



Control Number: 48975



Item Number: 3

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**DOCKET NO. 48975**

<b>PETITION OF PUNKADILLY, LTD. TO</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>AMEND AQUA TEXAS, INC.'S</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE AND</b>	<b>§</b>	<b>OF TEXAS</b>
<b>NECESSITY IN DENTON COUNTY BY</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	

2018 DEC 19 PM 2:30  
 PUBLIC UTILITY COMMISSION  
 HEARINGS CLERK

**COMMISSION STAFF'S 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. 1, files this Recommendation on Administrative Completeness and Proposed Notice. Staff recommends that the application be deemed sufficient for further review. In support thereof, Staff shows the following:

**I. BACKGROUND**

On September 19, 2018, Denton Sorrells, LLC and Punkadilly, LTD jointly filed a petition with the Commission for expedited release of two tracts of land from the service area of Aqua Texas, Inc. under certificate of convenience and necessity (CCN) number 13201 in Denton County under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.113(1) (which section was subsequently repealed and readopted at 16 TAC § 24.245(1)). That request was filed in PUC Docket No. 48700. Denton Sorrells owns a tract of land that is approximately 324 acres and Punkadilly owns a tract of land that is approximately 62 acres. Both tracts are located within the boundaries of Aqua's service area.

On December 3, 2018, Denton Sorrells and Punkadilly jointly filed a motion to sever the joint petition into two separate petitions: one for the tract of land owned by Denton Sorrells and the other for the 62-acre tract of land owned by Punkadilly. An amended petition for the tract of land owned by Denton Sorrells and a separate petition for the tract of land owned by Punkadilly were attached to the motion to sever. On December 6, 2018, Commission Staff filed a response to the motion to sever in which it agreed that processing the two petitions in separate dockets would be appropriate. On December 14, 2018, Order No. 3 in Docket 48700 was issued, which was also Order No. 1 in the present docket, Docket 48975. The Order granted the request to sever the Denton Sorrells request from the Punkadilly request, and assigned the Punkadilly portion of the request to Docket 48975. Docket No. 1 in the present docket also directed Commission Staff to

file a recommendation regarding administrative completeness of the Punkadilly request on or before December 19, 2018. 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 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>

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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).

<sup>3</sup> 16 TAC § 24.245(l)(2).

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 the petition of Punkadilly administratively complete. Therefore, the sixty (60) day count has not yet begun.

### **III. RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS**

As detailed in the attached memorandum from Elisabeth English in the Commission’s Water Utility Regulation Division, Staff has reviewed the petition for expedited release and recommends that it be found administratively complete.

### **IV. RECOMMENDATION ON 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.

Petitioner states in its filing that it mailed a copy of its petition to the CCN holder, Aqua, by certified mail on the day after the petition was filed with the Commission. Petitioner also included an affidavit attesting to this provision of notice to Aqua. Accordingly, Staff recommends that the notice issued be found sufficient.

### **V. PROPOSED PROCEDURAL SCHEDULE**

In accordance with Staff’s administrative completeness recommendation, Staff proposes that the below procedural schedule be used. Under TWC § 13.254(a-6), there is an expedited statutory deadline of 60 days for approval that begins once the Administrative Law Judge (ALJ) issues an order finding an application administratively complete. Therefore, Staff requests that the ALJ populate the following deadlines accordingly when the ALJ issues that order.

Event	Date
Order regarding administrative completeness of the Petition	Date of Order
Deadline for Petitioner 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 and/or intervenors to file a response
Deadline for Petitioner to file a reply to both Aqua's 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 requests that an order be issued that (1) finds Petitioner's petition to be administratively complete and its notice sufficient and (2) adopts the above proposed procedural schedule.

Dated: December 19, 2018

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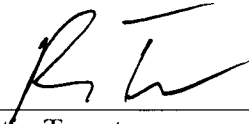
<sup>4</sup> Staff notes that such a reply must be limited to briefing and argument. Submission of any additional proof will be deemed a new petition.

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

Katherine Lengieza Gross  
Managing Attorney



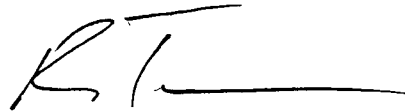
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Rustin Tawater  
State Bar No. 24110430  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7230  
(512) 936-7268 (facsimile)  
rustin.tawater@puc.texas.gov

**DOCKET NO. 48975**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on December 19, 2018, in accordance with 16 TAC § 22.74.



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Rustin Tawater

## PUC Interoffice Memorandum

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**To:** Rustin Tawater, Attorney  
Legal Division

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

**From:** Elisabeth English, Engineering Specialist  
Water Utility Regulation Division

**Date:** December 18, 2018

**Subject:** **Docket No. 48975**, *Petition of Punkadilly, LTD to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release.*

On September 19, 2018, Denton Sorrells, LLC (Denton Sorrells) and Punkadilly, LTD (Punkadilly) (collectively “Petitioners”) filed a petition requesting the expedited release of approximately 386 acres of land located within the boundaries of Aqua Texas, Inc.'s (Aqua) water certificate of convenience and necessity (CCN) No. 13201 in Denton County. The petition was assigned Docket No. 48700. On December 3, 2018, the Petitioners filed a request to sever the expedited release filed in 48700 into two separate petitions due to the request involving two landowners.

On December 14, 2018, the request to sever was granted. The above referenced docket is for the release of property owned by Punkadilly located within the boundaries of Aqua’s CCN. The petition is being reviewed under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) TAC § 24.245(l). Punkadilly asserts that the land is at least 25 acres, is not receiving water service, and is located in Denton County, which is a qualifying county.

Punkadilly has provided 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’s certificated area. Mapping Staff were able to confirm the acreage of the subject property, and determined that the requested release area is located within the Aqua’s water CCN. Furthermore, Punkadilly provided a deed confirming the Petitioner’s ownership of the subject property. Punkadilly submitted a sworn affidavit attesting that the subject property was not receiving water utility service from Aqua. The area being requested for expedited release from Aqua is approximately 62 acres.

The petition also included a statement indicating a copy of the petition was sent via certified mail to Aqua.

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