

Control Number: 48935



Item Number: 12

Addendum StartPage: 0

**DeAnn T. Walker**  
Chairman  
**Arthur C. D'Andrea**  
Commissioner  
**Shelly Botkin**  
Commissioner  
**John Paul Urban**  
Executive Director



**Greg Abbott**  
Governor

RECEIVED  
2019 FEB -8 PM 3:27

*Public Utility Commission of Texas*

PUBLIC UTILITY COMMISSION  
CLERK

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 February 28, 2019**  
Docket No. 48935-Petition of AIRW 2017-7, L.P., to Amend the City of  
McKinney's Certificate of Convenience and Necessity in Collin County by  
Expedited Release

DATE: February 8, 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 Thursday, February 14, 2019.

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

ta  
q:\cadm\doCKET management\water\ccn\_expedited\48xxx\48935 po memo.docx

**DOCKET NO. 48935**

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

**PROPOSED ORDER**

This Order addresses the petition of AIRW 2017-7, L.P. to amend the City of McKinney's sewer certificate of convenience and necessity (CCN) by expedited release. The Commission approves the petition and removes approximately 138.413 acres from the City of McKinney's CCN number 20071 in Collin County.

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

**I. Findings of Fact**

**Petitioner**

1. AIRW 2017-7 (AIRW) is a domestic limited partnership registered with the Texas Secretary of State on March 15, 2017, under file number 0802720661.
2. AIRW owns 138.413 contiguous acres of land located in Collin County within the boundaries of the City of McKinney's (McKinney) sewer CCN number 20071.

**Petition**

3. On November 30, 2018, AIRW filed a petition for expedited release of its 138.413-area tract of land in Collin County.
4. The tract of land is within McKinney's CCN number 20071.
5. Collin County is adjacent to Dallas County, which is a county with a population of over one million.
6. AIRW provided a special warranty deed and location maps confirming ownership of the tract of land.
7. Matthew J. Hiles, vice president of AIRW 17, LLC, provided an affidavit signed on November 30, 2018, affirming that the tract of land is owned by AIRW, is more than 25

acres, is not receiving sewer service, is subject to CCN number 20071, which is currently held by McKinney and is located entirely in Collin County.

8. In Order No. 2, issued January 4, 2019, the administrative law judge (ALJ) found the petition administratively complete.

#### **Intervenor**

9. In Order No. 3, issued on January 15, 2019, the ALJ granted McKinney's motion to intervene.
10. McKinney's motion to intervene included a sewer map outlining the location of its existing lines in relation to the requested area.

#### **Notice**

11. On November 30, 2018, AIRW certified that it sent a true and correct copy of the petition via certified mail, with return receipt requested, to McKinney.
12. Notice of the petition appeared in the December 14, 2018 issue of the *Texas Register*.
13. In Order No. 2, issued January 4, 2019, the ALJ found the notice sufficient.

#### **Sewer Service**

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

#### **Determination of Useless or Valueless Property**

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

#### **Informal Disposition**

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

21. Commission Staff, AIRW, and McKinney are the only parties to this proceeding.
22. No hearing was requested, and no hearing is needed.
23. This decision is not adverse to any party.
24. On January 18, 2019, Commission Staff recommended approval of the petition.

## 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 Texas Administrative Code (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 sewer service.
4. Collin County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.245.
5. The tract of land is not receiving sewer service from McKinney, as that term has been defined by the Austin Court of Appeals,<sup>1</sup> 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 sewer service directly or indirectly to the public in the decertified area without providing compensation to McKinney.
8. AIRW 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 sewer service.

---

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

9. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,<sup>2</sup> 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.

### 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 sewer CCN number 20071.
2. The Commission amends McKinney's CCN number 20071 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.

---

<sup>2</sup> Administrative Procedure Act, Tex. Gov't Code ch. 2001.

Signed at Austin, Texas the \_\_\_\_\_ day of February 2019.

**PUBLIC UTILITY COMMISSION OF TEXAS**

---

**DEANN T. WALKER, CHAIRMAN**

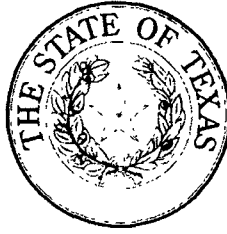
---

**ARTHUR C. D'ANDREA, COMMISSIONER**

---

**SHELLY BOTKIN, COMMISSIONER**

Q:\CADM\Docket Management\Water\CCN\_EXPEDITED\48xxx\48935 PO docx



# Public Utility Commission of Texas

**By These Presents Be It Known To All That**

**City of McKinney**

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 by City of McKinney is entitled to this

## **Certificate of Convenience and Necessity No. 20071**

to provide continuous and adequate sewer utility service to that service area or those service areas in Collin County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48935 are on file at the Commission offices in Austin, Texas; and is a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of City of McKinney 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, the 9th day of February 2019.





City of McKinney  
 Portion of Sewer CCN No. 20071  
 PUC Docket No. 48935  
 Petition by AIRW 2017-7, LP to Amend  
 City of McKinney's CCN by Expedited Release in Collin County

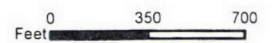


Public Utility Commission of Texas  
 1701 N. Congress Ave  
 Austin, TX 78701

**Sewer CCN**

-  20071 - City of McKinney
-  20888 - City of Prosper

-  Property Boundary
-  Area Released



Map by: Komal Patel  
 Date created: January 16, 2019  
 Project Path: n:\finalmapping\  
 48935CityofMcKinney.mxd