



Control Number: 51163



Item Number: 17

Addendum StartPage: 0

RECEIVED

DOCKET NO. 51163

2021 JAN 15 PM 12:16

PETITION OF OLEX (UNITED STATES), INC. FKA OLEX CORPORATION NV TO AMEND AQUA TEXAS, INC.'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN DENTON COUNTY BY EXPEDITED RELEASE § § § § § § §

PUBLIC UTILITY COMMISSION OF TEXAS  
PUBLIC UTILITY COMMISSION  
FILING CLERK

### COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 6, files this Recommendation on Final Disposition. Staff recommends that the petition be approved. In support thereof, Staff shows the following:

#### I. BACKGROUND

On August 13, 2020, Olex (United States), Inc. fka Olex Corporation NV (Olex) filed a petition for streamlined expedited release of a portion of a 409.11-acre tract of land within the boundaries of the Aqua Texas, Inc.'s (Aqua) water certificate of convenience and necessity (CCN) No. 13201 in Denton County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h).<sup>1</sup> Olex asserts that the tract of land is at least 25 acres, is not receiving water service, and is in Denton County, which is a qualifying county. Olex filed supplemental information on October 14, 2020 and November 13, 2020.

On December 22, 2020, the administrative law judge (ALJ) filed Order No. 6, granting Staff's request for extension and requiring Staff to file its recommendation on final disposition by January 15, 2021. Therefore, this pleading is timely filed.

#### II. STAFF'S REPLY TO AQUA'S RESPONSE TO THE COMMISSION

On December 11, 2020, Aqua filed a supplemental response to Olex's petition arguing that the petition should be denied because the requested release cannot lawfully be granted under TWC § 13.2541 and 16 TAC § 24.245 as the property receives "service" from Aqua.<sup>2</sup>

<sup>1</sup> Effective July 2, 2020, 16 TAC § 24.245(l) was re-designated as 16 TAC § 24.245(h).

<sup>2</sup> Aqua's Supplemental Response to Petition of Olex (United States), Inc. fka Olex Corporation NV for Streamlined Expedited Release at 2 (Dec. 11, 2020) (Aqua's Supplemental Response)

In defining service Aqua cites to TWC § 13.002(21), which broadly defines “service” as:

any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under this chapter to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.<sup>3</sup>

Aqua further cites to TWC § 13.002(9) to define “facilities” as:

[a]ll the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.<sup>4</sup>

Aqua argues that a property can receive water service under the statute without a utility delivering “actual water” onto a property. To support this argument Aqua cites to the *Texas General Land Office v. Crystal Clear Water Supply Corporation* decision.<sup>5</sup> Aqua argues that in *Crystal Clear*, the Austin Third Court of Appeals held that facilities or lines “used” or “committed” to providing such service may cause a property to “receive service” under the statutory and regulatory definition.<sup>6</sup>

In that decision, the Third Court of Appeals also wrote the following:

The mere existence of water lines or facilities on or near a tract would not necessarily mean that tract was “receiving water service.” Rather, as discussed previously, such a determination is essentially a fact-based inquiry requiring the Commission to consider whether the retail public utility has facilities or lines committed to providing water to the particular tract or has performed acts or supplied anything to the particular tract in furtherance of its obligation to provide water to that tract pursuant to its CCN. As noted above, the term “service” as defined in chapter 13 is very broad and appears intentionally so. It includes facilities and lines as well as acts performed and anything furnished or supplied. But its breadth is also constrained by limitations in the definition itself, as well as in Water Code section 13.254(a–5). The definition of “service” includes the

---

<sup>3</sup> TWC § 13.002(21); *see also*, 16 TAC § 24.3(33) (same definition).

<sup>4</sup> TWC § 13.002(9); *see also*, 16 TAC § 24.3(15) (same definition).

<sup>5</sup> Aqua’s Supplemental Response at 2.

