



Control Number' 45848



Item Number' 18

Addendum StartPage 0

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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
FILING CLERK
OF TEXAS

DIRECT TESTIMONY
OF
JASON S. JONES, P.E.
ON BEHALF OF
PETITIONER CITY OF CELINA

EXHIBITS SPONSORED BY JASON S. JONES:

- CEL101. Resume of Jason Jones
CEL102: Appraisal Prepared by Jones-Heroy & Associates, Inc. (June 9, 2016)

EXHIBIT
CEL100

DIRECT TESTIMONY OF JASON S. JONES, P.E.
ON BEHALF OF
PETITIONER CITY OF CELINA

18

1 **I. INTRODUCTION**

2 **Q. MR. JONES, PLEASE STATE YOUR NAME AND BUSINESS ADDRESS FOR**
3 **THE RECORD.**

4 **A.** My name is Jason S. Jones, P.E. and my business address is 2204 South Highway 281,
5 Suite D, Lampasas, Texas 76550.

6 **Q. WHAT SUBJECTS WERE YOU ASKED TO EVALUATE FOR THIS**
7 **PROCEEDING?**

8 **A.** I have completed an independent appraisal of a portion of the Aqua Texas water
9 Certificate of Convenience and Necessity (CCN) No. 13201 and sewer CCN No. 21059.
10 located approximately 6.5 miles southwest of the City of Celina along FM 428 and FM
11 1385 in Denton County, Texas. In addition, at this stage of the proceeding, I have been
12 asked to provide an opinion on the following two questions:

13 1. What property, if any, has been rendered useless or valueless to Aqua by the
14 decertification granted in this proceeding?

15 and

16 2. Whether the existing appraisals are limited to property that has been
17 determined to have been rendered useless or valueless by decertification?

18 **QUALIFICATIONS**

19 **Q. HOW ARE YOU CURRENTLY EMPLOYED?**

20 **A.** I am a principal at Jones-Heroy & Associates, Inc. and I am licensed as a Professional
21 Engineer in Texas, which is consistent with my work at Jones-Heroy in water distribution
22 systems.

23 **Q. WHAT TYPE OF BUSINESS IS JONES-HEROY?**

24 **A.** Jones-Heroy is a company that provides planning, management, design and
25 administrative services to water districts, municipalities, and water utility providers
26 across Texas.

27 **Q. HOW LONG HAVE YOU BEEN IN YOUR PROFESSION?**

28 **A.** I have 16 years of combined experience in the fields of engineering and environmental
29 science. Specifically, my technical, project management, and design experience includes

1 water supply planning, water distribution systems, water systems modeling and
2 operations, wastewater collection, utility regulatory support, and ecological systems
3 modeling and analysis. I also have experience in preparing appraisals for CCN
4 decertification proceedings.

5 **Q. PLEASE SUMMARIZE YOUR FORMAL EDUCATION.**

6 **A.** In 1999, I received a Bachelor of Science in Agricultural Engineering from Texas A&M
7 University. In 2006, I received a Master of Science in Rangeland Ecology and
8 Management from Texas A&M University.

9 **Q. PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE.**

10 **A.** I worked at HDR in Austin, Texas as a Project Engineer from 2000-2003. I then
11 transferred to HDR in Norfolk, Virginia and worked as a Drainage Engineer from 2005-
12 2006. From 2004-2009, I worked at Texas Agrilife Research as an Assistant Research
13 Scientist. Finally, I joined Jones-Heroy & Associates, Inc. in 2010. I have been with
14 Jones-Heroy from that time until now.

15 **Q. ARE YOU A REGISTERED PROFESSIONAL ENGINEER IN TEXAS?**

16 **A.** Yes, my Texas Professional Engineer Registration Number is 100034.

17 **Q. IS YOUR PROFESSIONAL REGISTRATION CURRENT AND OTHERWISE IN**
18 **GOOD STANDING?**

19 **A.** Yes.

20 **Q. ARE YOU A MEMBER OF ANY PROFESSIONAL ORGANIZATIONS OR A**
21 **RECIPIENT OF ANY AWARDS OR HONORS, AND IF SO, COULD YOU**
22 **PLEASE IDENTIFY THEM?**

23 **A.** I am a member of the American Water Works Association (where I currently serve as the
24 Growth Systems committee chair), the Association of Water Board Directors, the
25 Lampasas Lions Club, the Lampasas Chamber of Commerce, and the Saratoga
26 Underground Water Conservation District (where I currently serve as Vice President of
27 the Board of Directors). I received the HDR Pathfinder Gold Award in 2001.

