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DOCKET NO. 50405

**PETITION OF THE SANCTUARY
TEXAS, LLC TO AMEND AQUA
TEXAS, INC.'S CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
DENTON COUNTY BY EXPEDITED
RELEASE**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

FILED
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10:51 AM
DENTON COUNTY, TEXAS

ORDER

This Order addresses the petition of The Sanctuary Texas, LLC for streamlined expedited release of an approximately 59-acre portion of its 70.146-acre tract of land from Aqua Texas, Inc.'s water certificate of convenience and necessity (CCN) number 13201 in Denton County, Texas. For the reasons described in this Order, the petition is denied.

I. Background

On January 2, 2020, Sanctuary Texas filed its petition. On February 10, 2020, Sanctuary Texas filed its amended petition. On April 29 and May 7, 2020, Sanctuary Texas supplemented its petition. In its petition, Sanctuary Texas seeks streamlined expedited release from Aqua Texas's water CCN number 13201 of the 59-acre portion of the 70.146-acre tract of land Sanctuary Texas owns in Denton County that lies within Aqua Texas's CCN.

The petition included the notarized affidavits of Marlon McMakin, managing member of Sanctuary Texas, attesting to the following facts: (1) that Sanctuary Texas owns the 70.146-acre tract of land in Denton County; (2) that a 59-acre portion of the 70.146-acre tract is not receiving water service from Aqua Texas or any other water service provider; (3) that it has never requested water or sewer service from Aqua Texas; and (4) that there are no billing records or other documents indicating an existing account for the property. A plat map and deed of trust are included as exhibits to the petition. The petition also includes the notarized affidavit of Robert Camp, area president of Independent Bank dba Independent Financial, the lender holding a secured lien against the property. Mr. Camp attests that the purpose of the deed of trust entered into by Independent Bank and Sanctuary Texas is to secure a lien on the property and that he concurs with Sanctuary Texas's amended petition. Finally, the petition includes special warranty deeds demonstrating Sanctuary Texas's ownership of the tract.

On January 31, 2020, Aqua Texas moved to intervene. In Order No. 3 filed on February 20, 2020, the administrative law judge (ALJ) granted Aqua Texas's motion to intervene.

On July 17, 2020, Aqua Texas filed the notarized affidavit of Darryl Waldock, Aqua Texas's north Texas area manager, attesting that: (1) Aqua Texas has 2,930 linear feet of an active four-inch water main line located within the 59-acre portion of the 70.146-acre tract; (2) Aqua Texas has a residential 5/8" x 3/4" meter located within the 59-acre portion of the 70.146-acre tract that, until January 29, 2020 (27 days after the petition in this proceeding was filed), was used to actively supply water to a billed residential connection located within the 59-acre portion of the 70.126-acre tract, and the meter remains on standby today; and (3) Aqua Texas has other facilities immediately adjacent to the property. Attached to Mr. Waldock's affidavit is a vicinity map depicting the 70.146-acre tract and the location of its water meter, water lines, and adjacent facilities, which include a water plant. Also attached to Mr. Waldock's affidavit is a January 2020 bill statement for water supplied by Aqua Texas to the residential connection located on the 59-acre portion of the 70.146-acre tract.

On July 24, 2020, Commission Staff recommended that the petition be denied because the tract in question is receiving water service from Aqua Texas.

In Sanctuary Texas's July 31 and August 3, 2020 replies to Commission Staff's and Aqua Texas's responses, Sanctuary Texas reiterated its previous arguments and additionally argued that the now-vacant residence that was receiving water service from Aqua Texas does not constitute the entire 59-acre portion of the 70.146-acre tract owned by Sanctuary Texas. Sanctuary Texas's replies also included a notarized affidavit of Mr. McMakin attesting:

Based on [Aqua Texas's] representations in our meetings as well as its representations in this Docket that the facilities committed to serving the [59-acre portion of the 70.146-acre tract] amount to only: (1) a four-inch water line on the [59-acre portion of the 70.146-acre tract]; (2) a stand-by meter on an uninhabited dwelling; (3) and facilities adjacent to the [59-acre portion of the 70.146-acre tract], it is clear that Aqua has not committed lines or facilities to the [59-acre portion of the 70.146-acre tract] that will serve its *future demand* or meet its CCN obligations.¹

The parties do not dispute that there is a water meter attached to a residence located within the 70.146-acre tract, that the water meter is in a standby state, that there is an active water line

¹ Supplemental Affidavit in Support of Sanctuary Texas's Reply to Aqua Texas's Supplemental Response and Commission Staff's Recommendation on Final Disposition at 3 (Aug. 3, 2020) (emphasis added).

running through and adjacent to the 59-acre portion of the 70.146-acre tract, and that Aqua Texas owns and operates water facilities adjacent to the 59-acre portion of the 70.146-acre tract.

Based on the facts and arguments summarized above, the Commission finds that Sanctuary Texas has failed to establish that the 59-acre portion of the 70.146-acre tract it seeks to remove from Aqua Texas's water CCN service area by streamlined expedited release is not receiving water service under the standards of Texas Water Code (TWC) §§ 13.002(21) and 13.2541, and 16 Texas Administrative Code (TAC) § 24.245(h), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*²

II. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Sanctuary Texas is a domestic limited liability company registered with the Texas secretary of state under filing number 803372809.
2. Sanctuary Texas owns a 70.126-acre tract of land in Denton County, of which roughly 59 acres lie within the boundaries of Aqua Texas's water CCN number 13201.

