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DOCKET NO. 52004

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**PETITION OF DPSFLP LTD TO §
AMEND AQUA TEXAS, INC.'S §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN MONTGOMERY §
COUNTY BY EXPEDITED RELEASE §**

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

On April 9, 2021, DPSFLP Ltd. (DPSFLP) filed a petition to amend Aqua Texas, Inc.'s water certificate of convenience and necessity (CCN) number 13203 in Montgomery County by streamlined expedited release. DPSFLP seeks the release of the 303-acre portion of a tract totaling 343 acres that lies within Aqua Texas's CCN number 13203.

On May 18, 2021, the administrative law judge (ALJ) filed Order No. 3 setting a deadline of June 21, 2021 for the Staff of the Public Utility Commission of Texas (Staff) to file its recommendation on final disposition. Staff apologizes to the ALJ and to the parties for the delay in the submission of this pleading.

I. RECOMMENDATION ON FINAL DISPOSITION

As detailed in the attached memorandum from Patricia Garcia, Infrastructure Division, Staff has reviewed the amended petition for streamlined expedited release and recommends that it satisfies the requirements of Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Therefore, Staff respectfully requests the issuance of an order granting the petition.

Aqua Texas asserts that DPSFLP's property is receiving water service, and therefore, is not eligible to be released. In support, Aqua Texas provided the affidavit of Chris A. Garica, which states that Aqua Texas has provided water service in the following ways:

- (1) performing acts and supplying funds to permit, plan, design, construct, own, and operate the Crystal Forest Subdivision water system facilities located within and adjacent to the Property;
- (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the water CCN No. 13203 service area covering the Property under prevailing regulations;
- (3) performing acts and supplying funds necessary to obtain, transfer, renew, and maintain permits for the Crystal Forest Subdivision water system so that it may be used to serve the Property and CCN No. 13203 area that includes the Property;

(4) maintaining a regional office in Spring, Texas with personnel specifically dedicated to operations within Aqua’s geographic Southeast Texas Region water CCN No. 13203 service areas, including the Property and CCN No. 13203 area that includes the Property; and

(5) analyzing and responding to past service inquiries and service requests for the Property.¹

Mr. Garcia also states Aqua Texas has a public water system, identification number 1700096, that serves the subdivision adjacent to DPSFLP’s property and is located immediately adjacent to the property.²

Aqua Texas has raised similar arguments in other proceedings for streamlined expedited release.³ However, in each docket the Commission concluded that the property to be released “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).⁴ Therefore, Staff recommends a finding that the DPSFLP’s property is not receiving water service.

II. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that DPSFLP’s petition be approved and that the procedural schedule be modified as proposed.

¹ Aqua Texas, Inc.’s Response to Petition of D.P.S.F.L.P. Ltd. for Streamlined Expedited Release, Exhibit A at 2-3 (Jun. 7, 2021).

² *Id.* at 1-2.

³ *Petition of Denton 114 LP to Amend Aqua Texas, Inc.’s Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 51492, Aqua’s Supplemental Response to Petition of Denton 114 LP for Streamlined Expedited Release at Exhibit A (Dec. 30, 2021); *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*, Docket No. 51163, Aqua’s Supplemental Response to Petition of Olex (United States), Inc. fka Olex Corporation NV for Streamlined Expedited Release at Exhibit A (Dec. 11, 2020); *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, Aqua’s Supplemental Response to Petition of Imperial Heights. Ltd. for Streamlined Expedited Release at Exhibit A (Sep. 18, 2020); *Petition of Kristin Calfee Bybee to Amend Aqua Texas, Inc.’s Certificates of Convenience and Necessity in Montgomery County By Expedited Release*, Docket No. 50077, Aqua Texas, Inc.’s Supplemental Response to Petition at Exhibit A (Dec. 2, 2019).

⁴ Docket No. 51492, Order at Conclusion of Law No. 9 (Mar. 5, 2021); Docket No. 51163, Order at Conclusion of Law No. 9 (Mar. 5, 2021); Docket No. 51114, Order at Conclusion of Law No. 9 (Dec. 17, 2020); Docket No. 50077, Interim Order Approving Expedited Release at Conclusion of Law No. 8 (Feb. 27, 2020).

Dated: July 1, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 July 1, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kevin R. Bartz
Kevin R. Bartz

Public Utility Commission of Texas

Memorandum

TO: Kevin Bartz, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: July 1, 2021

RE: Docket No. 52004 – *Petition of DPSFLP Ltd. to Amend Aqua Texas, Inc.’s Certificate of Convenience and Necessity in Montgomery County by Expedited Release*

On April 9, 2021, D.P.S.F.L.P. Ltd. (DPSFLP) filed a petition for streamlined expedited release from Aqua Texas, Inc.’s (Aqua Texas) water certificate of convenience and necessity (CCN) No. 13203 in Montgomery County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). DPSFLP asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Montgomery County, which is a qualifying county.

DPSFLP submitted adequate maps delineating the tract of land for expedited release with enough detail to confirm the accurate positioning of its digital data under 16 TAC § 24.245(k). Gary Horton, Infrastructure Division, determined the map and digital data are sufficient for determining that the location of the area considered for expedited release is within Aqua Texas’ water CCN 13203. The entire tract of land is approximately 343 acres. The portion of the tract of land considered for release is approximately 303 acres. The area to be released from Aqua Texas, CCN No. 13203, is approximately 303 acres.

DPSFLP stated that a copy of the petition was submitted to Aqua Texas by certified mail on the same day the petition was submitted to the Commission, provided a warranty deed confirming ownership of the tract of land within Aqua Texas’ certificated area, and submitted a sworn affidavit attesting that the property was not receiving water service from the CCN holder.

