

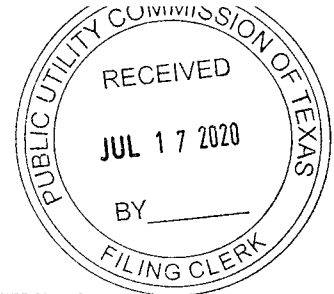


Control Number: 50405



Item Number: 20

Addendum StartPage: 0



DOCKET NO. 50405

PETITION OF THE SANCTUARY	§	BEFORE THE PUBLIC UTILITY
TEXAS, LLC TO AMEND AQUA	§	
TEXAS, INC.'S CERTIFICATE OF	§	COMMISSION OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
DENTON COUNTY BY EXPEDITED	§	
RELEASE	§	

**AQUA TEXAS, INC.'S SUPPLEMENTAL RESPONSE TO PETITION OF THE
SANCTUARY TEXAS, LLC FOR STREAMLINED EXPEDITED RELEASE**

Aqua Texas, Inc. (Aqua) files this Supplemental Response to the Petition of The Sanctuary Texas, LLC (Applicant or Petitioner) to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release (the Petition).¹ In support, Aqua shows as follows.

I. PROCEDURAL BACKGROUND

On January 2, 2020, Applicant filed the Petition seeking streamlined expedited release (SER) of 70.146 acres of property in Denton County (Property) from Aqua certificate of convenience and necessity (CCN) No. 13201. Applicant filed a First Amended Petition on February 10, 2020, an Affidavit of Robert Camp on April 29, 2020, and a set of deeds on May 7, 2020 in an attempt to cure Petition deficiencies. The presiding Commission Administrative Law Judge (ALJ) deemed the Petition administratively complete on July 10, 2020 and set a deadline of July 17, 2020 for Aqua to file its response to same.² Therefore, this pleading is timely filed. The Commission must deny the Petition because Aqua serves the Property.

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 Order No. 5 Finding Petition Administratively Complete, Notice Sufficient, and Establishing Procedural Schedule (Jul. 10, 2020).

II. ARGUMENTS AND AUTHORITIES

The Commission should deny the Petition because the SER requested cannot lawfully be granted under Texas Water Code (TWC) § 13.2541 and 16 Texas Administrative Code (TAC) § 24.245. The Property is receiving service from Aqua and not eligible for SER. Alternatively, if the Commission releases the Property despite this fact, Aqua is entitled to just and adequate compensation.

A. The Property Receives Service from Aqua

The Property receives water service from Aqua under any interpretation or application of the term “service” as the TWC defines it and the Property cannot be released from Aqua’s CCN under TWC § 13.2541.³ The Water Code broadly defines “service” as:

any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties . . . to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.⁴

The embedded term “facilities” is defined as:

[a]ll the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.⁵

Actually delivering water to a property is plainly “service,” but a property can also receive water service under the statute without a utility delivering “actual water” onto a property.⁶ In the *Crystal Clear* Austin Third Court of Appeals decision, the court held that facilities or lines “used” or

³ TWC § 13.2541(b) (allowing streamlined expedited release of a tract of land that “is not receiving water or sewer service.”); *see also* 16 TAC § 24.245(h)(1)(B).

⁴ TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

⁵ TWC § 13.002(9); *see also* 16 TAC § 24.3(15) (same definition).

⁶ *See Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied).

“committed” to providing such service might cause a property to “receive service” under the statutory and regulatory definition.⁷ But where water lines are actually present within a tract and “committed” to the property in that manner, the tract is unquestionably “receiving service” and the Commission recently determined that a streamlined expedited release petition may not be granted under *Crystal Clear* and TWC § 13.2541 when such facts are present.⁸

Here, the First Amended Petition claims, “The Property does not receive service from any water or sewer provider” and supports that statement with a self-serving affidavit from Mr. Marlon McMakin, Managing Member of The Sanctuary Texas, LLC.⁹ The affidavit also states, “[t]he property has not requested water or sewer service from Aqua Texas or paid any fees or charges to initiate or maintain water or sewer service, and there are no billing records or other documents indicating an existing account for the Properties.”¹⁰ That statement is false, and not just because it is impossible for a “property” to “request service” as a person or legal entity might, but because Aqua has both a fully charged water main line and meter located within the Property.