28 **Q. I AM SHOWING YOU WHAT HAS BEEN MARKED AS EXHIBIT CEL101**
29 **[RESUME]. WHAT IS THIS DOCUMENT?**

1 A. It is my resume describing my background and experience.

2 Q. **DID YOU PREPARE THIS EXHIBIT?**

3 A. Yes.

4 Q. **WHEN?**

5 A. August, 2016.

6 Q. **IS THE INFORMATION ON YOUR RESUME TRUE AND CORRECT?**

7 A. Yes.

8

9 **THE CITY OF CELINA OFFERS CEL101 [RESUME] INTO EVIDENCE.**

10

11 Q. **DESCRIBE YOUR SPECIFIC AREAS OF PROFESSIONAL CONCENTRATION**
12 **AND EXPLAIN HOW YOUR EXPERIENCE IS RELEVANT TO THE ISSUES**
13 **THAT YOU WILL BE TALKING ABOUT**

14 A. My professional concentration for the past 16 years has been in public water and
15 wastewater utility planning, design, and regulatory support. This experience is
16 fundamental to identifying, evaluating, and quantifying facilities which are used and
17 useful to providing service to undeveloped service areas.

18 Q. **DESCRIBE YOUR EXPERIENCE WITH PREPARING APPRAISALS FOR CCN**
19 **DECERTIFICATION PROCEEDINGS.**

20 A. I have been preparing appraisals for the CCN decertification process since 2011 when
21 Jones-Heroy was appointed by the TCEQ to prepare a third party appraisal in an
22 expedited release decertification of the Creedmore Maha WSC CCN. I have since
23 prepared various CCN appraisals on behalf of investor owned utilities, municipalities,
24 and as a third party appraiser for the Public Utility Commission. My objective in all
25 CCN appraisals is to provide a fair and objective assessment of the appraisal factors set
26 forth in 16 TAC Chapter 24.113(k). In addition, Jones-Heroy has assisted private and
27 public utility clients in various CCN creation and amendment matters across the state
28 since the founding of our company in 2003.

29 **MR. JONES' ROLE AND WORK OF JONES-HEROY IN THIS MATTER**

1 **Q. WHAT WORK HAVE YOU DONE ON BEHALF OF THE CITY OF CELINA,**
2 **THE PETITIONER IN THIS PROCEEDING?**

3 **A.** I prepared an independent appraisal of a portion of the Aqua Texas water Certificate of
4 Convenience and Necessity (CCN) No. 13201 and sewer CCN No. 21059. located
5 approximately 6.5 miles southwest of the City of Celina along FM 428 and FM 1385 in
6 Denton County, Texas.

7 **Q. I AM SHOWING YOU WHAT HAS BEEN MARKED AS EXHIBIT CEL102.**
8 **WHAT IS THIS DOCUMENT?**

9 **A.** It is the appraisal that I prepared for this matter.

10 **Q. DID YOU PREPARE THIS EXHIBIT?**

11 **A.** Yes.

12 **Q. WHEN?**

13 **A.** We submitted this Exhibit on or about June 13, 2016.

14 **Q. IS THE INFORMATION IN CEL102 TRUE AND CORRECT AND ARE THE**
15 **OPINIONS EXPRESSED THEREIN YOURS?**

16 **A.** Yes.

17

18 **THE CITY OF CELINA OFFERS CEL102 INTO EVIDENCE.**

19

20 **Q. WHAT CONCLUSION DID YOU REACH IN YOUR APPRAISAL?**

21 **A.** I concluded that the value of the property associated with the Aqua Texas Water and
22 Sewer Certificate of Convenience and Necessity considered in the evaluation is
23 \$38,000.00. The conclusion is set-forth at page 2 of Exhibit CEL102.

24 **Q. UPON WHAT DID YOU BASE YOUR ANALYSIS TO REACH YOUR**
25 **CONCLUSION?**

26 **A.** Our valuation has been performed in compliance with the guidelines of the Public Utility
27 Commission (PUC) as described in 16 TAC Chapter 24.113(k) and was based on the
28 documents listed at pages 2 and 3 of Exhibit CEL102.

1 **Q. WHEN YOU PREPARED THE APPRAISAL FOR THIS PROCEEDING, DID**
2 **YOU CONSIDER WHETHER CERTAIN PROPERTY WAS RENDERED**
3 **USELESS OR VALUELESS?**

4 **A.** Until this case and maybe one or two others happening now, the initial question of
5 whether property is rendered valueless or useless was not separately broken out and
6 discussed. However, as part of this appraisal, we did conduct a review to determine
7 whether there was any property, such as water lines, water wells, force mains, lift
8 stations, etc. constructed to serve the decertificated area. Given the nature of the
9 decertification action and the applicant's burden of proof, that is, the applicant must
10 prove that there is no service provided to the tract, it was easy to ascertain that there are
11 no pipes in the ground, storage facilities, wastewater plant or any related improvements
12 on the decertificated property. Otherwise, the PUC would not have granted the Petition
13 for Decertification in Docket No. 45329.

