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DOCKET NO. 53563

PETITION OF BENCHMARK	§	PUBLIC UTILITY COMMISSION
ACQUISITIONS, LLC TO AMEND	§	
MSEC ENTERPRISES INC.'S	§	OF TEXAS
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN MONTGOMERY	§	
COUNTY BY STREAMLINED	§	
EXPEDITED RELEASE	§	

ORDER NO. 6
GRANTING STREAMLINED EXPEDITED RELEASE

This Order addresses the petition of Benchmark Acquisition, LLC, for streamlined expedited release of a portion of a tract of land in Montgomery County from MSEC Enterprises Inc.'s service area under certificate of convenience and necessity (CCN) number 12887. For the reasons stated in this Order, the Commission releases the portion of the tract of land from MSEC Enterprises' certificated service area. In addition, the Commission amends MSEC Enterprises' CCN number 12887 to reflect the removal of the portion 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 MSEC Enterprises, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. Benchmark Acquisitions is Texas limited liability company registered with the Texas secretary of state under filing number 800503354.

CCN Holder

2. MSEC Enterprises is a Texas for-profit corporation registered with the Texas secretary of state under filing number 145205000.
3. MSEC Enterprises holds CCN number 12887 that obligates it to provide retail water service in its certificated service area in Grimes and Montgomery counties.

Petition and Supplemental Materials

4. On May 4, 2022, the petitioner filed a petition seeking streamlined expedited release of a portion of a tract of land from the CCN holder's service area under CCN number 12887.
5. The petition includes a special warranty deed dated May 7, 2021; a metes-and-bounds description of the portion of the petitioner's tract for which it seeks streamlined expedited release; maps; an affidavit, dated April 5, 2022, of Louis Trapolino, the petitioner's manager; and digital mapping data.
6. On July 5, 2022, the petitioner filed supplemental maps and digital mapping data.
7. In Order No. 4 filed on August 10, 2022, the administrative law judge (ALJ) found the petition, as supplemented, administratively complete.

Notice

8. On May 4, 2022, the petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder.
9. In Order No. 4 filed on August 10, 2022, the ALJ found the notice sufficient.

Response to the Petition

10. On August 30, 2022, the CCN holder filed the affidavit of Troy Morris, the CCN holder's senior vice-president, stating that the CCN holder does not object to the petition.

The Portion of the Tract of Land

11. The petitioner owns a tract of land in Montgomery County that is approximately 389 acres.
12. The portion of the tract of land for which the petitioner seeks streamlined expedited release is approximately 4.6 acres and is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

13. The petitioner acquired the tract of land by a special warranty deed dated May 7, 2021.

Qualifying County

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

Water Service

16. The tract of land is not receiving actual water service from the CCN holder.

17. There are no water meters or connections on the tract of land.
18. The petitioner has not requested water service from the CCN holder for the tract of land.
19. The petitioner has not paid to the CCN holder any service reservation or standby fees for the provision of water service to the tract of land.
20. There are no agreements between the petitioner and the CCN holder for the provision of water service to the tract of land.
21. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
22. The CCN holder has no facilities or lines that provide water service to the tract of land.
23. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

24. On September 20, 2022, Commission Staff filed its supplemental recommendation on final disposition that included a certificate.
25. On October 7, 2022, Commission Staff filed a revised final map on which it identified the tract of land, and the portion of the tract of land for which the petitioner seeks streamlined expedited release, 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 portion of the tract of land for which release is sought 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, including the portion for which they seek streamlined expedited release.
11. Montgomery 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 portion of the tract of land from the CCN holder's certificated service area.
14. Under TWC §§ 13.254(h) and 13.2541(a), after the date of this Order the CCN holder has no obligation to provide retail water service to the released portion of 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 Montgomery 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 released portion of 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 portion of the tract of land identified in the petition from the CCN holder's certificated service area under CCN number 12887.
2. The Commission does not decertify any of the CCN holder's equipment or facilities that may lay on or under the released portion of the tract of land.
3. The Commission amends CCN number 12887 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. 4. 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.

