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PUC DOCKET NO. 45848
SOAH DOCKET NO. 473-16-5011.WS PUBLIC UTILITY COMMISSION
FILING CLERK

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

**CITY OF CELINA'S RESPONSE TO SOAH ORDER NO.6 REQUESTING PROPOSED
CONCLUSIONS OF LAW AND ORDERING PROVISIONS, IF ANY**

The Honorable Administrative Law Judges issued Order No. 6 on December 27, 2016. Order No. 6 requesting that the Parties to the above-referenced docket provide proposed conclusions of law and ordering provisions, if any. The Administrative Law Judges welcomed the Parties to provide proposed findings of fact as well.

In compliance with Order No. 6, Celina provides the following proposed conclusions of law and ordering provisions:

Conclusions of Law

Jurisdiction

1. The Public Utility Commission ("The Commission") has jurisdiction over this matter pursuant to Texas Water Code ("TWC") §§13.041 and 13.254.
2. SOAH has jurisdiction over all matters related to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusion of law pursuant to the Tex. Gov't Code §§2001.058 & 2003.049.
3. Proper notice of this matter was provided. 16 Texas Administrative Code ("TAC") §24.106.

Procedural Conclusions

4. The Commission entered Final Order in Docket No. 45329 on March 22, 2016, which granted the landowners Petition for Expedited Release of approximately 128 acres from

Aqua Texas, Inc.'s ("Aqua's") water CCN No. 13201 and sewer CCN No. 21059, in Denton County, Texas (hereafter "Previously Decertified Area").

5. The City of Celina ("Celina") is a retail public utility as defined in TWC §13.001(19) and 16 TAC §24.3(58).
6. The City of Celina filed Notice of Intent ("NOI") in compliance with TWC §13.254(e) and 16 TAC §24.113(i) on April 12, 2016 to serve the Previously Decertified Area.
7. TWC §13.254(d) and 16 TAC §24.113(h) prohibit a retail public utility from providing service to an area that has been decertified under that section without providing compensation for any property that the utility commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.
8. TWC §13.254(e) and TWC § 24.113(i) require that the Commission determine the amount of monetary compensation, if any, that must be paid when a retail public utility seeks to provide service to the Previously Decertified Area.
9. TWC §13.254(f) requires that an independent appraiser, if one can be agreed upon, determine the monetary amount to be paid. If the parties cannot agree on an independent appraiser, TWC §13.254(g-1) provides the process the parties must follow.
10. The Commission, in referring this matter to the State Office of Administrative Hearings (SOAH), required SOAH to determine two matters: 1. What property, if any, has been rendered useless or valueless to Aqua by the decertification granted in Docket No. 45329? 2. Are the existing appraisals limited to property that has been determined to have been rendered useless or valueless by decertification?
11. The public hearing on this matter was held in compliance with Tex. Gov't. Code §2003.049, the Commission's rules and SOAH's rules.

Issue No. 1 – Real Property

12. TWC § 13.254(g) requires that the value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain.
13. To implement TWC § 13.254(g), prior to establishing a value for real property that the Commission determines has been rendered “useless or valueless” to Aqua as a result of the decertification, the Commission must identify whether any real property is at issue, and if so, the Commission must identify the real property to be valued.
14. Aqua does not own any real property in the Previously Decertified Area.
15. Aqua does not own or have any pipes, improvements or other physical infrastructure in the Previously Decertified Area.
16. Celina has no obligation to compensate Aqua for the loss of any real property.

Issue No. 1 – Personal Property

17. TWC § 13.254(g) requires the value of personal property shall be determined according to the following factors to ensure that the compensation to a retail public utility is just and adequate shall include: the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.
18. TWC §13.254(g) contains factors for the Commission to consider when valuing personal property, but the factors are not themselves property or property interests.
19. To implement TWC § 13.254(g), prior to establishing a value for personal property that the Commission determines has been rendered “useless or valueless” to Aqua as a result

- of the decertification, the Commission must identify whether any personal property is at issue, and if so, the Commission must identify the personal property to be valued.
20. The only property that should be considered property for purposes of this proceeding is property that a retail public utility has committed to providing service for the Previously Decertified Area.
 21. Permit No. WQ0014234001 was a Texas Pollutant Discharge Elimination System (“TPDES”) permit issued by the Texas Commission on Environmental Quality (“TCEQ”) that authorized Aqua to provide wastewater service to the Previously Decertified Area and authorized the Aqua Texas to construct facilities, such as a treatment plant, force mains, and other wastewater facilities in the Previously Decertified Area.¹
 22. Aqua did not construct a wastewater treatment plant or any associated pipes, improvements or other physical infrastructure in the Previously Decertified Area.
 23. The Previously Decertified Area has no wastewater customers, wastewater connections, or wastewater development.
 24. TWC § 26.029(c) holds that “a permit does not become a vested right in a permittee”.
 25. Black’s Law Dictionary defines “vest” as conferring a right of legal or absolute ownership.
 26. Black’s Law Dictionary defines “vested right” as a “right accrued to the possessor with no conditions”.
 27. Permit No. WQ0014234001 is not “property” subject to valuation pursuant to TWC § 13.254(g) based on the following: (a) TWC § 26.029(c) provides that “a permit does not become a vested right in a permittee”; and (b) there were no wastewater treatment plants, associated pipes, improvements or other physical infrastructure constructed pursuant to Permit No. WQ0014234001 to serve the Previously Decertified Area.
 28. Necessary and reasonable legal expenses and professional fees associated with a decertification hearing or a valuation hearing are costs, not property.

¹ See, TWC §26.027(c), prohibiting construction of wastewater facilities until the Texas Commission on Environmental Quality (“TCEQ”) issues a permit.

29. HB 2876, 79th Legislative Session, clarified that a decertificated retail public utility is prohibited from receiving compensation based on future revenues from customers not in existence at the time of decertification.
30. Principles of statutory construction dictate that TWC §13.254(g) does not make compensation available to a decertified utility for future revenues from customers who are not receiving service at the time of decertification.
31. Aqua had no customers, connections, or development in the Previously Decertified Area.
32. Aqua's expectation of future revenue is conditioned on its possession of CCNs and serving future customers.
33. Pursuant to 16 TAC §§24.113(a) and 24.116, a CCN is not a property right and does not become a vested right.
34. Aqua did not have a vested right in either of its CCNs.
35. Future revenues from future customers, or lost economic opportunity, is not property nor is it a property right or property interest pursuant to TWC § 13.254(g).
36. The decertification in Docket No. 45329 did not render any property of Aqua useless or valueless pursuant to TWC § 13.254(d) and 16 Texas Admin. Code § 24.113(h).
37. Celina has no obligation to compensate Aqua for the loss of any personal property.

Issue 2

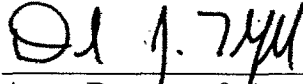
38. The three appraisals in this matter were not limited to property that has been rendered useless or valueless by decertification.
39. Each appraisal includes compensation regarding Aqua's wastewater discharge permit, which is not property.
40. Each appraisal includes compensation for legal and consultant costs, which are not property.
41. Aqua's appraisal included compensation for lost future economic opportunity, which is not property.

Ordering Paragraphs

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

1. Aqua does not have any property that was rendered useless or valueless as a result of the decertification in Docket #45329.
2. Celina is not required to pay any compensation to Aqua and may provide service to the property that was decertificated in Docket #45329.
3. No further appraisals are required and no further valuation by the Commission is warranted.
4. Aqua and Celina shall each pay half the cost of the transcript.
5. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

Respectfully submitted,



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ATTORNEYS FOR THE CITY OF CELINA

CERTIFICATE OF SERVICE

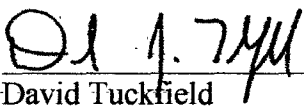
I, David Tuckfield, attorney for the City of Celina, certify that a copy of this document was served on all parties of record in this proceeding on January 10, 2017 in the following manner:

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