14 **Q. SO, HAVE YOU NOW MADE A DETERMINATION OF WHETHER AQUA HAS**
15 **ANY PROPERTY THAT HAS BEEN RENDERED USELESS OR VALUELESS**
16 **AS A RESULT OF THE PUC ACTION OF DECERTIFICATING THIS AREA?**

17 **A.** Yes, I have.

18 **Q. WHAT DID YOU DETERMINE?**

19 **A.** I determined that Aqua does not have any property that has been rendered useless or
20 valueless as a result of the PUC action of decertificating this area.

21 **Q. WHAT QUALIFIES YOU TO DRAW A CONCLUSION AS TO WHETHER**
22 **CERTAIN PROPERTY IS RENDERED USELESS OR VALUELESS WHEN A**
23 **PORTION OF A CCN IS DECERTIFIED?**

24 **A.** My experience in the water and wastewater utility industry evaluating existing systems
25 and the planning, design, and construction of facilities to serve future customers.
26

27 **THE CITY OF CELINA TENDERS MR. JASON S. JONES, P.E., AS AN EXPERT**
28 **WITNESS.**
29

DIRECT TESTIMONY OF JASON S. JONES, P.E.
ON BEHALF OF
PETITIONER CITY OF CELINA

EXHIBIT
CEL100

1 **Q. BASED UPON YOUR WORK FOR THE CITY OF CELINA AND YOUR**
2 **EDUCATION, EXPERIENCE, AND EXPERTISE, HAVE YOU FORMED**
3 **OPINIONS WITH REGARD TO: 1. WHETHER ANY PROPERTY HAS BEEN**
4 **RENDERED USELESS OR VALUELESS TO AQUA BY THE**
5 **DECERTIFICATION GRANTED IN THIS PROCEEDING; AND 2. WHETHER**
6 **THE EXISTING APPRAISALS ARE LIMITED TO PROPERTY THAT HAS**
7 **BEEN DETERMINED TO HAVE BEEN RENDERED USELESS OR**
8 **VALUELESS BY DECERTIFICATION?**

9 **A.** Yes. My opinions are summarized below and they are explained through the remainder
10 of my testimony.

11 **Q. WHAT DOCUMENTS DID YOU RELY UPON TO REACH YOUR**
12 **CONCLUSIONS IN THIS MATTER?**

13 **A.** My conclusions were reached by reviewing:
14 1. Section 13.254 of the Texas Water Code;
15 2. 30 Tex. Admin. Code §24.113;
16 3. The documents listed at pages 2 and 3 of Exhibit CEL102;
17 4. Exhibit CEL102;
18 5. All the appraisals, filings, and supporting material filed in this Docket, including the
19 third party appraisal prepared by Bret W Fenner, P.E. of B & D Environmental, Inc. (and
20 the documents he reviewed), and the appraisal prepared by Joshua M. Korman and John
21 Kostohryz, the consultants hired by Aqua Texas, and the documents that they reviewed.
22 6. Leonard H. Dougal and Mallory Beck, *Current Water Utility CCN Decertification*
23 *Issues at the Public Utility Commission of Texas* (December 4-5, 2014).
24 7. The documents found in the docket of *Petition from E.B. Windy Hill, L.P. for an*
25 *Expedited Release from Water Certificate of Convenience and Necessity No. 12983 of*
26 *Monarch Utilities I, L.P.* TCEQ Docket No. 2013-1871-UCR (TCEQ Order Determining
27 Compensation Issued Nov. 22, 2013).

28
29 **Q. PLEASE SUMMARIZE YOUR OPINIONS.**

1 **A.** In summary, I have the following opinions:

2 1 There is no property that has been rendered useless or valueless to Aqua by the
3 decertification granted in this proceeding.

4 2. The existing appraisals are not limited to property that has been determined to have
5 been rendered useless or valueless by decertification.

6 **Q.** **YOU STATED THAT YOU REVIEWS ALL THE APPRAISALS, FILINGS, AND**
7 **SUPPORTING MATERIAL FILED IN THIS DOCKET. CAN YOU DESCRIBE**
8 **THE OTHER APPRAISALS?**

9 **A.** There are two other appraisals. The first was prepared by Joshua M. Korman and John
10 Kostohryz, the consultants hired by Aqua Texas. The second was prepared by Bret W
11 Fenner, P.E. of B & D Environmental, Inc. Mr. Fenner was appointed by the Texas
12 Public Utilities Commission as an independent third-party appraiser to make a
13 determination as to the compensation to which Aqua Texas should be entitled. Mr.
14 Fenner's determination may not be less than the lower appraisal or more than the higher
15 appraisal.

16 **Q.** **LET'S BEGIN WITH YOUR FIRST OPINION – THE QUESTION OF**
17 **WHETHER: ANY PROPERTY HAS BEEN RENDERED USELESS OR**
18 **VALUELESS TO AQUA BY THE DECERTIFICATION GRANTED IN THIS**
19 **PROCEEDING HOW DID YOU REACH YOUR CONCLUSION?**

20 **A.** The first step is to determine whether there is any property at all. My examination
21 showed that Aqua had no property in the decertificated area. In Docket 45329, the PUC
22 found that Aqua had no water or sewer lines, no water or sewer meters or connections to
23 serve the decertificated area. The PUC further found that Aqua had not committed to
24 providing service to the decertificated area for either water or sewer. The second step is
25 to evaluate any offsite water or wastewater facilities owned by Aqua which may have the
26 capacity to serve the decertificated area for its intended use. We found no evidence of
27 offsite facilities which may have been intended to serve the decertificated area.

1 **Q. WHEN YOU SAY THERE IS NO TANGIBLE PROPERTY, DID YOU LOOK AT**
2 **REAL AND PERSONAL PROPERTY?**

3 **A.** Yes.
4

5 **Q. SO, YOU ARE SAYING THAT AQUA HAD NO REAL PROPERTY IN THE**
6 **AREA DECERTIFICATED IN DOCKET NO. 45329?**

7 **A.** That is correct. Aqua neither owns nor owned any land or real property in the 128-acre
8 tract. Further, Aqua has no easements on that property. To the best of my knowledge,
9 Aqua has no real property interests at all.

10 **Q. WHAT ABOUT PERSONAL PROPERTY?**

11 **A.** Aqua also had no personal property. Personal property would include water and/or sewer
12 lines, meters, connections, wells, etc. As I previously testified, Aqua had none of those
13 on the 128-acre tract.

14 **Q. WHAT YOU JUST DESCRIBED IS TANGIBLE PERSONAL PROPERTY DO**
15 **YOU KNOW WHAT INTANGIBLE PERSONAL PROPERTY IS?**

16 **A.** Yes, intangible personal property is like a claim or right that cannot be touched, felt or
17 seen. An example might be an account receivable or the brand identity of a corporation.

18 **Q. IN YOUR OPINION, DOES AQUA HAVE ANY INTANGIBLE PERSONAL**
19 **PROPERTY IN OR ASSOCIATED WITH THE 128-ACRE TRACT?**

20 **A.** No, I cannot see where Aqua has any intangible personal property in the 128-acre tract. I
21 noticed in Aqua's appraisal in this matter, Docket 45848, that Aqua claimed 'lost
22 economic opportunity' as intangible property and, thereby, should be compensated for
23 such loss of economic opportunity. Aqua's consultant appears to assert the concept of
24 lost economic opportunity as an intangible property right from the definition of
25 'facilities' in §13.002(9), *Water Code*.

26 **Q. DO YOU BELIEVE THAT AQUA'S ARGUMENT HAS ANY MERIT**

27 **A.** No, not under these circumstances for a number of reasons. First, it is clear that the
28 issuance of a CCN and/or a wastewater discharge permit to a utility does not create a
29 vested right for the permit holder or certificate holder in that permit or certificate. See,

1 Tex. Water Code §26.029(c), and 16 Tex. Admin. Code §24.113(a). If the permit or
2 certificate does not create a vested interest, then, likewise there would be no property
3 interest in expecting revenue to be generated from the permit or certificate. Second, in
4 utility matters, an expectation of “profit” or return on invested capital is not a property
5 right or entitlement. That is, a utility is not assured or guaranteed specific recompense
6 except for invested capital, allowable expenses and known and measurable changes.
7 Here, there are no customers and no invested capital. In addition, Aqua has not
8 demonstrated any known or measureable changes to the customer base of the CCN area
9 in questions. Third, Aqua’s reliance on ‘intangible property rights’ in the definition of
10 ‘facilities’ is misplaced. The phrasing in the definition of facilities .including all
11 tangible and intangible real and personal property without limitation. refers to plant
12 and equipment of a retail public utility. Here, Aqua has no plant or equipment either
13 within nor dedicated to serve the 128-acre tract. To have future customers, there would
14 first have to be plant and equipment constructed to serve those customers. It is that
15 property, i.e. the plant and equipment, that is rendered useless or valueless—not an
16 expectation that there might someday be customers that would generate revenue. Finally,
17 Tex. Water Code §13.254(g) limits any compensation from future revenues to existing
18 customers. Aqua’s argument seems to be an attempt to circumvent the prohibition on
19 being compensated future revenues for non-existing customers.

