



## Filing Receipt

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|                                   |          |                                  |
|-----------------------------------|----------|----------------------------------|
| <b>PETITION OF AM BUSINESS</b>    | <b>§</b> |                                  |
| <b>TRUST 2021-001, A FOREIGN</b>  | <b>§</b> |                                  |
| <b>TRUST BASED IN UTAH</b>        | <b>§</b> | <b>BEFORE THE</b>                |
| <b>REGISTERED TO DO BUSINESS</b>  | <b>§</b> |                                  |
| <b>IN TEXAS, TO AMEND CITY OF</b> | <b>§</b> | <b>PUBLIC UTILITY COMMISSION</b> |
| <b>GRAND PRAIRIE’S WATER</b>      | <b>§</b> |                                  |
| <b>CERTIFICATE OF CONVENIENCE</b> | <b>§</b> | <b>OF TEXAS</b>                  |
| <b>AND NECESSITY NO. 10105 IN</b> | <b>§</b> |                                  |
| <b>ELLIS COUNTY BY</b>            | <b>§</b> |                                  |
| <b>STREAMLINED EXPEDITED</b>      | <b>§</b> |                                  |
| <b>RELEASE</b>                    | <b>§</b> |                                  |

**CITY OF GRAND PRAIRIE’S  
EXCEPTIONS TO THE ALJ’S PROPOSED ORDER**

The City of Grand Prairie (the “City”) respectfully asserts that the Administrative Law Judge’s (“ALJ’s”) proposed order inappropriately considers whether the City is “actually” serving petitioner’s tract of property (“Tract”), which is not a required consideration under applicable law. In accordance with Public Utility Commission of Texas (“Commission”) rules and the ALJ’s memorandum dated November 7, 2022, the City respectfully urges its exceptions to the proposed order, as follows:

**I. Executive Summary:**

**The Proposed Order Would Set New Commission Precedent in Streamlined Cases  
By Considering Whether the CCN Holder Is “Actually” Providing Service  
“To the Tract” Owned by Petitioner**

The ALJ’s order proposes to grant the petition because the City is not “actually” providing water service “to the [T]ract” owned by petitioner.<sup>1</sup> Whether or not the City is actually serving the Tract would be relevant if the petition were filed under Texas Water Code (TWC) § 13.254 (“Expedited Release”). But this is not a § 13.254 expedited-release case. This proceeding is a *streamlined*-expedited release case governed by a different statute, TWC § 13.2541 (“Streamlined Expedited Release”). Section 13.2541 does not require proof of actual service.

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<sup>1</sup> See Findings 17-22 and Conclusion of Law 1 in the proposed order.

The proposed order does not consistently and precisely cite the relevant law governing this case. It broadly includes a citation to the *expedited* decertification statute, TWC § 13.254. The *streamlined* decertification laws incorporate a few subsections of 13.254, but definitely not the statutory language that would require the City to show proof of actual service or an existing account on petitioner's tract to defeat the petition.<sup>2</sup>

Declaring the law accurately and clearly and how it is to be applied to fact-intensive decertification proceedings is important. With explosive population growth across the state, it is critical that both water and wastewater utilities and landowner-developers have certainty as to how service-area ("CCN") decertification law is to be applied. Planning for growth requires the investment of millions of dollars in infrastructure and water supply by these utilities, which plans are dependent in large part on the state's policies and laws governing and protecting CCNs. From the landowner's perspective, it is only fair that developers know their rights if a utility is not providing service.

Under the law applicable to this streamlined case, as briefed in the City's response at pages 3-5 and 10-12, the City has provided evidence that it is providing service to the Tract—by sworn testimony, a P.E.-sealed engineering opinion, engineering maps, and correspondence with the developer reflecting that (A) infrastructure and (B) water supply are, in fact, "committed" and "dedicated" to the Tract.<sup>3</sup> Commission staff cites only to page 140 of the *Texas General Land Office v. Crystal Clear Water Supply Corporation* decision, seemingly of the opinion that the facts in that case are same as in this case, which ought to drive the same outcome in the petitioner's favor.<sup>4</sup> However, the Court's analysis that extends into pages 141-42 reveals that the circumstances are distinguishable. Unlike in *Crystal Clear*, the City has provided several affidavits, an engineering opinion with the stamp of a licensed professional engineer, and accompanying documents demonstrating the City's dedication and commitment

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<sup>2</sup> Subsections (a-7), (c), (d), (g), and (h) of that statute are incorporated by reference into the *streamlined* decertification laws, as stated in TWC § 13.2541(a) and (h).

