

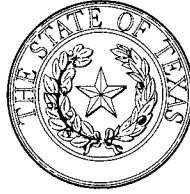
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State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

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February 28, 2017

TO: Stephen Journeay, Director
Attention: Keva Roundtree-Williams
Commission Advising and Docket Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701

Courier Pick-up

RE: SOAH Docket No. 473-16-5011.WS
PUC Docket No. 45848

City of Celina's Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc. in Denton County

The undersigned Administrative Law Judges (ALJs) have read the exceptions and replies to the Proposal for Decision (PFD) in this case. Although the ALJs recommend no changes to the PFD they address the following issues raised by Aqua Texas, Inc. (Aqua), the City of Celina (City), and Staff of the Public Utility Commission of Texas (Commission).

Both Aqua and the City recommend that Conclusion of Law No. 1 should be amended to define Aqua and the City as "retail public utilities" under Texas Water Code (Water Code) § 13.002(19). The ALJs agree with this recommendation and request that the Commission amend the conclusions of law accordingly.

The City's exceptions largely reiterate the City's argument presented during the hearing and in briefing. The ALJs addressed these arguments in the PFD, and as a result, do not recommend any changes to the PFD or the proposed findings of fact and conclusions of law.

City and Staff do, however, raise a somewhat new argument based on the ALJs' recommendations in the PFD. City and Staff argue that Aqua's expenditures on planning, and legal and professional fees should not be considered property because the result would be contrary to the intent of Water Code § 13.254(d) and (g), giving utilities an incentive to increase such expenditures.

The ALJs disagree with this argument. As stated in the PFD, treating a utility's money spent on such expenses as property facilitates the legislature's intended goal of reimbursing a

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utility for legal and professional expenses. Furthermore, utilities have the same incentive to incur such expenses regardless of whether these factors are treated as compensation factors or a means to value property lost through decertification – the effect is the same because a utility will seek reimbursement no matter how such expenditures are classified. Finally, under Factors 3 and 7, any utility that deliberately incurs high planning, design, legal, or professional fees runs the risk of such fees being denied through a rate case or denied as unreasonable or unnecessary. For these reasons and the analysis in the PFD, other than for Conclusion of Law No. 1 as referenced above, the ALJs recommend no change in the PFD or findings of fact and conclusions of law.

Sincerely,



Meitra Farhadi
Administrative Law Judge



Travis Vickery
Administrative Law Judge

Enclosure

xc: All Parties of Record