As shown by the attached affidavit of Darryl Waldock, Area Manager – North Texas, Aqua submits that: (1) Aqua has 2,930 linear feet of an active four-inch water main line located within the Property; (2) Aqua has a residential 5/8” x 3/4” meter located within the Property that *until January 29, 2020* was used to actively supply water to a billed residential connection located at 601 Garza Ln, Little Elm, TX 75068-3509 and remains on standby today; and (3) Aqua has other facilities immediately adjacent to the Property, and has performed various acts and supplied funds

⁷ *Id*

⁸ *Petition of Clay Road 628 Development, LP to Amend T&W Water Service Company’s Certificate of Convenience and Necessity in Montgomery County by Expedited Release*, Docket No. 50261, Order Denying Streamlined Expedited Release at 2-4 (Apr. 29, 2020).

⁹ First Amended Petition by The Sanctuary Texas, LLC for Expedited Release Pursuant to Texas Water Code Section 13.2541 (Feb. 10, 2020).

¹⁰ First Amended Petition by The Sanctuary Texas, LLC for Expedited Release Pursuant to Texas Water Code Section 13.2541 at Exhibit “A” Affidavit of Marlon McMakin (Feb. 10, 2020).

in furtherance of service to the Property and Aqua's CCN No. 13201 area that includes the Property, as detailed in Mr. Waldock's affidavit.¹¹ Mr. Waldock's affidavit includes a map showing the location of its Spanish Oaks Addition water system (PWS ID No. TX0610214) facilities which serve the Property and nearby areas, including the location of the four-inch line and meter within the Property, and the last bill that went to a customer at the meter location within the Property on January 31, 2020 for service through January 29, 2020, well after the Petition was filed.¹²

Here, these facilities—and the acts planning, creating, and maintaining them—are all plainly “committed” or “used” by Aqua in the performance of its duties to supply water within the targeted CCN area. At a minimum, the water main line and meter located within the Property provide water service to the Property, but the Property also receives water service from Aqua through its commitments to, and its existing facilities and capacity adjacent to, the Property. Mr. Waldock's affidavit describes all the different ways Aqua has served the Property through its various service acts and funds supplied, but there should be no question that the Property receives water service from Aqua today through facilities located within the Property.¹³ Under these facts, the Commission should deny the Petitioner's request to release the Property from Aqua's CCN No. 13201 because that would violate TWC § 13.2541.

¹¹ **Exhibit A** - Affidavit of Darryl Waldock.

¹² *Id.* Aqua notes that the customer's name is redacted in the customer bill document for privacy protection. However, Aqua submits that the customer's name does not serve to demonstrate a meter exists within the Property or that a customer was billed at the meter location as other information in the bill document and affidavit/map exhibit evidences.

¹³ *Id.*

B. Aqua Must Be Compensated If the Property Is Removed from Aqua's CCN Area.

Aqua is entitled to a determination of just and adequate compensation if its CCN area is reduced.¹⁴ The value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing actions in eminent domain, and compensation for personal property is to be based on several factors, including the following:

the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.¹⁵

If the Property is removed from Aqua's CCN No. 13201, Aqua would be entitled to compensation under several of these factors, including but not necessarily limited to the costs of obtaining permits, planning, design, and construction of facilities, and the necessary and reasonable legal expenses and professional fees that are incurred as a result of the decertification Petition.¹⁶ Aqua would also be compelled to spend time and resources to make the filing required by TWC § 13.257(r)-(s). But regardless, Aqua would need full compensation for its line and meter located within the Property, along with corresponding real property interests. Further, decertification of the Property will impede Aqua's ability to serve areas of the CCN adjacent to the Property using the water main line located within the Property, potentially increasing expense to all Aqua customers and possibly degrading service by eliminating its Spanish Oaks Addition water system looped water main

¹⁴ TWC §§13.254(g) and 13.2541(f)-(h).

¹⁵ TWC §§13.254(g) and 13.2541(h).

