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49904

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Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



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PUBLIC UTILITY COMMISSION
FILING CLERK

Public Utility Commission of Texas

TO: Chairman DeAnn T. Walker
Commissioner Arthur C. D'Andrea
Commissioner Shelly Botkin

FROM: Stephen Journeay
Commission Counsel

RE: Certification of Issues
January 16, 2020, Open Meeting

Docket No. 49904 – *Petition of Republic Business Center LLC to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*

DATE: December 16, 2019

On December 5, 2019, the administrative law judge in the above referenced docket requested certification to the Commission of the questions set out in the attached Order No. 5.

Under 16 Texas Administrative Code § 22.127 (TAC), the Commission shall consider this request for certification at an open meeting that is not earlier than twenty days after its submission. For this reason, I have set this case for your consideration at the **January 16, 2020**, open meeting. The requirement of 16 TAC § 22.127(d), that the Commission shall issue a written decision on the certified issues within thirty days of its submission is waived.

The parties were ordered by the administrative law judge to file briefs on the certified issues by December 18, 2019.

cc: All Parties of Record
w/out attachment



DOCKET NO. 49904

PETITION OF REPUBLIC BUSINESS	§	PUBLIC UTILITY COMMISSION
CENTER LLC TO AMEND AQUA	§	
TEXAS, INC.'S CERTIFICATES OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
HARRIS COUNTY BY EXPEDITED	§	
RELEASE	§	

ORDER NO. 5
CERTIFYING AN ISSUE TO THE COMMISSION

In this matter, Republic Business Center, LLC seeks expedited release from Aqua Texas, Inc.'s water and sewer certificates of convenience and necessity (CCNs) in Harris County. Republic filed its petition on August 27, 2019. The petition was declared to be administratively complete in Order No. 3 filed on October 18, 2019.

There is a dispute among the parties as to the version of the relevant law that applies in this case. Prior to September 1, 2019, Texas Water Code (TWC) § 13.254(d) mandated that, if a tract of land was decertificated from a CCN, then a new utility could not provide service to the decertificated tract without first providing compensation to the ousted utility for any property that had been "rendered useless or valueless" by the decertification.

During the 2019 legislative session, the relevant law changed. Now, under TWC §§ 13.254(g) and 13.2541(f)-(h), the Commission "may" require the owner of the tract of land for which expedited release is granted to provide "just and adequate" compensation to the utility following the decertification. According to the legislation, the changes to the law apply only to a "proceeding" affecting a CCN that "commences on or after the effective date of this Act," which is September 1, 2019.¹

The parties disagree as to which version of the law applies in this case. Aqua Texas argues that the version of the law that became effective on September 1, 2019, should apply. The utility relies on 16 Texas Administrative Code (TAC) § 24.8(d) for its argument. Under 16 TAC § 24.8(d), an application affecting a CCN is not considered filed until the Commission makes a determination that the application is administratively complete. Because Republic's application was declared administratively complete on October 18, 2019, Aqua Texas contends that the petition should be governed by the amendments to the TWC that went into effect on September 1,

¹ Act of May 26, 2019, 86th Leg., R.S., S.B. 2272, §§ 6, 7.

2019. Effectively, Aqua Texas is arguing that this docket should be considered to have commenced when the application was deemed administratively complete.

Republic contends that the prior law governs because it physically filed its petition with the Commission prior to September 1, 2019.

The administrative law judge (ALJ) believes the question of which version of the relevant statutes applies is an appropriate issue for certification to the Commission. Accordingly, under 16 TAC § 22.127, the ALJ certifies the following issue to the Commission:

For the purpose of determining which law applies, should an expedited release proceeding be deemed to have commenced on the date the petition was first physically filed with the Commission's Central Records office, or when the petition is deemed by the ALJ to be administratively complete?

If any party wishes to file briefing on the certified issue, it must do so by December 18, 2019.

Signed at Austin, Texas the 5th day of December 2019.

PUBLIC UTILITY COMMISSION OF TEXAS


HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE