



Control Number: 52004



Item Number: 19

2021 SEP -8 PM 3: 11

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

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

This Order addresses the petition of DPSFLP Ltd. 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 13203. Aqua Texas, Inc. is the holder of CCN number 13203. 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 13203 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.

Petitioner

1. DPSFLP Ltd. is a Texas limited partnership registered with the Texas secretary of state under filing number 801197291.

CCN Holder

2. Aqua Texas is a Texas corporation registered with the Texas secretary of state under filing number 800304878.
3. Aqua Texas holds water CCN number 13203 that obligates it to provide retail water service in its certificated service area in Montgomery County.

Petition

4. On April 9, 2021, the petitioner filed a petition for streamlined expedited release of a portion of its tract of land from the CCN holder's service area under CCN number 13203.
5. The petition includes location maps for the tract; an affidavit, dated April 6, 2021, of Pam Steward, the petitioner's president; a general warranty deed dated June 13, 2011, which

includes metes and bounds descriptions of the parcels comprising the tract of land; and a boundary survey of the tract of land.

6. In Order No. 3 filed on May 18, 2021, the administrative law judge (ALJ) found the petition administratively complete.

Notice

7. On May 27, 2021, the petitioner filed an affidavit, dated May 18, 2021, of Ms. Steward, testifying that a copy of the petition was sent to the CCN holder, by certified mail, return receipt requested, on May 11, 2021.
8. In Order No. 5 filed on July 2, 2021, the ALJ found the notice sufficient.

Intervention and Response to Petition

9. In Order No. 4 filed on May 18, 2021, the ALJ granted the CCN holder's motion to intervene.
10. On June 7, 2021, the CCN holder filed a response to the petition.
11. The response includes an affidavit, dated June 7, 2021, of Chris A. Garcia, the CCN holder's Southeast Texas area manager; and a map of the tract of land and surrounding area.

The Tract of Land

12. The tract of land is approximately 343 acres and is in Montgomery County.
13. The portion of the tract of land for which the petitioner seeks streamlined expedited release (the release property) is approximately 303 acres.
14. The release property is located within the CCN holder's certificated service area.

Ownership of the Tracts of Land

15. The petitioner acquired the tract of land by a general warranty deed dated June 13, 2011.

Qualifying County

16. Montgomery County has a population of more than 47,500 and is adjacent to Harris County.
17. Harris County has a population of at least one million.

Water Service

18. The release property is not receiving actual water service from the CCN holder.
19. The CCN holder owns and operates certain facilities for the provision of water service which it refers to as the Crystal Forest Subdivision water system.
20. The Crystal Forest Subdivision water system serves the subdivision, which lies to the west of, and abuts, the release property.
21. The Crystal Forest Subdivision water system facilities were originally built with the intent of serving the Crystal Forest Subdivision and the release property.
22. None of the Crystal Forest Subdivision water system facilities lie within release property.
23. The CCN holder's Crystal Forest Subdivision water system has a capacity that exceeds the immediate needs of the CCN holder's existing customers in the subdivision and that could provide water to approximately 41 additional equivalent single-family connections.
24. The CCN holder is capable of expanding the system to accommodate even more connections within a reasonable amount of time.
25. The CCN holder has not committed or dedicated any facilities or lines to the release property.
26. The CCN holder has no facilities or lines that provide water service to the release property.
27. The CCN holder has not performed any acts for or supplied anything to the release property.

Map and Certificate

28. On July 1, 2021, Commission Staff filed its recommendation on final disposition that included a certificate and a map on which it identified the release property in relationship to the CCN holder's certificated service area.

Good Cause Exception

29. Under 16 Texas Administrative Code (TAC) § 24.245(h)(3)(F), a petitioner for streamlined expedited release must file proof that a copy of the petition was mailed to the

current CCN holder via certified mail on the date that the petitioner filed the petition with the Commission.

30. DPSFLP filed its petition on April 9, 2021 but did not mail a copy of the petition to Aqua Texas via certified mail until May 11, 2021 and did not file proof of notice with the Commission until May 27, 2021.
31. There is good cause to grant an exception to the notice requirements of 16 TAC § 24.245(h)(3)(F) because Aqua Texas filed a timely motion to intervene and fully participated in this proceeding despite DPSFLP's failure to issue proper notice.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over the petition for streamlined expedited release under Texas Water Code (TWC) §§ 13.254 and 13.2541.
2. The petitioner failed to provide notice of the petition in the manner required under 16 TAC § 24.245(h)(3)(F).
3. There is good cause under 16 TAC § 24.2(b) to grant an exception to the notice requirements of 16 TAC § 24.245(h)(3)(F).
4. No opportunity for a hearing on a petition for streamlined expedited release is provided under TWC §§ 13.254 and 13.2541 or 16 TAC § 24.245(h)(7).
5. Petitions for streamlined expedited release filed under TWC §§ 13.254 and 13.2541 and 16 TAC § 24.245(h) are not contested cases.
6. 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.
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. Montgomery County is a qualifying county under TWC § 13.2541(b) and 16 TAC § 24.245(h)(2).
9. The petitioner owns the tract of land, which is at least 25 acres and includes the release property for which it seeks streamlined expedited release through the petition.
10. The release property is not receiving water service under the standards of 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).
11. The petitioner is entitled under TWC § 13.2541(b) to the release of the release property from the CCN holder's certificated service area.
12. After the date of this Order, the CCN holder has no obligation under TWC § 13.254(h) to provide retail water service to the release property.
13. The Commission has no authority to decertify any facilities or equipment owned and operated by the CCN holder to provide retail water service or retail sewer service through the streamlined-expedited-release process under TWC § 13.2541(b).
14. The Commission processed the petition in accordance with the TWC and Commission rules.
15. 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.
16. A retail public utility may not under TWC § 13.254(d) provide retail water service or retail sewer 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 identified in the petition from the CCN holder's service area under CCN number 13203.
2. The Commission does not decerticate any of the CCN holder's equipment or facilities that may lay on or under the release property.
3. The Commission amends CCN number 13203 in accordance with this Order.
4. The Commission approves the map attached to this Order.
5. The Commission issues the certificate attached to this Order
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.



