



Control Number: 49433



Item Number: 19

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**DeAnn T. Walker**  
Chairman

**Arthur C. D'Andrea**  
Commissioner

**Shelly Botkin**  
Commissioner

**John Paul Urban**  
Executive Director



**Greg Abbott**  
Governor

## *Public Utility Commission of Texas*

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

All Parties of Record

**FROM:** Steven Leary *SL*  
Administrative Law Judge  
Office of Policy & Docket Management

**RE:** **Open Meeting of February 27, 2020**  
Docket No. 49433 – *Petition of LGI Homes – Texas, LLC to Amend Bolivar Water Supply Corporation's Water Certificate of Convenience and Necessity in Denton County by Expedited Release*

**DATE:** **January 31, 2020**

The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, February 27, 2020, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties may file corrections or exceptions to the Proposed Order on or before Friday, February 14, 2020.

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

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**DOCKET NO. 49433**

<b>PETITION OF LGI HOMES – TEXAS,</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>LLC TO AMEND BOLIVAR WATER</b>	<b>§</b>	
<b>SUPPLY CORPORATION’S WATER</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	
<b>AND NECESSITY IN DENTON</b>	<b>§</b>	
<b>COUNTY BY EXPEDITED RELEASE</b>	<b>§</b>	

**PROPOSED ORDER**

This Order addresses the petition of LGI Homes – Texas, LLC, filed on April 10, 2019, as amended, requesting the streamlined expedited release of approximately 280 acres of land located within the boundaries of the Bolivar Water Supply Corporation’s water certificate of convenience and necessity (CCN) number 11257 in Denton County. The Commission grants the release of the requested area.

**I. Background**

This petition was filed on April 10, 2019 and assigned the docket number 49433. As originally filed, there were three petitioners: LGI Homes, Big Sky, LLC, and Mindy Koehne. The three petitioners collectively sought the streamlined expedited release of an approximately 440-acre tract of land located within Bolivar’s water CCN in Denton County. Of the total acreage, approximately 280 acres were owned by LGI Homes, 159 acres were owned by Big Sky, and one acre was owned by Ms. Koehne in her capacity as trustee of a trust. The petition included landowner affidavits attesting that the requested acres were not receiving service.

Bolivar filed a timely motion to intervene and response to the petition on May 10, 2019. The intervention was unopposed and was granted by the administrative law judge (ALJ) on May 22, 2019. Bolivar requested a contested case hearing and generally asserted that Bolivar is “ready, willing, and able” to serve the area and has “service capacities” that would be rendered useless if the petition is granted.<sup>1</sup> Bolivar provided only conclusory allegations, did not allege

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<sup>1</sup> Bolivar’s Motion to Intervene at 2.

specific facts, and did not provide an affidavit or other supporting evidence. Bolivar did not file any further response to the petition despite being provided the opportunity to do so.<sup>2</sup>

In Order No. 3 filed on July 11, 2019,<sup>3</sup> the ALJ found the petition to be administratively incomplete due to the fact that the petition was filed by multiple landowners owning separate tracts and that the one-acre tract owned by Ms. Koehne was less than 25 acres.

On August 9, 2019, the petitioners, in response to Order No. 3, filed a pleading requesting to withdraw the request for expedited release of the one-acre tract, and requesting severance of the case to separate the expedited release requests of LGI Homes and Big Sky. In Order No. 4 in this docket and Order No. 1 in Docket No. 49939,<sup>4</sup> the ALJ granted the requested severance and the withdrawal of the request for release of the one-acre tract.

In Order No. 5 filed on September 27, 2019, the ALJ found the petition in this docket, as amended, to be administratively complete.

During the 2019 legislative session, the law relevant to streamlined expedited releases changed. Prior to September 1, 2019, Texas Water Code (TWC) § 13.254(d) mandated that, if a tract of land was decertificated from a CCN, then a new utility could not provide service to the decertificated tract without first providing compensation to the ousted utility for any property that had been “rendered useless or valueless” by the decertification. On or after September 1, 2019, TWC §§ 13.254(g) and 13.2541(f)-(h) provide that the Commission “may” require the owner of the tract of land for which expedited release is granted to provide “just and adequate” compensation to the utility following the decertification. According to the legislation, the changes to the law apply only to a proceeding affecting a CCN that “commences on or after the effective date of this Act,” which is September 1, 2019.<sup>5</sup> Under 16 Texas Administrative Code (TAC) § 24.8(d), an application affecting a CCN is not generally considered filed until the Commission makes a determination that the application is administratively complete. As a result, uncertainty

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<sup>2</sup> The procedural schedule in Order No. 5 filed on September 27, 2019, provided Bolivar until October 7, 2019 to respond to the petition.