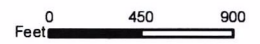
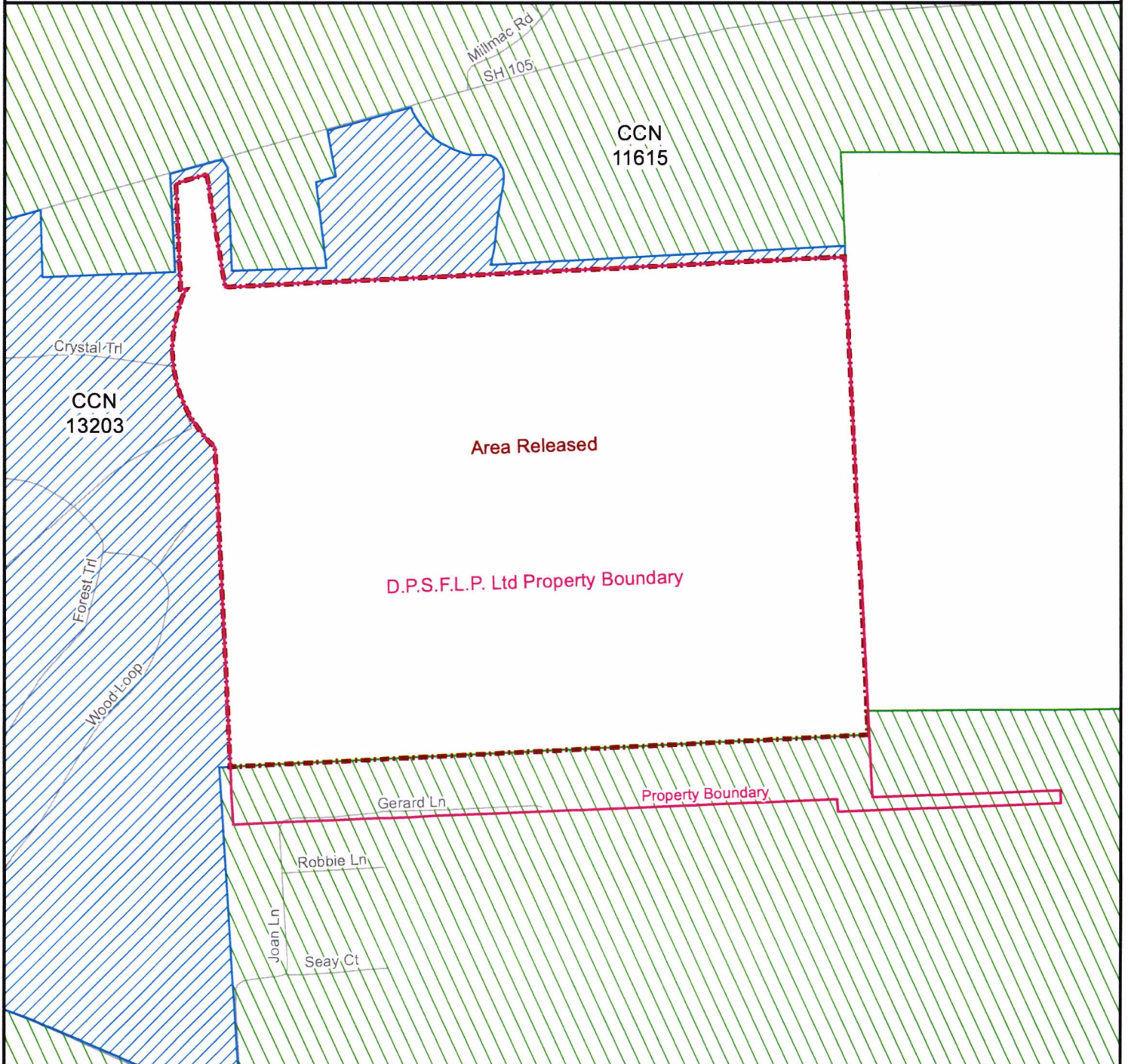
Aqua Texas requested to intervene. Aqua Texas stated it had not yet found anyone within its organization who received a copy of the petition that DPSFLP states was provided on the same day the petition was submitted to the Commission. DPSFLP mailed a second copy of the petition on May 11, 2021, and provided a signed affidavit and a copy of the certified mail receipt on May 27, 2021. Additionally, Aqua Texas submitted an affidavit stating that the

water facilities located near the requested area were built with the intent of serving the property and neighboring subdivision. There is no indication that the portion of the tract of land to be released is currently receiving water service from Aqua Texas.



In accordance with TWC § 13.2541 and 16 TAC § 24.245(h), DPSFLP has met the Commission's requirements to allow for the release of the requested area from Aqua Texas' CCN No. 13203. 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. 13203
 PUC Docket No. 52004
 Petition by D.P.S.F.L.P. Ltd to Amend
 Aqua Texas, Inc.'s CCN by Expedited Release in Montgomery County



Water CCN

-  13203 - Aqua Texas Inc
-  11615 - Town of Cut and Shoot

-  Area Released
-  Property Boundary



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, Aqua Texas, Inc. is entitled to this

Certificate of Convenience and Necessity No. 13203

to provide continuous and adequate water utility service to that service area or those service areas in Brazoria, Chambers, Fort Bend, Grimes, Harris, Jefferson, Liberty, Montgomery, Polk, San Jacinto, Trinity, and Warton Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 52004 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 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.