



Control Number: 51114



Item Number: 8

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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: Hunter Burkhalter 
Chief Administrative Law Judge

RE: **Open Meeting of November 5, 2020**
Docket No. 51114 – *Petition of Imperial Heights, Ltd. To Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*

DATE: October 6, 2020

Because of the COVID-19 state of disaster, the Commission has moved to a work at home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday November 5, 2020, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file corrections or exceptions to the Proposed Order on or before Tuesday, October 27, 2020.

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

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DOCKET NO. 51114

PETITION OF IMPERIAL HEIGHTS,	§	PUBLIC UTILITY COMMISSION
LTD. TO AMEND AQUA TEXAS,	§	
INC.'S CERTIFICATES OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
HARRIS COUNTY BY EXPEDITED	§	
RELEASE	§	

PROPOSED ORDER DENYING STREAMLINED EXPEDITED RELEASE

This Order denies Imperial Heights, Ltd.'s petition to remove its 37.8-acre tract of land from Aqua Texas, Inc.'s water and sewer certificates of convenience and necessity (CCN) numbers 13203 and 21065 in Harris County.

I. Background

On July 24, 2020, Imperial Heights filed its petition under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245(h). The petition seeks to remove from Aqua Texas' water and sewer CCN numbers 13203 and 21065 a 37.8-acre tract of land Imperial Heights owns in Harris County. The petition includes an affidavit from Louis Trapolino, development manager for Imperial Heights, attesting, among other things, that Imperial Heights never requested water or sewer service from Aqua Texas, the tract is not receiving water or sewer service from Aqua Texas, Imperial Heights has never paid to Aqua Texas anything to initiate or maintain water service, and there are no billing records or other documents evidencing an existing account with Aqua Texas for the tract.

On August 21, 2020, Aqua Texas moved to intervene. In Order No. 2 filed on August 31, 2020, the motion to intervene was granted. In its September 18, 2020 supplemental response to the petition, Aqua Texas included an affidavit from Chris A. Garcia, Aqua Texas' Southeast Texas Area manager. Mr. Garcia attests that the property at issue receives both water and sewer service from Aqua Texas. Aqua Texas owns and operates water and sewer facilities which the company refers to as the Imperial Valley water and sewer facilities. According to Mr. Garcia, the Imperial Valley water and sewer facilities were built with the intent of serving the Imperial Heights tract and the subdivision that Aqua Texas currently serves and that is located adjacent to the Imperial Heights tract. Mr. Garcia states that, as a part of the Imperial Valley water facilities, Aqua Texas owns and operates a number of water lines, including an eight-inch water line. Approximately

1,000 feet of that eight-inch water line runs through the Imperial Heights tract. Similarly, as a part of the Imperial Valley sewer facilities, Aqua Texas owns and operates a number of sewer collection lines, gravity lines, and force main lines, including a four-inch sewer force main line. Approximately 400 feet of that four-inch sewer force main line runs through the Imperial Heights tract. According to Mr. Garcia, a significant number of additional components of the Imperial Valley water and sewer facilities are located immediately adjacent to the Imperial Heights tract. Mr. Garcia asserts that Aqua Texas has excess capacity available to provide water and sewer service to the Imperial Heights tract. He also asserts that Aqua Texas has analyzed and responded to past service inquiries and service requests for the Imperial Heights tract.¹

An aerial photograph of the tract and surrounding area is attached to Mr. Garcia's affidavit. From the photo, it appears that the Imperial Heights tract is undeveloped, but almost completely surrounded by fully-developed residential neighborhoods. The 1,000-foot stretch of eight-inch water main runs through the western portion of the tract, and the 400-foot stretch of four-inch sewer force main line runs through the southern portion of the tract. Aqua Texas' water plant for the Imperial Valley water facilities is located just outside the northwest corner of the tract. A lift station and the sewer treatment plant for the Imperial Valley sewer facilities are located just outside the south corner and southeast corner, respectively, of the tract.

Commission Staff filed its final recommendation on September 25, 2020, in which it recommended that Imperial Heights' petition be granted.

Based on the facts summarized above, the Commission finds that Imperial Heights has failed to establish that the property it seeks to remove from Aqua Texas' CCN areas by streamlined expedited release is not receiving water or sewer 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.*²

¹ It is unclear from the record whether such service inquiries and service requests came from Imperial Heights or a previous owner.

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

II. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Imperial Heights is a domestic limited partnership registered with the Texas secretary of state under filing number 803497557.
2. Imperial Heights owns a 37.8-acre tract of land in Harris County, which is located within the boundaries of Aqua Texas' water CCN number 13203 and sewer CCN number 21065.

Petition

3. On July 24, 2020, Imperial Heights filed its petition for streamlined expedited release of its 37.8-acre tract from the water and sewer service area of Aqua Texas' water and sewer CCNs.
4. The petition included a notarized affidavit from Louis Trapolino, Imperial Heights' development manager, attesting, among other things, that the company has never requested water or sewer service from Aqua Texas and that the tract is not receiving water or sewer service from Aqua Texas.
5. Imperial Heights provided a special warranty deed confirming its ownership of the tract and maps confirming the tract's location.
6. Imperial Heights asserted that the tract is not receiving water or sewer service from Aqua Texas, is owned by Imperial Heights, is more than 25 acres, is within the boundaries of water CCN number 13203 and sewer CCN number 21065 held by Aqua Texas, and is located in Harris County.
7. In Order No. 2 filed on August 31, 2020, the administrative law judge (ALJ) found the petition administratively complete.

Notice

8. The applicant sent a true and correct copy of the petition, via certified mail, to Aqua Texas on July 24, 2020.
9. In Order No. 2 filed on August 31, 2020, the ALJ found the notice sufficient.

Intervention

10. On August 21, 2020, Aqua Texas filed a motion to intervene.

11. In Order No. 2 filed on August 31, 2020, the ALJ granted Aqua Texas' motion to intervene.

Response to Petition

12. Aqua Texas provided a notarized affidavit from Chris A. Garcia, Aqua Texas' Southeast Texas Area manager, attesting that the tract is receiving water and sewer service from Aqua Texas.

Water and Sewer Service

13. Aqua Texas' water and sewer facilities in the area were built with the intent of serving the Imperial Heights tract and the adjacent subdivision Aqua Texas currently serves next to the Imperial Heights tract.

14. An eight-inch water main line owned and operated by Aqua Texas runs through the Imperial Heights tract for approximately 1,000 feet.

15. A four-inch sewer force main line owned and operated by Aqua Texas runs through the Imperial Heights tract for approximately 400 feet.

16. Aqua Texas' water plant is located just outside the northwest corner of the Imperial Heights tract.

17. An Aqua Texas lift station for its sewer treatment operations is located just outside the south corner of the Imperial Heights tract.

18. Aqua Texas' sewer treatment plant is located just outside the southeast corner of the Imperial Heights tract.

19. Aqua Texas has performed various acts and committed facilities or lines to providing water and sewer services to the tract Imperial Heights seeks to decertify.

III. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition under TWC §§ 13.254 and 13.2541.
2. Notice of the petition was provided in compliance with 16 TAC §§ 22.55 and 24.245(h)(3)(F).
3. No opportunity for a hearing on a petition for expedited release is provided under TWC § 13.2541 or 16 TAC § 24.245(h)(7).

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 of land is located in a qualifying county, and that the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN.
7. Harris County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
8. Imperial Heights failed to demonstrate that the land it seeks to decertify by streamlined expedited release is not receiving water service and sewer 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.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
9. The Commission processed the petition in accordance with the TWC, the Administrative Procedure Act,³ and Commission rules.

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 Imperial Heights to remove its 37.8-acre tract of land from Aqua Texas' water CCN number 13203 and sewer CCN number 21065 in Harris County.
2. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

³ Tex. Gov't Code §§ 2001.001-.903.

Signed at Austin, Texas the ____ day of November 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER

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