<sup>3</sup> Item No. 15 in the Commission interchange (response and accompanying Gabriel Johnson, P.E.'s affidavit at Paras. 10-25; G. Johnson's sealed engineering opinion at pp. 1-2, with accompanying engineering maps; and G. Johnson's business-records affidavit with two water supply contracts evidencing sufficient infrastructure and supply and the email exchange between petitioner's representative C. Silvestri and G. Johnson).

<sup>4</sup> Item No. 17 in the Commission interchange (Commission Staff's Final Recommendation) at 2.

of infrastructure and water supply to the Tract.<sup>5</sup> Even the petitioner’s engineer, Mr. Carlos Silvestri, reinforces the fact that the City is able to serve: after reviewing the City’s Capital Improvement Plan and other related GIS information showing the City’s infrastructure, he emails Mr. Johnson that “all the information was helpful and it does appear there are options in the area.” Then, Mr. Silvestri trades emails with Mr. Johnson about next steps (1) to build out water utility service with Mr. Johnson’s Engineering and Public Works Team and (2) on a parallel but separate track to work with the Office of the City Manager, legal and development directors on a development agreement.<sup>6</sup> Although the parties reached an impasse on the development agreement, the City’s Engineering and Public Works Team has always stood ready to build out service to the Tract from the preexisting water supply and infrastructure committed to the Tract.

## **II. Exceptions to the Proposed Order**

The City excepts to Findings of Fact 10 and 17-22; Conclusions of Law 1, 12-14, and 17; and Ordering Paragraphs 1 and 3-7. For convenience of review, the City makes these exceptions below, with proposed new text underlined and strike-throughs reflecting text proposed to be struck:

### **A. Exception to Finding of Fact No. 10**

To accurately reflect the evidentiary attachments to the City’s verified response to AM Business Trust 2021-001’s (“AMB Trust’s”) petition, the City requests the following edits:

10. On September 28,2022, the CCN holder filed a response to the petition. The CCN holder’s response included an affidavit dated September 28, 2022, of Gabriel Johnson, the director of engineering and public works for Grand Prairie; an affidavit dated September 28,2022, of Rashad J. Jackson, the planning and development director for Grand Prairie; a separate business-records affidavit from Mr. Johnson with emails regarding the provision of water and sewer service to the tract of land; an agreement for the sale and delivery of treated water to Grand Prairie by the City of Midlothian, dated September 14, 2021; maps depicting supply lines and delivery points between Grand Prairie and Midlothian; -the rate methodology policy between Grand

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<sup>5</sup> *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140-142 (Tex. App.—Austin 2014, pet. denied).

<sup>6</sup> Item No. 15 in the Commission interchange (C. Silvestri emails to/from G. Johnson in May-June 2021).

Prairie and Midlothian; a Grand Prairie resolution number RE-579 10; and an agreement for the sale and delivery of treated water, dated August 18, 2010, between Grand Prairie and Mansfield; a separate business-records affidavit from Mr. Jackson with emails; and an engineering memorandum opinion written by and sealed by licensed engineer Mr. Johnson.

**B. Exception to Findings of Fact No. 17 and 19**

Both findings are undisputed but not determinative of the outcome of this case. For this reason, the City proposes that both be struck in their entirety.

**C. Exception to Finding of Fact No. 18**

The City owns and operates a 16-inch water supply line abutting the eastern boundary of the Tract (“Line II”). As confirmed by Mr. Johnson, P.E. in his sworn affidavit, Line II is committed to providing water service to the Tract. To accurately reflect Line II is committed to serving the Tract, the City requests the following edits:

18. The CCN holder owns and operates water system infrastructure located outside of, but in proximity to the tract of land. Although ~~None of this infrastructure~~ actually provides water service to the tract of land under the standard applicable to an expedited decertification proceeding, this infrastructure does provide water service to the tract of land under the standard for serving applicable to a streamlined expedited decertification proceeding.

