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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  
OFFICE OF THE PUBLIC UTILITY COMMISSION  
CLERK  
OF TEXAS

### COMMISSION STAFF'S LIST OF ISSUES

Commission Staff (Staff) of the Public Utility Commission (Commission) of Texas files its List of Issues. In support of its List of Issues, 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 constructed 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.<sup>1</sup> 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.<sup>2</sup>

<sup>1</sup> 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).

<sup>2</sup> 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

## II. Staff's List of Issues

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.<sup>3</sup>

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

Based on the assertions in Kempner WSC's application and the City of Lampasas' response, Staff proposes that the following issues be considered by the Commission in this proceeding:

1. The City of Lampasas constructed a water line in Kempner WSC's certificated service area in anticipation of providing retail water service to a recently-annexed business park.
  - a. Does the construction of this water line interfere or attempt to interfere with Kempner WSC's water infrastructure?
  - b. Does the construction of this water line constitute an act of providing retail service in Kempner WSC's certificated service area?
2. If 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, what are the appropriate remedies for Kempner WSC?

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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.”).

<sup>3</sup> Tex. Water Code § 13.252.

<sup>4</sup> 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.”).

3. If the City of Lampasas' construction of a water line in Kempner WSC's certificated service area constitutes the act of providing retail service in Kempner WSC's certificated service area, what are the appropriate remedies for Kempner WSC?

### **III. Conclusion**

Staff requests that the Commission consider in this proceeding the issues identified above.

Date: May 6, 2016

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Stephen Mack  
Managing Attorney  
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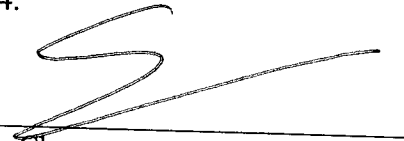


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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on May 6, 2016,  
in accordance with 16 Tex. Admin. Code § 22.74.

  
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Sam Chang