<sup>6</sup> *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin, 2014, pet. denied).

condition that the facilities or lines be “committed or used” in the performance of Crystal Clear's duties as a retail public utility. Tex. Water Code § 13.002(21).<sup>7</sup>

Aqua argues that for a number of reasons the utility has “committed or used” facilities to serving the tract of land from which Olex seeks release. Aqua provides an affidavit from Darryl Waldock, North Texas Area Manager for Aqua, which states Aqua has:

- (1) performed acts and supplied funds to permit, plan, design, construct, own, and operate its Old Stoney Estate water system which is just southwest of the property in question;
- (2) performed acts and supplied funds necessary to obtain, transfer, and maintain the water CCN No. 13201 service area covering the property under prevailing regulations;
- (3) performed acts and supplied funds necessary to obtain, transfer, renew, and maintain permits for the Old Stoney Estates water system so that it may be used to serve the property and CCN No. 13201 area that includes the property; and
- (4) maintained a regional office in Fort Worth, Texas with personnel specifically dedicated to operations within Aqua’s geographic North Texas Region water CCN No. 13201 service areas, including the property and CCN No. 13201 area that includes the property.<sup>8</sup>

While it is undisputed that Aqua has a line and other facilities proximate to the area in question, the factors described above are not sufficient on their own to demonstrate that these facilities are “committed” to the tract. As noted by the Third Court of Appeals:

[a] tract of land is not necessarily ‘receiving’ water service simply because there are facilities or water lines near, or even on that tract if, for example, such facilities are used to provide water only to other tracts. Rather, it is important to consider whether the facilities and lines are ‘committed’ to the tract seeking expedited release or ‘used’ to provide water to that tract.<sup>9</sup>

In addition, the Commission recently granted the expedited release of a tract<sup>10</sup> despite the fact that: (1) the CCN holder’s water and wastewater facilities were originally built with the intent of serving the tract to be released and the adjacent subdivision; (2) 1,000 linear feet of an active eight-inch

---

<sup>7</sup> *Id.*

<sup>8</sup> Aqua’s Supplemental Response at Exhibit A.

<sup>9</sup> *Crystal Clear*, 449 S.W.3d at 140.

<sup>10</sup> *Petition of Imperial Heights, Ltd. to Amend Aqua Texas, Inc.’s Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 51114, Order (Dec. 17, 2020).

water main line was located within the tract; (3) 400 linear feet of four-inch sewer force mains was located within the tract; and (4) the CCN holder had other facilities immediately adjacent to the tract and had performed various acts and supplied funds in furtherance of service to the tract.<sup>11</sup>

In his affidavit, Mr. Waldock describes acts performed and funds supplied in furtherance of constructing and operating the Old Stoney Estates water system.<sup>12</sup> These statements indicate that providing service to Olex's property was not the sole reason for the construction of this public water system. In addition, Mr. Waldock describes activities that generally benefit properties within Aqua's service area under CCN No. 13201, and again, are not specific to the Olex property.<sup>13</sup> Given the fact that Aqua is not actively providing service to the property in question, and the Old Stoney Estates system provides water service to all properties within the proximate area, it seems that the facilities are not "committed" to serving the tract of land that Olex seeks to release from Aqua's CCN.

Therefore, Staff recommends that the property is not receiving water service because Aqua has not shown that it has facilities committed to serving Olex's property.

### **III. FINAL RECOMMENDATION**

Staff has reviewed the petition filed by Olex and, as detailed in the attached memorandum from Jolie Mathis, Infrastructure Division, recommends that the petition be approved. Staff recommends that Olex's petition satisfies the requirements of TWC § 13.2541(b) and 16 TAC § 24.245(h). Specifically, the petition demonstrates that the property for which Olex seeks streamlined expedited release is located in a qualifying county (Denton County), is at least 25 acres in size, is not receiving water service, and is located within Aqua's certificated water service area. In addition, Olex has provided deeds confirming its ownership of the property.

The final water CCN map and certificate are attached to this filing. Staff additionally recommends that the final map and certificate be provided to Aqua and that Aqua file a certified copy of the CCN map and a boundary description of the CCN service area in the Denton County Clerk's office, as required under TWC § 13.257(r)-(s).

