



Control Number: 51114



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DOCKET NO. 51114

PETITION OF IMPERIAL HEIGHTS,
LTD. TO AMEND AQUA TEXAS,
INC.'S CERTIFICATES OF
CONVENIENCE AND NECESSITY IN
HARRIS COUNTY BY EXPEDITED
RELEASE

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PUBLIC UTILITY COMMISSION
COMMISSION OF TEXAS

**AQUA TEXAS, INC.'S RESPONSE TO COMMISSION STAFF MAP FILING
AND REQUEST FOR ORAL ARGUMENT**

Aqua Texas, Inc. (Aqua) files this response to Commission Staff's (Staff) December 8, 2020 map filing in the matter of Imperial Heights, Ltd.'s (Petitioner) petition for streamlined expedited release (SER) of certain property (Property) from Aqua's water CCN No. 13203 and sewer CCN No. 21065 (Petition). Aqua also requests oral argument at the next Commission open meeting at which this matter is to be considered. In support, Aqua shows as follows.

During the November 19, 2020 open meeting at which this matter was discussed, the Commissioners decided to consider releasing the Property in a different manner than requested by Petitioner. The Commissioners asked Staff to present mapping showing Aqua's line locations left as certificated. Aqua has reviewed the maps filed by Staff in this docket yesterday.¹ This approach is problematic for several reasons.

First, Aqua maintains that its lines are committed to the Property because they are currently located within the Property, meaning that the Property receives "service" from Aqua under *Crystal Clear* and the Texas Water Code (TWC).² That will not change even if the Commission grants release in the manner contemplated. The Commission rules define "tract of land" as an area of land

¹ Commission Staff's Sewer and Water Maps (Dec 8, 2020).

² TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition). *See Tex. Gen. Land Office v Crystal Clear Water Supply Corp.*, 449 S.W 3d 130, 140 (Tex. App.—Austin 2014, pet. denied).

that has common ownership.³ The tract of land owned by Petitioner encompasses the lines whether Aqua's CCN area that includes the lines is released or not.

Second, Aqua has concerns about whether relocation of its lines within the Property will be possible following CCN releases in the manner considered if needed to accommodate the development while allowing Aqua's service in the area to continue unimpeded. Coordination with the Developer will likely be needed. At one point, Petitioner representatives approached Aqua about relocating Aqua's lines within the Property to accommodate Petitioner's development. After Aqua expressed concerns about that proposal and Aqua's preference against release of the area in favor of a different water/sewer service provider, Petitioner eventually filed the Petition. The issue was not revisited. Without appropriate coordination, granting relief in the manner under consideration could present problems as Aqua efforts to maintain continuous and adequate service to current residents in the area.

Finally, if the Commission proceeds with partial CCN releases as considered, Staff's filed maps are not a workable approach to the issue. Including a parenthetical sentence that the "Facilities in the Area Released Remain Certificated" does not show the physical locations of Aqua's lines. Presumably, in line with past practice, the Commission will order Aqua to make the county recording required by TWC § 13.257(r) if the Commission grants release. Aqua does not see how Staff's maps will enable compliance with that statute without showing the line locations. Aqua does not see how the Commission's CCN viewer will be able to show Aqua's CCNs in accord with Aqua's line locations either. The line locations are simply not shown. This creates ambiguity about their location. The Petitioner with the burden of proof in this proceeding has not

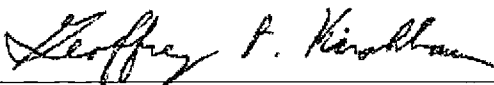
³ 16 TAC § 24.3(38) TWC § 13.002(1-a) defines "landowner," "owner of a tract of land," and "owners of each tract of land," as "multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located." See also 16 TAC § 24.3(18) and 24.245(7) (defining "Landowner")

filed any information to identify the line locations in relation to the Property even though their presence was known. While TCEQ and its predecessor agencies moved away from facilities only, or facilities only plus 200 feet, water and sewer CCNs in favor of polygon shaped CCNs, which remain the Commission's practice, some older facilities only CCNs remain. Those types of CCNs were specifically mapped. Somehow physical identification of Aqua's line and CCN locations would need to occur here if release is granted as considered. If this cannot be accomplished, the Commission should deny the release.

Aqua understands this matter may be considered again at the December 17, 2020 open meeting. Aqua respectfully requests the opportunity to discuss this issue with the Commissioners through oral argument when it is next taken up.

In conclusion, Aqua re-urges the Commission to deny the SER Petition in its entirety. Alternatively, Aqua requests the Commission ensure that the concerns described above are fully addressed in terms of what remains of Aqua's CCNs within the Property after partial release and that it be compensated for same. Aqua also requests the Commission grant oral argument at its next open meeting discussion for this docket.

Respectfully submitted,

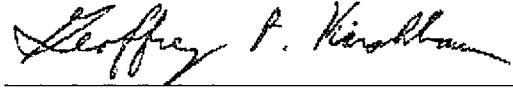
By: 

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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 December 9, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

A handwritten signature in black ink, reading "Geoffrey P. Kirshbaum". The signature is written in a cursive style with a horizontal line underneath it.

Geoffrey P. Kirshbaum