

Control Number: 49904



Item Number: 18

Addendum StartPage: 0

**PUC DOCKET NO. 49904**

**PETITION BY REPUBLIC BUSINESS  
CENTER, LLC FOR EXPEDITED  
RELEASE FROM WATER CCN NO.  
13203 AND SEWER CCN NO. 21065  
HELD BY AQUA TEXAS INC.**

§  
§  
§  
§  
§

**BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS**

2019 DEC 10 PM 12:40  
FILED IN CASE NO. 49904

**REPUBLIC BUSINESS CENTER LLC'S RESPONSE TO ORDER NO. 5  
CERTIFYING AN ISSUE TO THE COMMISSION**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW, Republic Business Center LLC (Republic), and files this Response to Order No. 5 Certifying an Issue to the Public Utility Commission (Commission) to determine the version of the relevant law that applies to Republic's Petition for expedited release from Aqua Texas Inc.'s (Aqua) water certificate of convenience and necessity (CCN) No. 13202 and sewer CCN No. 21065 and would respectfully show the following:

**I. BACKGROUND**

Republic filed its petition for streamlined expedited release on August 27, 2019<sup>1</sup> pursuant to Texas Water Code section 13.254(a-5). The section was amended and reassigned to Water Code section 13.2541 by the 86<sup>th</sup> Texas Legislature through S.B. 2272, effective September 1, 2019. S.B. 2272 states as follows:

A proceeding affecting a certificate of public convenience and necessity that commenced before the effective date of this Act is governed by the law in effect on the date the proceeding is commenced, and that law is continued in effect for that purpose.

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

<sup>1</sup> Republic filed an amended petition on September 18, 2019 at the Commission's request to correct a non-substantive typographical error.

18

Republic filed its petition, thereby commencing the proceeding affecting water CCN No. 13202 and sewer CCN No. 21065, before the effective date of the Act. Accordingly, this application is governed by the law in effect at the time the petition was filed on August 27, 2019, Texas Water Code section 13.254(a-5).

## **II. ARGUMENT**

### **A. The Commission should rely upon the specific language of S. B. No. 2272 rather than 16 Tex. Admin. Code § 24.8.**

Aqua argues that the Commission should apply section 13.2541 rather than former section 13.254(a-5) based on the language in the Commission's rule in 16 Tex. Admin. Code § 24.8, because the rule states that an application is not considered "filed" until the Commission makes a determination that it is administratively complete. Aqua offers no support for this interpretation, and Aqua's reliance is misplaced. Rule 24.8 speaks to whether an application is "filed" for purposes of the Commission's deadlines under (a-6), which states that the "commission shall grant the petition not later than the 60th day after the date the landowner files the petition." *See* former § 13.254(a-6), recodified as § 13.2541(c). Rule 24.8 is not controlling regarding the effective date of a statute.

The Legislature directly spoke to which law applies through S. B. 2272 §§ 6 and 7, which clearly states that for proceedings commenced before September 1, 2019, section 13.254(a-5) is continued in effect. When applying a newly enacted or amended statute, the specific language of the enabling statute setting the effective date controls over a general statute. *See generally, Harris v. State*, 913 S.W.2d 706, 709-710 (Tex. App.—Texarkana 1995, no pet.). Therefore, the issue turns on whether the "proceeding" was "commenced" when Republic filed its petition on August 27, 2019, not on whether the application was declared administratively complete by the Commission before September 1, 2019.

**B. The filing of a petition for streamlined expedited release is the commencement of a streamlined expedited release proceeding.**

The plain language of the Legislature’s enactment paragraph assigning an effective date to S.B. 2272 supports the interpretation that filing a petition for decertification of a CCN is a “proceeding affecting” a CCN that “commenced before the effective date.” The term “commenced” plainly means to begin, and it is commonly recognized that a legal action is commenced with the filing of an initial petition.<sup>2</sup> Courts have recognized that the term “proceeding” can either reference the entire course of action at law or entire suit, or describe a procedural step that is part of a larger action. *See, e.g., Howland v. State*, 990 S.W.2d 274, 276-77 (Tex. Crim. App.—1999); Black’s Law Dictionary, Ninth Edition (2009). To determine which definition applies in an enactment paragraph, courts have replaced the term “proceeding” with both meanings in turn throughout the act in question. *Id.*

Accordingly, the Commission should look to the act as a whole to interpret the meaning. In S.B. 2272, the Legislature uses “a proceeding” to mean the entire streamlined expedited release process in the amended statutory language. The newly enacted Section 13.2541 states: “Sec. 13.2541. Streamlined Expedited Release Initiated By Landowner. (a) Sections 13.254(a-7), (c), (d), and (h) apply to a *proceeding* under this section,”<sup>3</sup> referencing the entire decertification process as a proceeding. More broadly, Chapter 13 of the Water Code defines proceeding as “any

---

<sup>2</sup> *See generally, Travelers Ins. Co. v. Brown*, 402 S.W.2d 500, 503 (Tex. 1966) (“Rule 22 [of the Texas Rules of Civil Procedure] reads: ‘A civil suit in the district or county court shall be commenced by a petition filed in the office of the clerk.’ Webster’s Third New International Dictionary defines ‘commence’ as ‘1: to enter upon; BEGIN, START \* \* \* 2: to initiate formally by performing the first act of (—legal proceedings) \* \* \*.’”) The *Travelers* court recognizes that the filing of a suit does not always constitute commencement of the suit, if the party does not have a bona fide intention to pursue the case but rather is relying on the physical filing to commence a suit without taking further steps to prosecute the case. Here, Republic had a bona fide intention to obtain the expedited decertification upon filing the petition on August 27, 2019, and it should constitute commencement of the proceeding.

<sup>3</sup> Emphasis added.

hearing, investigation, inquiry, or other fact-finding or decision making procedure under this chapter and includes the denial of relief or the dismissal of a complaint.” Tex. Water Code § 13.002(16). The streamlined expedited release process is a “decision making procedure” under this chapter, and it is commenced by the filing of a petition. Therefore, the most reasonable interpretation is that the Legislature intended the newly enacted statute to apply to a streamlined expedited release proceeding initiated by the filing of the petition after September 1, 2019, as a whole.

### **III. CONCLUSION AND PRAYER**

WHEREFORE, Republic asks that the Commission determine former Texas Water Code section 13.254(a-5) is the version of the relevant law that applies to Republic’s Petition for expedited release from Aqua Texas Inc.’s water CCN No. 13202 and sewer CCN No. 21065.

Respectfully submitted,

Emily W. Rogers  
State Bar No. 24002863  
[erogers@bickerstaff.com](mailto:erogers@bickerstaff.com)

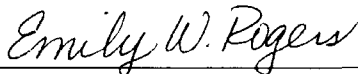
Kimberly G. Kelley  
State Bar No. 24086651  
[kkelley@bickerstaff.com](mailto:kkelley@bickerstaff.com)

Bickerstaff Heath Delgado Acosta LLP  
3711 S. MoPac Expressway  
Building One, Suite 300  
Austin, TX 78746  
Telephone: (512) 472-8021  
Facsimile: (512) 320-5638

BY: *Emily W. Rogers*  
Emily W. Rogers

**CERTIFICATE OF SERVICE**

I hereby certify by my signature below that on the 18th day of December, 2019, a true and correct copy of the above and foregoing document was forwarded via hand delivery, facsimile, U.S. mail or electronic mail to all parties of record and a true and correct copy of the above and foregoing document has been mailed by certified mail to Aqua Texas Inc., 1106 Clayton Ln., Suite 400W, Austin, TX., 78723-2476.

  
\_\_\_\_\_  
Emily W. Rogers