20 **Q. DO YOU KNOW WHETHER THIS ARGUMENT THAT AQUA PUT FORWARD**
21 **IS CONSISTENT WITH THEIR OTHER CASES?**

22 **A.** No, it is not. In two previous cases, Docket Nos. 45450 and 45462, with a fact pattern
23 almost identical to this matter, the Appraiser found, and the PUC accepted, that Aqua did
24 not have any property in the decertificated area. Therefore, no property was rendered
25 useless and valueless from the decertification in that matter.

26 **Q. MR. JONES, ARE YOU FAMILIAR WITH THE FACTS IN DOCKET NOS.**
27 **45450 AND 45462?**

1 A. Yes I am. In fact, I included the Appraisal Report from that matter in my Appraisal for
2 this case, Ex. CEL102.

3 **Q. IN DOCKET NOS. 45450 AND 45462, WHERE WAS THE DECERTIFICATED**
4 **PROPERTY LOCATED?**

5 A. The decertificated properties included a total of approximately 1,012 undeveloped acres
6 which were located adjacent to both the 128-acre tract and the existing Willow Wood
7 Addition Meadow Vista public water system. As with the 128-acre tract, these properties
8 are located approximately 6.5 miles southwest of the City of Celina along FM 428 in
9 Denton County, Texas and entirely within Aqua's water CCN. The PUC decertificated
10 these properties in Docket Nos. 45100 and 45099, respectively.

11 **Q IN DOCKET NOS. 45450 AND 45462, DID THE PARTIES AGREE ON AN**
12 **APPRAISER?**

13 A. Yes, the parties agreed to NewGen Strategies and Solutions.

14 **Q. WHAT DID THE APPRAISER FIND?**

15 A. NewGen found, in a document dated February 16, 2016 addressed to Mr. Chris Boyd and
16 Mr. Geoffrey Kirshbaum, among other matters, that Aqua did not have any facilities or
17 customers in the area nor did Aqua have any facilities dedicated solely to serve that area.
18 Based on that, the Appraiser determined that no property was rendered useless or
19 valueless since there was no property.

20 **Q. IS IT YOUR OPINION THAT THE CASES IN DOCKETS 45450 AND 45462 ARE**
21 **SIMILAR TO THIS MATTER?**

22 A Yes I do, especially given the proximity of the two properties, the fact that no facilities
23 have been put on the property and no facilities have been dedicated solely to serve the
24 128-acre tract. In addition to the proximity of the two properties, Aqua's conclusions
25 were within a few months of the current case.

26 **Q. MR. JONES, ARE YOU FAMILIAR WITH THE CONCEPT OF STRANDED**
27 **CAPACITY?**

28 A. Yes, I understand the concept of stranded capacity.

1 **Q. CAN YOU INFORM THE HONORABLE ALJ WHAT STRANDED CAPACITY**
2 **IS?**

3 **A.** Yes. Stranded capacity is not a term used in the Texas Water Code or in any guidance
4 documents related to Water and Sewer Utilities. However, as applied to water and sewer
5 CCN matters, stranded capacity generally refers to a utility's investments in existing
6 regional facilities intended to serve undeveloped portions of its CCN, which will be
7 underutilized as a result of decertification.

8 **Q. DO YOU BELIEVE THAT STRANDED CAPACITY SHOULD BE**
9 **CONSIDERED PROPERTY THAT MIGHT BE RENDERED USELESS AND**
10 **VALUELESS AS A RESULT OF DECERTIFICATION?**

11 **A.** Yes.

12 **Q. WHY IS THAT?**

13 **A.** Capital investments made to serve undeveloped portions of a utility's CCN are necessary
14 to meet the fundamental obligations of the certificate holder, which is to provide
15 continuing and adequate water service to every customer who requests service in a
16 certificated area. Compensation for 'stranded capacity' satisfies the intent of appraisal
17 factor 3, in TAC Chapter 24.113(k), which considers 'compensation for the construction
18 of service facilities allocable for service to the area in question.

19 **Q. IN THE EVENT THAT THE HONORABLE ALJ OPTS TO CONSIDER**
20 **STRANDED CAPACITY, DOES AQUA HAVE ANY?**

21 **A.** No, they do not. Looking first to sewer, there is simply no capacity at all. There is no
22 wastewater plant built, there are no meters, no sewer lines, no force mains, no lift
23 stations, etc. Having this property decertificated from Aqua does not impact its capacity
24 since there is none. The only possible stranded matter is Aqua's wastewater permit,
25 which is scheduled to expire in October 2016. However, as I previously testified, that
26 permit is not a vested right. In the event that the ALJ were to recommend to the PUC that
27 it is stranded, the cost should be limited to \$28,000.00 for planning costs as explained in
28 our appraisal.

