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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
PUBLIC UTILITY COMMISSION
OF TEXAS

COMMISSION STAFF'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files these Commission Staff's Exceptions to the Proposal for Decision, and would show the following:

INTRODUCTION

On January 27, 2017, the Administrative Law Judges (ALJs) issued a Proposal for Decision (PFD) in this proceeding. Staff commends the ALJs for a thoughtful and well-reasoned decision in a proceeding that is one of first impression, and involves many complex issues. While Staff supports the ALJs' recommendations in part, Staff makes the following exceptions to the PFD that Staff recommends the Commission consider.

STAFF'S EXCEPTIONS

I. INTRODUCTION

Not addressed.

II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Not addressed.

III. FACTUAL BACKGROUND

Not addressed.

IV. LEGAL FRAMEWORK

A. Water Code Provisions Regarding Property Rendered Useless or Valueless

Not addressed.

B. Definition of "Property"

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Not addressed.

C. Burden of Proof

Not addressed.

V. PRELIMINARY ORDER ISSUES

A. Identification of Aqua's Property Interests

1. Expenditures for Planning, Design, or Construction of Service Facilities that are Allocable to Service the Area in Question [Factor 3]

a. Introduction

Not addressed.

b. Parties' Positions

Not addressed.

c. Analysis

i. The Permit and CCN

Not addressed.

ii. Expenditures for the Planning or Design of Service Facilities

Staff excepts to the position taken in the PFD that money retains property status even after it is spent,¹ which is further addressed in the below section regarding necessary and reasonable legal expenses and professional fees.

2. Necessary and Reasonable Legal Expenses and Professional Fees [Factor 7]

a. Parties' Positions

Not addressed.

b. Analysis

In the PFD, the ALJs found that "reasonable and necessary expenditures for legal and professional services are property under Water Code § 13.254(d) and (g); and to the extent they

¹ PFD at 18 ("Regardless of whether service facilities were ever constructed for the Tract, Aqua invested its money in related permit and CCN expenses. That money did not suddenly transform into non-property, once spent. Instead, Aqua was entitled to capitalize those expenses and recover them through rates as intangible personal property.")

were spent pursuant to Aqua's obligations under the permit or its CCN, or to protect its interests thereunder, they have been rendered useless or valueless by decertification of the Tract."²

It is Staff's position that reasonable and necessary legal fees and professional expenses are not property. As argued in Staff's Initial Brief, necessary and reasonable legal expenses and professional fees are only recoverable if it is determined that there is property rendered useless or valueless to the decertified retail public utility as a result of the decertification.³ It is Staff's continued position that under Tex. Water Code § 13.254(g) (TWC), reasonable and necessary legal expenses and professional fees are part of the compensation paid to a decertified retail public utility, but are not themselves property that can be rendered useless or valueless.

Staff further takes exception to the theory that spent money is property.⁴ Property is "every species of valuable right and interest."⁵ Spent money has no inherent value. While Aqua's money was in its possession, it could be considered Aqua's property. However, once it spent money for legal and professional services, Aqua's only remaining value was in the services it received in exchange for payment, not in the spent money itself. Legal expenses and professional fees are costs incurred by Aqua, and Aqua retains no ownership interest or right in its money spent on those obligations.

Further, treating legal expenses and professional fees as property could lead to incongruous results. For example, if a decertified retail public utility had no property rendered useless or valueless by TWC § 13.254(g), but incurred extensive legal expenses contesting the expedited release proceeding, it would be automatically entitled to recover those fees from the landowner or new retail public utility. Retail public utilities would always be encouraged to intervene and contest expedited release proceedings, regardless of the merit of their argument, because they would incur no financial risk in retaining a lawyer and/or experts. This would make the process more expensive overall, and more onerous on the landowner seeking to take advantage of this mechanism to release their land from an existing CCN. This result would seem to circumvent the intent of the statute.

² *Id.* at 36.

³ Staff's Initial Brief at 10.

⁴ *See* PFD at 18.

⁵ *State v. Public Utility Commission of Texas*, 883 S.W.2d 190, 200 (Tex. 1994).

Staff also notes that the money spent by Aqua for legal expenses and professional fees is distinguishable from money spent by Aqua on planning, design, or construction of service facilities. For costs associated with planning, design, or construction of facilities to serve an area, Aqua is spending money to further its obligation under its CCN and to benefit the landowner within its CCN area that presumably has requested service or indicated an interest in receiving service. However, for costs associated with legal expenses or professional fees, Aqua is spending money to protect its business interests in its CCN area, which might be directly adverse to the landowner. In such cases, the landowner or new utility seeking to serve should not be required to reimburse the decertified utility for the legal expenses and/or professional expenses incurred in an attempt to prevent decertification or to make a case for property rendered useless or valueless where none is found by the Commission.

3. Lost Economic Opportunity [Factor 6]

a. Parties' Positions

Not addressed.

b. Analysis

Not addressed.

B. Whether any of the Identified Property has been Rendered Useless or Valueless?

1. Definition of "Useless or Valueless"

Not addressed.

**2. Expenditures for Planning, Design, or Construction of Service
Facilities that are Allocable to Service the Area in Question**

Not addressed.

3. Necessary and Reasonable Legal Expenses and Professional Fees

Not addressed.

**C. Are the Existing Appraisals Limited to Property that has been Determined to
have been Rendered Useless or Valueless by Decertification?**

Not addressed.

VI. CONCLUSION

Not addressed.

VII. FINDINGS OF FACT

Not addressed.

VIII. CONCLUSIONS OF LAW

Not addressed.

IX. ORDERING PARAGRAPHS

Not addressed.

CONCLUSION

For the reasons discussed above and in Staff's briefs, Staff respectfully takes exception to the PFD and requests that any final order in this proceeding be revised consistent with these exceptions.

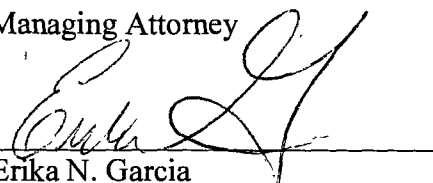
Dated: February 15, 2017

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
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CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on February 15, 2017, in accordance with 16 TAC § 22.74.


Erika N. Garcia