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PUBLIC UTILITY COMMISSION
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OPEN MEETING COVER SHEET

MEETING DATE: July 20, 2016

DATE DELIVERED: July 13, 2016

AGENDA ITEM NO.: 1

CAPTION: Docket No. 45848; SOAH Docket No. 473-16-5011.WS
City of Celina's Notice of Intent to Provide
Water and Sewer Service to Area
Decertified from Aqua Texas, Inc. in Denton
County

ACTION REQUESTED: Discussion and possible action with respect
to Draft Preliminary Order

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Greg Abbott
Governor

Public Utility Commission of Texas

TO: Chairman Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: Hannah Turner *HT*
Commission Advising

RE: July 20, 2016, Open Meeting Agenda Item No. 1
Docket No. 45848, SOAH Docket No. 473-16-5011.WS - Draft Preliminary
Order
*City of Celina's Notice of Intent to Provide Water and Sewer Service to Area
Decertified from Aqua Texas, Inc. in Denton County*

DATE: July 13, 2016

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the July 20, 2016 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the July 20, 2016 open meeting.

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**PUC DOCKET NO. 45848
SOAH DOCKET NO. 473-16-5011.WS**

**CITY OF CELINA'S NOTICE OF
INTENT TO PROVIDE WATER AND
SEWER SERVICE TO AREA
DECERTIFIED FROM AQUA TEXAS,
INC. IN DENTON COUNTY**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

DRAFT PRELIMINARY ORDER

On April 12, 2016, the city of Celina filed notice of its intent to provide retail water and sewer service to an approximately 128-acre tract of land that was decertified from Aqua Texas, Inc.'s water certificate of convenience and necessity (CCN) 13201 and sewer CCN 21509 in Docket No. 45329.¹ Celina's notice filing automatically initiated this proceeding for a determination of what compensation, if any, is owed to Aqua for property rendered useless and valueless.²

On April 14, 2016, the Commission's administrative law judge (ALJ) issued an order requiring Celina and Aqua to inform the Commission by April 22, 2016 of whether they had agreed on an independent appraiser. On April 22, 2016, Celina filed notice that the parties were not able to agree on a single appraiser. On the same day, Aqua moved to intervene in the case and also notified the Commission ALJ that the parties could not agree on a single appraiser and would therefore be filing separate appraisals. On April 25, 2016, the Commission ALJ issued an order requiring Celina and Aqua to submit their appraisals by June 13, 2016. On June 13, Celina and Aqua each filed an appraisal. The appraisal submitted by Celina assigned a value of \$38,000 to the property associated with Aqua's water and sewer certificated area.³ The appraisal submitted by Aqua determined that Aqua was owed \$985,946 in compensation.⁴ On July 6, 2016, a third-

¹ *Petition of CADG Sutton Fields II, LLC to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 45329 (Mar. 22, 2016).

² TWC § 13.254(d); 16 TAC § 24.113(i).

³ City of Celina's Appraisal at 2 (Jun. 13, 2016).

⁴ Aqua's Appraisal at 1 (Jun. 13, 2016).

party appraisal valuing the property at \$69,839 was filed after being prepared at the request of the Commission.⁵ On July 7, 2016, the Commission referred this case to the State Office of Administrative Hearings (SOAH).

Although appraisals have already been submitted in this matter, it is not clear that the appraisals are limited to valuing property that was rendered useless or valueless due to the decertification. That is not surprising given that the Commission has not yet identified that property. After the Commission identifies what property has been rendered useless or valueless, the appraisal process may be concluded.

This is the one of the first cases of this type to be referred to SOAH.⁶ While it is unlikely that SOAH can complete a hearing and issue a proposal for decision (PFD) within the directory 90-day timeframe provided by Texas Water Code (TWC) § 13.254(e), the Commission requests that the case be expedited to the extent possible. After appropriate discovery, the SOAH ALJ should hold a hearing on the first phase of this docket and determine what property has been rendered useless or valueless. The ALJ should issue a PFD on that issue to allow the Commission to make the determination that is required under TWC § 13.254(d): what property has been rendered useless or valueless as a result of the decertification. The Commission will then issue an interim order to memorialize that determination.

After the Commission issues the interim order, there will be a determination of compensation based on the value of the property the Commission has determined to have been rendered useless or valueless. If additional appraisals are necessary and if the Commission appoints a third-party appraiser under TWC § 13.254(g-1) because the parties are unable agree on a single appraiser, then the case may be returned to SOAH for a hearing on the second phase of this matter, particularly if the compensation determination is contested and becomes a fact-intensive inquiry. If the case is returned to SOAH for a second phase, the Commission will issue a supplemental preliminary order addressing that phase.

⁵ Third Party Appraisal by B&D Environmental, Inc. at 5 (Jul. 7, 2016).

⁶ See *Zipp Road Utility Company, LLC's Notice of Intent to Provide Sewer Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County*, Docket No. 45679, Order On Rehearing (Jul. 7, 2016).

After conclusion of the second phase, whether or not the second phase is referred back to SOAH, the Commission will issue a final order regarding compensation for property rendered useless or valueless as a result of the decertification.

I. Issues to be Addressed

After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. What property, if any, has been rendered useless or valueless to Aqua by the decertification granted in Docket No. 45329⁷? TWC § 13.254(d); 16 TAC § 24.113(h).
2. Are the existing appraisals limited to property that has been determined to have been rendered useless or valueless by decertification?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed.

II. Issue Not to be Addressed

The Commission takes the position that the following issue need not be addressed in this proceeding for the reasons stated.

1. Whether the Commission may refer this docket to SOAH.

The Commission is tasked with making a determination of what property has been rendered useless or valueless by decertification. In order to properly make this fact-intensive determination, the Commission has decided that it needs to refer the matter to SOAH for a hearing.

⁷ *Petition of CADG Sutton Fields II, LLC to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 45329 (Mar. 22, 2016).

III. Effect of Preliminary Order

The Commission's discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, this Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the _____ day of July 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER