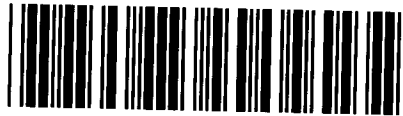


Control Number: 44534



Item Number: 24

Addendum StartPage: 0

**PUC DOCKET NO. 44534**

**APPLICATION OF AQUA TEXAS,  
INC. D/B/A AQUA TEXAS TO  
AMEND ITS CERTIFICATES OF  
CONVENIENCE AND NECESSITY IN  
HARRIS COUNTY**

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**BEFORE THE PUBLIC UTILITY  
COMMISSION OF TEXAS**  
2016 FEB 29 PM 1:02  
PUBLIC UTILITY COMMISSION

**AQUA TEXAS' STATUS REPORT IN RESPONSE TO ORDER NO. 8 AND  
SUPPLEMENTAL APPLICATION INFORMATION**

COMES NOW Applicant Aqua Texas, Inc. d/b/a Aqua Texas ("Aqua") and files this Status Report in Response to Order No. 8 and Supplemental Application Information.

**I. STATUS REPORT**

1. On March 13, 2015, Aqua filed with the Public Utility Commission of Texas ("Commission") an application to amend its water and sewer certificates of convenience and necessity (CCN) Nos. 13203 and 21065 in Harris County ("Application"). Aqua seeks to amend its CCNs in order to provide water and wastewater utility services to a commercial development comprising 620.652 acres (the "Property") located inside the boundaries of a portion of Harris County Improvement District No. 17 ("HCID 17").

2. On January 28, 2016, the Parties filed a Joint Motion to Abate in this docket until February 29, 2016.

3. On January 29, 2016, the ALJ issued Order No. 8 Continuing Abatement and requiring parties to file a joint status report requesting either a new procedural schedule or continued abatement by February 29, 2016.

4. Aqua has conferred with both Commission Staff ("Staff") and the City of Tomball ("Tomball"). Aqua and Staff agree that the abatement in this matter should be lifted. Approximately one month ago, Aqua informed Tomball that if all issues were not resolved informally, no further

same even though Tomball previously indicated to the Property owner its policy is not to serve areas it has not annexed.<sup>3</sup>

7. Finally, the Texas Water Code generally requires a municipality's consent for the Commission to grant a CCN amendment within its ETJ if the municipality has a population of 500,000 or more.<sup>4</sup> However, it also includes a process for obtaining a CCN in those locations without such consent in certain circumstances.<sup>5</sup> Aqua's March 10, 2015 consent request to Houston was included in the Application.<sup>6</sup> Now, Aqua supplements its Application to request its approval without Houston consent based on the applicable Water Code considerations. Houston has failed to officially respond to Aqua's consent request and has unreasonably withheld its affirmative consent. Aqua hereby supplements its Application with Houston correspondence showing that Houston deemed Aqua's March 10, 2015 consent request administratively complete on May 6, 2015.<sup>7</sup> Aqua will explain herein why the statutory criteria are now met for the Commission to grant the CCN amendment without Houston's consent.

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<sup>3</sup> Compare Item No. 15 (Tomball Protest and Request for Public Hearing Letter dated July 16, 2015, alleging adverse impacts on Tomball if the proposed CCNs are located within Tomball's ETJ while stating the "City of Tomball will withdraw the request for a public hearing if the CCN area is reduced and exclude areas located within the City of Tomball ETJ."); with Item No. 1, Application, Attachment 12, at page 276 of 446 (Tomball's response to Property developer's service availability request letter dated February 17, 2015, in which Tomball states, "The City of Tomball's policy is to not provide services to properties located outside its City Limits" and declines to offer service without Property annexation (which is not desired by the Property owner)).

<sup>4</sup> TEX. WATER CODE §13.245(a)-(c). Aqua notes that these provisions would not apply to Tomball due to its population size.

<sup>5</sup> *Id.*

<sup>6</sup> Item # 1, Application, at Attachment 16 (Aqua Texas' Application to Houston for Consent).

<sup>7</sup> **Exhibit 2** (Letter from City of Houston to Aqua Texas, Inc. c/o W. A. "Butch" Callegari, Jr. dated May 6, 2015). Aqua notes that Mr. Callegari is another attorney that has worked with Aqua on this project. Aqua also notes that Mr. Callegari was instructed by Houston to modify Houston's standard Water District Consent Application form to tailor it for the CCN consent requested for this Application as it appears in the Application, Attachment 16. When Aqua first approached Houston about making its CCN consent request, Aqua was informed that no CCN-specific form existed. Mr. Callegari submitted no other consent request for Aqua. Thus, the reference in the May 6, 2015 letter to a "Water District Consent Application" is simply an administrative error. The May 6, 2015 letter was in response to Aqua's CCN consent application and fee payments for same.