Public Utility Commission of Texas

By These Presents Be It Known To All That

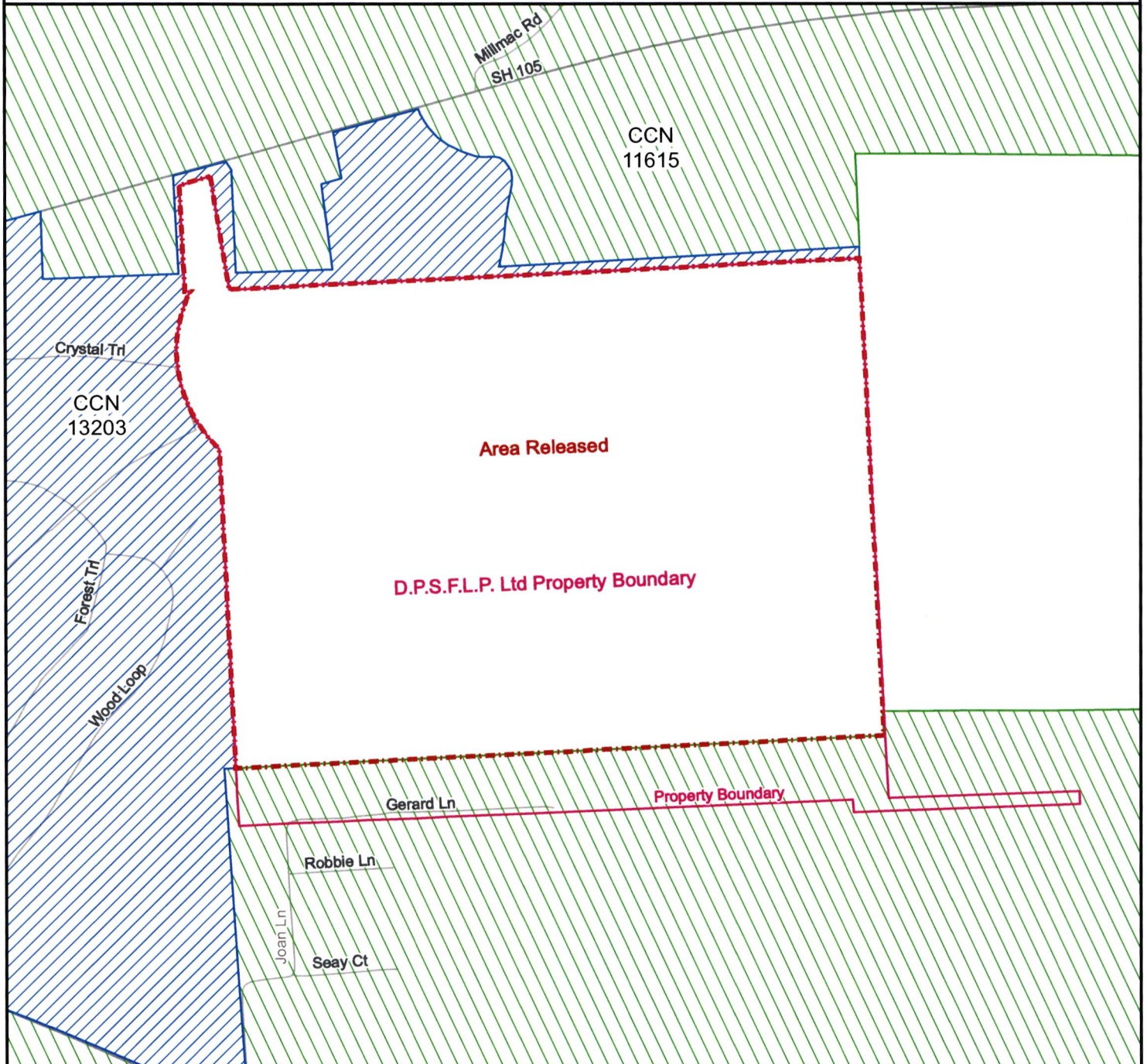
Aqua Texas, Inc.

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.



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



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

Water CCN

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

-  Area Released
-  Property Boundary

0 450 900
Feet



Map by: Komal Patel
Date created: June 15, 2021
Project Name: 52004AquaTx.mxd

Signed at Austin, Texas the 9th day of September 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



PETER M. LAKE, CHAIRMAN



WILL MCADAMS, COMMISSIONER



LORI COBOS, COMMISSIONER



JIMMY GLOTFELTY, COMMISSIONER