



Control Number: 49167



Item Number: 3

Addendum StartPage: 0

49167

DOCKET NO. 48180

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PETITION OF MARTIN FAMILY §
VENTURES, LTD TO AMEND THE §
CITY OF CUT AND SHOOT'S §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN MONTGOMERY §
COUNTY BY EXPEDITED RELEASE §

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

ORDER NO. 9

**PROVIDING PRIOR NOTICE OF THE ADMINISTRATIVE LAW JUDGE'S INTENT
TO SEVER THE CASE INTO SEPARATE PETITIONS FOR EACH LANDOWNER**

On March 16, 2018, Martin Family Ventures, Ltd. "and affiliated partnerships" filed a petition for the expedited release of 382.142 acres of land within the Town of Cut and Shoot's water certificate of convenience and necessity (CCN) No. 11615 in Montgomery County. The petition is filed under Texas Water Code (TWC) § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 24.245(I). The petition has proceeded in its current form without objection by Commission Staff.

On August 10, 2018, Commission Staff recommended that the petition be granted as applied for. Upon review, however, the administrative law judge (ALJ) has identified a problem with the petition that requires attention. The petition is not filed by a single landowner for a single, contiguous tract. Rather, the petition seeks expedited release of at least four tracts, some of which are not contiguous, and which are owned by four different landowners. The text of the applicable statute and rule, and Commission precedent, dictate that the petition, in its current form, cannot be granted. Under Texas Water Code § 13.254(a-5), "the *owner* of a tract of land that is at least 25 acres"¹ may petition for expedited release. The statute is written in the singular, not the plural. There is nothing in the statute to suggest that, as in the present petition, multiple owners of different tracts can join together to apply for expedited release collectively. This conclusion is buttressed by Commission precedent. The Commission has previously determined as follows:

[T]o constitute a single tract of land under TWC § 13.245(a-5) the property must have common ownership and be contiguous, meaning that all portions of the property must be in uninterrupted physical contact. A single tract cannot be

¹ Emphasis added. The implementing rule, 16 TAC 26.245(I), uses essentially the same language.

24
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separated by other property with different ownership, such as roads and railroads, whether owned by governmental entities or private interests.²

From the pleadings on file in this matter, it appears that the petition seeks expedited release for the following four tracts:

- Tract 1 -- a 167.152-acre tract owned by Martin Family Ventures, Ltd;
- Tract 2 -- an 88.036-acre tract owned by Julie and Brad Dubros (the tract consists of two adjoining parcels, one of 5 acres and the other of 83.036 acres);
- Tract 3 -- a 77.170-acre tract owned by Forest Trace Court, Ltd.; and
- Tract 4 -- a 49.784-acre tract owned by FM Properties.

Tracts 1, 2, and 3 are contiguous to one another. Tract 4 is not contiguous with any of the other properties, being separated by Waukegan Road from Tract 1.

"With prior notice to the parties," the ALJ may order the severance of proceedings on his own initiative, if he finds that severance would serve the interest of efficiency or prevent unwarranted expense and delay. 16 Texas Administrative Code (TAC) § 22.34(b). Because the petition cannot be granted in its current form, the only alternative to severance would be denial of the petition. Thus, the ALJ finds that severance serves the interests of efficiency and prevents unwarranted expense and delay. Moreover, the parties' abilities to present their cases will not be unduly prejudiced by severance.

The parties are hereby given prior notice of the ALJ's intent to sever this matter into four separate docket numbers, one for each tract listed above. If any party disagrees with the ALJ's analysis, they may, by no later than January 31, 2019, file briefing explaining their position.

Signed at Austin, Texas the 22^d day of January, 2019.

PUBLIC UTILITY COMMISSION OF TEXAS


HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE

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² *Petition of SLF IV – 114 Assemblage, L.P. to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release*, Order at 5-6 (September 11, 2015).