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Public Utility Commission of Texas

TO: Stephen Journey
Commission Counsel

All Parties of Record

FROM: Susan E. Goodson 
Administrative Law Judge

RE: **Docket No. 53698** – *Petition of AM Real Estate Solutions, Inc., Trustee of the AM Business Trust 2021-001, to Amend the City of Grand Prairie's Certificate of Convenience and Necessity in Ellis County by Streamlined Expedited Release*

DATE: December 1, 2022

On November 7, 2022, a Proposed Order was filed in the above-referenced case. The Commission will consider the Proposed Order at a future open meeting.

On November 22, 2022, the City of Grand Prairie filed proposed corrections and exceptions to the Proposed Order. The corrections to Finding of Fact No. 10 are appropriate, and the proposed order is revised as follows:

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 Prairie and Midlothian, 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 engineer Mr. Johnson.

The Revised Proposed Order is ready for the Commission's consideration.

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DOCKET NO. 53698

PETITION OF AM REAL ESTATE SOLUTIONS, INC., TRUSTEE OF THE AM BUSINESS TRUST 2021-001, TO AMEND THE CITY OF GRAND PRAIRE'S CERTIFICATE OF CONVENIENCE AND NECESSITY IN ELLIS COUNTY BY STREAMLINED EXPEDITED RELEASE	§	PUBLIC UTILITY COMMISSION
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REVISED PROPOSED ORDER

This Order addresses the petition by AM Real Estate Solutions, Inc., as trustee of the AM Business Trust 2021-001, for streamlined expedited release of a tract of land in Ellis County from the City of Grand Prairie’s service area under certificate of convenience and necessity (CCN) number 10105. For the reasons stated in this Order, the Commission releases the tract of land from Grand Prairie’s certificated service area. In addition, the Commission amends Grand Prairie’s CCN number 10105 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 Grand Prairie, which will be addressed by separate order.

I. Findings of Fact

The Commission makes the following findings of fact.

Petitioner

1. AM Business Trust is a Utah business trust registered with the Texas secretary of state under filing number 804512209.

CCN Holder

2. Grand Prairie is a home-rule municipality located in Ellis County.
3. Grand Prairie holds CCN number 10105 that obligates it to provide retail water service in its certificated service area in Dallas, Ellis, and Tarrant counties.

Petition and Supplemental Materials

4. On June 8, 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 10105.

5. The petition includes an affidavit dated June 6, 2022, of Robert Feiger, vice president of AM Real Estate, the trustee and authorized representative of petitioner; a special warranty deed dated November 10, 2021; a survey plat with a metes-and-bounds description of the tract of land; general and detailed location maps; digital mapping data; email correspondence between petitioner and the CCN holder; and an affidavit of proof of notice to the CCN holder dated June 8, 2022, and a certificate of service with mailing list.
6. On August 4, 2022, the petitioner supplemented the petition with additional mapping data.
7. In Order No. 3 filed on September 8, 2022, the administrative law judge (ALJ) found the petition, as supplemented, administratively complete.

Notice

8. On June 8, 2022, the petitioner sent a copy of the petition by certified mail, return receipt requested, to the CCN holder.
9. In Order No. 3 filed on September 8, 2022, the ALJ found the notice sufficient.

Response to the Petition

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 Prairie and Midlothian, 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 engineer Mr. Johnson.

The Tract of Land

11. The petitioner owns property in Ellis County that is approximately 340.8 acres.

12. The tract of land for which the petitioner seeks streamlined expedited release is a portion of the petitioner's property that is approximately 318.6 acres.
13. The tract of land is located within the CCN holder's certificated service area.

Ownership of the Tract of Land

14. The petitioner acquired the property through a special warranty deed dated November 10, 2021.

Qualifying County

15. Ellis County is adjacent to Dallas County and has a population of more than 47,500.
16. Dallas County has a population of at least one million.

Water Service

17. The tract of land is not receiving actual water service from the CCN holder.
18. The CCN holder owns and operates water system infrastructure located outside of, but in proximity to the tract of land. None of this infrastructure provides water service to the tract of land.
19. There are no billing records or other documents that indicate that the petitioner has an existing account for the tract of land with the CCN holder.
20. The CCN holder has not committed or dedicated any facilities or lines to the tract of land for water service.
21. The CCN holder has no facilities or lines that provide water service to the tract of land.
22. The CCN holder has not performed any acts for or supplied anything to the tract of land.

Map and Certificate

23. On November 2, 2022, Commission Staff filed its final recommendation that included a certificate and a map on which it identified the tract of land 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)(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 or sewer service under TWC § 13.2541(b). Whether a tract of land might have previously received water or sewer 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. Ellis 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. 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 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 decertify 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 Ellis 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 10105.
2. The Commission does not decertify 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 10105 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. 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.

Signed at Austin, Texas the _____ day of _____ 2022.

PUBLIC UTILITY COMMISSION OF TEXAS

PETER M. LAKE, CHAIRMAN

WILL MCADAMS, COMMISSIONER

LORI COBOS, COMMISSIONER

JIMMY GLOTFELTY, COMMISSIONER

KATHLEEN JACKSON, COMMISSIONER