29 **Q. TURNING TO WATER, DOES AQUA HAVE ANY STRANDED CAPACITY?**

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1 A. No, they do not. CEL102 shows that Aqua has no facilities that could serve a dense
2 subdivision like that envisioned for this property. However, Aqua does provide water
3 service, but not sewer service, to a nearby subdivision known as Willow Wood Addition
4 Meadow Vista. I examined this system and found that it has limited capacity to serve
5 additional customers. In addition, the system does not have the fire flow capacity which
6 would be necessary to serve the high density development planned for the 128-acre tract.
7 Our conclusions are based on available drillers logs for Aqua's existing wells, TCEQ
8 records, plat records of the subdivision, and a site visit conducted on December 21, 2015.
9 Finally, we found no offsite water facilities that Aqua constructed to serve currently
10 unserved areas within its CCN.

11 Q. MR. JONES, WE ARE GOING TO TURN AGAIN TO AQUA'S ARGUMENT
12 REGARDING COMPENSATION FOR LOST ECONOMIC OPPORTUNITY DO
13 YOU BELIEVE THAT LOST ECONOMIC OPPORTUNITY IS AN INTANGIBLE
14 PERSONAL PROPERTY RIGHT FOR WHICH COMPENSATION IS
15 WARRANTED?

16 A. No, not under the circumstances of this case.

17 Q. WHY?

18 A. There are many reasons why the circumstances of this case do not warrant compensation
19 for lost economic opportunity, some of which I discussed earlier.

20
21 First, I am in agreement with Mr. Fenner's analysis. Specifically that the rates and thus
22 the determined income of an investor owned utility such as Aqua Texas are established
23 by the Public Utility Commission based on the allowable expenses for an historical test
24 year data plus known and measurable changes. As per 30 TAC §24.31(c)(5)(A)(iv),
25 known and measurable changes may be considered if they can with reasonable certainty
26 be identified, quantified and matched. It is not known exactly what the customer base
27 within the tract in question will be at any period in the future, largely because the
28 historical growth rate within the existing CCN area is minimal at best. Nor does Aqua
29 Texas know what its anticipated net income will be from service to the decertified area in

1 the future since it has made no capital investments in infrastructure to serve the
2 decertified area. Since a future number of connections is not known or measurable at
3 this time, future rates for which revenues would be generated and thus any potential
4 income cannot be determined.

5
6 Second, if Aqua Texas had existing customers in the decertified service area then it
7 would be entitled to compensation for future lost income from its known current
8 customer base pursuant to Factor 6. In other words, if the legislature and the PUC
9 wanted to compensate for future income from future customers, factor 6 simply would
10 have said 'the impact on future revenues lost from customers' or from 'existing and
11 future customers. It does not. It is limited to the impact on future revenues lost from
12 existing customers. The statute and rules address lost income. They make clear how and
13 to what extent lost income should be considered. They do not provide for lost income
14 from future customers – only present customers.

15
16 Third, I am not aware of any case in which compensation has been provided for a
17 decertification proceeding for future lost economic opportunity from a potential customer
18 base. In fact, when these matters were still be handled by TCEQ, I argued in the *Petition*
19 *from E.B. Windy Hill, L.P. for an Expedited Release from Water Certificate of*
20 *Convenience and Necessity No. 12983 of Monarch Utilities I, L.P.* TCEQ Docket No.
21 2013-1871-UCR (TCEQ Order Determining Compensation Issued Nov. 22, 2013) that
22 Monarch (the CCN holder) was entitled to \$2,266,600 in estimated value for factor 8.
23 This value was based on the concepts that (1) the market value of the Windy Hill Tract
24 should be based on future returns to investors from water sales in the proposed
25 development; (2) that the proportion of the rates charged by an investor owned utility
26 allocated to profit is regulated by the TCEQ; (3) the CCN area in question had
27 historically accounted for a significant proportion of the growth in the utility's customer
28 base; and (4) the utility had encumbered capital investments intended to provide water
29 service to the high density development planned within the decertified area. Our basis

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1 for calculating the future revenues lost was similar to the argument that Aqua Texas is
2 making here. The TCEQ rejected this argument. To accept Aqua Texas' argument now
3 would be against precedent set by TCEQ in these valuation cases.

4
5 Fourth, it would be against public policy to award compensation for vacant CCN
6 holdings where there is no current development, no customers, no history of customer
7 growth, and no investment in facilities intended to serve the area. To do so would create
8 a huge incentive for a company such as Aqua Texas to acquire CCN's over as much
9 property as possible and for very little investment reap huge rewards at the expense of
10 future developers and ratepayers. It would create a commercial market for CCN
11 speculation to the detriment of the purpose of CCNs assuring public water and
12 wastewater service to customers where it is needed.

13
14 Fifth, according to 16 TAC § 24.3(15), a CCN is a 'permit issued by the commission
15 which authorizes and obligates a retail public utility to furnish, make available, render, or
16 extend continuous and adequate retail water or sewer utility service to a specified
17 geographic area. In other words, it is an authorization and an obligation, it is not an
18 entitlement. CCN's do not guarantee profits. Their purpose is to guarantee water or
19 wastewater service. There is nothing in the granting of a CCN that conveys a property
20 right to future profits.

