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DOCKET NO. 49904

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

**AQUA TEXAS, INC.'S BRIEFING ON CERTIFIED QUESTION:
WHEN DOES AN EXPEDITED RELEASE PROCEEDING "COMMENCE"?**

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

The Administrative Law Judge certified the following question 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?

The meaning of the word "commences" in a legislative act will determine which version of statutes applies to this and other similar cases. Concluding that the proceeding "commences" when the petition is determined to be administratively complete is consistent with the relevant statutes and rules, and sets a consistent and readily determined date.

The 2019 Legislature amended statutes governing streamlined expedited release ("SER") petitions affecting certificates of convenience and necessity, recodifying some provisions and rewriting others.¹ The changes apply "only to a proceeding affecting a certificate of public convenience and necessity that commences on or after" September 1, 2019.² Determining when the proceeding commences will determine what compensation procedures will apply to a given case. But "commences" is not defined in the relevant statutes or rules.

¹ Act of May 25, 2019, 86th Leg., R.S., Ch. 688, 2019 TEX. GEN. LAWS ____ (S.B. 2272).

² *Id.* §§ 6, 7.

Under both versions of the statute, a final decision on an SER petition is due 60 days “after the date the landowner files the petition.”³ By rule, an SER petition from a CCN is an application filed pursuant to “subchapter H of chapter 24” in the Commission’s substantive rules setting forth CCN application requirements and is “not considered filed until the commission makes a determination that the application is administratively complete.”⁴ Only when the petition is administratively complete does the presiding officer establish a procedural schedule and begin the 60-day clock for final Commission action.⁵ Until that point, the petition filing is in limbo and not a “proceeding” because the presiding officer can require the petitioner to supplement or amend the petition and can dismiss the petition if the petitioner fails to comply.⁶ The proceeding does not “commence” until the petition is deemed filed, the schedule is set, and the decision clock is ticking. The Commission rules are specifically designed to give the Commission sufficient time to consider an SER petition after confirming a complete filing was made, and this treatment has been afforded by Commission rule to all CCN-related applications covered by “subchapter H of chapter 24.”⁷

Recognizing the “commencement” date for a proceeding as the date a petition is deemed administratively complete removes uncertainty in cases in which the petitioner changes its petition—whether on its own or at the ALJ’s request, whether to correct a typographical error or to make wholesale changes—before the petition is declared administratively complete. The

³ “The utility commission shall grant the [a] petition [~~received under Subsection (a-5)~~] not later than the 60th day after the date the landowner files the petition.” *Id.* § 3 (recodifying Tex. Water Code § 13.254(a-6) as Tex. Water Code § 13-2541(c)); *see also* 16 TEX. ADMIN. CODE § 24.245(l)(6).

⁴ 16 TEX. ADMIN. CODE § 24.8(d).

⁵ *Id.* § 24.245(k)(9)-(10).

⁶ *Id.*

⁷ *Id.* § 24.8(d).

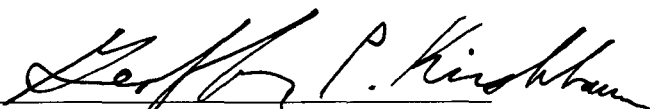
Commission and the parties can rely on the single date the subject petition was deemed complete and filed as the date the proceeding toward final determination began.

Here, the SER petition filed by Republic Business Center, LLC against Aqua Texas, Inc. was file-stamped by Commission Central Records on August 27, 2019 and thus physically received by Commission Central Records on that date. However, the SER petition was not considered “filed” with the Commission under its rules until it was declared administratively complete on October 18, 2019. Consequently, this proceeding commenced on October 18, 2019, after SB 2272 took effect.

Conclusion and Prayer

Aqua Texas, Inc. respectfully requests that the Honorable Public Utility Commission conclude that streamlined expedited release petition proceedings do not “commence” until the subject SER petition is deemed administratively complete, that the proceeding for the SER petition filed by Republic Business Center, LLC against Aqua Texas, Inc. did not commence until October 18, 2019, and that the changes reflected in SB 2272 apply here. Further, Aqua Texas, Inc. requests just and adequate compensation for the requested CCN releases and all further relief to which it is justly entitled at law or in equity.

Respectfully submitted,

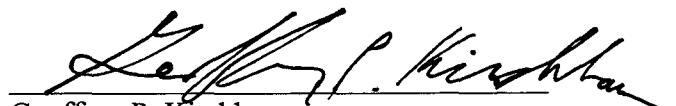
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ATTORNEYS FOR AQUA TEXAS, INC.

CERTIFICATE OF SERVICE

I hereby CERTIFY that on December 18, 2019, 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