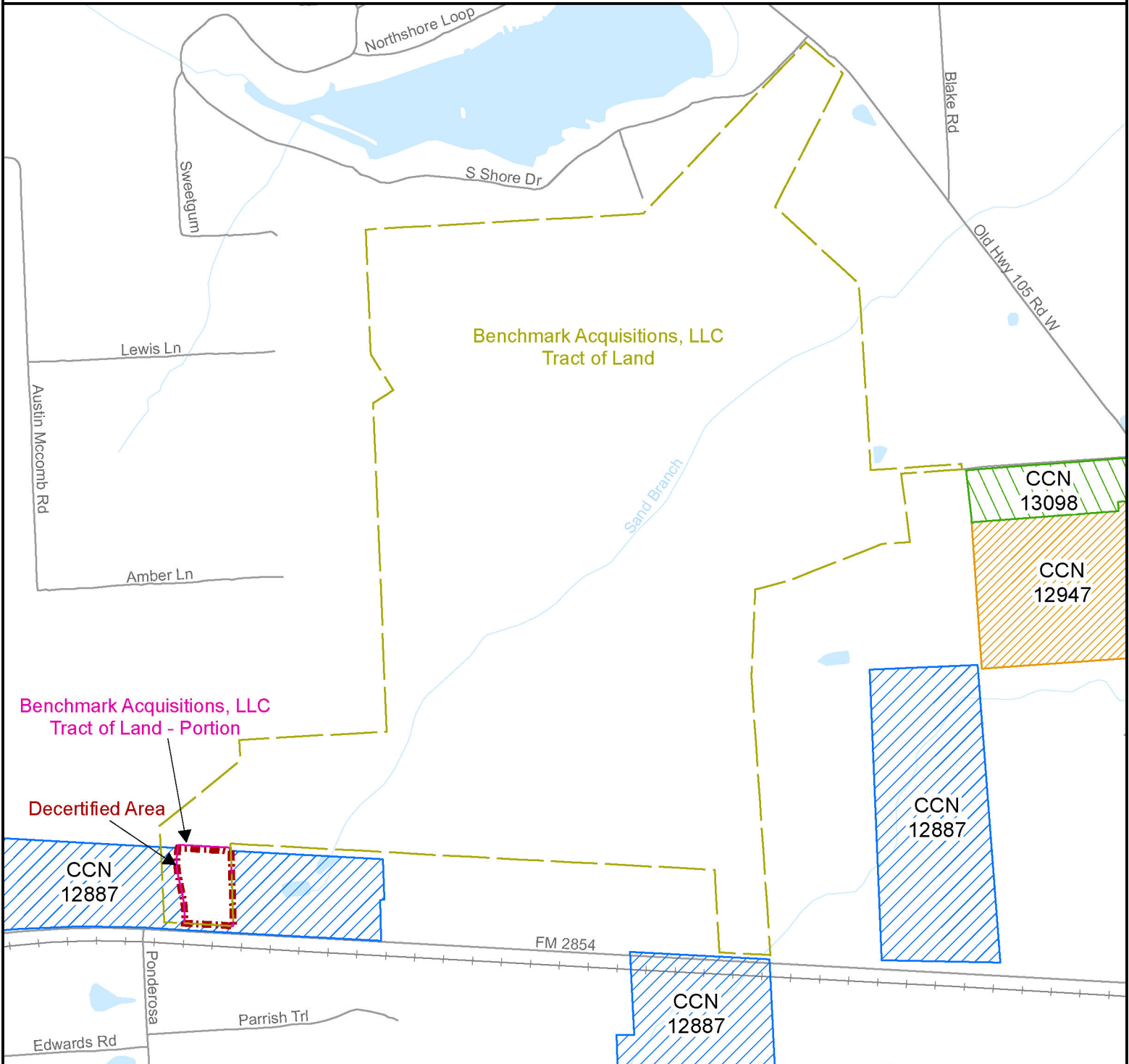
Signed at Austin, Texas the 12th day of October 2022.

PUBLIC UTILITY COMMISSION OF TEXAS



HUNTER BURKHALTER
CHIEF ADMINISTRATIVE LAW JUDGE




MSEC Enterprises, Inc.
 Portion of Water CCN No. 12887
 PUC Docket No. 53563
 Petition by Benchmark Acquisitions, LLC to Amend
 MSEC Enterprises, Inc.'s CCN by Streamlined Expedited Release in Montgomery County

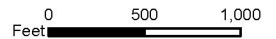


Public Utility Commission of Texas
 1701 N. Congress Ave
 Austin, TX 78701

Water CCN

-  12887 - MSEC Enterprises Inc
-  13098 - C & R Water Supply Inc
-  12947 - Woodland Oaks Utility Co Inc

-  Tract of Land
-  Tract of Land - Portion
-  Decertified Area



Map by: Komal Patel
 Date: October 4, 2022
 Project: 53563MSEC.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

MSEC Enterprises, 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, MSEC Enterprises, Inc. is entitled to this

Certificate of Convenience and Necessity No. 12887

to provide continuous and adequate water utility service to that service area or those service areas in Grimes and Montgomery Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 53563 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 MSEC Enterprises, 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.