HCID 17's selection by resolution ensured that one set of ETJ requirements now applies to the Property.<sup>12</sup> Today, the Property's governing ETJ is that of Houston and not Tomball.

When Aqua initially filed its Application, there was some confusion about the ETJ issue. Aqua made its CCN consent request to Houston because it knew part of the Property was within Houston's ETJ. However, since then, Aqua learned about the HCID 17 ETJ selection for the Property to be wholly within Houston's ETJ. Aqua has made Tomball aware of this information, but Tomball has not withdrawn its hearing request.

### **III. SUPPLEMENTAL INFORMATION REGARDING HOUSTON CONSENT**

10. Application, Attachment 16 is Aqua's March 10, 2015 request to Houston for its consent to Aqua's proposed CCN amendment that would include the Property located within Houston's ETJ. On May 6, 2015, Aqua received official word from Houston via the letter included herein as **Exhibit 2** confirming Houston considered Aqua's consent application complete, the appropriate fees were paid and received, and Aqua's consent application was "in review."<sup>13</sup> Since then, Aqua has received no official word from Houston as to whether its CCN consent request is granted or denied. Further, Houston did not file a request for hearing or intervene in this docket despite Aqua providing it a mailed notice of the Application in addition to the published notice provided to all (in addition to making Houston aware of the Application through Aqua's consent request).<sup>14</sup> This all constitutes unreasonable withholding of consent to Aqua's requested CCN within HCID 17 and is not permitted by the Water Code.

11. The applicable legal provisions for this situation are as follows:

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<sup>12</sup> **Exhibit 1** (HCID 17 Resolution).

<sup>13</sup> **Exhibit 2** (Letter from City of Houston to Aqua Texas, Inc. c/o W. A. "Butch" Callegari, Jr. dated May 6, 2015).

<sup>14</sup> Item Nos. 12 and 13 (Notice Affidavits).

the Property per §13.245(c)(1); and (7) Houston has failed to make any effort to provide service to the Property, much less a “good faith effort,” per §13.245(c)(2).

12. In sum, all requirements are met for the Commission to grant the Application without consent from Houston. In the alternative, Houston’s failure to intervene or otherwise contest the Application should be construed as consent. Either way, Houston’s lack of action should not be allowed to hold Aqua’s Application hostage and such is prohibited by the Texas Water Code.

#### IV. CONCLUSION

13. In sum, for unknown reasons, the failure to act by two municipalities is unreasonably holding up Aqua’s Application made in partnership with an established political subdivision with authority to provide retail public water/sewer utility service to the Property in its own right with or without a CCN. As an investor-owned utility, however, Aqua requires CCNs to fulfill its commitments. The current situation is untenable.

14. If a contested case hearing is necessary, Aqua is prepared to move forward. However, if Staff and the Commission concur upon review that the Application should be approved without Houston consent and Tomball is now willing to withdraw its hearing request given that the basis for same is wholly flawed, it would be a tremendous waste of resources to send this case for a contested case hearing based solely on Tomball’s hearing request when the Application would otherwise be eligible for uncontested application processing. Thus, Tomball must be directed by the Court to state whether it still wishes to pursue its hearing request within an abbreviated amount of time.

15. Aqua’s understanding is that the Tomball City Council’s next meeting is scheduled for Monday, March 7, 2016. Thus, Aqua suggests setting a March 9, 2016 deadline for Tomball’s filing. Depending on Tomball’s position, Aqua will respond accordingly.

# Exhibit 1

## RESOLUTION SELECTING EXTRATERRITORIAL JURISDICTION AUTHORITY OF THE DISTRICT

THE STATE OF TEXAS

COUNTY OF HARRIS

HARRIS COUNTY IMPROVEMENT DISTRICT NO. 17

§  
§  
§

We the undersigned officers of the Board of Directors (the "Board") of HARRIS COUNTY IMPROVEMENT DISTRICT NO. 17 (the "District") hereby certify as follows:

The Board convened in special session, open to the public, at 10:00 a.m. on Friday, January 17, 2014, at 1001 McKinney Street, Suite 1000, Houston, Texas 77002, its meeting place outside the boundaries of the District, and the roll was called of the members of the Board, to-wit:

Joe Bullard	President
Hollis Bullard	Secretary
Tim Culp	Assistant Secretary/Treasurer
Art DePue	Director