Petition

3. On January 2, 2020, Sanctuary Texas filed its petition.
4. On February 10, 2020, Sanctuary Texas amended the petition.
5. On April 29 and May 7, 2020, Sanctuary Texas supplemented the petition.
6. The petition seeks streamlined expedited release from Aqua Texas's water CCN number 13201 of the 59-acre portion of the 70.146-acre tract.
7. The petition, as amended and supplemented, included: (1) notarized affidavits of Marlon McMakin, managing member of Sanctuary Texas, attesting that the 70.146-acre tract does not receive water service from Aqua Texas or any water service provider; (2) a deed of trust and special warranty deeds demonstrating Sanctuary Texas's ownership of the 70.146-acre tract of land; (3) the notarized affidavit of Robert Camp, area president of Independent Bank dba Independent Financial, attesting that the purpose of the deed of trust

² 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

executed by Sanctuary Texas and Independent Bank is to secure a lien on the property and that he concurs with Sanctuary Texas's amended petition; and (4) a general location map, a detailed map of the 70.146-acre tract, and a metes and bounds survey.

8. In Order No. 5 filed on July 10, 2020, the ALJ found the petition administratively complete.

Notice

9. On January 2 and February 10, 2020, Sanctuary Texas provided a copy of the petition and amended petition, respectively, to Aqua Texas via certified mail, return receipt requested.

10. In Order No. 5 filed on July 10, 2020, the ALJ found the notice sufficient.

Intervention

11. On January 31, 2020, Aqua Texas moved to intervene.
12. Aqua Texas is a domestic for-profit corporation registered with the Texas secretary of state under filing number 800304878.
13. Aqua Texas is a retail public utility that provides water service in Denton County, Texas under water CCN number 13201.
14. In Order No. 3 filed on February 20, 2020, the ALJ granted Aqua Texas's motion to intervene.

Responses to Petition

15. On January 31, February 18, May 6 and 13, and July 17, 2020, Aqua Texas filed responses to the petition.
16. On July 17, 2020, Aqua Texas filed the notarized affidavit of Darryl Waldock, Aqua Texas's north Texas area manager, attesting that service is being provided to the 59-acre portion of the 70.146-acre tract and surrounding certificated area because Aqua Texas has (1) a 2,930-foot active four-inch water main running through the 59-acre portion of the 70.146-acre tract; (2) a water meter on the property that was used to supply water to a residential connection and that the water meter continues to be available for service presently; and (3) facilities adjacent to the tract in question.
17. Attached to Mr. Waldock's affidavit was a map showing (1) the location of Aqua Texas's water meter as being roughly in the center of the 59-acre portion of the 70.146-acre tract; (2) water lines running through and adjacent to the 59-acre portion of the 70.146-acre tract;

and (3) water facilities, including a water plant, adjacent to the 70.146-acre tract. Also attached to Mr. Waldock's affidavit was a bill sent by Aqua Texas for the water meter on the property for service through January 29, 2020, 27 days after Sanctuary Texas filed its petition.

18. On July 24, 2020, Commission Staff filed its response to the petition in which it recommended denial of the petition.

Reply to Responses to Petition

19. On July 31 and August 3, 2020, Sanctuary Texas filed its reply to Aqua Texas's and Commission Staff's responses to its petition arguing that the vacant residence does not constitute the entire 59-acre portion of the 70.146-acre tract owned by Sanctuary Texas.
20. Sanctuary Texas's reply included an additional notarized affidavit of Mr. McMakin acknowledging the existence of Aqua Texas's facilities, but arguing that because Aqua Texas has not committed lines or facilities to serve Sanctuary Texas's future demand, Aqua Texas is not providing water service to the tract.

Water Service

21. Aqua Texas has a residential 5/8" x 3/4" water meter located on the tract for which expedited release is sought.
22. The tract was receiving water service until January 29, 2020 through the water meter committed to the tract.
23. Aqua Texas has committed facilities or lines to providing water service to the tract for which streamlined expedited release is sought.
24. Aqua Texas has performed acts or supplied things of value to the tract for which streamlined expedited release is sought.
25. The tract for which streamlined expedited release is sought is receiving water service from Aqua Texas.

III. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition under TWC §§ 13.245, 13.254, and 13.2541.
2. Notice of the petition was provided in compliance with 16 TAC §§ 22.55 and 24.245(h).
3. No opportunity for a hearing on a petition for expedited release is provided under TWC § 13.2541 or 16 TAC § 24.245(h).
4. Petitions for expedited release filed under TWC § 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking expedited release under TWC § 13.2541 and 16 TAC § 24.245(h) 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 § 13.2541, a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract is located in a qualifying county, and that the tract is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.
7. Denton County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h).
8. The tract is receiving water service under the standards of TWC §§ 13.002(21) and 13.2541 and 16 TAC § 24.245(h), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*³
9. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,⁴ and Commission rules.

³ 449 S.W.3d 130.

⁴ Tex. Gov't Code §§ 2001.001--903.

IV. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The Commission denies the petition of Sanctuary Texas for streamlined expedited release of the 59-acre portion of its 70.146-acre tract of land from Aqua Texas's water CCN number 13201 in Denton County.
2. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 10th day of October 2020.

PUBLIC UTILITY COMMISSION OF TEXAS


DEANN T. WALKER, CHAIRMAN


ARTHUR C. D'ANDREA, COMMISSIONER


SHELLY BOTKIN, COMMISSIONER