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PUBLIC UTILITY COMMISSION  
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# OPEN MEETING COVER SHEET

**MEETING DATE:** April 13, 2017

**DATE DELIVERED:** April 12, 2017

**AGENDA ITEM NO.:** 18

**CAPTION:** Docket No. 45848; SOAH Docket No. 473-16-5011.WS - City of Celina's Notice of Intent to Provide Water and Sewer Service to Area Decertified from Aqua Texas, Inc. in Denton County

**ACTION REQUESTED:** Discussion and possible action with respect to Final Order

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

**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  
  
OF TEXAS**

**DRAFT ORDER**

This Order addresses whether Aqua Texas, Inc. had any property rendered useless or valueless by the decertification of a 128-acre tract from its water and sewer certificates of convenience and necessity (CCNs) in Docket No. 45329.<sup>1</sup> This Order also addresses the amount of compensation due to Aqua.

The City of Celina filed a notice of intent to provide service to the decertified tract on March 22, 2016. The matter was referred to the State Office of Administrative Hearings (SOAH) to determine what property, if any, had been rendered useless and valueless by the decertification. After hearing, the administrative law judges (ALJs) issued a proposal for decision in this docket.<sup>2</sup> In their proposal, the ALJs recommended that the following property be found to have been rendered useless and valueless to Aqua: (1) expenditures for planning, design, or construction of service facilities allocable to service the area in question; and (2) necessary and reasonable legal expenses and professional fees. The ALJs also determined that Aqua was not entitled to compensation for lost future profits.

For the reasons discussed in this Order, the Commission finds that Aqua had no property that was rendered useless or valueless by the decertification in Docket No. 45329. Accordingly, the Commission does not adopt those portions of the proposal for decision that conflict with its decisions in this Order. Because Aqua has no facilities that were rendered useless and valueless as a result of the decertification, Aqua is not entitled to any compensation and the City of Celina may provide retail water and sewer service to the 128-acre tract.

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<sup>1</sup> *Petition of CADG Sutton Fields II, LLC to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 45329 (Mar. 22, 2016).

<sup>2</sup> Proposal for Decision (Jan. 27, 2017) (PFD).

### I. Background and Procedural History

The owner of a tract of land that is at least 25 acres and that is not receiving water or sewer service may file a petition with the Commission for expedited release of the tract from a certificate of public convenience and necessity.<sup>3</sup> A landowner is entitled to the release of the property if the tract is located in a specified county,<sup>4</sup> and the Commission is to act on the petition within 60 days.<sup>5</sup> CADG Sutton Fields II, LLC filed such a petition with the Commission for the release of the 128-acre tract at issue in this docket.<sup>6</sup> On March 22, 2016, the Commission granted the petition and released the tract from Aqua Texas, Inc.'s water certificate (number 13201) and its sewer certificate (number 21059). In its order, the Commission found that the property was not receiving service from Aqua and was entitled to expedited release under section 13.254 of the Texas Water Code.

When a tract has been released from a certificate of public convenience and necessity under section 13.254, before another retail public utility may provide service to the tract, the retail utility from whose certificate the tract was released must be "compensated for any property that the utility commission determines is rendered useless and valueless to the decertified retail public utility as a result of the decertification."<sup>7</sup> The amount of compensation is to be determined at the time another retail utility seeks to provide service, and the Commission is directed to ensure that the amount of compensation is determined within 90 days of the date a retail utility notifies the Commission that it intends to provide service to the tract.<sup>8</sup> On April 12, 2016, the City of Celina filed notice of its intent to provide retail water and sewer service to the 128-acre tract of land that was decertified from Aqua Texas, Inc.'s water and sewer certificates in Docket No. 45329. Celina's notice filing initiated this docket for a determination of what compensation, if any, is owed to Aqua for property rendered useless and valueless, if any, due to the decertification.<sup>9</sup>

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<sup>3</sup> Tex. Water Code Ann. § 13.254(a-5) (West 2008 & Supp. 2016) (TWC); 16 Tex. Admin. Code § 24.113(r) (TAC).

<sup>4</sup> TWC § 13.254(a-6); 16 TAC § 24.113(r).

<sup>5</sup> TWC § 13.254(a-7); 16 TAC § 24.133(r).