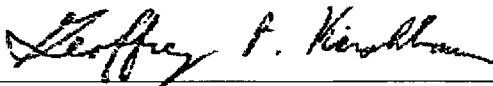
¹⁶ See **Exhibit A**.

layout.¹⁷ Aqua would be entitled to receive compensation for that too. If required, the monetary amount shall be determined by an appraiser—either one agreed upon by the retail public utilities involved, or one hired by each retail public utility, and a third appointed by the Commission.¹⁸

CONCLUSION AND PRAYER

Aqua respectfully requests the Commission deny the Petition because it cannot lawfully be granted under TWC § 13.2541. Alternatively, if the Commission approves the Petition, Aqua seeks just and adequate compensation for the decertification of a portion of its water CCN No. 13201. Aqua also seeks all and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

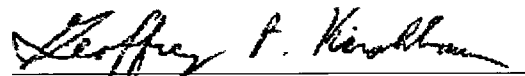
By: 

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

ATTORNEY FOR AQUA TEXAS, INC.

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on July 17, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.


Geoffrey P. Kirshbaum

¹⁷ *Id.*

¹⁸ TEX. WATER CODE §13.2541(g), (i).

DOCKET NO. 50405

PETITION OF THE SANCTUARY TEXAS,	§	BEFORE THE PUBLIC UTILITY
LLC TO AMEND AQUA TEXAS, INC.'S	§	
CERTIFICATE OF CONVENIENCE AND	§	COMMISSION OF TEXAS
NECESSITY IN DENTON COUNTY BY	§	
EXPEDITED RELEASE	§	

AFFIDAVIT OF DARRYL WALDOCK

THE STATE OF TEXAS §
 §
 COUNTY OF TARRANT §

BEFORE ME, the undersigned official on this day personally appeared Darryl Waldock, who is personally known to me and first being duly sworn according to law, upon his oath deposed and said:

My name is Darryl Waldock. I am over the age of 18 years and reside in Tarrant County, Texas. I am of sound mind and fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

I am the North Texas Area Manager for Aqua Texas, Inc. dba Aqua Texas ("Aqua"), Intervenor in the above styled and numbered case, and I am authorized to make this affidavit on behalf of Aqua.

The attached map, **Attachment 1**, was created by Dunaway Associates under my supervision and control. I am familiar with Aqua's facilities in the vicinity of the property tract for which The Sanctuary Texas, LLC ("Petitioner") seeks a streamlined expedited release ("SER") decertification from Aqua water certificate of convenience and necessity ("CCN") No. 13201 in PUC Docket No. 50405 (the "Property") and their location in relation to same. **Attachment 1** shows the Property and the location of Aqua's four-inch water main line and active 5/8" x 3/4" residential meter within the Property. The location of that meter is at 601 Garza Lane, Little Elm, Texas 75068-3509 as reflected in **Attachment 2**, which is the last Aqua service bill sent for that location on January 31, 2020 for

service through January 29, 2020.¹ The meter at that location was used to actively supply water to the Property before that date and remains on standby today. The four-inch water main and meter are facilities that are part of Aqua's Spanish Oaks Addition water system (PWS ID No. TX0610214) ("Spanish Oaks") which serves the Property and nearby areas.

In addition to Aqua's Spanish Oaks facilities within the Property, **Attachment 1** shows the layout of Aqua's Spanish Oaks facilities and meter locations immediately adjacent to the Property, which include: (1) a water plant that includes a groundwater well, pump station, 15,000 gallon ground storage tank, 900 gallon high pressure tank, chlorination equipment, and controls; (2) a flush valve; (3) seven other water meter service connections; and (4) a six-inch and a four-inch water main that connect to the four-inch water main located within the Property, creating a looped layout for the Spanish Oaks water system mains in the area. Aqua has constructed water facilities within the Property and adjacent CCN area with capacity that exceeds immediate need in order to respond quickly to anticipated new development within the Property. Aqua's Spanish Oaks water system serves approximately 34 connections in CCN No. 13201 and its water plant has the capacity to provide water to approximately 11 additional equivalent single-family connections. There are no outstanding requests for service from the undeveloped portions of the subject CCN area that will use the remainder of the existing capacity.

Aqua has provided water service to the Property in several ways: (1) performing acts and supplying funds to permit, plan, design, construct, own, and operate the Spanish Oaks water system facilities located inside the Property boundaries and adjacent to same; (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the water CCN No. 13201 service area covering the Property under prevailing regulations; (3) performing acts and supplying funds necessary

¹ The customer's name is redacted in **Attachment 2** for privacy protection.