---

<sup>11</sup> *Id.*, Aqua's Supplemental Response to Petition of Imperial Heights, Ltd. for Streamlined Expedited Release at 3 (Sep. 18, 2020).

<sup>12</sup> Aqua's Supplemental Response, Exhibit A at 2.

<sup>13</sup> *Id.*

#### **IV. CONCLUSION**

Staff respectfully requests that Olex's petition be approved and that an order be issued consistent with the foregoing recommendations.

Dated: January 15, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

/s/ David Hoard  
David Hoard  
State Bar No. 24106843  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7203  
(512) 936-7268 (facsimile)  
David.Hoard@puc.texas.gov

**DOCKET NO. 51163**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on January 15, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ David Hoard  
David Hoard

# *Public Utility Commission of Texas*

---

## **Memorandum**

**TO:** David Hoard, Attorney  
Legal Division

**FROM:** Jolie Mathis, Utility Engineering Specialist  
Infrastructure Division

**DATE:** January 15, 2021

**RE:** **Docket No. 51163:** *Petition of Olex (United States), Inc. FKA Olex Corporation NV to Amend Aqua Texas, Inc. 's Certificate of Convenience and Necessity in Denton County by Expedited Release*

---

On August 13, 2020, Olex (United States), Inc. FKA Olex Corporation (Olex) filed a petition for streamlined expedited release from Aqua Texas, Inc.'s (Aqua) water Certificate of Convenience and Necessity (CCN) No. 13201 in Denton County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Olex asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Denton County. which is a qualifying county.

Olex submitted adequate maps delineating the requested area for expedited release with enough detail to confirm the accurate positioning of its digital data under 16 TAC § 24.245(k). The map and digital data are sufficient for determining the location of the requested release area within Aqua Texas Inc.'s (Aqua Texas) certificated area. Gary Horton, Infrastructure Division, was able to confirm the acreage of the subject property and determined that the requested area is located within Aqua Texas's water CCN. Furthermore, Olex provided a warranty deed confirming ownership of the tract of land within Aqua Texas's certificated area. In addition, Olex submitted a sworn affidavit attesting that the property was not receiving from the CCN holder. The area being requested for expedited release is approximately 234 acres.

