



Control Number: 49904



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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**

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BEFORE THE PUBLIC UTILITY

COMMISSION OF TEXAS

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PUBLIC UTILITY COMMISSION
FILING CLERK

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

Aqua Texas, Inc. ("Aqua") files this Motion to Intervene, Initial Comments, and Request for Response Deadline in relation to Republic Business Center, LLC's (Petitioner) Petition for an Expedited Release that initiated this docket (Petition).¹ The petition seeks to avail itself of the Commission's streamlined expedited release process to extract property from a portion of the retail water and sewer utility service area Aqua serves under sewer CCN No. 13203 and 21065 in Harris County, Texas.²

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
rlaughman@aquaamerica.com

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

Geoffrey P. Kirshbaum
TERRILL & WALDROP
810 West 10th Street

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).

² Both the Petition and the Amended Petition list Aqua's water CCN No. as 13202. This is incorrect. Aqua's correct water CCN No. is 13203 for its Southeast Region, the region in which the subject tract is located.

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Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)
gkirshbaum@terrillwaldrop.com

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 in throughout the state of Texas. Aqua has affiliate utility companies with similar facilities operating elsewhere in the state of Texas. Aqua holds water CCN No. 13203 and sewer CCN No. 21065 for its Southeast Region which includes Harris County and the tract that Petitioner seeks to decertify.

4. On September 18, 2019, Petitioner submitted its amended petition for streamlined expedited release pursuant to Texas Water Code (TWC) § 13.254(a-5) and 16 TEX. ADMIN. CODE (TAC) § 24.245.

5. Petitioner attests that it mailed a copy of the Petition and a copy of the Amended Petition to Aqua via certified mail.

6. This Motion to Intervene and Request for a Response Deadline is timely filed because it is being submitted by the October 11, 2019 deadline to "file a motion to intervene or comment" set out in Commission Order No. 2, which also notes that "[a]dditional deadlines will be established after the petition is deemed administratively complete."

Motion to Intervene

7. Aqua seeks to participate in this proceeding as an Intervenor.³ The Commission's rules⁴ define who can intervene:

A person has standing to intervene if that person:

³ *Id.* § 24.3(31).

⁴ *Id.* § 22.103(b).

- (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 specifically provide that the “CCN holder may submit a response to the petition within a timeframe specified by the presiding officer.” 16 TAC § 24.245(1)(5). Further, Aqua has a justiciable interest that may be adversely affected by the outcome of this proceeding and is an “affected person” in that it is a “retail public utility affected by [the requested] action of the regulatory authority.”⁵ The Petition asks the Commission to decertify a portion of Aqua’s water CCN No. 13203 and sewer CCN No. 21065 in Harris County, thereby depriving Aqua of its exclusive right to provide retail water and sewer utility service to this particular area.

9. 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 with respect to the 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.

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

Initial Comments

11. The Petition fails to give effect to the broad definition of “service” in both the TWC and Commission rules.⁶ Aqua serves the land requested to be released. Aqua will address this issue further if the Petition is deemed administratively complete.

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

⁶ TEX. WATER CODE §13.002(21); 16 TAC § 24.3(62).

12. The Petition is silent on the issue of compensation, but the current Commission rules on this issue no longer apply in light of applicable statutory revisions that took effect September 1, 2019.⁷ TWC § 13.254(d) was revised effective September 1, 2019 to require “just and adequate compensation” to decertified retail public utilities regardless of whether property will be rendered useless or valueless by the decertification according to the factors set forth in TWC § 13.254(g).⁸ Further, the Petition does not recognize that TWC § 13.254(a-5) and (a-6) are no longer in effect and were replaced by TWC § 13.2541 effective September 1, 2019.⁹ The Commission rules have not yet been revised to implement these statutory changes and yet they apply.¹⁰ Aqua will address these issues further if the Petition is deemed administratively complete despite these deficiencies.

Request for Response Deadline

13. 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 from which the Petitioner seeks decertification and is entitled to just and adequate compensation.

14. Order No. 2 issued on September 20, 2019 established October 11, 2019 as the “Deadline for Aqua Texas and other affected persons to file a motion to intervene or comment 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

⁷ Compare 16 TAC §24.245(n)(6), with TEX. WATER CODE §13.254(d), (g).

⁸ TEX. WATER CODE §13.254(d), (g).

⁹ TEX. WATER CODE §13.2541.

¹⁰ The Petition cannot be considered filed prior to the Commission determining it is administratively complete. 16 TAC § 24.8(d). Thus, it was not filed prior to September 1, 2019.

administratively complete.”¹¹ 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 October 11, 2019 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. 2 provision: “Additional deadlines will be established after the petition is deemed administratively complete.”

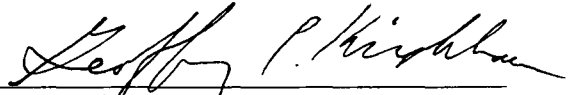
15. If the Petition is declared administratively complete and properly filed, Aqua should have a reasonable opportunity following Staff’s recommendation on administrative completeness and notice following the Commission’s determination regarding same to file a complete responsive pleading commenting on the Petition. 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.

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.

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

Respectfully submitted,

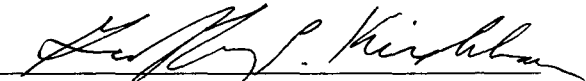
By: 

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ATTORNEYS FOR AQUA TEXAS, INC.

CERTIFICATE OF SERVICE

I hereby CERTIFY that on October 11, 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