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DOCKET NO. 50405

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

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PUBLIC UTILITY COMMISSION

OF TEXAS

COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this recommendation. Staff recommends that the application be denied. In support thereof, Staff would show the following:

I. BACKGROUND

On January 2, 2020, The Sanctuary Texas, LLC (Petitioner) filed a petition for streamlined expedited release from Aqua Texas, Inc.'s (Aqua) water certificate of convenience and necessity (CCN) No. 13201 in Denton County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). The Petitioner asserts that the tract of land is at least 25 acres, is not receiving water service, and is located in Denton County, which is a qualifying county. Petitioner filed supplemental information on February 10, April 29, and May 7, 2020. On January 31, 2020, Aqua filed a motion to intervene, which was granted on February 20, 2020.

On July 10, 2020, Order No. 5 was issued, establishing a deadline of July 24, 2020, for Staff to file a recommendation on final disposition. This pleading, therefore, is timely filed.

II. RECOMMENDATION

As detailed in the attached memorandum from Jolie Mathis in the Commission's Infrastructure Division, Staff has reviewed petition for streamlined expedited release and supplemental information filed by the Petitioner and recommends that it be denied.

Under 16 TAC § 24.245(h), in addition to other requirements, the 59-acre tract of land in question must not be receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN. Here, Aqua asserts that the Petitioner is receiving water service

under Aqua's water CCN No. 13201 in three forms.¹ First, Aqua has a 2,930-foot active four-inch water main running through the property. Second, Aqua has a 5/8" water meter on the property that up until January 29, 2020, was used to supply water to a residential connection. The water meter continues to be available for service presently. Third, Aqua has facilities adjacent to the tract in question.

Of these three, Staff recommends that the second factor, the continuing presence of a water meter, should be dispositive in this matter. Under the *Crystal Clear* standard, a tract is receiving service when facilities or lines are used or committed to providing such service.² Here, Aqua asserts that the meter remains at the ready to provide service again.³ In addition, a residential connection within the tract was billed for water service until January 29, 2020—27 days after the petition was filed.⁴ As such, Staff contends that the water meter is specifically committed to providing service, remains ready to provide service, and therefore, the tract at issue is receiving water service. As the property appears to be receiving water service, Staff recommends that the petition be denied.

III. CONCLUSION

Staff respectfully requests the issuance of an order consistent with the foregoing recommendation.

Dated: July 24, 2020

¹ Aqua Texas' Supplemental Response to Petition of The Sanctuary Texas, LLC, Affidavit of Darryl Waldock at Exhibit A and Attachment 1 (Jul. 17, 2020) (Aqua's Response).

² *Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied).

³ Aqua's Response at 3.

⁴ *Id.* at Attachment 2.

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 24, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Creighton R. McMurray
Creighton R. McMurray

PUC Interoffice Memorandum

To: Creighton McMurray, Attorney
Legal Division

From Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

Date: July 24, 2020

Subject: **Docket No. 50405:** *Petition of The Sanctuary Texas, LLC to Amend Aqua Texas Inc.'s Water Certificate of Convenience and Necessity in Denton County by Expedited Release*

On January 2, 2020, The Sanctuary Texas, LLC (Petitioner) filed an application for streamlined expedited release from Aqua Texas, Inc.'s (Aqua) water Certificate of Convenience and Necessity (CCN) No. 13201 in Denton County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). The Petitioner asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Denton County, which is a qualifying county.

The Petitioner included a statement indicating that a copy of the petition was sent via certified mail to Aqua, the current holder of CCN No. 13201, on the date the petition was filed with the Commission. On January 31, 2020, Aqua filed a Motion to Intervene, which was granted by the Administrative Law Judge (ALJ) on February 20, 2020.

The Petitioner submitted an adequate map delineating the requested area for expedited release with enough detail to confirm the accurate positioning of their digital data pursuant to 16 TAC § 24.245(m). The map and digital data are sufficient for determining the location of the requested release area within Aqua's certificated area. Mapping Staff was able to confirm the acreage of the subject property and determined that the requested area is located within Aqua's water CCN. Furthermore, the Petitioner provided a warranty deed confirming the Petitioner's ownership of the tract of land within Aqua's certificated service area. In addition, the Petitioner submitted a notarized affidavit attesting that the property is not receiving water services from the CCN holder. The area requested for expedited release is approximately 59 acres.

On July 17, 2020, Aqua filed a Supplemental Response to Petition of the Sanctuary Texas, LLC for Streamlined Expedited Release. In the response, Aqua claimed that the Petitioner is in fact receiving water service and is not eligible for release, as Aqua has a water main line and meter located within the property. Darryl Waldock, Area Manager-North Texas, Aqua submitted by affidavit 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. A map confirming the location of the water main and a previous bill associated with 601 Garza Ln., a residential connection within the tract, was submitted with the supplemental response.

Based on this information, Staff recommends that the Petitioner is indeed receiving water service, and in accordance with TWC Chapter 13 and 16 TAC § 24.245, that the Petitioner has not met the Commission's requirements to allow for the release of the requested area from the Aqua's CCN No. 13201. Therefore, Staff does not recommend approval of the petition.