



Control Number: 51698



Item Number: 18

Addendum StartPage: 0

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# OPEN MEETING COVER SHEET

## REVISED PROPOSED ORDER & MEMORANDUM

**MEETING DATE:** April 7, 2021

**DATE DELIVERED:** April 6, 2021

**AGENDA ITEM NO.:** TBD

**CAPTION:** Docket No. 51698 – *Petition of Tri Pointe Homes Texas, Inc to Amend MSEC Enterprises, Inc.'s Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

**DESCRIPTION:** Revised Proposed Order & Memorandum

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Arthur C. D'Andrea  
Chairman



Greg Abbott  
Governor

Thomas J. Gleeson  
Executive Director

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*Public Utility Commission of Texas*

TO: Arthur C. D'Andrea, Chairman  
All Parties of Record

FROM: Hunter Burkhalter <sup>LB</sup>  
Chief Administrative Law Judge

RE: **Open Meeting of April 7, 2021**  
**Docket No. 51698** – *Petition of Tri Pointe Homes Texas, Inc. to Amend MSEC Enterprises, Inc.'s Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

DATE: April 6, 2021

On March 26, 2021, the petitioner filed a notification letter indicating a name change. The attached Revised Proposed Order reflects the name change.

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**DOCKET NO. 51698**

<b>PETITION OF TRI POINTE HOMES</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>TEXAS, INC. TO AMEND MSEC</b>	<b>§</b>	
<b>ENTERPRISES, INC.'S CERTIFICATE</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OF CONVENIENCE AND NECESSITY</b>	<b>§</b>	
<b>IN MONTGOMERY COUNTY BY</b>	<b>§</b>	
<b>EXPEDITED RELEASE</b>	<b>§</b>	

**REVISED PROPOSED ORDER**

This Order addresses the petition by Tri Pointe Homes Texas, Inc. for streamlined expedited release of a portion of a tract of land in Montgomery County from the service area under certificate of convenience and necessity (CCN) number 12887. MSEC Enterprises, Inc. is the holder of CCN number 12887. For the reasons stated in this Order, the Commission releases the tract of land from MSEC's certificated service area. In addition, the Commission amends MSEC's CCN number 12887 to reflect the removal of this tract of land from the service area.

Following entry of this Order, the Commission will determine the amount of compensation, if any, to be awarded to MSEC, which will be addressed by separate order.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Petitioner**

1. Tri-Pointe is a Texas for-profit corporation registered with the secretary of state under filing number 29716600.

**CCN Holder**

2. MSEC is a Texas for-profit corporation registered with the Texas secretary of state under filing number 145205000.
3. MSEC holds CCN number 12887 that obligates MSEC to provide retail water service in its certificated service area in Montgomery County.

**Petition**

4. On January 8, 2021, the petitioner, at the time named Trendmaker Homes, Inc., filed a petition for streamlined expedited release of a portion of a tract of land from the CCN holder's service area under CCN number 12887.
5. The petition includes the affidavit, dated January 7, 2021, of Collins Pier, the petitioner's vice president of land acquisition and development; maps of the subject property and digital data; and a special warranty deed and a warranty deed, both dated December 29, 2020.
6. In Order No. 2 filed on February 5, 2021, the administrative law judge (ALJ) found the petition administratively complete.
7. On January 11, 2021, the petitioner filed with the Texas secretary of state a certificate of amendment changing its name from Trendmaker Homes, Inc. to Tri-Pointe Homes Texas, Inc. The name change became effective on January 15, 2021.
8. On March 26, 2021, the petitioner supplemented its petition with documentation evidencing its name change.

**Notice**

9. The petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on January 8, 2021.
10. In Order No. 2 filed on February 5, 2021, the ALJ found the notice sufficient.

**Intervention and Response to Petition**

11. In Order No. 3 filed on February 22, 2021, the ALJ granted the CCN holder's motion to intervene.
12. Other than moving to intervene, the CCN holder did not file a substantive response to the petition.

**The Tract of Land**

13. The tract of land is approximately 125.45 acres, is in Montgomery County, and is comprised of three contiguous parcels. The first parcel is approximately 54.55 acres, the second is approximately 68.85 acres, and the third is approximately 2.05 acres.

14. The portion of the tract of land for which the petitioner seeks streamlined expedited release (the release property) is approximately 125.08 acres.
15. The release property is located within the CCN holder's certificated service area.