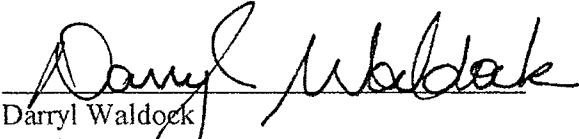
to obtain, transfer, renew, and maintain permits for the Spanish Oaks water system so that it may be used to serve the Property and CCN No. 13201 area that includes the Property; (4) maintaining a regional office in Fort Worth, Texas with personnel specifically dedicated to operations within Aqua's geographic North Texas Region water CCN No. 13201 service areas, including the Property and CCN No. 13201 area that includes the Property; and (5) analyzing and responding to past service inquiries and service requests for the Property.

CCNs and groundwater permits have value that purchasers of utilities will pay for when acquiring a utility because of the rights to serve the public that they accord and because the time and expense to acquire the CCNs and permits has already been spent. Decertification of the Property will impede Aqua's ability to serve areas of the CCN adjacent to the Property, potentially increasing expense to all Aqua customers. Importantly, Aqua's four-inch water main within the Property benefits all Spanish Oaks water system customers by creating a looped water system main layout. The benefit of having a looped water system versus a dead-end water main is that it improves reliability by supplying water from two directions rather than one. During times of high usage, customers on a looped main will experience much better pressures than if they were on a dead end main. Looping allows some water service to continue even after a main break. Looping also reduces head loss (*i.e.*, energy loss) by reducing velocity by about half.

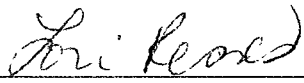
In sum, Aqua has performed numerous acts, supplied funds, and committed facilities to the Property. Aqua has also performed acts, supplied funds, and committed facilities to areas adjacent to the Property in CCN No. 13201. Aqua is incurring legal expenses and is likely to incur other professional expenses as a result of the decertification and Petition. If the decertification is approved, Aqua will be compelled to spend time and resources to make the filing required by TWC § 13.257(r)-(s). Aqua is actively supplying water to the Property and nearby properties. The Property receives

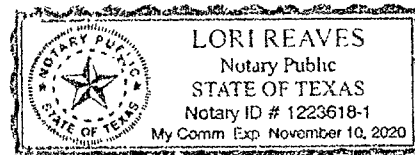
service from Aqua through these acts, supplied funds, and facilities. Aqua stands ready to perform additional acts of service and commit additional facilities to the Property as necessary.

