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DOCKET NO. 53253

PETITION OF KB HOME LONE STAR,	§	PUBLIC UTILITY COMMISSION
INC. TO AMEND AQUA WATER	§	
SUPPLY CORPORATION'S	§	OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN TRAVIS COUNTY	§	
BY STREAMLINED EXPEDITED	§	
RELEASE	§	

ORDER NO. 7
GRANTING STREAMLINED EXPEDITED RELEASE

This Order addresses the petition by KB Home Lone Star, Inc. for streamlined expedited release of a tract of land in Travis County from Aqua Water Supply Corporation's service area under certificate of convenience and necessity (CCN) number 10294. For the reasons stated in this Order, the Commission releases the tract of land from Aqua WSC's certificated service area. In addition, the Commission amends Aqua WSC's CCN number 10294 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 WSC, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. KB Home is a Texas corporation registered with the Texas secretary of state under filing number 800836731.

CCN Holder

2. Aqua WSC is a Texas nonprofit corporation registered with the Texas secretary of state under filing number 25894701 and operating under chapter 67 of the Texas Water Code.
3. Aqua WSC holds CCN number 10294 that obligates it to provide retail water service in its certificated service area in Bastrop, Caldwell, Lee, Travis, and Williamson counties.

Petition and Supplemental Materials

4. On February 22, 2022, the petitioner filed a petition for streamlined expedited release of a tract of land from the CCN holder's service area under CCN number 10294.
5. The petition includes an affidavit, dated February 8, 2022, of John Zinsmeyer, vice president of petitioner; a warranty deed for 42.921 acres dated October 29, 2021, with exceptions to conveyance and a metes-and-bounds description, a special warranty deed for 93.983 acres dated October 29, 2021, with exceptions to conveyance and a metes-and-bounds description; maps; digital mapping data; and a signed certificate of service certifying proof of notice to the CCN holder.
6. On April 25, May 25 and 26, and July 15, 2022, the petitioner filed supplemental mapping and digital mapping information.
7. In Order No. 6 filed on August 23, 2022, the administrative law judge (ALJ) found the petition, as supplemented, administratively complete.

Notice

8. The petition includes a signed certificate of service in which petitioner certified that it mailed a true and correct copy of its petition to the CCN holder, by certified mail on the date the petition was filed with the Commission.
9. In Order No. 6 filed on August 23, 2022, the ALJ found the notice sufficient.

Response to the Petition

10. On September 12, 2022, the CCN holder filed a response to the petition, which included the signed affidavit of Ty H. Embrey, general counsel for CCN holder, dated September 12, 2022.

The Tract of Land

11. The petitioner owns two adjacent parcels of land in Travis County that total 136.9 acres and comprise the tract of land for which it seeks streamlined expedited release.
12. The entire tract of land, 136.9 acres, is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

13. The petitioner acquired one of the two parcels of land that make up the tract of land by a warranty deed and the second parcel by a special warranty deed, both dated December 29, 2021.

Qualifying County

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

Water Service

15. The tract of land is not receiving actual water service from the CCN holder.
16. The petitioner has not requested water service from the CCN holder, paid any fees or charges to initiate or maintain water service from the CCN holder, and there are no billing records or other documents indicating that the petitioner has an existing account for the tract of land with the CCN holder.
17. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
18. The CCN holder has no facilities or lines that provide water service to the tract of land.
19. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

20. On October 3, 2022, Commission Staff filed its recommendation on final disposition that included a certificate and a map on which it identified the tract of land in relation 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)(7) 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 water service under TWC § 13.2541(b). Whether a tract of land might have previously received water service is irrelevant.
9. A landowner is not required to seek the streamlined expedited release of all of its property.
10. The petitioner owns the tract of land that is at least 25 acres for which it seeks streamlined expedited release.
11. Travis 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 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).
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 water service to the 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 decertificate 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).
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 Travis 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 water service to the public within the tract of land unless just and adequate 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 certificated service area under CCN number 10294.
2. The Commission does not decertificate 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 10294 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 on the date of this Order in accordance with the schedule adopted in Order No. 6. 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 7th day of October 2022.

PUBLIC UTILITY COMMISSION OF TEXAS





SUSAN E. GOODSON
ADMINISTRATIVE LAW JUDGE



Aqua Water Supply Corporation
Portion of Water CCN No. 10294
PUC Docket No. 53253
Petition by KB Home Lone Star, LLC to Amend
Aqua Water Supply Corporation's CCN by Streamlined Expedited Release in Travis County



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

Water CCN

-  10294 - Aqua WSC
-  11144 - Manville WSC

-  Decertified Area
-  Tract of Land

0 325 650
Feet



Map by: Komal Patel
Date: September 20, 2022
Project: 53253AquaWSC.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

Aqua Water Supply Corporation

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 Water Supply Corporation is entitled to this

Certificate of Convenience and Necessity No. 10294

to provide continuous and adequate water utility service to that service area or those service areas in Bastrop, Caldwell, Lee, Travis and Williamson counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 53253 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 the Aqua Water Supply Corporation 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.