<sup>6</sup> Docket No. 45329, Petition (Nov. 10, 2015).

<sup>7</sup> TWC § 13.254(d); 16 TAC § 24.113(h).

<sup>8</sup> TWC § 13.254(e); 16 TAC § 24.113(i).

<sup>9</sup> TWC § 13.254(d); 16 TAC § 24.113(i).

The amount of compensation is to be determined by a qualified entity serving as an independent appraiser agreed upon by both retail utilities,<sup>10</sup> but if the two utilities cannot timely agree on an independent appraiser, each utility must engage its own appraiser.<sup>11</sup> After it receives the two appraisals, the Commission appoints a third appraiser who makes a determination of compensation that must be between the two utilities' appraisals submitted to the Commission.<sup>12</sup>

In this docket, a Commission administrative law judge issued an order requiring Celina and Aqua to inform the Commission by April 22, 2016 whether they had agreed on an independent appraiser, and, if they could not agree, to obtain their own appraisers and submit their appraisals within 60 days of the filing of the notice of intent to serve.<sup>13</sup> On April 22, 2016, Celina filed notice that the parties were not able to agree on a single appraiser. On the same day, Aqua moved to intervene in the case and also notified the Commission ALJ that the parties could not agree on a single appraiser and would therefore be filing separate appraisals. Subsequently, the Commission ALJ ordered Celina and Aqua to submit their appraisals by June 13, 2016.<sup>14</sup> On June 13, Celina and Aqua each filed an appraisal. The appraisal submitted by Celina assigned a value of \$38,000 to the property associated with Aqua's water and sewer certificated area.<sup>15</sup> The appraisal submitted by Aqua determined that Aqua was owed \$985,946 in compensation.<sup>16</sup> On July 6, 2016, the third appraisal valuing the property at \$69,839 was filed after being prepared at the request of the Commission.<sup>17</sup>

The appraisal submitted by Celina was not limited to valuing property rendered useless and valueless, in fact it did not identify or even mention property rendered useless and valueless. This appraisal valued "property associated with the Aqua Texas Water and Sewer Certificate of

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<sup>10</sup> TWC § 13.254(f); 16 TAC §24.113(j).

<sup>11</sup> TWC § 13.254(g-1); 16 TAC §24.113(j).

<sup>12</sup> *Id.*

<sup>13</sup> Order No. 1 (Apr. 14, 2016).

<sup>14</sup> Order No. 2 (Apr. 25, 2016).

<sup>15</sup> City of Celina's Appraisal at 2 (Jun. 13, 2016).

<sup>16</sup> Aqua's Appraisal at 1 (Jun. 13, 2016).

<sup>17</sup> B&D Environmental, Inc. Appraisal at 5 (Jul. 7, 2016).

Convenience and Necessity . . . .”<sup>18</sup> The appraisal submitted by Aqua likewise failed to identify any property rendered useless and valueless and this appraisal provided a valuation for certain of the factors listed in section 13.254(g) of the Texas Water Code to value personal property.<sup>19</sup> The appraisal submitted by the third appraiser also did not address any property that had been rendered useless and valueless; it sought “to determine a compensation value for the approximately 128 acre tract that had been decertified . . . .”<sup>20</sup> This appraisal also focused on valuing the factors in section 13.254(g). Whether appraisals are properly limited to property rendered useless and valueless has been addressed previously by the Commission.

In another case seeking to establish compensation for an expedited release, the Commission questioned whether submitted appraisals were properly limited to property rendered useless and valueless due the decertification.<sup>21</sup> After a Commission ALJ issued an order approving the amount of compensation,<sup>22</sup> the Commission granted rehearing for the purpose of referring the matter to SOAH to determine what property, if any, was rendered useless and valueless.<sup>23</sup> In making this decision, the Commission recognized the tension in the statute between the compensation deadline and the Commission’s obligation to make the determination of what property, if any, was rendered useless and valueless and that referral to SOAH was appropriate to assist the Commission in making this determination.<sup>24</sup> That docket eventually settled.<sup>25</sup>

Because of concerns that the appraisals in this docket are not limited to property that was rendered useless and valueless, the Commission referred this case to SOAH.<sup>26</sup> As in *Zipp Road*, the preliminary order in this docket was limited to two questions: What property, if any, was

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<sup>18</sup> City of Celina’s Appraisal at 1.

<sup>19</sup> Aqua’s Appraisal at 4-7.

<sup>20</sup> B&D Environmental, Inc. Appraisal at 1.

<sup>21</sup> *Zipp Road Utility Company LLC’s Notice of Intent to Provide Service to Area Decertified from Guadalupe-Blanco River Authority in Guadalupe County*, Docket No. 45679, Order (Feb. 21, 2017).

<sup>22</sup> Docket No. 45679, Corrected Notice of Approval (May 27, 2016).

<sup>23</sup> Docket No. 45679, Order on Rehearing at 1 (Jul. 7, 2016).

<sup>24</sup> Docket No. 45679, Order on Rehearing at 1; *see also, id.*, Memorandum of Chairman Donna L. Nelson (Jun. 28, 2016); Preliminary Order at 1 (Jul. 20, 2016); Open Meeting Tr. at 35:7-38:17 (Jun. 29, 2016).

<sup>25</sup> Docket No. 45679, Order (Feb. 21, 2017).

<sup>26</sup> Preliminary Order (Jul. 20, 2016).

rendered useless and valueless due to the decertification in Docket No. 45329; and are the existing appraisals limited to such property.<sup>27</sup>

The hearing on the merits was held on September 16, 2016. Commission Staff, the City of Celina and Aqua participated. The record closed on January 10, 2017. Exceptions to the proposal for decision were filed on February 15, 2017. Aqua filed a response to the exceptions on February 22. Aqua and the City of Celina agreed that finding of fact 1 should be revised to refer to “retail public utilities” rather than “public utilities.”<sup>28</sup> On March 1, the ALJs filed a letter in response to the exceptions to the proposal for decision agreeing with that change.<sup>29</sup>

## II. Discussion

### A. Texas Water Code § 13.254(g)

After a tract of land has been decertified under Texas Water Code (TWC) § 13.354(a-5) and (a-6), a retail public utility may not provide service to that area until the retail public utility holding the certificate from which the tract was removed is compensated for any property that the Commission determines is rendered useless and valueless because of the decertification.<sup>30</sup> The amount of compensation is to reflect the value of the property rendered useless and valueless and is to be determined at the time that a retail public utility notifies the Commission of its intent to provide service to the tract.<sup>31</sup> The statute specifies how the value of the property that is rendered useless and valueless shall be determined.<sup>32</sup> In determining the value of personal property, subsection (g) lays out an exclusive list of nine factors,<sup>33</sup> but the last factor allows consideration of “other relevant factors.”<sup>34</sup> The definition of property and the manner of determining the value of property was addressed in the proposal for decision.

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<sup>27</sup> *Id.* at 3.

<sup>28</sup> Aqua’s Response to Exceptions to the PFD at 1 (Feb. 22, 2017); Celina’s Exceptions to the PFD at 1 (Feb. 15, 2017).

<sup>29</sup> ALJs’ Response to Exceptions (Mar. 1, 2017).

<sup>30</sup> TWC § 13.254(d).

<sup>31</sup> TWC §§ 13.254 (d), (e), (f), (g).

<sup>32</sup> TWC § 13.254(g).

<sup>33</sup> *Id.* (“the value of personal property shall be determined according to the factors of this subsection.”)

<sup>34</sup> *Id.*

Aqua argued that subsection (g) “outlines certain property interests that must be considered in determining the value of property rendered useless and valueless,”<sup>35</sup> and also argued that *property* must have a broad meaning.<sup>36</sup> The ALJs concurred with Aqua “that the factors listed in Water Code § 13.254(g) identify a utility’s *property interests*, which must be broadly interpreted.”<sup>37</sup> In disagreeing with the city and Commission Staff that subsection (g) provides “mere ‘compensation factors,’ and . . . [does] not describe property interests,”<sup>38</sup> the ALJs concluded that such a construction “separates property from its value” and that subsection (g) must be read “such that property is indivisible from its value.”<sup>39</sup>

The Commission disagrees with the ALJs and agrees with Commission Staff and the City of Celina: TWC § 13.254(g) identifies factors to be used to value property and does not identify property, or property interests, for which compensation is required under TWC § 13.543(d). The statute explicitly requires compensation only “for property that the utility commission determines is rendered useless and valueless due to the decertification.”<sup>40</sup> The Commission agrees with the ALJs that property, as generally understood, has a broad meaning and includes property real and personal, tangible and intangible. Subsection (g) does not, however, identify property interests, it identifies the factors that must be used to *value* the property found to be useless and valueless. By properly valuing property rendered useless and valueless due to a decertification, just and adequate compensation can be determined in accordance with the standards of TWC § 13.254.

Accordingly, based on the plain language of the statute, the Commission concludes that the factors listed in TWC § 13.254(g) are intended to be used only to value the property that has been determined to be useless and valueless as a result of decertification and these factors do not identify property interests.

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<sup>35</sup> PFD at 6.

<sup>36</sup> *Id.* at 6-8.

<sup>37</sup> PFD at 17 (emphasis added); *see also, id.* at 15 (Water Code § 13.254(d) and (g) must be read consistent with a broad interpretation of property); 21 (“the plain text of Water Code § 13.254(g), Factor 3, describes a utility’s property interest, not a mere compensation factor”); 36.

<sup>38</sup> PFD at 18.

<sup>39</sup> *Id.*

<sup>40</sup> TWC § 13.254(d).



To reflect its decision, the Commission deletes conclusion of law 9, modifies conclusions of law 8 and 10, and adds conclusion of law 8A.

### B. Expenditures

The third factor listed in subsection (g) is “the amount of any expenditures for planning, design, or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question.”<sup>41</sup> The ALJs concluded that “*expenditures* for planning and design of service facilities allocable to the [t]ract are also compensable property under Water Code § 13.254(d) and (g).”<sup>42</sup> The basis of the ALJs’ decision is that a utility must obtain a permit to plan, design, and build a service facility;<sup>43</sup> that Aqua spent money on planning, designing, and permitting a planned service facility and on litigating the decertification;<sup>44</sup> that money is property and that the money Aqua spent on planning and design “produced property rights,”<sup>45</sup> and that “Aqua retained property rights in the monies it [spent],”<sup>46</sup> even though a permit is not property and the service facility was never built.<sup>47</sup> The ALJs also noted testimony that “permit-related expenses are capitalized by a utility into the related asset and are considered property.”<sup>48</sup>

The Commission disagrees with the ALJs: *expenditures* by the utility are not property of the utility; even capital expenditures are not property of the utility. These expenditures may have been made using money that was formerly the property of the utility, but upon payment ceased being the property of the utility: an expenditure represents the transfer of the utility’s property (money or otherwise) to another. One generally does not retain any property interest in money spent to obtain products or services. And whether such retained rights can be found by contract or special laws, there is no evidence in this case that would support a conclusion that Aqua retained any property interest in the money it spent on planning or designing.

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<sup>41</sup> TWC § 13.254(g).

<sup>42</sup> PFD at 10 (emphasis added); *see also, id.* at 14, 16, 18; 21.

<sup>43</sup> *Id.* at 16.

<sup>44</sup> *Id.* at 17.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 16.

<sup>48</sup> *Id.* at 17.

The Commission agrees with the ALJs that costs to obtain property, whether by purchase or by construction or manufacture, may be capitalized and form the book value of a utility's assets.<sup>49</sup> In fact, generally there are special accounts to accumulate such amounts until the asset is dedicated to public service by the utility and the amounts are transferred to the plant-in-service account. There are accounting requirements that must be satisfied to capitalize expenses into an asset account. The included expenses establish the value of the asset on the utility's books, and assuming that the Commission finds the costs were prudently incurred and are reasonable and necessary costs to provide service, may be recovered through the utility's rates. The Commission sees no discussion in this docket regarding how any of the amounts at issue here were recorded in the utility's books. While these costs are too recent to have been addressed by the Commission in a rate proceeding, the manner in which the costs were recorded in the utility's books, and the assets the costs were associated with, might have been informative in this case.

In a similar fashion, the factors in subsection (g) recognize the general proposition that the value of a utility's property is determined by a number of factors, including the amounts spent for planning, designing, and constructing service facilities. But the costs—expenditures—are not themselves property, or a property interest; they are a factor to determine the value of the property, as expressly provided by TWC §13.254(g). Once a utility proves that property was rendered useless and valueless as a result of decertification, the utility would then bear the burden to prove that any expenditures are appropriate to establish the value of such property. But here, Aqua simply failed to prove that any property was rendered useless and valueless.

The Commission also disagrees with the ALJs' contention that money spent by Aqua remained the property of Aqua.<sup>50</sup> Under TWC § 13.254(g), expenditures can be a factor in determining the value of property or services, but they are not themselves property. Once Aqua spent its money on designing, planning, legal, professional or other services, Aqua had no remaining property interest in that money because it became the property of those entities that Aqua paid to provide the services.

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<sup>49</sup> *Id.* at 18 (“Aqua was entitled to capitalize those expenses and recover them through rates . . . .”); *id.* Proposed Finding of Fact Nos. 46 and 48.

<sup>50</sup> *Id.* at 14.

To reflect this decision, Commission declines to adopt those portions of the PFD to the contrary. Specifically, the Commission deletes findings of fact 36, 37, 38, 39, 40, 41, 42, 45 and 46. The Commission also deletes conclusions of law 13, 14, 15, 17 and 21. In addition, the Commission adds conclusions of law 7A and 7B.

### C. Expenditures for Legal Expenses

As they did for the previous expenditures, the ALJs recommended that “expenditures for legal and professional services are property . . . .”<sup>51</sup> These are expenses Aqua incurred to litigate the decertification in Docket No. 45329 and this docket.<sup>52</sup> Because Aqua spent the money to participate in these proceedings, the ALJs concluded that “expenditures for legal or professional services are Aqua’s property [under subsection (g)].”<sup>53</sup> “When Aqua spent its money,” the ALJs state, “it [the money] did not transform into non-property.”<sup>54</sup> The Commission agrees the money did not turn into non-property; it became the property of someone else. Expenditures are not property. Under TWC § 13.254, expenditures are a factor that is to be used to value property rendered useless and valueless—no such property has been identified. Simply showing that it spent money is not enough; Aqua must identify property and prove that it has been rendered useless and valueless. Once property has been identified, then the factors in TWC § 13.254(g) can be used to value that property.

To reflect its decision, the Commission adds conclusion of law 7C. In addition, the Commission deletes finding of fact 48 and conclusions of law 16, 18 and 22.

### D. Lost Economic Opportunity

The Commission agrees with the ALJs that the legislature did not intend future revenue from future customers to be included in the factors listed in subsection (g). Again, lost economic opportunity is not property, even in its broadest meaning. Further, the lost opportunity Aqua complains of—“its goal of making money through service to future customers on the [t]ract”<sup>55</sup>—is not, as the ALJs noted, properly considered as a factor under subsection (g).

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<sup>51</sup> *Id.* at 23.

<sup>52</sup> *Id.* at 21, 22.

<sup>53</sup> *Id.* at 23-24.

<sup>54</sup> *Id.* at 24.

<sup>55</sup> *Id.* at 25.

**E. Property Rendered Useless and Valueless**

All parties agree that no real or tangible personal property of Aqua was rendered useless and valueless by the decertification. The only property Aqua asserts is rendered useless and valueless is intangible personal property composing expenditures for planning, design, or construction of service facilities, legal and professional fees, and lost economic opportunity.<sup>56</sup> As discussed previously, none of these items are property. Accordingly, Aqua has failed to show that it has any property that was rendered useless and valueless as a result of the decertification in Docket No. 45329.

To reflect this decision, the Commission does not adopt that portion of the PFD and deletes conclusions of law 20, 21, 22, 23 and 24.

**F. Permit and CCN are Not Property**

The Commission adopts the ALJs' finding that Aqua's wastewater permit and certificates are not property. In addition to the reasons stated in the PFD, the Commission also notes that neither is subject to Aqua's ownership.

The Commission modifies and deletes some of the ALJs' findings of fact related to the wastewater permit to better support the conclusion that the permit is not personal property. Specifically, the Commission deletes findings of fact 36, 37, 38, 39, 40, 41 and 42. The Commission also modifies findings of fact 23, 26, 27 and 28.