**Ownership of the Tract of Land**

16. The petitioner acquired the 54.55 and 2.05-acre parcels by a special warranty deed dated December 29, 2020.
17. The petitioner acquired the 68.85-acre parcel by a warranty deed dated December 29, 2020.

**Qualifying County**

18. Montgomery County abuts Harris County and does not have a population of more than 45,000 and less than 47,500.
19. Harris County has a population greater than one million people.

**Water Service**

20. The release property is not receiving actual water service from the CCN holder.
21. The petitioner has not requested that the CCN holder provide water service to the release property or paid any fees or charges to initiate or maintain such service.
22. There are no billing records or other documents indicating an existing account with the CCN holder for the provision of water service to the release property.
23. The CCN holder has not committed or dedicated any facilities or lines to the release property for water service.
24. The CCN holder has no facilities or lines that provide water service to the release property.
25. The CCN holder has not performed any acts for or supplied anything to the release property.

**Map and Certificate**

26. On March 5, 2021, Commission Staff filed its recommendation that included a certificate and a map on which it identified the release property in relationship to the CCN holder's certificated service area.

27. On April 6, 2021, Commission Staff filed a revised map, using the petitioner's new name, on which it identified the release property in relationship to the CCN holder's certificated service area.

## II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this petition for streamlined expedited release under Texas Water Code (TWC) §§ 13.254 and 13.2541.
2. The petitioner provided notice of the petition in compliance with 16 Texas Administrative Code (TAC) § 24.245(h)(3)(F).
3. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 or 13.2541 or 16 TAC § 24.245(h)(7).
4. Petitions for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are not contested cases.
5. Landowners seeking streamlined expedited release under TWC §§ 13.254 and 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 that must be verified by a notarized affidavit.
6. To obtain release under TWC § 13.2541(b), 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. The petitioner owns a tract of land, which is at least 25 acres and includes the release property for which it seeks streamlined expedited release through the petition.
8. Montgomery County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
9. The release property is not receiving water service under TWC §§ 13.002(21) and 13.2541(b) and 16 TAC § 24.245(h), as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).

10. The petitioner is entitled under TWC § 13.2541(b) to the release of the release property from the CCN holder's certificated service area.
11. After the date of this Order, the CCN holder has no obligation under TWC §13.254(h) to provide retail water service to the petitioner's release property.
12. The Commission has no authority to decertify any facilities or equipment owned and operated by the CCN holder to provide retail water service through the streamlined-expedited-release process under TWC § 13.2541(b).
13. The Commission processed the petition in accordance with the TWC and Commission rules.
14. Under TWC § 13.257(r) and (s), the CCN holder is required to record certified copies of the approved certificate and map, along with a boundary description of the service area, in the real property records of Montgomery County no later than the 31st day after the date the CCN holder receives this Order.
15. A retail public utility may not under TWC § 13.254(d) provide retail water service to the public within the tract of land unless just and reasonable compensation under TWC § 13.254(g) has been paid to the CCN holder.

### **III. Ordering Paragraphs**

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

1. The Commission releases the release property identified in the petition from the CCN holder's service area under CCN number 12287.
2. The Commission does not decertify any of the CCN holder's equipment or facilities that may lay on or under the petitioner's release property.
3. The Commission amends CCN number 12287 in accordance with this Order.
4. The Commission approves the attached map.
5. The Commission approves the attached certificate.



6. The CCN holder must file in this docket proof of the recording required in TWC § 13.257(r) and (s) within 45 days of the date of this Order.
7. The proceeding to determine the amount of compensation to be awarded to the CCN holder, if any, commences with the filing of this Order in accordance with the schedule adopted in Order No. 2. Any decision on compensation will be made by a separate order.
8. The Commission denies all other motions and any other requests for general or specific relief not expressly granted by this Order.

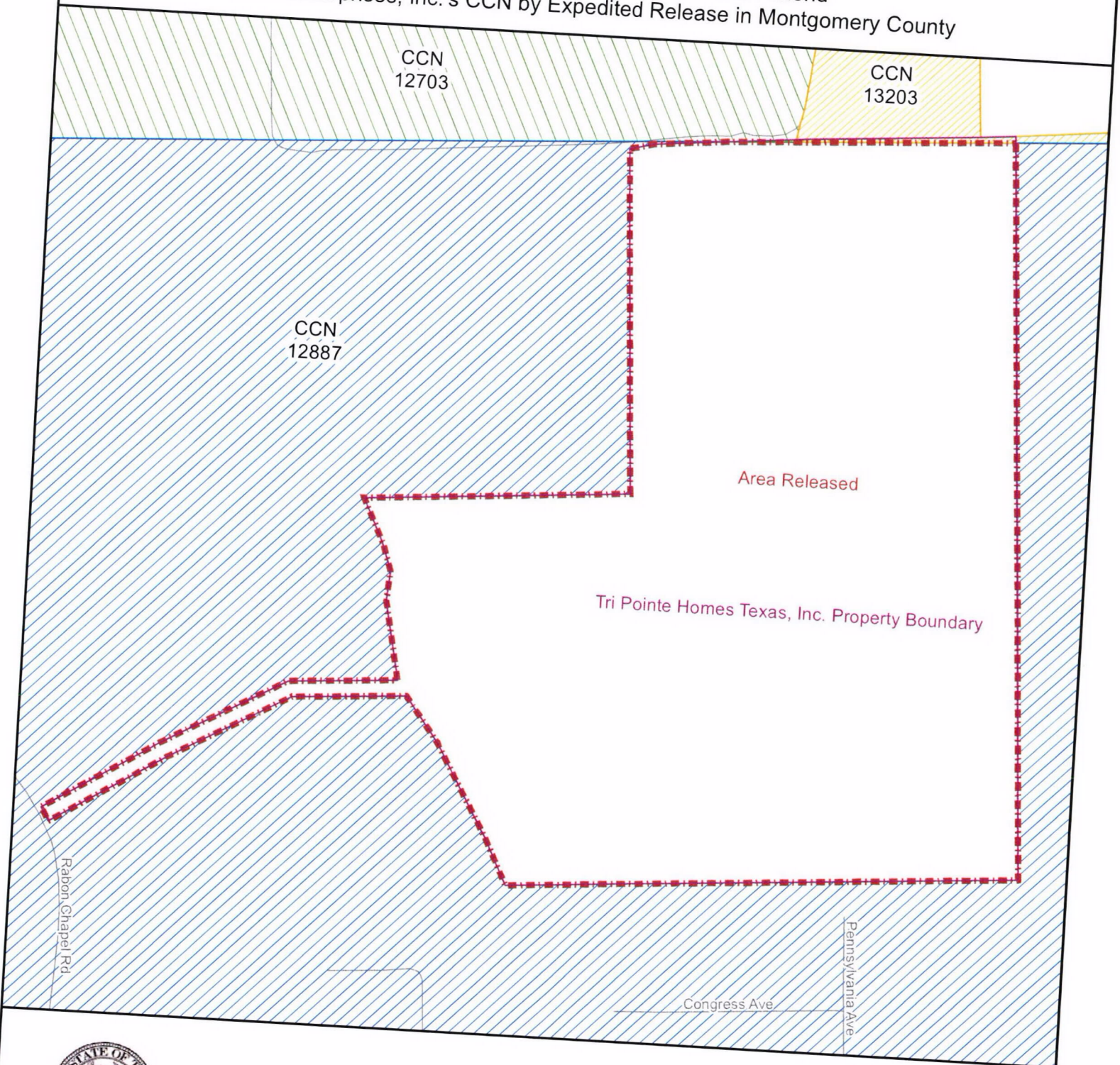
**Signed at Austin, Texas the \_\_\_ day of April 2021.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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


MSEC Enterprises, Inc.  
Portion of Water CCN No. 12887  
PUC Docket No. 51698  
Petition by Tri Pointe Homes Texas, Inc. to Amend  
MSEC Enterprises, Inc.'s CCN by Expedited Release in Montgomery County

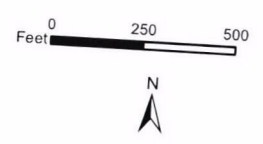


Public Utility Commission of Texas  
1701 N. Congress Ave  
Austin, TX 78701

**Water CCN**

-  12887 - MSEC Enterprises Inc
-  12703 - Lake Bonanza WSC
-  13203 - Aqua Texas Inc

-  Area Released
-  Property Boundary



Map by: Komal Patel  
Date created: February 12, 2021  
Project Name: 51689MSEC.mxd



# **Public Utility Commission of Texas**

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

## **MSEC Enterprises, 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, MSEC Enterprises, Inc. is entitled to this

### **Certificate of Convenience and Necessity No. 12887**

to provide continuous and adequate water utility service to that service area or those service areas in Grimes and Montgomery Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51698 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 MSEC Enterprises, 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, this \_\_\_\_ day of April 2021.