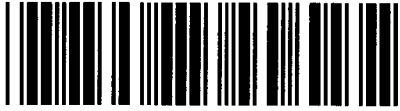




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DOCKET NO. 45710

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APPLICATION OF KEMPNER
WATER SUPPLY CORPORATION
FOR SECTION 13.252 CASE AND
DESIST ORDER AGAINST THE CITY
OF LAMPASAS

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§

PUBLIC UTILITY COMMISSION

OF TEXAS

PUBLIC UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF'S REQUEST FOR REFERRAL TO
THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

Commission Staff (Staff) of the Public Utility Commission (Commission) of Texas files this Request. In support of its Request, Staff states the following:

I. Background

Kempner Water Supply Corporation (Kempner WSC) requests that the Commission issue a cease and desist order against the City of Lampasas. Kempner WSC asserts that the City of Lampasas is constructing a water line that is in Kempner WSC's certificated service area. Kempner WSC further asserts that the City of Lampasas will use this newly-constructed water pipeline to provide retail water service in Kempner WSC's certificated service area.

In response, the City of Lampasas denies that it is providing or attempting to provide retail water service in Kempner WSC's certificated area. Instead, the City of Lampasas asserts that it constructed the water line in anticipation of providing retail water service to a recently-annexed business park that is in Kempner WSC's certificated area. The City of Lampasas states that it will provide water service to the recently-annexed business park in two, separate ways. First, the City of Lampasas states that it will seek an expedited release from Kempner WSC's certificated area, which would allow the City of Lampasas to serve the recently-annexed business park.¹ Second, the City of Lampasas states that it will seek to certify the recently-annexed business park as being part of the City of Lampasas' certificated service area.²

¹ See generally Tex. Water Code § 13.254(a-1) ("As an alternative to decertification under Subsection (a), the owner of a tract of land that is at least 50 acres and that is not in a platted subdivision actually receiving water or sewer service may petition the utility commission under this subsection for expedited release of the area from a certificate of public convenience and necessity so that the area may receive service from another retail public utility."). See also *Petition of the Lampasas Economic Development Corporation to Amend Kempner Water Supply Corporation's Certificate of Convenience and Necessity in Lampasas County by Expedited Release*, Docket No. 45778 (pending).

² See generally Tex. Water Code § 13.255(a) ("In the event that an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that

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II. Request for Referral to SOAH

The Texas Water Code prohibits a retail public utility from interfering with or providing retail service to the certificated area of another retail public utility. The relevant section of the Texas Water Code states:

If a retail public utility in constructing or extending a line, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the utility commission may issue an order prohibiting the construction, extension, or provision of service or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of the service.³

Both Kempner WSC and the City of Lampasas are retail public utilities, as defined by the Texas Water Code.⁴

Based on the assertions in Kempner WSC's application and the City of Lampasas' response, Staff has determined that there are factual disputes that need to be adjudicated. Without limitation, Staff has identified the following factual disputes:⁵

1. Whether the City of Lampasas' construction of a water line in Kempner WSC's certificated service area interferes or attempts to interfere with Kempner WSC's water infrastructure.
2. Whether the City of Lampasas' construction of a water line in Kempner WSC's certificated service area is an act by the City of Lampasas of providing retail water service in Kempner WSC's certificated service area.

Given these factual disputes, Staff requests that the Commission refer this proceeding to the State Office of Administrative Hearings.⁶

provides water or sewer service to all or part of the area pursuant to a certificate of convenience and necessity may agree in writing that all or part of the area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility.”).

³ Tex. Water Code § 13.252.

⁴ See Tex. Water Code § 13.002(19) (defining “retail public utility” as any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.”).

⁵ Staff reserves the right to include other factual disputes that need to be adjudicated.

⁶ See generally 16 Tex. Admin. Code § 22.207.

III. Conclusion

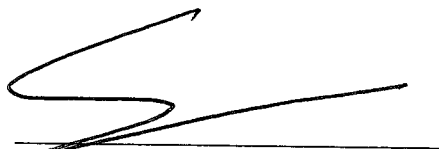
Staff requests that the Commission refer this proceeding to the State Office of Administrative Hearings.

Date: April 5, 2016

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
Legal Division

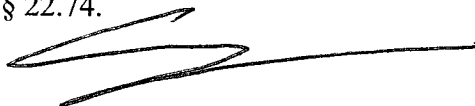


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on April 5, 2016, in accordance with 16 Tex. Admin. Code § 22.74.



Sam Chang