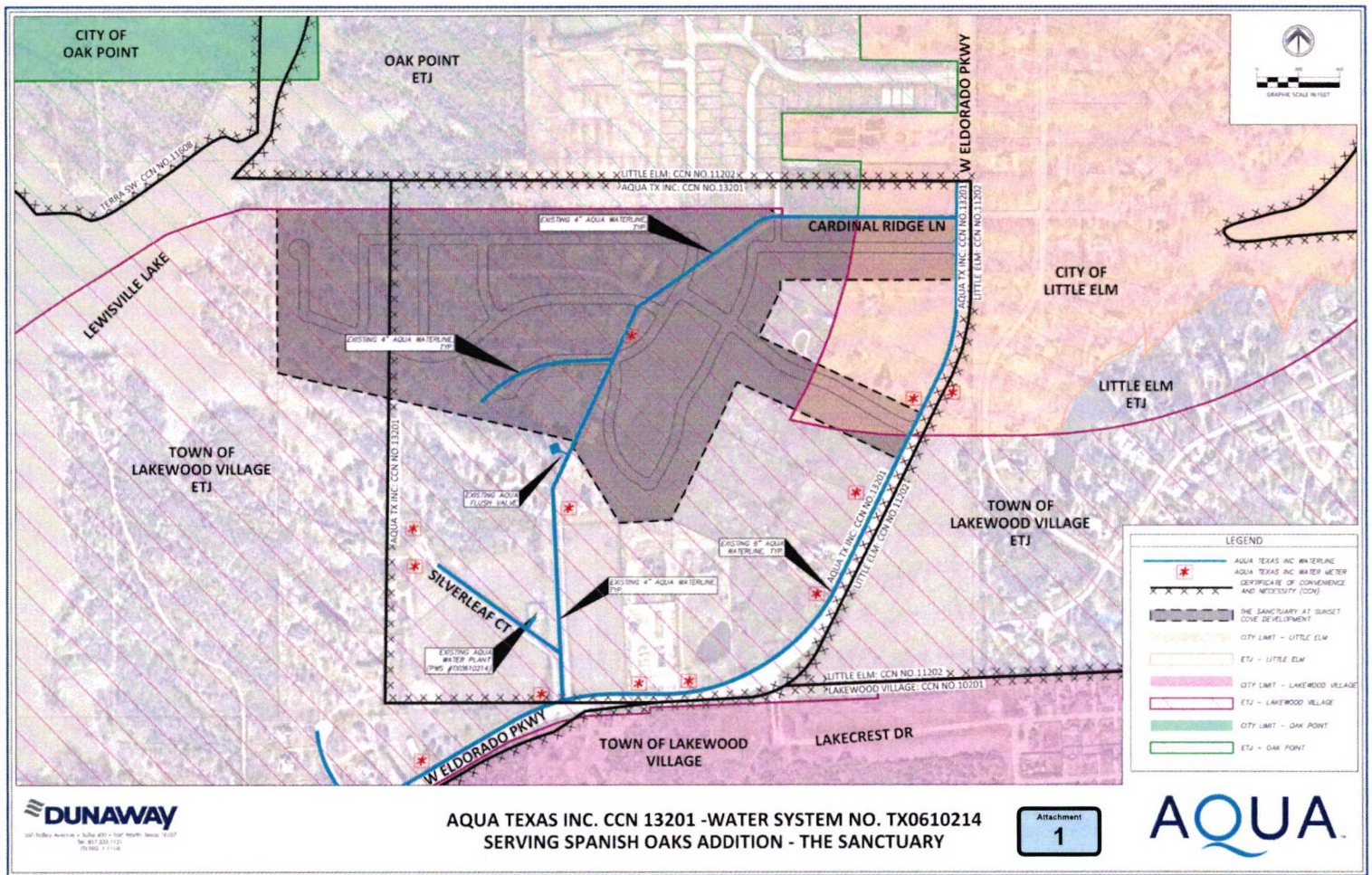
Further Affiant sayeth not.


Darryl Waldock
North Texas Area Manager
Aqua Texas, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 16 day of July, 2020, to which witness my hand and official seal.


Notary Public in and for
The State of Texas







Service To:
601 GARZA LN
LITTLE ELM, TX 75068-3509
Lot: 50327300 Block:

Account Number
001129334 0691886
FT WORTH WATER
1317000 PWSID # TX0610214

Aqua Texas, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010-3489

Toll Free: 877.987.2782
Fax: 866.780.8292
www.aquaamerica.com

Questions about your water service?... Contact us before the due date.

Bill Date **January 31, 2020** Total Amount Due **\$ 86.30** Current Charges Due Date **February 24, 2020**

Meter Data

Meter	Size	Billing Period	Days	Read Type	Meter Readings	Usage	Units
15243408	5/8	01/29/20	26	Actual	3900	0	Gallons
		01/03/20		Actual	3900		
Total Days: 26				Total Usage:		0	Gallons

Billing Detail

Amount Owed from Last Bill	\$ 43.15
Total Payments Received	0.00
Remaining Balance	43.15
Water Base Facility Charge	45.06
Total Water Charges	45.06
FTCCR Water Credit Rider	2.34 Credit
Regulatory Assessment Fee	0.43
Amount Due ON or BEFORE 02/24/20	\$ 86.30
Amount Due AFTER 02/24/20	\$ 90.57

Message Center (see reverse side for other information)

- This is your final bill for service at this property.
- Would you like to quickly and easily learn important information about your water? Please let us know how you want to be contacted via our new automated notification system by clicking on the WaterSmart Alerts button at www.aquaamerica.com.

