



Control Number: 45848



Item Number: 57

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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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BEFORE THE STATE OFFICES

PUBLIC FILING CLERK

OF

ADMINISTRATIVE HEARINGS

COMMISSION STAFF'S PROPOSED FINDINGS AND CONCLUSIONS

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff's Proposed Findings and Conclusions. In support thereof, Staff states the following:

I. BACKGROUND

On December 28, 2017, the State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs) issued SOAH Order No. 6, requiring parties to file proposed findings and conclusions of law by January 10, 2017. Therefore, this pleading is timely filed.

II. PROPOSED FINDINGS OF FACT

Staff proposes the following findings of fact:

Procedural History

1. On March 22, 2016, the Commission issued an order in Docket No. 45329 approving the petition of CADG Sutton Fields II, LLC for expedited release of approximately 128-acres from Aqua Texas, Inc.'s (Aqua's) water certificate of convenience and necessity (CCN) No. 13201 and sewer CCN No. 21059, in Denton County, Texas.
2. On April 12, 2016, the City of Celina (Celina) filed a Notice of Intent to provide retail water and sewer service to the area decertified in Docket No. 45329, pursuant to Tex. Water Code § 13.254(e) (West 2008 and Supp. 2016) (TWC) and 16 Tex. Admin. Code § 24.113 (TAC).
3. The Commission provided notice to the public of Celina's notice of intent in the *Texas Register* for publication on April 14, 2016.

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4. On April 22, 2016, Aqua filed a motion to intervene.
5. On April 22, 2016, Celina filed a Notice of Non-Agreement on a Single Appraiser.
6. On April 25, 2016, Order No. 2 was issued, requiring Aqua and Celina to each file an appraisal.
7. On June 13, 2016, Celina and Aqua filed individual appraisals.
8. On July 7, 2016, an independent third appraisal was filed.
9. On July 7, 2016, the Commission issued an Order of Referral, referring this matter to SOAH.
10. A hearing on the merits was held on September 16, 2016.

Prosper Point Project

11. Aqua does not own any real property or personal property on the decertified land.
12. Aqua does not have any physical infrastructure, such as water or sewer lines, pipes, or tanks, built to serve the decertified land.
13. There has not been any development on the decertified land.
14. Aqua has never provided water or sewer utility service to the decertified land.
15. Aqua executed the first developer Letter of Intent in reference to the development of the decertified land (the Prosper Point Project) in 2000.
16. On January 9, 2003, the Texas Commission on Environmental Quality (TCEQ) issued a wastewater discharge permit, TPDES Permit No. WQ001423400, to Aqua.
17. Aqua renewed TPDES Permit No. WQ001423400 on May 21, 2007 and again on January 31, 2012.
18. TPDES Permit No. WQ001423400 had capacity limited to the anticipated needs for development within the decertified land.
19. Aqua declined to renew TPDES Permit No. WQ001423400 after the decertification in Docket No. 45329, and it expired on October 1, 2016.

III. PROPOSED CONCLUSIONS OF LAW

Staff proposes the following conclusions of law:

1. Celina and Aqua are public utilities as defined in TWC § 13.002(19).
2. The Commission has jurisdiction and authority over this docket under TWC §§ 13.041 and 13.254(d)-(e) and 16 TAC § 24.113.
3. For purposes of TWC § 13.254(d), “useless or valueless” means without any use or value.
4. For purposes of TWC § 13.254(d), property cannot be rendered useless or valueless in part.
5. In accordance with the standard established in *Texas General Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.-Austin 2014, pet. denied), the only property that can be rendered useless or valueless as a result of decertification is property that a retail public utility has committed to providing service to the particular piece of decertified land, and which is of no use or value to that retail public utility.
6. A wastewater permit is property in accordance with TWC § 13.254(d).
7. Lost economic opportunity, or lost future profit, is not property in accordance with TWC § 13.254(d).
8. Necessary and reasonable legal expenses and professional fees are not property in accordance with TWC § 13.254(d).
9. In accordance with TWC § 13.254(d), Celina has not in any way render retail water or sewer service directly, or indirectly to the public in the decertified area.
10. Celina’s appraisal and the independent third appraisal are limited to property rendered useless or valueless by the decertification in Docket No. 45329.
11. Aqua’s appraisal is not limited to property rendered useless or valueless by the decertification in Docket No. 45329.

IV. PROPOSED ORDERING PARAGRAPHS

Staff proposes the following ordering paragraphs:

1. TPDES Permit No. WQ001423400 is property that was rendered useless or valueless to Aqua as a result of the decertification in Docket No. 45329.
2. Celina may not provide retail water or sewer service to the decertified land without providing compensation for TPDES Permit No. WQ001423400.
3. 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.

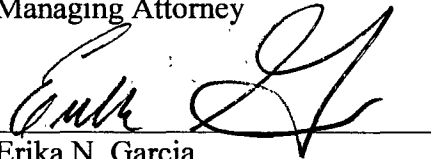
Dated: January 10, 2017

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney

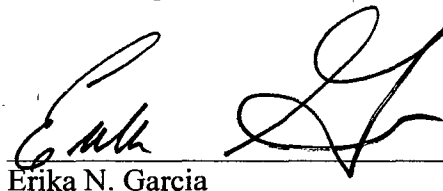


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**SOAH DOCKET NO. 473-16-5011.WS
PUC DOCKET NO. 45848**

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on January 10, 2017, in accordance with 16 TAC § 22.74.



Erika N. Garcia