<sup>3</sup> Due to a clerical error, the order was designated as “Order No. 3.” A previous Order No. 3 was filed on May 22, 2019.

<sup>4</sup> *Petition of Big Sky LLC to Amend Bolivar Water Supply Corporation’s Water Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 49939, Order No. 1 (Sept. 24, 2019).

<sup>5</sup> Act of May 26, 2019, 86<sup>th</sup> Leg., R.S., S.B. 2272, §§ 6, 7.

existed whether, for purposes of determining the applicable version of the statute, a case is “commenced” when the petition is physically filed with the Commission’s filing clerk or when the case is deemed administratively complete.

In this case, the petition was physically filed with the Commission’s filing clerk before September 1, 2019, but was declared administratively complete after that date. To resolve this uncertainty in Docket No. 49904,<sup>6</sup> a similarly situated expedited release case, this question of law was certified to the Commission. Due to the uncertainty concerning the applicable law, the ALJ delayed further action in the present case pending the outcome of the certified issue in Docket 49904.

In its order on the certified issue filed on January 28, 2020,<sup>7</sup> the Commission clarified that for purposes of determining the applicable law, a streamlined expedited release petition is commenced when the petition is physically filed rather than when it is deemed administratively complete. This case will therefore be analyzed under the law as it existed prior to September 1, 2019.<sup>8</sup>

Commission Staff filed its final recommendation on October 18, 2019. Commission Staff recommends that LGI Homes’ petition, as amended, be approved and that Bolivar is not entitled to compensation.

Based on the facts summarized above, the Commission finds: (1) LGI homes has established that it is entitled to have its application granted, including proving that LGI Homes’ 280-acre tract is not receiving water service under the standards of TWC §§ 13.002(21) and 13.254(a-5), and 16 TAC § 24.245(*l*) as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*;<sup>9</sup> and (2) Bolivar failed to prove that any of its property will be rendered valueless or useless by the decertification of the tract under the standards of TWC § 13.254(a-6) and (d), and 16 TAC § 24.245(*l*) and (n).

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<sup>6</sup> *Petition of Republic Business Center LLC to Amend Aqua Texas, Inc.’s Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 49904, Order No. 5 (Dec. 5, 2019).

<sup>7</sup> *Id.*, Order on Certified Issue (Jan. 28, 2020).

<sup>8</sup> Unless otherwise noted, all references to the TWC in this Order are to the relevant sections as they existed prior to September 1, 2019.

<sup>9</sup> 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

## II. Findings of Fact

The Commission makes the following findings of fact.

### Petitioner

1. LGI Homes is a domestic limited liability company registered with the Texas secretary of state under filing number 801539837.
2. LGI Homes conducts business under the assumed name Terrata Homes.
3. LGI Homes owns 280 contiguous acres of land in Denton County located within the boundaries of Bolivar's water CCN number 11257.

### Petition

4. On April 10, 2019, LGI Homes, Big Sky, and Mindy L. Koehne jointly filed a petition for expedited release of approximately 440 acres of land from the service area of Bolivar's water CCN number 11257 in Denton County.
5. Of the originally requested 440-acre area, LGI Homes owns 280 acres, Big Sky owns 159 acres, and Ms. Koehne, in her capacity as trustee of a trust, owns one acre.
6. On August 9, 2019, the petitioners filed a motion to sever the expedited release requests of LGI Homes and Big Sky into two separate dockets and to withdraw the expedited release request with respect to the one-acre tract.
7. In Order No. 4 in this docket, and Order No. 1 in Docket No. 49939,<sup>10</sup> both filed on September 24, 2019, the ALJ granted the motion to sever the joint petition into two separate petitions for expedited release and granted the request to withdraw the petition for the one-acre tract. As a result, this Order addresses only the request for streamlined expedited release of the 280-acre tract owned by LGI Homes.
8. The tract of land is within Bolivar's service area for CCN number 11257.
9. LGI Homes provided a special warranty deed confirming its ownership of the tract and provided maps confirming the land's location.

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<sup>10</sup> *Petition of Big Sky, LLC to Amend Bolivar Water Supply Corporation's Water Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 49939, Order No. 1 (Sept. 24, 2019).