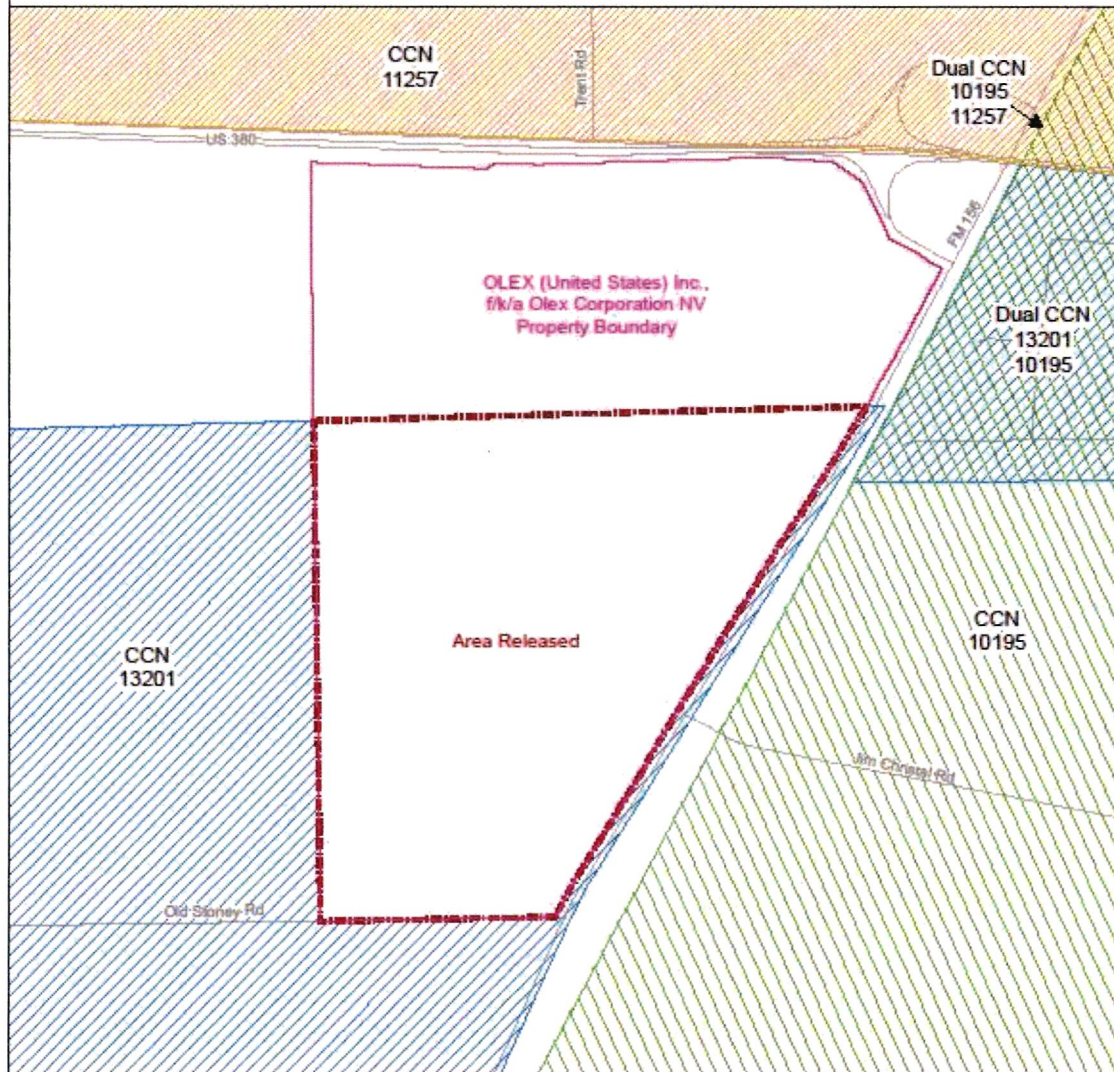
On August 28, 2020, Aqua Texas requested to intervene. On September 4, 2020, the Administrative Law Judge granted Aqua Texas's motion to intervene.

In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), Olex has met the Commission's requirements to allow for the release of the requested area from Aqua's CCN No. 13201. Therefore, I recommend approval of the petition. Enclosed is a final map and certificate for Commission approval.

Additionally, I recommend that a final map and certificate be provided to the CCN holder.



Aqua Texas, Inc.  
 Portion of Water CCN No. 13201  
 PUC Docket No. 51163  
 Petition by OLEX (United States) Inc., f/k/a Olex Corporation NV to Amend  
 Aqua Texas, Inc.'s CCN by Expedited Release in Denton County



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

**Water CCN**

- 13201 - Aqua Texas Inc
- 11257 - Bolivar WSC
- 10195 - City of Denton

- Area Released
- Property Boundary

0 500 1,000  
 Feet



Map by: Komal Patel  
 Date created: January 8, 2021  
 Project Path: n:\finalmapping\51163AquaTx.mxd



# **Public Utility Commission of Texas**

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

**Aqua Texas, Inc.**

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 by Aqua Texas, Inc., is entitled to this

## **Certificate of Convenience and Necessity No. 13201**

to provide continuous and adequate water utility service to that service area or those service areas in Anderson, Bosque, Camp, Cherokee, Collin, Cooke, Denton, Erath, Grayson, Gregg, Henderson, Hood, Hunt, Johnson, Kaufman, Marion, McLennan, Parker, Smith, Somervell, Tarrant, Taylor, Wise, and Wood Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51163 are on file at the Commission offices in Austin, Texas; and is a matter of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of Aqua Texas, Inc. 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, the \_\_\_\_\_ day of \_\_\_\_\_ 2021.