21
22 Sixth, the Aqua Texas appraisal justifies its inclusion of lost economic opportunity based
23 on the definition of 'facilities' which 'means all the plant and equipment of a retail
24 public utility, including all tangible and intangible real and personal property without
25 limitation, and any and all means and instrumentalities in any manner owned, operated,
26 leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the
27 business of any retail public utility. They use this definition to assert that lost economic
28 opportunity is intangible personal property, and therefore part of a 'facility, for which
29 compensation is justified. This argument is misplaced. To the extent that the 'facility'

1 definition is relevant, 'facilities' are first defined as the plant and equipment – hard
2 assets. The definition then states that these hard assets include, intangible personal
3 property without limitation. The intangible personal property must have a connection to
4 these hard assets. The intangible personal property at issue must be part of or associated
5 with the hard assets. If there are no hard assets that were built for the property in
6 question, then there is no intangible personal property to be 'included' in the definition
7 of facility. I agree with Leonard H. Dougal and Mallory Beck of Jackson Walker L.L.P.
8 the authors of the article entitled *Current Water Utility CCN Decertification Issues at the*
9 *Public Utility Commission of Texas*. In their article, they say: 'Compensation to the
10 incumbent utility. it seems, turns on the existence of physical assets dedicated to serving
11 the decertified area more so than mere planning for future assets or existing assets that
12 could contribute in some way to the service of the decertified area. Based on the limited
13 cases to date, the compensation for property rendered useless or valueless appears to
14 largely turn on the value of hard assets clearly dedicated to serve the subject land, such as
15 water system facilities, that are adversely impacted by the decertification.

16
17 Eighth, Aqua Texas has made it clear as a result of its determination of value for the
18 adjacent decertified water CCN (PUC Docket Nos. 45450 and 45462) that its investors do
19 not have an expectation of future revenues from this particular water system and the
20 decertified area.

21
22 Finally, taken as a whole, the compensation rules and the eight factors are meant to
23 provide just and adequate compensation to make an entity whole for out-of-pocket and
24 investment losses, not to assure future profits. Awarding compensation for lost economic
25 opportunity under these circumstances goes far beyond making an entity whole. It
26 guarantees profits to all CCN holders.

27
28 **Q. BASED UPON YOUR WORK FOR THE CITY OF CELINA AND YOUR**
29 **EDUCATION, EXPERIENCE, AND EXPERTISE, WHAT IS YOUR OPINION**

DIRECT TESTIMONY OF JASON S. JONES, P.E.

**EXHIBIT
CEL100**

**ON BEHALF OF
PETITIONER CITY OF CELINA**

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**WITH REGARD TO WHAT PROPERTY, IF ANY, HAS BEEN RENDERED
USELESS OR VALUELESS TO AQUA BY THE DECERTIFICATION
GRANTED IN THIS PROCEEDING?**

A. I believe that there has been no property that was rendered useless and valueless as a result of the decertification. The only property that possibly was impacted is TPDES Permit WQ0014234001, but as discussed, a wastewater permit is not a property right and it was only considered in my appraisal for the planning value associated with factor 3. Although not technically property that has been rendered useless or valueless, I also identified a cost associated with decertification pursuant to factor 7.

**Q. LET’S MOVE ALONG TO THE SECOND ISSUE – THE QUESTION OF
WHETHER THE EXISTING APPRAISALS ARE LIMITED TO PROPERTY
THAT HAS BEEN DETERMINED TO HAVE BEEN RENDERED USELESS OR
VALUELESS BY DECERTIFICATION – HOW DID YOU REACH YOUR
CONCLUSION?**

A. I began with the applicable statute and rules, which clearly state that compensation must be provided ‘for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification. Tex. Water Code § 13.254(d) and 16 TAC § 24.113(h). After review, as I testified above, I do not believe that Aqua had any property that has been rendered useless or valueless due to the decertification of the 128-acre tract. However, the closest potential asset is Aqua’s wastewater permit, which, if a right, would be an intangible personal property right. The applicable statute and rules also state that the value of personal property shall be determined according to the eight factors identified in Texas Water Code § 13.254(g) and 16 TAC § 24.113(k). The eight factors are set-forth to ensure that the compensation to a retail public utility is just and adequate. These eight factors are: (1) the amount of the retail public utility's debt allocable for service to the area in question; (2) the value of the service facilities of the retail public utility located within the area in question; (3) the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; (4) the amount of the retail public utility's

contractual obligations allocable to the area in question; (5) any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; (6) the impact on future revenues lost from existing customers; (7) necessary and reasonable legal expenses and professional fees; (8) and other relevant factors.