All members of the Board were present with the exception of Tim Culp, thus constituting a quorum. Whereupon other business, the following was transacted at such Meeting:

## RESOLUTION SELECTING EXTRATERRITORIAL JURISDICTION AUTHORITY OF THE DISTRICT

was duly introduced for the consideration of the Board. It was then duly moved and seconded that such Resolution be adopted; and after full discussion, such motion, carrying with it the adoption of such Resolution prevailed, carried, and became effective by the following vote:

AYES: 3 NOES: 0

A true, full and correct copy of the aforesaid Resolution adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; such Resolution has been duly recorded in the Board's minutes of such Meeting; the above and foregoing paragraph is a true, full, and correct excerpt from the Board's minutes of such Meeting pertaining to the adoption of such Resolution; the persons named in the above and foregoing paragraph are the duly chosen, qualified, and acting officers and members of the Board as indicated therein; each of the officers and members of the Board are duly and sufficiently notified officially and personally, in advance, of the time, place, and purpose of such Meeting, and that such Resolution would be introduced and considered for adoption at such meeting, and each of the officers and members consented, in advance, to the holding of such meeting for such purpose; and such Meeting was open to the public and public notice of the time, place, and purpose of such Meeting was given, all as required by Chapter 551 of the Texas Government Code and Section 49.063 of the Texas Water Code, as amended.

**RESOLUTION SELECTING EXTRATERRITORIAL JURISDICTION AUTHORITY  
OF THE DISTRICT**

**THE STATE OF TEXAS  
COUNTY OF HARRIS  
HARRIS COUNTY IMPROVEMENT DISTRICT NO. 17**

§  
§  
§

**WHEREAS**, HARRIS COUNTY IMPROVEMENT DISTRICT NO. 17 (the "District") is a political subdivision of the State of Texas, created under Section 59, Article XVI, Texas Constitution and operating under Chapter 375 of the Texas Local Government Code and Chapters 49 and 54 of the Texas Water Code; and

**WHEREAS**, the District is located in the extraterritorial jurisdictions of the City of Houston and the City of Tomball; and

**WHEREAS**, under Section 54.0163 of the Texas Water Code, the District is authorized to select by a Resolution of the Board of Directors of the District (the "Board") the municipality that may exercise authority within the District as a whole; and

**WHEREAS**, the Board desires to be wholly contained within the extraterritorial jurisdiction of the City of Houston (the "City") for all purposes; and

**WHEREAS**, the City and all parts of the District are located within Harris County.

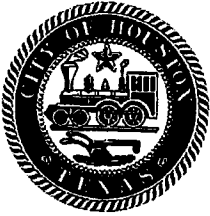
**NOW THEREFORE, BE IT ORDERED BY THE BOARD OF HARRIS COUNTY IMPROVEMENT DISTRICT NO. 17 THAT:**

Section 1. The matters and facts recited in the preamble to this Resolution are hereby found to be true and correct.

Section 2. The Board hereby declares its selection of the extraterritorial jurisdiction of the City of Houston effective January 17, 2014; and

Section 3. The District's legal counsel is hereby authorized to submit all required documents and any other information that may be required in connection with this request for selection, including sending a copy of this Resolution to the City of Tomball.

[Remainder of page intentionally left blank]



**CITY OF HOUSTON**  
Department of Public Works & Engineering

**Exhibit 2**

**Annise D. Parker**

Mayor

Dale A. Rudick, P.E.  
Director  
P.O. Box 1562  
Houston, Texas 77251-1562

T. 832 395-2500  
F. 832-395-2704  
[www.houstontx.gov](http://www.houstontx.gov)

May 6, 2015

Aqua Texas, Inc.  
c/o Callegari Law Firm, P.C.  
15040 Fairfield Village Drive, Suite 200  
Cypress, Texas 77433

Attention: W. A. "Butch" Callegari, Jr.

**RE: Water District Consent Application for the addition of 620.652 acres of land to Aqua Texas, Inc., and payment made by district check numbers 53898 and 53946, in the amount of \$454.96 and \$12.92, respectively.**

Dear Mr. Callegari:

This notice is to inform you that the above referenced Water District Consent Application and applicable fees were processed on April 30, 2015, and May 4, 2015. Please be advised that your application has been accepted as administratively complete and is in review.

Should you have any questions regarding this application, please e-mail [mudreview@houstontx.gov](mailto:mudreview@houstontx.gov).

Respectfully,

Veronica R. Osegueda  
Administrative Manager  
Department of Public Works & Engineering

VRO:mek

Attachments