract of land.
20. Aqua has not performed acts or supplied anything to the 108-acre tract of land.
21. The 108-acre tract of land is not receiving actual water service from Aqua.

Sewer Service

22. Aqua's Lake Conroe Forest wastewater treatment plant serves properties adjacent to and near the 108-acre tract of land.
23. The Lake Conroe Forest wastewater treatment plant has capacity to serve 1,000 additional residential connections.
24. In 2013 and 2014, Aqua was in contact with various entities regarding providing sewer service to part of the 108-acre tract of land but was not in contact with Tejas Creek.
25. On November 27, 2018, Tejas Creek sent Aqua a letter in which Tejas Creek inquired regarding potential service but did not request service.
26. Aqua maintains Texas Pollutant Discharge Elimination System permit number WQ0014357001, but that permit is not limited to the 108-acre tract of land.
27. Aqua has not committed facilities or lines providing sewer service to the 108-acre tract of land.
28. Aqua has not performed acts or supplied anything to the 108-acre tract of land.
29. The 108-acre tract of land is not receiving actual sewer service from Aqua.

Determination of Useless or Valueless Property

30. Aqua's facilities can still be used and useful to provide water and sewer service in the remainder of its CCN service areas.
31. No property of Aqua is rendered useless or valueless by the decertification.

Informal Disposition

32. More than 15 days have passed since the completion of notice of the petition in this docket.

33. Commission Staff, Tejas Creek, and Aqua are the only parties to this proceeding.
34. No party requested a hearing.
35. On January 2, 2019, Commission Staff recommended approval of the petition.

Good Cause to Waive the 20-Day Requirement

36. The need to have Tejas Creek's petition considered within the 60-day timeline set forth in TWC § 13.254(a-6) serves as good cause to waive the 20-day requirement in 16 Texas Administrative Code (TAC) § 22.35 and have the petition considered at the next regularly scheduled open meeting.

II. Conclusions of Law

1. The Commission has jurisdiction over this petition under Texas Water Code (TWC) § 13.254(a-5).
2. Notice of the petition was provided in compliance with 16 TAC § 24.245(l) and 16 TAC § 22.55.
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 or sewer service.
4. A tract of land under TWC § 13.254(a-5) and 16 TAC § 24.245(l) must form a connected, uninterrupted whole.¹
5. Montgomery County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.245(l).
6. The 108-acre tract of land is not receiving water or sewer service from Aqua as that term has been defined by the Austin Court of Appeals.²
7. The requirement that facilities be committed and dedicated to serve a tract of land is not satisfied just by facilities that are available and capable of providing water or sewer service.

¹ 16 TAC 24.3(73).

² *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130, 140-41 (Tex. App.—Austin 2014, pet. denied).

8. The requirement that facilities be committed and dedicated, or acts be performed, to serve a tract of land is not satisfied just by facilities that are committed or used, or acts that are performed, for the general provision of service to a certificated area.
9. Tejas Creek has satisfied the requirements of TWC § 13.254(a-5) and 16 TAC § 24.245(l) 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 or sewer service.
10. As used in TWC § 13.254(d), the words *property*, *useless*, and *valueless* should be given their ordinary or plain meaning.³
11. As used in TWC § 13.254(d), *useless* means having or being of no use, and *valueless* means having no monetary worth.
12. No property has been rendered useless or valueless by the decertification; therefore, no compensation is owed to Aqua under TWC § 13.254(d) through (g).
13. Because no compensation is owed under TWC § 13.254(d) through (g), a retail public utility may render retail water or sewer service directly or indirectly to the public in the 108-acre tract of land without providing compensation to Aqua.
14. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,⁴ and Commission rules.
15. Under TWC § 13.257(r) and (s), Aqua 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.

³ Tex. Gov't Code §§ 311.011, 311.002; *Tex. Dept. of Protective & Reg. Servs. v. Mega Child Care, Inc.*, 145 S.W.3d 170, 177 (Tex. 2004); *State v. Pub. Util. Comm'n of Texas*, 883 S.W.2d 190, 200 (Tex. 1994).

⁴ 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 108-acre tract of land owned by Tejas Creek from Aqua's water CCN number 13203 and sewer CCN number 21065.
2. The Commission amends Aqua's water CCN number 13203 and sewer CCN number 21065 in accordance with this Order.
3. The Commission's official service area boundary maps for Aqua's CCNs must reflect this change, as shown in the attached maps.
4. Aqua must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Montgomery 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 February 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER