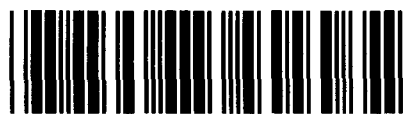




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PETITION OF TEJAS CREEK, LTD. §
TO AMEND AQUA TEXAS, INC.'S §
CERTIFICATES OF CONVENIENCE §
AND NECESSITY IN MONTGOMERY §
COUNTY BY EXPEDITED RELEASE §

BEFORE THE PUBLIC UTILITY
COMMISSION OF TEXAS

2018 NOV 29 AM 10:39
PUBLIC UTILITY COMMISSION
FILING CLERK

**AQUA TEXAS' MOTION TO INTERVENE, INITIAL COMMENTS,
AND REQUEST FOR RESPONSE DEADLINE**

Aqua Texas, Inc. d/b/a Aqua Texas (Aqua) files this Motion to Intervene, Initial Comments, and Request for Response Deadline in relation to Tejas Creek, Ltd.'s (Petitioner) Petition for an Expedited Release from Aqua Texas, Inc.'s water certificate of convenience and necessity (CCN) No. 13203 and sewer CCN No. 21065 in Montgomery County (Petition)¹ which initiated this docket. In support, Aqua would show as follows.

1. The name address, and telephone number of the movant is:

Aqua Texas, Inc.
Robert L. Laughman, President
1106 Clayton Lane, Suite 400W
Austin, Texas 78723
(512) 990-4400

2. The name, address, and telephone number of Aqua's authorized representatives is:

Geoffrey P. Kirshbaum
TERRILL & WALDROP
810 West 10th Street
Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)
gkirshbaum@terrillwaldrop.com

¹ For purposes of this proceeding, the Petition is considered the Application as defined in the Commission's Procedural Rules under 16 TAC § 22.2(6).

Service of all pleadings and other documents should be made upon Aqua's authorized representatives.

3. Aqua is an investor-owned utility with water and wastewater facilities throughout the State of Texas. Aqua holds the water CCN No. 13203 and sewer CCN No. 21065 for the area in Montgomery County that Tejas Creek, Ltd. seeks to decertify.

4. On October 30, 2018, Petitioner submitted its petition for streamlined expedited release pursuant to Texas Water Code (TWC) § 13.254(a-5) and 16 TEX. ADMIN. CODE (TAC) § 24.245(1).¹

5. Petitioner mailed a Notice of the Application to Aqua on October 30, 2018.

6. This Motion to Intervene and Request for Deadline Extension is timely filed because it is being submitted by the deadline set out in Commission Order No. 1.

Motion to Intervene

7. Aqua seeks to participate in this proceeding as an Intervenor.² The Commission's rules³ define who can intervene:

A person has standing to intervene if that person:

- (1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or
- (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.

8. Aqua has a right to participate in this proceeding. Commission rules concerning streamlined expedited release petitions provide that the "CCN holder may submit a response to the

¹ Tejas Creek filed its Petition under former 16 TAC § 24.113(l).

² *Id.* § 24.3(31).

³ *Id.* § 22.103(b).

petition within a timeframe specified by the presiding officer.” 16 TAC § 24.245(1) (implementing TWC §13.254(a-5)).

9. Aqua has a justiciable interest that may be adversely affected by the outcome of this proceeding. Aqua is an “affected person” with respect to this docket in that it is a “retail public utility affected by [the requested] action of the regulatory authority.”⁴ The Petition asks the Commission to decertify a portion of Aqua’s water CCN No. 13203 and sewer CCN No. 21065 in Montgomery County, thereby depriving Aqua of its exclusive right to provide retail water and sewer utility service to this particular area.

10. Because the Commission rules permit a response by the CCN holder in response to the type of expedited release petition filed in this docket, because Aqua is an affected person by this Petition, and because Aqua has a justiciable interest which may be adversely affected by the outcome of the proceeding, the Commission should grant Aqua party status as an Intervenor.

11. Aqua hereby moves to intervene in this docket and for party status as an Intervenor

Initial Comments

12. To explain discrepancies in rules citations, Aqua observes that the Petition cites to the former rules, while Aqua cites to the amendments to the Texas Administrative Code sections concerning streamlined expedited release that became effective October 17, 2018.

13. The Petition fails to give effect to the broad definition of “service” in both the TWC and Commission rules.⁵ Aqua serves the land requested to be released. Aqua will address this issue further if the Petition is deemed administratively complete.

⁴ TEX. WATER CODE §13.002(1); 16 TAC § 24.3(5).

⁵ TEX. WATER CODE §13.002(21); 16 TAC § 24.3(62).

14. The Petition fails to identify whether property will be rendered useless or valueless by the decertification and requires compensation.⁶ However, Aqua will address that issue if the Petition is deemed administratively complete.

Request for Response Deadline

15. Aqua substantively opposes the Petition and desires to file a substantive response as permitted by 16 TAC § 24.245(l)(5). Aqua has provided service to the area seeking decertification and has property that will be rendered useless or valueless by such decertification.

16. Order No. 1 issued on October 31, 2018 established November 29, 2018 as the “Deadline for Aqua Texas, Inc. and other affected persons to file a written protest or motion to intervene and file comments on the petition”—the same date as the Commission Staff’s comments on the administrative completeness of the petition and notice are due. The Commission does not consider Applications, such as the Petition, “filed until the commission makes a determination that the application is administratively complete.”⁷ Aqua does not know what Staff’s recommendation on the Petition will be or if the Commission will actually deem the Petition administratively complete. Aqua cannot effectively and efficiently respond to the Petition on November 29, 2018 before the Petition is found administratively complete and the rules do not require such a response deadline. Rather, setting a later response deadline is contemplated in the following Order No. 1 provision: “The Commission will establish additional deadlines after the petition is administratively complete.”

17. If the Petition is declared administratively complete and properly filed, Aqua should have a reasonable opportunity following Staff’s recommendation on administrative

⁶ 16 TAC §24.245(n)(6).

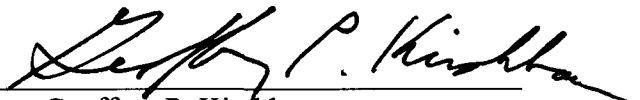
⁷ 16 TAC §24.8(d) (applicable to applications under subchapter H of Chapter 24, which include all CCN applications).

completeness and notice and following the Commission's determination regarding same to file a complete responsive pleading commenting on the Petition under Texas Water Code § 13.254(a-5) and 16 TAC § 24.245(1)(5). Aqua respectfully requests that the deadline for its response to the Petition be at least 30 days following a Commission finding, if any, that the Commission has jurisdiction over an administratively complete Petition. Aqua has received this relief in other expedited release dockets upon request.⁸

Conclusion and Prayer

Aqua respectfully requests the Honorable Administrative Law Judge issue an order that: (1) grants Aqua's Motion to Intervene; and (2) sets a deadline for Aqua's response consistent with the request herein if the Petition is found administratively complete.

Respectfully submitted,

By: 


Geoffrey P. Kirshbaum
State Bar No. 24029665
TERRILL & WALDROP
810 W. 10th Street
Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)
gkirshbaum@terrilwaldrop.com

**ATTORNEYS FOR AQUA TEXAS, INC. D/B/A AQUA
TEXAS**

⁸ See Docket No. 44667, *Petition of SLF IV-114 Assemblage, L.P. to Amend Aqua Texas, Inc.'s Water Certificate of Convenience and Necessity in Denton County by Expedited Release*, Commission Staff's Response to Order No. 2, at 2-3 (June 5, 2015) and Order No. 4 (June 15, 2015); see also OM Transcript at page 114 (March 31, 2015).

CERTIFICATE OF SERVICE

I hereby CERTIFY that on November 29, 2018, a true and complete copy of the above was sent to the parties of record in accordance with P.U.C. PROC. R. 22.74.



Geoffrey P. Kirshbaum