**G. Non-Substantive Changes to the Proposal for Decision**

In addition to the changes described above, the Commission makes non-substantive changes to findings of fact and conclusions of law for such matters as capitalization, spelling, punctuation, style, grammar, and readability.

The Commission adopts the following findings of fact and conclusions of law:

**III. Findings of Fact**

**Procedural History**

1. On March 22, 2016, the Commission issued an order in *Petition of CADG Sutton Fields II, LLC to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Denton*

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<sup>56</sup> *Id.* at 32.

*County by Expedited Release*, Docket No. 45329, approving the petition of CADG Sutton Fields II, LLC for expedited release of approximately 128 acres (the tract) from Aqua's water certificate of convenience and necessity (CCN) 13201 and sewer CCN 21059 in Denton County, Texas.

2. On April 12, 2016, the City of Celina filed with the Commission a notice of intent to provide retail water and sewer service to the tract decertified in Docket No. 45329.
3. On April 14, 2016, a Commission Administrative Law Judge (ALJ) issued Order No. 1, requiring the parties to notify the Commission whether they agreed on an independent appraiser by April 22, 2016.
4. Notice of Celina's notice of intent to serve was published in the *Texas Register* on April 14, 2016.
5. On April 22, 2016, the City of Celina filed a notice of non-agreement on single appraiser and Aqua filed a motion to intervene.
6. On April 25, 2016, the Commission ALJ issued Order No. 2 requiring Aqua and the City of Celina to each file an appraisal by June 13, 2016. Aqua and the City of Celina timely filed appraisals.
7. On July 7, 2016, an independent third appraisal was filed.
8. On July 7, 2016, the Commission issued an order of referral, referring this matter to the State Office of Administrative Hearings (SOAH) requesting the assignment of an ALJ to conduct a hearing and issue a proposal for decision (PFD), if necessary.
9. On July 13, 2016, a SOAH ALJ issued SOAH Order No. 1, setting a prehearing conference and granting Aqua's motion to intervene.
10. On July 20, 2016, the Commission issued a preliminary order identifying the following issues for SOAH to address:
  1. What property, if any, has been rendered useless or valueless to Aqua by the decertification granted in Docket No. 45329? Water Code § 13.254(d) and 16 Texas Administrative Code § 24.113(h).

2. Are the existing appraisals limited to property that has been determined to have been rendered useless or valueless by decertification?
11. On July 26, 2016, Aqua, the City of Celina, and Commissions Staff attended an initial prehearing conference in this matter and the SOAH ALJs adopted a procedural schedule, which was memorialized in SOAH Order No. 2, issued July 29, 2016.
12. The hearing on the merits was held on September 16, 2016, and was attended by the City of Celina, Aqua, and Commission Staff.
13. On October 28, 2016, all parties filed their initial post-hearing briefs on closing arguments.
14. On November 14, 2016, all parties filed their respective replies to post-hearing briefs.
15. On December 27, 2016, the SOAH ALJ issued SOAH Order No. 6 which requested parties file proposed findings of fact and conclusions of law.
16. On January 10, 2017, the parties filed proposed findings of fact and conclusions of law. The record closed on that day.

#### Appraisals

17. Aqua filed an appraisal report for its decertified CCN areas prepared by KOR Group and Texas state-licensed appraiser Joshua M. Korman.
18. The City of Celina's appraisal report was prepared by Jason S. Jones, P.E.
19. A third party engineering appraisal report was filed by Bret W. Fenner, P.E. at the request of the Commission's executive director.
20. The three appraisals filed in this docket are different in terms of the property identified as rendered useless or valueless by the CCN decertifications in Docket No. 45329.
21. The three appraisals filed in this docket all find that Aqua is owed some amount of compensation for expenditures it made to obtain the Texas Commission on Environmental Quality (TCEQ)-approved wastewater discharge permit, Texas Pollutant Discharge Elimination System Permit No. WQ0014234001 (referred to as the permit) and necessary and reasonable legal expenses and professional fees.

Aqua's Property

22. Aqua does not own any real or personal property on the tract.
23. Aqua has no physical improvements or infrastructure, such as water or sewer lines, pipes, or tanks, built to serve the tract.
24. Aqua has been certificated to the tract since approximately 2004.
25. There has been no development on the tract.
26. The TCEQ or its predecessor agency issued the wastewater discharge permit to Aqua, which authorized Aqua to provide wastewater service to the tract and to construct facilities, such as a treatment plant, force mains, and other wastewater facilities on the tract. *See* TWC § 26.027(c), prohibiting construction of wastewater facilities until the TCEQ issues a permit.
27. No wastewater treatment plant or any attendant physical infrastructure, improvements or structures have been constructed.
28. No actual water or sewer service was received on the tract.
29. The tract's current landowner did not request service from Aqua.
30. Aqua serves a residential subdivision located approximately 1.5 miles from the tract called the Willow Wood Addition Meadow Vista with retail water service but not with sewer service.
31. Aqua has no debt allocable to the tract.
32. Aqua has no service facilities on the tract.
33. Aqua has no existing customers on the tract.
34. Aqua has no contractual obligations allocable to the tract.
35. There is no demonstrated impairment of Aqua's service to other customers or increase of cost to other customers of Aqua as a result of the decertification.
36. [Deleted.]
37. [Deleted.]

38. [Deleted.]
39. [Deleted.]
40. [Deleted.]
41. [Deleted.]
42. [Deleted.]
43. Aqua ceased permit renewal activities as a result of the sewer CCN decertification in Docket No. 45329.
44. The permit is now expired.
45. [Deleted.]
46. [Deleted.]
47. Aqua incurred necessary legal expenses and professional fees in this docket and Docket No. 45329 as a result of the decertifications in Docket No. 45329.
48. [Deleted.]

#### IV. Conclusions of Law

1. The City of Celina and Aqua are retail public utilities as defined in Texas Water Code (TWC) § 13.002(19).
2. The Commission has jurisdiction and authority over this docket under TWC §§ 13.041 and 13.254(d)-(e).
3. SOAH has jurisdiction over matters related to the hearings of this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code §§ 2001.058 and 2003.049.
4. Notice of the hearing was provided consistent with Texas Government Code § 2001.052 and 16 Texas Administrative Code (TAC) § 24.106.
5. Aqua has the burden of proof in this case. 16 Tex. Admin. Code § 24.12 and 1 Tex. Admin. Code § 155.427.



6. 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 Commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.
7. TWC §§ 13.254(e) and 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 a previously decertified area.
  - 7A. Expenditures are not property.
  - 7B. Aqua's expenditures on permitting, planning, and design activities to serve the tract are not property.
  - 7C. Aqua's expenditures on reasonable and necessary legal expenses and professional fees incurred in this docket and in Docket No. 45329 are not property.
8. TWC § 13.254(g) requires the value of personal property, if any, to be determined according to the following factors to ensure that the compensation to a retail public utility is just and adequate: 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.
  - 8A. The factors listed in TWC § 13.254(g) are limited to determining the value of personal property, if any, and are not themselves property interests.
9. [Deleted.]
10. The term property in TWC § 13.254 includes all property, real and personal, and tangible and intangible.

11. A CCN is not property. 16 Tex. Admin. Code §§ 24.113(a) and 24.116.
12. A wastewater permit issued by the TCEQ or the Commission is not property. Tex. Water Code § 26.029(c).
13. [Deleted.]
14. [Deleted.]
15. [Deleted.]
16. [Deleted.]
17. [Deleted.]
18. [Deleted.]
19. TWC § 13.254(g) limits recovery for the impact on future revenues to losses from existing customers. Aqua's lost future revenues from currently non-existing customers are not property and are not compensable under TWC §§ 13.254(d) and (g).
20. [Deleted.]
21. [Deleted.]
22. [Deleted.]
23. [Deleted.]
24. [Deleted.]

#### V. Ordering Paragraphs

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

1. Aqua does not have any property that was rendered useless or valueless as a result of the decertification in Docket No. 45329.
2. Celina does not owe any compensation to Aqua and may provide water and sewer service to the tract that was decertified in Docket No. 45329.
3. Aqua and the City of Celina shall each pay half the cost of the transcript.

4. 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, are denied.

Signed at Austin, Texas the \_\_\_\_\_ day of April 2017.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**