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Received - 2022-01-21 10:36:38 AM
Control Number - 51842
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Public Utility Commission of Texas

TO: Peter M. Lake, Chairman
Will McAdams, Commissioner
Lori Cobos, Commissioner
Jimmy Glotfelty, Commissioner

All Parties of Record

FROM: Gregory R. Siemankowski
Administrative Law Judge

A handwritten signature in black ink, appearing to be "G. Siemankowski".

RE: **Open Meeting of January 27, 2022**
Docket No. 51842 – *Petition of Kenneth F. Jenkins, Trustee of the Hinsvark Family Trust, to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Bastrop County by Expedited Release.*

DATE: January 21, 2022

Enclosed is a copy of the Revised 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 January 27, 2022, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas.

The Revised Proposed Order is being filed to incorporate changes adopted by the Commission in other recently-filed orders granting streamlined expedited release.

The Revised Proposed Order is ready for the Commission's consideration.

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DOCKET NO. 51842

PETITION OF KENNETH F. JENKINS,	§	PUBLIC UTILITY COMMISSION
TRUSTEE OF THE HINSVARK	§	
FAMILY TRUST TO AMEND AQUA	§	OF TEXAS
TEXAS, INC.'S CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
BASTROP COUNTY BY EXPEDITED	§	
RELEASE	§	

REVISED PROPOSED ORDER

This Order addresses the petition by Kenneth F. Jenkins, Trustee of the Hinsvark Family Trust for streamlined expedited release of a tract of land in Bastrop County from Aqua Texas, Inc.'s service area under certificate of convenience and necessity (CCN) number 21116. For the reasons stated in this Order, the Commission releases the tract of land from Aqua Texas' certificated service area. In addition, the Commission amends Aqua Texas' CCN number 21116 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 Aqua Texas, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. The petitioner owns property containing 269.692 acres in Bastrop County.

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 21116 that obligates Aqua Texas to provide sewer service in its certificated service area in Bastrop County.

Petition

4. On February 26, 2021, the petitioner filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 21116.

5. The petition includes the affidavit, dated February 2, 2021, of Robert J. Gilliland, Jr., attorney for the petitioner; general location map; detailed property map; and a deed dated July 7, 2020.
6. On April 23, 2021, petitioners filed a supplement to the petition containing mapping information in PDF and shapefile format, general location map, and digital mapping data.
7. In Order No. 3 filed on May 19, 2021, the administrative law judge (ALJ) found the petition, as supplemented, administratively complete.

Notice

8. The petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder on February 26, 2021.
9. In Order No. 3 filed on May 19, 2021, the ALJ found the notice sufficient.

Intervention

10. In Order No. 4 filed on June 22, 2021, the ALJ granted the CCN holder's motion to intervene.

Response to Petition

11. On June 7, 2021, the CCN holder filed response to the petition.
12. On June 22, 2021, the petitioner filed a reply to the CCN holder's response.
13. On June 25, 2021, the CCN holder filed a supplemental response.
14. On June 25, 2021, the petitioner filed a motion to strike the CCN holder's supplemental response.
15. On June 28, 2021, the CCN holder filed a response to petitioner's motion to strike.
16. In Order No. 6, filed on July 19, the ALJ denied petitioner's motion to strike.

The Tract of Land

17. The petitioner owns property in Bastrop County that is approximately 269.692 acres.
18. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 217.9 acres.
19. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

20. The petitioner acquired its property by a special warranty deed dated July 7, 2020.

Qualifying County

21. Bastrop County abuts Travis County and has a population of more than 47,500.

22. Travis County has a population of at least one million.

Sewer Service

23. The tract of land is not receiving actual sewer service from the CCN holder.

24. The petitioner has not requested that the CCN holder provide sewer service to the tract of land or paid any fees or charges to initiate or maintain such service.

25. There are no billing records or other documents indicating an existing account with the CCN holder for the provision of sewer service to the tract of land.

26. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for sewer service.

27. The CCN holder has no facilities or lines that provide sewer service to the tract of land.

28. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

29. On June 21, 2021, Commission Staff filed its recommendation that included a certificate and a map on which it identified the tract of land 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 and, under 16 TAC § 24.245(h)(7), no hearing will be held on such a petition.
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. Under 16 TAC § 24.245(h)(7), the Commission's decision is based on the information submitted by the landowner, the CCN holder, and Commission Staff.
7. 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.
8. The time that the petition is filed is the only relevant time period to consider when evaluating whether a tract of land is receiving sewer service under TWC § 13.2541(b). Whether a tract of land might have previously received sewer service is irrelevant.
9. A landowner is not required to seek the streamlined expedited release of all its property.
10. The petitioner owns the tract of land that is at least 25 acres for which it seeks streamlined expedited release.
11. Bastrop County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
12. The tract of land is not receiving sewer 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).
13. The petitioner is entitled under TWC § 13.2541(b) to the release of the tract of land from the CCN holder's certificated service area.

14. After the date of this Order, the CCN holder has no obligation under TWC § 13.254(h) to provide retail sewer service to the petitioner's tract of land.
15. The Commission may release only the property of the landowner from a CCN under TWC § 13.2541(b). The Commission has no authority to decerticate any facilities or equipment owned and operated by the CCN holder to provide retail sewer service through the streamlined-expedited-release process under TWC § 13.2541(b).
16. The Commission processed the petition in accordance with the TWC and Commission rules.
17. 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 Bastrop County no later than the 31st day after the date the CCN holder receives this Order.
18. A retail public utility may not under TWC § 13.254(d) provide retail sewer 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 tract of land identified in the petition from the CCN holder's service area under CCN number 21116.
2. The Commission does not decerticate any of the CCN holder's equipment or facilities that may lay on or under the tract of land.
3. The Commission amends CCN number 21116 in accordance with this Order.
4. The Commission approves the attached map.
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 _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER