



Control Number: 50405



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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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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 The Sanctuary Texas, LLC's (Petitioner) Petition for an Expedited Release that initiated this docket (Petition).¹ The petition seeks to avail itself of the Commission's expedited release process to extract 70.146 acres of property (Property) from a portion of the retail water utility service area Aqua serves under CCN No. 13201 in Denton County, Texas.² However, the Petition is deficient, the Commission should not find the Petition administratively complete, and the Commission should not set a deadline requiring a substantive response to the Petition from Aqua unless the Commission disagrees.

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
rllaughman@aquaamerica.com

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 Petitioner cites Texas Water Code § 13.254(a-5) which previously governed the streamlined expedited release process, but: (1) the Petition does not specifically state it seeks a streamlined expedited release; and (2) the streamlined expedited release provisions were amended and recodified at Texas Water Code § 13.2541, effective September 1, 2019.

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

Geoffrey P. Kirshbaum
TERRILL & WALDROP
810 West 10th Street
Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)
gkirshbaum@terrellwaldrop.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 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. 13201 for its North Texas Region, which includes Denton County and, allegedly, the Property.

4. On January 2, 2020, Petitioner submitted the Petition along with an affidavit in support of same.

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

6. Order No. 1 set February 3, 2020 as the deadline for "Commission Staff's comments on the administrative completeness of the petition, notice, and severance." The only other deadline established was a deadline for Petitioner "to submit a response to the petition" by February 11, 2020. Finally, Order No. 1 states, "Additional deadlines will be established after the petition is deemed administratively complete." Thus, this Motion to Intervene is timely filed.

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:

- (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. While the Petition does not specify, Aqua believes the Petition is seeking a streamlined expedited release from Aqua's CCN. 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."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."⁶ Though the specific Property location is unclear, the Petition requests the Commission decertify the portion of Aqua water CCN No. 13201 in Denton County that includes the Property, thereby depriving Aqua of its exclusive right to provide retail water 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.

³ 16 TAC § 24.3(31).

⁴ 16 TAC § 22.103(b).

⁵ 16 TAC § 24.245(l).

⁶ TEX. WATER CODE §13.002(1); 16 TAC § 24.3(5).

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

Initial Comments

11. The Commission should not deem the Petition administratively complete and reject it for several reasons. First, Petitioner's mapping and property description information is defective. Second, Petitioner has not provided sufficient proof that it owns the Property. Finally, the Petition cites incorrect statutory and regulatory provisions for the type of expedited release sought. Collectively, these defects should lead the Commission to conclude the Petition should not be deemed administratively complete.

12. First, the Petition is defective because the mapping information included with the Petition as filed with the Commission and provided to Aqua does not satisfy the Commission's minimum requirements for expedited release and streamlined expedited release petitions.⁷ There is no "general-location map identifying the" requested "tract of land in reference to the nearest county boundary, city, or town" sought for release.⁸ There is no "detailed map identifying the tract of land in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads" and "the location and acreage of land conveyed by each deed" if "multiple deeds" conveyed ownership of the tract.⁹ Finally, it appears a Property survey was attached/filed which may contain metes and bounds,¹⁰ but it is largely illegible and Aqua cannot tell from that document what area Petitioner seeks to have released from Aqua's CCN if in fact that information is included. In sum, none of the mapping information required by the applicable Commission rule was filed with the Petition or provided to Aqua at the time the Petition was filed, and Aqua is not certain what specific area is sought for release from water CCN No. 13201.

⁷ 16 TAC § 24.245(m).

⁸ 16 TAC § 24.245(m)(1)(A).

⁹ 16 TAC § 24.245(m)(1)(B). Aqua is unclear from the face of the Petition whether the tract was conveyed by a single deed or by multiple deeds.

¹⁰ 16 TAC § 24.245(m)(1)(C)(i).

13. Second, Petitioner has provided insufficient proof that it owns the Property. Petitioner has attached a “Deed of Trust” to the Petition which indicates the Petitioner has conveyed the Property to “Daniel W. Brooks, Trustee.”¹¹ The Petitioner is identified as the “Grantor” in that document.¹² Thus, the information provided indicates the Petitioner is not the Property owner as alleged and required.¹³

14. Finally, the Petition cites TWC § 13.254(a-5) and 16 TAC § 24.113(l) as the basis for the CCN release sought. Both those provisions are repealed.

15. In sum, the Petition fails to include the most basic information that would allow Aqua to be notified concerning what specific land Petitioner seeks to remove from Aqua’s CCN and whether Petitioner actually owns that land. Thus, Aqua fails to see how the Commission can determine those issues based on what was filed. Aqua has other substantive issues with the Petition that it will address if the Petition is ultimately deemed administratively complete.¹⁴ However, it is premature to require Aqua to address those issues in light of Petitioner’s administratively incomplete filing. Respectfully, Aqua requests the Commission not deem the Petition administratively complete and, instead, reject it.

Request for Response Deadline

16. Aqua substantively opposes the Petition and desires to file a substantive response as permitted by 16 TAC § 24.245(l)(5) if the Petition is deemed administratively complete, but not before. The Commission does not consider Applications, such as the Petition, “filed until the

¹¹ Petition, at Exhibit C.

¹² *Id.*

¹³ TEX. WATER CODE §13.2541(b).

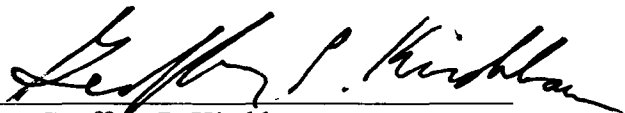
¹⁴ Upon information and belief, while Aqua cannot tell for certain, Aqua believes it will be able to show the Property is receiving service from Aqua and does not qualify for expedited release. TEX. WATER CODE §13.2541(b). Further, the Petition makes no mention of the just and adequate compensation to be provided to Aqua. TEX. WATER CODE §13.2541(f)-(i).

commission makes a determination that the application is administratively complete.”¹⁵ Aqua does not know what Commission Staff’s recommendation on the Petition will be or if the Commission will ever deem the Petition administratively complete. Aqua submits the Petition should not be deemed administratively complete. The Commission should only seek a substantive response from Aqua if the Commission disagrees and finds the Petition administratively complete over Aqua’s objections. In that event, Aqua respectfully requests the Commission establish a reasonable deadline for Aqua to substantively respond to the Petition after the Commission’s finding, preferably no sooner than 30 days thereafter.

Conclusion and Prayer

Aqua respectfully requests the presiding Honorable Administrative Law Judge issue an order that grants Aqua’s Motion to Intervene and either: (1) identifies deficiencies in the Petition and concludes that it is not administratively complete, or (2) sets a deadline for Aqua’s Petition response consistent with the request herein if the Petition is found administratively complete.

Respectfully submitted,

By: 

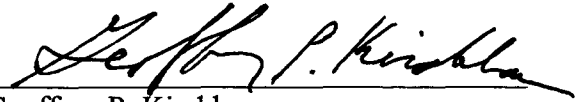
Geoffrey P. Kirshbaum
State Bar No. 24029665
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ATTORNEYS FOR AQUA TEXAS, INC.

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

CERTIFICATE OF SERVICE

I hereby CERTIFY that on January 31, 2020, 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