10. The petition included an affidavit of Elaine Torres, an officer for LGI Homes, certifying that the tract is not receiving water service from Bolivar, is owned by LGI Homes, is more than 25 acres, is within the boundaries of CCN number 11257 held by Bolivar, and is located in Denton County.
11. In Order No. 5 filed on September 27, 2019, the ALJ found the petition administratively complete.

#### **Notice**

12. The applicant sent a true and correct copy of the petition, via certified mail, to Bolivar on the day the petition was filed with the Commission.
13. Proof of notice to Bolivar was filed with the Commission as an attachment to the petition on April 10, 2019.
14. In Order No. 5 filed on September 27, 2019, the ALJ found the notice sufficient.

#### **Intervention**

15. On May 10, 2019, Bolivar filed a motion to intervene in this proceeding.
16. In Order No. 3 filed on May 22, 2019, the ALJ granted the motion to intervene.

#### **Response to Petition**

17. Bolivar's motion to intervene included a response to the petition. Bolivar alleged that is "ready, willing, and able" to serve the area and has "service capacities" that would be rendered useless if the petition is granted. Bolivar did not provide an affidavit or other supporting evidence.

#### **Water Service**

18. Bolivar has not committed facilities or lines for providing water service to the tract.
19. Bolivar has not performed acts or supplied anything to the tract.
20. The tract of land is not receiving water service from Bolivar.

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

21. No property of Bolivar is rendered useless or valueless by the decertification.

22. Because no property of Bolivar is rendered useless or valueless by the decertification, compensation is not necessary.
23. Bolivar's existing water facilities can still be used and useful to provide service in the remainder of its CCN service area.

### III. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this petition under TWC § 13.254(a-5).
2. Notice of the petition was provided in compliance with 16 TAC §§ 22.55 and 24.245(l).
3. No opportunity for a hearing on a petition for expedited release is provide under TWC § 13.254(a-5) and (a-6) or 16 TAC § 24.245(l).
4. Petitions for streamlined expedited release filed under TWC § 13.254(a-5) and 16 TAC § 24.245(l) are not contested cases.
5. Landowners seeking streamlined expedited release under 16 TAC § 24.245(l) are required to submit a verified petition through a notarized affidavit and the CCN holder may submit a response to the petition.
6. To obtain release under TWC § 13.254(a-5), a landowner must demonstrate that the landowner owns a tract that is at least 25 acres, that the tract is located in a qualifying county, and that the tract is not receiving water service.
7. Denton County is a qualifying county under TWC § 13.254(a-5) and 16 TAC § 24.245(l).
8. The 280-acre tract is not receiving water service from Bolivar under the standard of TWC §§ 13.002(21) and 13.254(a-5) and 16 TAC § 24.245(l), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
9. Bolivar failed to prove that any of its property will be rendered valueless or useless by the decertification of the 280-tract, under the standards of TWC § 13.254(a-6) and (d), and 16 TAC § 24.245(l) and (n); therefore, no compensation is owed to Bolivar under TWC § 13.254(d) through (g).



10. Because no compensation is owed under TWC § 13.254(d) through (g), a retail public utility may render retail water service directly or indirectly to the public in the decertified area without providing compensation to Bolivar.
11. The applicant 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 service.
12. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,<sup>11</sup> and Commission rules.
13. Under TWC § 13.257(r) and (s), Bolivar 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.

#### **IV. 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 280-acre tract of land owned by LGI Homes from Bolivar's water CCN number 11257 in Denton County.
2. The Commission's official service area boundary maps for Bolivar's CCN will reflect this change as shown on the attached map.
3. The Commission grants the certificate attached to this Order.
4. Bolivar must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Denton 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.

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<sup>11</sup> Tex. Gov't Code ch. 2001.

**Signed at Austin, Texas the \_\_\_\_\_ day of February 2020.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DEANN T. WALKER, CHAIRMAN**