Therefore, the legal structure dictates that compensation must be made for any property that the commission determines is rendered useless or valueless. Notwithstanding, when applying the third and seventh factors, Texas Water Code § 13.254(g) and 16 TAC § 24.113(k) goes beyond the scope of determining that a property might be rendered useless or valueless.

All of the appraisals filed in this docket follow the format required by Texas Water Code § 13.254(g) and 16 TAC § 24.113(k). They evaluate the eight factors to opine on what compensation would be just and adequate. Each of the appraisals included costs that were not associated with property that was rendered useless or valueless by decertification.

In other words, all of the appraisals address property that has been determined to have been rendered useless or valueless by decertification, but they are more broad than that – in the evaluation of factors 3 and 7 they are not limited to property that has been determined to have been rendered useless or valueless by decertification.

Q. JUST SO THAT WE ARE CLEAR, DO THE APPRAISALS IN THIS DOCKET ADDRESS SOMETHING OTHER THAN JUST PROPERTY THAT HAS BEEN RENDERED USELESS OR VALUELESS BY DECERTIFICATION?

A. Yes. They address two things: (1) at factor 3, planning expenses that have been determined to have been rendered useless or valueless by decertification; and (2) at factor 7. costs associated with decertification.

1 **Q. ARE YOU SUGGESTING THAT THERE IS A DIFFERENCE BETWEEN**
2 **PROPERTY THAT HAS BEEN RENDERED USELESS OR VALUELESS BY**
3 **DECERTIFICATION AND COSTS ASSOCIATED WITH PLANNING FOR**
4 **SERVICE AND THE DECERTIFICATION PROCESS?**

5 **A.** Yes. Legal fees are a perfect example. Legal fees are clearly costs, but they could not be
6 said to be property belonging to the utility that is rendered useless or valueless.

7 **Q. IF THE STATUTE AND RULES ONLY REQUIRES COMPENSATION FOR**
8 **ANY PROPERTY THAT IS RENDERED USELESS OR VALUELESS TO THE**
9 **DECERTIFIED RETAIL PUBLIC UTILITY AS A RESULT OF THE**
10 **DECERTIFICATION PURUSANT TO TEXAS WATER CODE § 13.254(D)**
11 **AND 16 TAC § 24.113(H), WHY DO THE APPRAISALS ALSO ADDRESS**
12 **COSTS ASSOCIATED WITH PLANNING FOR SERVICE AND THE**
13 **DECERTIFICATION PROCESS?**

14 The law requires the appraisals to evaluate necessary and reasonable legal expenses and
15 professional fees. Practice in the industry seems to have moved away from the strict
16 tenant in the law that the reasonable legal expenses and professional fees are recoverable
17 only if they are property rendered useless or valueless. Further, practice in the industry
18 seems to focus on costs and not with an in depth discussion of the existence or nature of
19 property in the decertificated area, much less whether such property, if in existence at all,
20 was rendered useless or valueless. This case seems to change that.

21 **Q. POSED WITH THE QUESTION OF WHETHER THE EXISTING APPRAISALS**
22 **ARE LIMITED TO PROPERTY THAT HAS BEEN DETERMINED TO HAVE**
23 **BEEN RENDERED USELESS OR VALUELESS BY DECERTIFICATION,**
24 **WHAT DO YOU CONCLUDE?**

25 **A.** The existing appraisals are not limited to property that has been determined to have been
26 rendered useless or valueless by decertification. Although they address all such property
27 — they are not limited to such property because at factors 3 and 7 they include costs
28 associated with planning for service and the decertification process.
29

1 **Q. SO AMONG THE THREE APPRAISALS, WHAT WERE THE POINTS OF**
2 **DISAGREEMENT?**

3 **A.** With respect to the first 7 factors, all three appraisals were in agreement as to what
4 property was rendered useless or valueless. Notwithstanding, we did have some
5 disagreement on the values associated with TPDES Permit WQ0014234001, planning
6 expenses for service to the tract, and with necessary and reasonable legal expenses and
7 professional fees.

8
9 The only time that the appraisers disagreed as to the identification of property that should
10 be deemed useless or valueless was with factor 8. With respect to that factor, only the
11 Aqua Texas appraisal concluded that lost economic opportunity was an intangible
12 personal property right for which compensation is warranted.

13
14 **Q. IS IT YOUR OPINION THAT THE EXISTING APPRAISALS ARE LIMITED TO**
15 **PROPERTY THAT HAS BEEN DETERMINED TO HAVE BEEN RENDERED**
16 **USELESS OR VALUELESS BY DECERTIFICATION?**

17 **A.** No. They include costs for planning expenses and attorney and professional fees
18 associated with the decertification.

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 **A.** Yes, but I reserve the right to amend my testimony if additional information becomes
21 available.