



Control Number: 49904



Item Number: 23

Addendum StartPage: 0

PUC 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**

§
§
§
§
§
§

**PUBLIC UTILITY COMMISSION
OF TEXAS**

RECEIVED
2020 JAN 28 PM 1:34
PUBLIC UTILITY COMMISSION
FILING CLERK

ORDER ON CERTIFIED ISSUE

This Order addresses the issue certified to the Commission by the Commission's administrative law judge (ALJ) related to determining the law that is applicable to Republic Business Center, LLC's petition for streamlined expedited release from Aqua Texas, Inc's water and sewer certificates of convenience and necessity. An amendment to the expedited release provisions of the Texas Water Code became effective on September 1, 2019 but only applied to a proceeding that was commenced after the effective date of that amendment. The certified issue asks whether a proceeding for an expedited release commences on the date a petition for expedited release is first physically filed with the Commission or on the date the Commission determines the petition is administratively complete. A petition for expedited release is "not considered filed until the Commission makes a determination that the petition is administratively complete."¹ For the reasons discussed in this Order, the Commission concludes that such a proceeding commences on the date the petition is first physically filed with the Commission.

Petitions for expedited release that commenced prior to September 1, 2019 are governed by former TWC § 13.254(a-5) and (a-6).² In 2019, the 86th Texas Legislature added new section 13.2541 and transferred subsections (a-5) and (a-6) to that new section.³ Petitions for expedited release that commenced on September 1 or afterwards are governed by TWC § 13.2541.

¹ 16 Tex. Admin Code § 24.8(d).

² Act of May 25, 2019, 86th Leg., R.S., ch. 688 (SB 2272), § 6, 2019 Tex. Sess. Law Serv. 1976, 1977; *see also* Act of Sep. 1, 2013, 83rd Leg., R.S., ch. 171 (SB 567), 2013 Tex. Gen. Laws 772, *amended by* Act of Sep. 1, 2019, 86th Leg., R.S., ch. 688 (SB 2272), §§ 1-6, 2019 Tex. Sess. Law Serv. 1976.

³ Act of Sep. 1, 2019, 86th Leg., R.S., ch. 688 (SB 2272), §§ 3-6, 2019 Tex. Sess. Law Serv. 1976 (codified at TWC §§ 13.254, 13.2541).

Republic's petition for streamlined expedited release was received by the Commission's central records on August 27, 2019 and was stamped with that date. The petition requested release under former TWC § 13.254(a-5) and 16 Texas Administrative Code (TAC) § 13.245(1).⁴ On August 29, Republic was ordered to file additional information and a schedule was set for Aqua to file comments on the application and for Commission Staff to file comments on the administrative completeness of the application and notice.⁵ Republic filed supplements to its application on September 16 and 17 and an amended petition on September 18, 2019. On October 18, 2019, the Commission ALJ found Republic's petition administratively complete and granted intervenor status to Aqua.⁶ In Order No. 5 filed on December 5, 2019, the Commission ALJ certified the issue to the Commission.⁷

Neither the Texas Water Code nor the Commission's rules specify when a proceeding commences before the Commission. Aqua and Commission Staff emphasize that a petition for streamlined expedited release is not considered *filed* until the Commission determines that the application is administratively complete.⁸ They both contend that this proceeding did not commence until the Commission determined that the petition was administratively complete. But no provision of the Commission's substantive water rules uses the administrative-completeness requirement to demarcate when a proceeding begins. Rather, the requirement for a finding of administrative completeness and the acceptance for filing controls the start of the period within which the Commission must act. Thus, the Commission can avoid having to act on an incomplete and inaccurate application.

However, before a petition is ever declared administratively complete the administrative review of the application begins and other activities may occur: informal discovery can begin, motions may be filed and ruled on, and the petition may be found deficient and corrective or supplemental filings may be ordered. The review of the application begins before a determination of administrative completeness and continues until final action on the petition. In other words, the

⁴ Petition at 1 (Aug. 27, 2019).

⁵ Order No. 1 (Aug. 29, 2019).

⁶ Order No. 3 (Oct. 18, 2019).

⁷ Order No. 5.

⁸ See 16 TAC § 24.8(d).

proceeding—the review of the petition—begins when the petition is first physically filed with the Commission. That is the definition of commence.⁹ The proceeding does not commence upon determination of administrative completeness.

Consequently, the Commission determines that this proceeding commenced on August 27, 2019, the date Republic physically filed its petition with the Commission's central records.

Signed at Austin, Texas the 28th day of January 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER, CHAIRMAN



ARTHUR C. D'ANDREA, COMMISSIONER



SHELLY BOTKIN, COMMISSIONER

W2013

q:\cadm\orders\interim\49000\49904 ci.docx

⁹ *Commence*, Merriam Webster's Collegiate Dictionary (10th ed. 1996).