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DOCKET NO. 51114

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

**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 response to Imperial Heights, Ltd.'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 37.8 acres of property (Property) from a portion of the retail water and sewer utility service areas Aqua serves under CCN Nos. 13203 and 21065 in Harris County, Texas. 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 Petition is deemed administratively complete.

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. 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@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 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 Texas Region, which includes Harris County and, allegedly, the Property.

4. On July 24, 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 August 31, 2020 as the "Deadline for Aqua to submit a response to the petition." Order No. 1 also 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.² The Commission's rules³ define who can intervene:

A person has standing to intervene if that person:

² 16 TAC § 24.3(31).

³ 16 TAC § 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. The Petition is seeking a streamlined expedited release from Aqua's CCN. Commission rules concerning streamlined expedited release petitions specifically provide, "The current CCN holder may file a response to the petition within the timeframe specified by the presiding officer, not to exceed 20 days from the date the petition is determined to be administratively complete."⁴ 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 Though the specific Property location in relation to Aqua's CCN is unclear, the Petition requests the Commission decertify the portion of Aqua water and sewer CCN Nos. 13203 and 21065 in Harris 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.

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

⁴ 16 TAC § 24.245(h)(6).

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

defective. Second, Petitioner has not provided sufficient proof that it owns the Property according to the county “appraisal roll of the appraisal district.”⁶ Third, the Petition cites the incorrect Commission rule for a streamlined expedited release such as that the Petition purports to seek. 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 maps are not legible. Attached is the set of documents received by Aqua.⁷ They are difficult to read and there is no indication of where the Property is in relation to Aqua’s CCN. Thus, notice of what the Petitioner seeks is defective, and it is not apparent that Petitioner has complied with the PUC mapping requirements.⁸

13. Second, there is no information at all provided about ownership according to the Harris County “appraisal roll of the appraisal district.”⁹ Thus, the Petition is defective on this ground too.

14. Finally, the Petition cites to 16 TAC § 24.245(l) as part of its legal basis. The PUC has moved its streamlined expedited release rule to 16 TAC § 24.245(h).

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, whether Petitioner actually owns that land according to the county appraisal district appraisal roll, and which PUC rule Petitioner plans to use as the basis for its streamlined expedited release request. Thus, Aqua fails to see how the Commission can make a decision about the Petition 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. However, it is premature to require Aqua

⁶ See TWC § 13.002(1-a); see also 16 TAC § 24.3(18).

⁷ See **Exhibit A**.

⁸ 16 TAC § 24.245(h)(3)(G) and (k).

⁹ See TWC § 13.002(1-a); see also 16 TAC § 24.3(18).

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

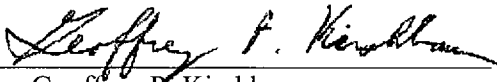
16. Aqua substantively opposes the Petition and desires to file a substantive response at least 20 days from the date the Petition is determined administratively complete as permitted by 16 TAC § 24.245(h)(6) if the Petition is deemed administratively complete, but not before. The Commission does not consider Applications, such as the Petition, "filed until the commission makes a determination that the application is administratively complete."¹⁰ 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 20 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 and Commission rules if the Petition is found administratively complete.

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

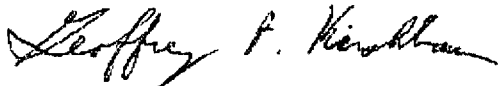
Respectfully submitted,

By: 
Geoffrey P. Kirshbaum
State Bar No. 24029665
TERRILL & WALDROP
810 W. 10th Street
Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)
gkirshbaum@terrillwaldrop.com

ATTORNEYS FOR AQUA TEXAS, INC.

CERTIFICATE OF SERVICE

I hereby CERTIFY that on August 21, 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

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