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APPLICATION OF QUADVEST, L.P. §  
TO AMEND CERTIFICATES OF §  
CONVENIENCE AND NECESSITY IN §  
HARRIS COUNTY §

PUBLIC UTILITY COMMISSION

OF TEXAS  
FILING CLERK

## ORDER

This Order addresses the application of Quadvest, L.P. to amend its water and sewer certificates of convenience and necessity (CCN) in Harris County. Commission Staff recommended dismissal of this application, as amended, without prejudice. This application, as amended, is dismissed without prejudice.

### I. Background

In this application, filed on May 6, 2015, Quadvest seeks to add approximately 93 acres of new water and sewer service area with no current customers in Harris County. On June 24, 2016, Order No. 13 was issued, deeming the application administratively complete and sufficient for further review. On December 19, 2016, Commission Staff recommended dismissal because Quadvest had not yet submitted a preliminary engineering report to the Texas Commission on Environmental Quality (TCEQ) for the first phase of the system and because Quadvest had not obtained all of the necessary consents to cure overlaps with the requested service area.<sup>1</sup>

Commission Staff stated that TCEQ approval of facility plans and specifications and/or a preliminary engineering reports is an extended process potentially requiring several months to complete, and that Commission Staff cannot complete its review of the application until Quadvest files an approval letter from TCEQ.<sup>2</sup> Commission Staff speculated that given the usual time lines, if Quadvest filed its preliminary engineering report with the TCEQ in January 2017, it is likely Quadvest would not receive approval till mid-2017.<sup>3</sup> Therefore, Commission Staff recommended

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<sup>1</sup> Commission Staff's Motion to Dismiss at 1 (Dec. 19, 2016) (Staff Motion).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.*

dismissal for failure to prosecute<sup>4</sup> and for failure to state a claim for which relief can be granted<sup>5</sup> because Quadvest has continued to delay in filing its application with the TCEQ and thus has failed to prosecute this action and has also failed to provide in a timely manner the documents and approvals necessary to process this docket.<sup>6</sup>

Quadvest did not respond to Commission Staff's motion to dismiss.<sup>7</sup> On January 31, 2017, Order No. 17 was issued, providing Quadvest one more opportunity to respond to Commission Staff's motion to dismiss and to demonstrate in that response that Quadvest had filed the necessary paperwork with the TCEQ by February 3, 2017.

On February 9, 2017, Quadvest responded to Order No. 17, stating that due to circumstances beyond its control it was unable to satisfy Commission Staff's position regarding the submittal of plans and specifications to the TCEQ.<sup>8</sup> Quadvest stated that it would prefer abatement for a reasonable period and therefore disagrees with dismissal, but understands Commission Staff's position and does not object to Commission Staff's motion to dismiss.<sup>9</sup> No filings have been made by Quadvest since February 9, 2017.

The Commission agrees with Commission Staff. Quadvest delayed an unacceptable length of time to prosecute this application and thus cannot provide the necessary documents and approvals for Commission Staff to complete the necessary reviews and provide a final recommendation. Quadvest can re-file this application when it can provide all of the documents and approvals necessary to completely process the application. For the foregoing reasons, this application is dismissed, without prejudice.

The Commission adopts the following findings of fact and conclusions of law:

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<sup>4</sup> 16 Tex. Admin. Code § 24.118(d)(6) (TAC).

<sup>5</sup> 16 TAC § 24.118(d)(8).

<sup>6</sup> Staff Motion at 2.

<sup>7</sup> 16 TAC § 22.181(e)(3).

<sup>8</sup> Response to Order 17 at 1 (Feb. 9, 2017).

<sup>9</sup> *Id.*

## II. Findings of Fact

1. On May 6, 2015, Quadvest filed an application to amend its water CCN No. 11612 and sewer CCN No. 20952 in Harris County. Quadvest seeks to add approximately 93 acres of new service area with no current customers.
2. Attachment B to the application includes an undated letter from Mr. R.L. Dennison, on behalf of the International Center for Entrepreneurial Development (ICED) and its subsidiary Kwik Kopy Corporation, requesting water and sewer service to its property known as the Northwest Forest, 12715 Telge Road, Cypress, Texas.
3. Attachment D to the application includes correspondence from TCEQ regarding Quadvest's application for a water quality discharge permit and Attachment F includes a preliminary engineering report for a water system dated March 2015.
4. On June 11, 2015, Order No. 2 was issued, deeming the application deficient for several reasons; including, failure to provide required information, failure to pay regulatory assessment fees to the TCEQ and mapping issues. Quadvest was given until July 8, 2015 to cure the deficiencies.
5. Quadvest supplemented the application on July 30, 2015, so Commission Staff's deadline to address the new information was extended to August 28, 2015.
6. On August 28, 2015, Commission Staff responded to Order No. 2, stating that the supplemental digital data revealed a boundary overlap with Aqua Texas CCN No. 13203 and recommended the application be found administratively incomplete.
7. On September 2, 2015, Order No. 4 was issued, deeming the application deficient and establishing a September 28, 2015 deadline for Quadvest to cure the deficiencies identified by Commission Staff, specifically to clarify an overlap with Aqua Texas CCN No. 13203, or revise the application to remove the overlap area.
8. Quadvest again missed the deadline, but on October 19, 2015, Quadvest requested a 30 day extension of time

9. On October 26, 2015, Order No. 5 was issued, extending deadlines to November 30, 2015 for Quadvest to supplement and complete the application and to January 5, 2016 for Commission Staff to file a final recommendation.
10. On October 30, 2015, Quadvest requested abatement of the proceeding to January 5, 2016 and stated Commission Staff did not oppose the requested abatement.
11. On November 3, 2015, Order No. 6 was issued, abating this proceeding to January 5, 2016.
12. On January 19, 2016, Quadvest requested a 30-day extension of the abatement and stated it would have all issues in this application resolved by January 15, 2016.
13. On January 22, 2016, Order No. 7 was issued, interpreting Quadvest's January 19, 2016 filing to say that the utility would have all issues in this application resolved by February 15, 2016, and thus was asking to continue the abatement for 30 days after that date. Order No. 7 abated the proceeding until March 18, 2016 and required Quadvest to file a status update by that deadline.
14. On February 12, 2016, Quadvest filed a request on behalf of the ICED for the expedited release of its approximately 93 acres tract from Aqua Texas' CCN No, 13203.
15. On February 22, 2016, Order No. 8 was issued, advising Quadvest that the purported petition for expedited release filed in this proceeding on February 12, 2016 has no effect on this proceeding, did not initiate a separate expedited release proceeding and did not clear the mapping overlap in this application. Order No. 8 also found that the application remained deficient because Quadvest's last prior substantive filing in this proceeding was on July 30, 2015 and established a February 24, 2016 deadline for Quadvest to file a status update and cure all of the deficiencies in this application.
16. Quadvest missed the February 24, 2016 deadline.
17. On March 4, 2016, Quadvest apologized for missing the February 24, 2016 deadline and reported a February 25, 2016 meeting with Commission Staff. Quadvest reported that difficulties with this application have been resolved and requested additional abatement.

18. On March 8, 2016, Order No. 9 was issued, requiring Quadvest to provide proof by March 22, 2016 that the overlap with Aqua Texas' CCN is being resolved and delaying ruling on the utility's request to abate.
19. On March 9, 2016, Commission Staff requested an extension of its deadline to file a supplemental recommendation until after Quadvest responds to Order No. 9.
20. On March 17, 2016, Order No. 10 was issued, establishing a March 25, 2016 deadline for Commission Staff to provide a supplemental recommendation on sufficiency.
21. On March 24, 2016, Commission Staff filed a motion to dismiss stating that Quadvest had missed the March 22, 2016 deadline established in Order No. 9 and in fact that no information to cure previously identified deficiencies had been filed since Commission Staff's August 25, 2015 recommendation.
22. On March 28, 2016, Quadvest filed Aqua Texas's consent to the decertification of approximately 4.88 acres from its water CCN No. 13203 for the purpose of that property being added to Quadvest's water CCN No. 11612 and a response to Commission Staff's motion to dismiss stating that it misread Order No. 9 and thought it had until March 25, 2016 to respond and to please allow this application to proceed.
23. On March 29, 2016, Order No. 11 was issued, denying Commission Staff's motion to dismiss and establishing an April 22, 2016 deadline for Commission Staff to file a supplemental recommendation on the sufficiency of this application. Additionally, if Commission Staff continued to recommend dismissal Quadvest was given until April 29, 2016 to respond and reminded that timely responses are expected.
24. On April 27, 2016, Order No. 12 was issued, finding that the application remains deficient and establishing a May 23, 2016 deadline for Quadvest to supplement the application and cure the deficiencies and a June 23, 2016 deadline for a supplemental recommendation on sufficiency from Commission Staff.
25. On May 9, 2016, Quadvest supplemented the application providing a decertification map for the area being decertified by Aqua Texas.

26. On June 24, 2016, Order No 13 was issued, deeming the application sufficient, requiring notice and establishing deadlines.
27. Notice of this application was mailed to districts, groundwater conservation districts, counties, utilities, cities and affected parties within a two-mile radius of the proposed service area on July 5, 2016.
28. On August 9, 2016, Quadvest filed affidavits as proof of notice.
29. On August 24, 2016, Order No. 14 was issued, deeming the notice provided by Quadvest deficient and adopting a procedural schedule.
30. On August 29, 2016, Quadvest provided mailed notice to Harris County Municipal Utility District No. 503.
31. On September 2, 2016, Quadvest supplemented its proof of notice in this application.
32. On September 13, 2016, Commission Staff issued its first requests for information (RFIs) to Quadvest seeking financial information for 2015, a 3-year business plan, and debt issuance information.<sup>10</sup>
33. On September 14, 2016, Order No 15 was issued, deeming the notice of this application provided by Quadvest sufficient and adopting a procedural schedule for the remainder of the proceeding.
34. On October 7, 2016 Commission Staff issued its second RFIs to Quadvest seeking information regarding whether Quadvest had submitted plans and specifications to the TCEQ for review and approval of facilities to serve the proposed area and to provide the approval received, or to confirm if Quadvest has submitted a preliminary engineering report to TCEQ for the first phase of the water system, and to confirm when sent and TCEQ's response.<sup>11</sup>
35. On October 10, 2017, Commission Staff issued its third RFIs to Quadvest seeking letters of consent from the Cy Fair Community Improvement District, H-M-W Special Utility

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<sup>10</sup> Commission Staff's First RFI to Quadvest, LP Question Nos. Staff 1-1 through Staff 1-3 at 6 (Sep. 13, 2016).

<sup>11</sup> Commission Staff's Second RFI to Quadvest, L.P. at 6 (Oct. 7, 2016).

District and Harris County WCID 113 consenting to Quadvest' provision of retail water and or sewer service in its area.<sup>12</sup>

36. On October 20, 2016, Quadvest responded confidentially to Commission Staff's first RFIs regarding financials.<sup>13</sup>
37. On October 31, 2016, Quadvest requested a 30-day extension of the procedural schedule and stated it had received a consent letter from one of the districts in the proposed area.
38. On November 7, 2016, Quadvest responded to Commission Staff's second RFIs stating that Quadvest has not submitted plans to the TCEQ; that the utility's engineer is currently working on the plans and as soon as they are submitted Quadvest will send a copy of TCEQ's acceptance.<sup>14</sup>
39. On November 8, 2016, Order No. 16 granted Quadvest' requested 30-day extension of the procedural schedule, beginning with a December 22, 2016 deadline for Commission staff to provide final maps, tariffs and certificates to Quadvest for review and consent.
40. On December 19, 2016, Commission Staff recommended dismissal of this application, without prejudice, for failure to prosecute and failure to state a claim for which relief can be granted because of Quadvest's failure to have submitted a preliminary engineering report to the TCEQ for the first phase of the system and because Quadvest had not obtained all of the necessary consents to cure the overlaps with its requested service area.<sup>15</sup>
41. On January 13, 2017, Commission Staff filed a letter stating that Quadvest did not respond to its motion to dismiss, had not responded to its second or third RFIs and advising that it cannot proceed with evaluation of this application without receiving TCEQ approval of Quadvest's plans.

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<sup>12</sup> Commission Staff's Third RFI to Quadvest, L.P. at 6 (Oct. 10, 2016).

<sup>13</sup> CONFIDENTIAL – RFI Response Financials; Bate Stamp: 1 to 9 (Oct. 20, 2016).

<sup>14</sup> Response to Second RFI at 1 (Nov. 7, 2016).

<sup>15</sup> Staff Motion at 1.



42. On January 31, 2017, Order No. 17 was issued, establishing a February 7, 2017 deadline for Quadvest to respond to Commission Staff's motion to dismiss and demonstrate that it filed the necessary paperwork with the TCEQ by February 3, 2017.<sup>16</sup>
43. On February 9, 2017, Quadvest responded to order No. 17, stating it was unable to satisfy Commission Staff's position regarding the submittal of plans and specifications to the TCEQ. Quadvest stated it preferred abatement of the proceeding and therefore disagrees with the motion to dismiss, Quadvest understands Staff's position and does not object to the motion to dismiss.<sup>17</sup>

### III. Conclusions of Law

1. The Commission has jurisdiction and authority over this docket pursuant to the Texas Water Code §§ 13.041, 13.241-13.250 (TWC).
2. Quadvest is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(59).
3. Quadvest provided public notice of the application in compliance with TWC § 13.246 and with 16 TAC § 24.106.
4. The application was processed in accordance with the requirements of the APA,<sup>18</sup> TWC § 13.241-13.250 and 16 TAC §§ 24.101 - 24.107.
5. Commission Staff is entitled to approval of its motion to dismiss, having demonstrated that Quadvest has failed to prosecute this application and failed to request relief that can be granted, therefore dismissal is appropriate under 16 TAC § 22.181(d)(6) and (8).
6. The requirements of informal disposition pursuant to 16 TAC § 22.35(b)(2) have been met in this proceeding.

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<sup>16</sup> Letter to Judge Goodson at 1 (Jan 13, 2017).

<sup>17</sup> Order 17 Response at 1 (Feb. 9, 2017).

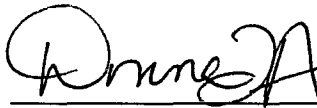
<sup>18</sup> Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001-2001.902 (West 2016) (APA).

**IV. , Ordering Paragraphs**

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. Quadvest's application, as amended, is dismissed, without prejudice.
2. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 30<sup>th</sup> day of March 2017.

**PUBLIC UTILITY COMMISSION OF TEXAS**

**DONNA L. NELSON, CHAIRMAN**



**KENNETH W. ANDERSON, JR., COMMISSIONER**



**BRANDY MARTY MARQUEZ, COMMISSIONER**