**D. Exception to Finding of Fact No. 20**

The City has both committed and dedicated facilities and lines to the Tract for water service. As demonstrated by the City and acknowledged by the ALJ in the Proposed Order, the City owns and operates water system infrastructure located in proximity to the Tract. Additionally, the City has secured and committed water supply to the Tract as evidenced in its Midlothian Contract. Mr. Johnson confirmed, in his PE Sealed Memorandum and sworn affidavit, the City has committed Line II and water supply secured by the Midlothian Contract to providing water service for the Tract. To accurately reflect that the City has committed and dedicated facilities and lines to the tract of land for water service, the City proposes the following revision:

20. The CCN holder has ~~not committed or~~ and dedicated ~~any~~ facilities ~~or~~ and lines to the tract of land for water service.

**E. Exception to Finding of Fact No. 21**

As described above, the City has facilities and lines committed to providing water service to the Tract. Although the City's facilities and lines are not providing actual water service, they are providing water service as interpreted in *Texas General Land Office v. Crystal Clear Water Supply Corporation*. To accurately reflect that the City is providing water service, the City proposes the following revision:

21. The CCN holder has no facilities or lines that provide actual water service to the tract of land.

**F. Exception to Finding of Fact No. 22**

The City has performed acts in furtherance of its obligation to provide water service to the tract. Specifically, the City has constructed a water line, secured and committed water supply, and allocated funding to construct future facilities committed to serving the Tract. This is evidenced by Gabriel Johnson's sworn affidavit, the Midlothian Contract, and the Capital Improvement Plan map included in the City's Response. To accurately reflect that the City performed acts in furtherance of its obligation to provide service to the Tract, the City proposes the following revision:

22. The CCN holder has ~~not~~ performed ~~any~~ acts ~~for or in~~ furtherance of its obligation to provide water service to the tract. The CCN holder has not yet supplied anything to the tract of land.

**G. Exception to Conclusion of Law No. 1**

To be clear and specific about the applicable law, the City requests the following revision:

1. The Commission has authority over the petition for streamlined expedited release under Texas Water Code (TWC) §§ 13.254(a7), (c), (d), (g), and (h) and 13.2541.

**H. Exception to Conclusion of Law Nos. 12 and 13**

As thoroughly demonstrated by the City, the City has both committed facilities to providing water service to the Tract and performed acts in furtherance of its obligations to provide water service to the Tract. To accurately reflect that the City is providing water service, the City proposes the following revisions:

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 not entitled under TWC § 13.2541(b) to the release of the tract of land from the CCN holder’s certificated service area.

**I. Exception to Conclusion of Law Nos. 14 and 17**

For the foregoing reasons, AMB Trust is not entitled to streamlined release and its petition should be denied. Accordingly, these conclusions should be struck as the City will continue its obligation to provide retail water service to the Tract and should not be required to record a certified copy of the approved CCN and map in the real property records of Ellis County.

**J. Exception to Ordering Paragraphs Nos. 1 and 3-7**

Given the foregoing reasons, the City is providing water service to the petitioned property, which makes it ineligible for streamlined release. As such, the petition by AMB Trust should be denied and these ordering provisions rewritten accordingly.

**CONCLUSION AND PRAYER**

In 2011 the Legislature created streamlined-expedited release as an alternative to expedited release and excluded the term “actually” from the text of the statute. By excluding the term “actually,” the Legislature removed the requirement that a CCN holder must be providing *actual* service at the time a petition for decertification is submitted. Accordingly, in *Texas General Land Office v. Crystal Clear Water Supply Corporation*, the Court of Appeals made clear that whether a tract of land is “receiving service” does not require showing actual physical service to the property. The evidence submitted in this proceeding demonstrates that the City is providing water service to the petitioned property as defined by Texas courts, which renders it ineligible for release from the City’s water CCN.

WHEREFORE, for all of these reasons set forth above, the City respectfully requests that these exceptions be granted and that AMB Trust's petition be denied.

Respectfully submitted,

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ATTORNEYS FOR CITY OF  
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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 November 22, 2022, in accordance with the Order Suspending Rules, issued in Docket No. 50664, and the order of the Administrative Law Judge.

/s/ Michael A. Gershon

Michael A. Gershon