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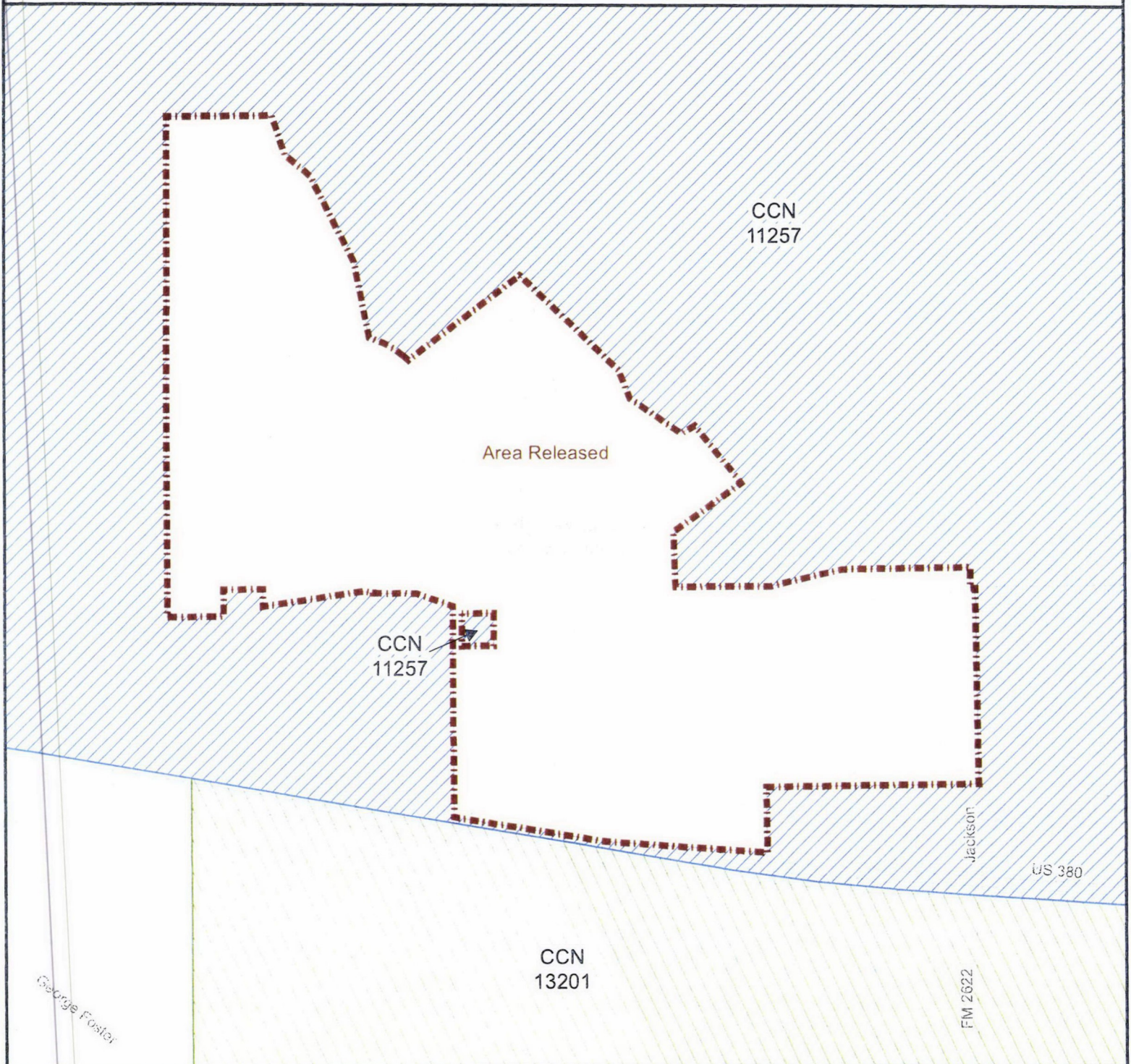
**ARTHUR C. D'ANDREA, COMMISSIONER**

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**SHELLY BOTKIN, COMMISSIONER**



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Bolivar Water Supply Corporation  
Portion of Water CCN No. 11257  
PUC Docket No. 49433  
Petition by LGI Homes, LLC to Amend  
Bolivar Water Supply Corporation's CCN by Expedited Release in Denton County



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

**Water CCN**

-  11257 - Bolivar WSC
-  13201 - Aqua Texas Inc



Area Released

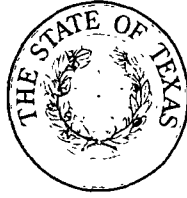
Property Boundary

0 450 900  
Feet



Map by: Komal Patel  
Date created: October 18, 2019  
Project Path: n:\finalmapping\  
49433BolivarWSC.mxd

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# **Public Utility Commission of Texas**

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

## **Bolivar Water Supply Corporation**

having obtained certification to provide water 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, Bolivar Water Supply Corporation is entitled to this

### **Certificate of Convenience and Necessity No. 11257**

to provide continuous and adequate water utility service to that service area or those service areas in Cooke, Denton, and Wise Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 49433 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Bolivar Water Supply Corporation 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, this \_\_\_\_ day of February 2020.