RETURN THIS PORTION WITH YOUR PAYMENT



Aqua Texas, Inc.
762 W. Lancaster Avenue • Bryn Mawr, PA 19010-3489

Final

MAKE CHECK PAYABLE TO:
Aqua TX

Please Do Not Remit Payment To The Above Address

Cyc-31F2 1up-2180133

Seq-900

Account Number

001129334-0691886

BEFORE DUE DATE **02/24/2020** PAY THIS AMOUNT **\$86.30**

AFTER DUE DATE **02/24/2020** PAY THIS AMOUNT **\$90.57**

Amount Enclosed \$



AQUA TEXAS
PO BOX 70279
PHILADELPHIA PA 19176-0279



001129334069188600000000086303

QUESTIONS ABOUT YOUR BILL ?

Toll Free: 877.WTRAQUA or 877.987.2782

Fax: 866-780-8292

www.aquaamerica.com

If you have a billing question or complaint, call or write to us before the due date on your bill. When writing, please use a separate piece of paper and include your name, address, and account number. Notes written on the bill may delay processing of your payment. Our customer service address is listed on the front of the bill. You may also contact us for a rate schedule which is an explanation of how to verify that your bill is correct or for an explanation of our charges.

Please notify our office immediately upon changes of occupancy, ownership or mailing address, as the customer is responsible for all changes until we are notified. All water passing through the meter will be charged to the customer whether used, wasted or lost by leakage.

If your bill is based on zero usage, there may be a problem with your meter reading equipment. If there is a problem with your meter reading equipment, you will be responsible for the water usage or leakage not reported on this bill. Please call customer service if you have any questions or to have your meter reading equipment serviced.

EXPLANATION OF TERMS

Actual (A) Read: Meter reading obtained by a company employee or one of our automatic meter reading systems.

Customer Read: Meter reading obtained from our customer.

Employee Identification: All company employees carry an identification card showing their picture and employee number.

Estimated (E) Bill: When we are unable to read your meter, we base the bill on your past water use. If you receive an estimated bill, you may have a new bill by reading the meter and calling the company with that reading. Note, revised bills will not be issued after the due date of the estimated bill.

Late Charge: A penalty on past due balances.

Meter Reading: We attempt to read the water meter every billing period. We either have our meter reader visit your property or obtain the reading through one of our automatic meter reading systems.

Method of Payment: You can pay your bill by any of the following methods:

By mail: Place your check or money order in the enclosed pre-addressed envelope. Put a stamp on the envelope and mail it to us.
Aqua Texas: PO BOX 70279, PHILADELPHIA PA 19176-0279. DO NOT SEND CASH.

By phone: Customers with bank accounts or credit cards may pay their bills over the phone for a fee by calling this toll free number: 866.269.2906. Customers with bank accounts may also pay through their bank. (Call the company or your bank for details)

In Person: Pay in person (with cash or check) at convenient Western Union locations throughout Aqua Texas service territory. Payments are credited to your account the same day or the next business day if you make payments on a weekend or holiday.
Please call or visit www.aquaamerica.com to find the Western Union location closest to you.

ZipCheck®: A program in which your payment is automatically deducted from your bank account. You save the cost of postage and using bank checks. Details and applications are available from the company. Please call our Customer Service Department.

WaterSmart e-Billing: Switch to paperless billing today. Enjoy the convenience of viewing and paying your bill online. Visit us at www.aquaamerica.com to sign up today!

Payment Terms: You should pay your bill on or before the due date.

Rate Case Expense Surcharge: A charge to recover rate case expense.

Regulatory Assessment Fee: A fee used to pay the costs and expenses incurred by the Texas Commission on Environmental Quality in the regulation of retail public utilities.

Return Check Charge: If for any reason your check is returned to us from the bank, we will add a service charge to your account.

Sewer Base Facility Charge: A charge to recover the fixed costs of utility service regardless of usage.

Water Base Facility Charge: A charge to recover the fixed costs of utility service regardless of usage.



View your account, pay your current bill, check your daily balance, sign up for paperless billing, make a one-time payment.

[Get Started >](#)

[More Ways To Pay](#)

Save time and cut clutter with paperless billing!

Enroll today in WaterSmart e-Billing. You can cut the clutter of a paper bill, and we'll notify you by email when your bill is available to view online. It's simple, secure, and no additional fees.

Visit – AquaAmerica.com for more details.