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Public Utility Commission of Texas

TO: Stephen Journeay
Commission Counsel

All Parties of Record

FROM: Isaac Ta *I. T.*
Administrative Law Judge

RE: **Docket No. 51738** – *Petition of Sanctuary Texas, LLC to Amend Aqua Texas, Inc. 's Certificate of Convenience and Necessity in Denton County by Expedited Release*

DATE: July 20, 2021

A proposed order was filed on June 24, 2021, in this docket to be heard on a future open meeting. On July 8, 2021, Aqua Texas filed exceptions to the proposed order. I do not recommend any changes to the proposed order in response to Aqua's filing.

On July 19, Commission Staff filed a proposed final map. Enclosed is a revised proposed order along with the proposed final map.

Please place this docket on an open meeting agenda for the Commissioners' consideration. Please notify me and the parties of the open meeting date.

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DOCKET NO. 51738

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

REVISED PROPOSED ORDER

This Order addresses the petition by The Sanctuary Texas, LLC for streamlined expedited release of a portion of a tract of land in Denton County from the service area under water certificate of convenience and necessity (CCN) number 13201. Aqua Texas, Inc. is the holder of CCN number 13201. For the reasons stated in this Order, the Commission releases the tract of land from Aqua Texas's certificated service area. In addition, the Commission amends Aqua Texas's CCN number 13201 to reflect the removal of the 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 Aqua Texas, which will be addressed by a separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. The petitioner is a Texas limited liability company registered with the Texas secretary of state under filing number 803372809.

CCN Holder

2. Aqua Texas is a Texas corporation registered with the Texas secretary of state under filing number 800304878.
3. Aqua Texas holds CCN number 13201 that obligates it to provide retail water service in its certificated service area in Denton County.

Petition

4. On January 20, 2021, the petitioner filed a petition for streamlined expedited release of a portion of a tract of land from the CCN holder's service area under water CCN number 13201.

5. The petition includes the notarized affidavit of Marlon McMakin, petitioner's managing member, a general location map, a detailed map, a survey map with a metes-and-bounds description, plat map, and two special warranty deeds, each dated August 21, 2019.
6. On February 3, 2021, the petitioner supplemented the petition with digital mapping files.
7. In Order No. 2 filed on February 24, 2021, the administrative law judge (ALJ) found the petition administratively incomplete and insufficient.
8. On March 4, 2021, the petitioner supplemented the petition with digital mapping files.
9. On April 16, 2021, Commission Staff filed its supplemental recommendation on administrative completeness and proposed notice recommending that though the petition requests streamlined expedited release of 69.113 acres, the portion of petitioner's 70.149-acre tract of land that overlaps CCN holder's CCN is approximately 58.794 acres (release property).
10. In Order No. 3 filed on April 19, 2021, the ALJ found the petition administratively complete.

Notice

11. On January 20, 2021, the petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder.
12. The petitioner filed a certificate of service with its petition certifying that notice was provided as set forth above.
13. In Order No. 3 filed on April 19, 2021, the ALJ found the notice sufficient.

Intervention

14. In Order No. 3 filed on April 19, 2021, the ALJ granted the CCN holder's motion to intervene.

Response to Petition

15. On February 5, 2021, CCN holder filed initial comments on the petition.
16. On May 3, 2021, CCN holder filed a response to the petition.
17. The CCN holder's response includes the notarized affidavit of Darryl Waldock, CCN holder's north Texas area manager, with a map showing the location of the CCN holder's

facilities in proximity to the tract in question and a bill that was sent by CCN holder for a water meter in proximity to the release property for water service through January 29, 2020.

The Tract of Land

18. The tract of land is approximately 70.149 acres, is in Denton County, and is comprised of three contiguous parcels.
19. The release property for which the petitioner seeks streamlined expedited release is approximately 58.794 acres.
20. The release property is located within the CCN holder's certificated service area.

Ownership of the Land

21. The petitioner acquired the tract of land by two special warranty deeds, each dated August 21, 2019.

Qualifying County

22. Denton County abuts Dallas and Tarrant counties and has a population of more than 47,500.
23. Dallas and Tarrant counties each have a population greater than one million people.

Water Service

24. The release property is not receiving actual water service from the CCN holder.
25. The CCN holder provides water service in the vicinity of, but not on, the release property.
26. The CCN holder has not committed or dedicated any facilities or lines to the release property for water service.
27. The CCN holder has no facilities or lines that provide water service to the release property.
28. The CCN holder has not performed any acts for or supplied anything to the release property.

Map and Certificate

29. On June 24, 2021, Commission Staff filed the proposed certificate and draft map on which it identified the release property in relationship to the CCN holder's certificated service area.
30. On July 19, 2021, Commission Staff filed a proposed final map identifying 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.
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 the tract of land, which is at least 25 acres, for which it seeks streamlined expedited release through the petition.
8. Denton 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 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 under CCN number 13201.
11. After the date of this Order, the CCN holder has no obligation to provide retail water service to the 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 certificates and maps, along with a boundary description of the service area, in the real property records of Denton 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 release property 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 from the CCN holder's certificated service area under CCN number 13201.
2. The Commission does not decertify any of the CCN holder's equipment or facilities that may lay on or under the release property.
3. The Commission amends CCN number 13201 in accordance with this Order.
4. The Commission approves the attached maps.
5. The Commission issues 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. 3. 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 _____ 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER