

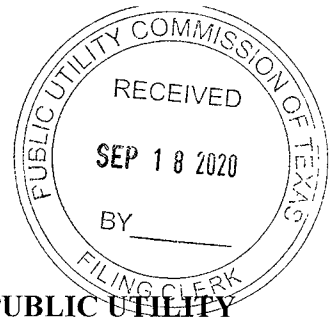


Control Number: 51114



Item Number: 6

Addendum StartPage: 0



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'S SUPPLEMENTAL RESPONSE TO PETITION OF IMPERIAL HEIGHTS,
LTD. FOR STREAMLINED EXPEDITED RELEASE**

Aqua Texas, Inc. (Aqua) files this Supplemental Response to the Petition of Imperial Heights, Ltd. (Applicant or Petitioner) to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release (the Petition).¹ In support, Aqua shows as follows.

I. PROCEDURAL BACKGROUND

On July 24, 2020, Applicant filed the Petition seeking streamlined expedited release (SER) of 37.8 acres of property in Harris County (Property) from Aqua water certificate of convenience and necessity (CCN) No. 13203 and sewer CCN No. 21065. The presiding Commission Administrative Law Judge (ALJ) deemed the Petition administratively complete on August 31, 2020 and set a deadline of September 18, 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. 2 Finding Petition Administratively Complete and Notice Sufficient, Establishing Procedural Schedule, and Granting Intervention (Aug. 31, 2020).

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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 and sewer 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 CCNs 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 or collecting wastewater from a property is plainly “service,” but a property can also receive water or sewer service under the statute without a utility delivering “actual water” onto or collecting wastewater from a property.⁶ In the *Crystal Clear Austin Third*

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).

Court of Appeals decision, the court held that facilities or lines “used” or “committed” to providing such service might cause a property to “receive service” under the statutory and regulatory definition.⁷ But where water lines or wastewater 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 Petition claims, “None of the Property receives service from any water or sewer provider.”⁹ The Petition supports that statement with a self-serving affidavit from Mr. Louis Trapolino, Development Manager for the Petitioner.¹⁰ But Aqua has both a fully charged water main line and a wastewater collection line located within the Property.

As shown by the attached affidavit of Chris Garcia, Southeast Texas Area Manager, Aqua submits that: (1) Aqua’s Imperial Valley water and wastewater facilities were originally built with the intent of serving the Property and the adjacent subdivision Aqua currently serves next to the Property; (2) Aqua has 1,000 linear feet of an active eight-inch water main line located within the Property; (3) Aqua has 400 linear feet of four-inch sewer force mains located within the property; and (4) Aqua has other facilities immediately adjacent to the Property, and has performed various acts and supplied funds in furtherance of service to the Property and Aqua’s CCN Nos. 13203 and 21065 area that includes the Property, as detailed in Mr. Garcia’s affidavit.¹¹ Mr. Garcia’s affidavit includes a map showing the location of its Imperial Heights water system (PWS ID No. 1013153)

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 Petition at 2 (Jul. 24, 2020).

¹⁰ Petition at Exhibit A, Affidavit of Louis Trapolino (Jul. 23, 2020).

¹¹ **Exhibit A** - Affidavit of Chris A. Garcia.

and sewer system (TPDES Permit No. WQ014106-001) facilities which serve the Property and nearby areas, including the location of the eight-inch water line and four-inch sewer force main within the Property.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 and sewer service to the targeted CCN area. At a minimum, the water main line and wastewater line located within the Property provide water and sewer service to the Property, but the Property also receives water and sewer service from Aqua through its commitments to, and its existing facilities and capacity adjacent to, the Property. Mr. Garcia’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 and sewer 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. 13203 and CCN No. 21065 because that would violate TWC § 13.2541.

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 areas are 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

¹² *Id.*

¹³ *Id.*

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

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. 13203 and CCN No. 21065, 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 lines located within the Property, along with corresponding real property interests, plus line relocation and installation costs. Further, decertification of Property may impede Aqua's ability to serve areas of the CCN adjacent to the Property using the water and wastewater main lines located within the Property, potentially increasing expense to all Aqua customers.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 portions of its water CCN No.

¹⁵ TWC §§13.254(g) and 13.2541(h).

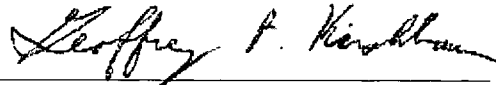
¹⁶ See **Exhibit A**.

¹⁷ *Id.*

¹⁸ TEX. WATER CODE §13.2541(g), (i).

13203 and sewer CCN No. 21065. Aqua also seeks all and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

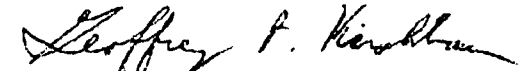
By: 

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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 September 17, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.


Geoffrey P. Kirshbaum

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	§	

AFFIDAVIT OF CHRIS A. GARCIA

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

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

My name is Chris A. Garcia. I am over the age of 18 years and reside in Harris 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 Southeast 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**, shows the property tract ("Property") that the Petition filed by Imperial Heights, Ltd. ("Petitioner") in Docket No. 51114 seeks to remove through streamlined expedited release ("SER") from areas for which Aqua holds water and sewer certificates of convenience and necessity ("CCNs") Nos. 13203 and 20165. I am familiar with Aqua's facilities in the vicinity of the Property and their location in relation to same. **Attachment 1** shows the Property and the location of Aqua's Imperial Valley water and wastewater facilities adjacent to and within the

Property. Those facilities are part of Aqua's Imperial Valley water system (PWS ID No. 1013153) and Imperial Valley sewer system (TPDES Permit No. WQ014106-001) which serves the Property and nearby areas. The Imperial Valley water and wastewater facilities were originally built with the intent of serving the Property and the adjacent subdivision Aqua currently serves next to the Property.

Specifically, Aqua's Imperial Valley water system facilities include: one water well that produces 260 gallons per minute ("gpm") a ground storage tank that holds 65,000 Gallons, a hydro tank that holds 5,000 Gallons, two 15 horse power service pumps that pump 250 gpm each, 109 active 5/8" x 3/4" meter water customers and 2 active 4" meter water customers with corresponding service lines, plus 7 additional inactive 5/8" x 3/4" water meters, and over 4,000 linear feet of water lines, of which 1000 linear feet is 8" water line that runs through the Property. Aqua's Imperial Valley sewer system facilities include: an 80,000 gallon per day ("gpd") wastewater treatment plant, an offsite lift station with two lift pumps, chlorine disinfection system, two blower units, 20 manholes, 111 active sewer customers, plus 7 additional inactive connections, with corresponding sewer lateral collection lines, and over 5,900 linear feet of sewer gravity and force main lines, of which 400 linear feet of 4" sewer force main runs through the Property. Thus, Aqua's Imperial Valley facilities are located both adjacent to and within the Property.

Aqua has constructed its Imperial Valley water and sewer system facilities with capacity that exceeds immediate need in order to respond quickly to anticipated new development within the Property. Aqua's Imperial Valley water system facilities have the capacity to provide water to approximately 136 additional equivalent single-family connections. Aqua's Imperial Valley sewer system facilities have the capacity to provide sewer services to approximately 140 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 Imperial Valley water system facilities located within and adjacent to the Property; (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the water CCN No. 13203 service area covering the Property under prevailing regulations; (3) performing acts and supplying funds necessary to obtain, transfer, renew, and maintain permits for the Imperial Valley water system so that it may be used to serve the Property and CCN No. 13203 area that includes the Property; (4) maintaining a regional office in Spring, Texas with personnel specifically dedicated to operations within Aqua's geographic Southeast Texas Region water CCN No. 13203 service areas, including the Property and CCN No. 13203 area that includes the Property; and (5) analyzing and responding to past service inquiries and service requests for the Property.

Aqua has provided sewer service to the Property in several ways: (1) performing acts and supplying funds to permit, plan, design, construct, own, and operate the Imperial Valley sewer system facilities located within and adjacent to the Property; (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the water CCN No. 21065 service area covering the Property under prevailing regulations; (3) performing acts and supplying funds necessary to obtain, transfer, renew, and maintain permits for the Imperial Valley sewer system so that it may be used to serve the Property and CCN No. 21065 area that includes the Property; (4) maintaining a regional office in Spring, Texas with personnel specifically dedicated to operations within Aqua's geographic Southeast Texas Region water CCN No. 21065 service areas, including the Property and CCN No. 21065 area that includes the Property; and (5) analyzing and responding to past service inquiries and service requests for the Property.

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'S SUPPLEMENTAL RESPONSE TO PETITION OF IMPERIAL HEIGHTS,
LTD. FOR STREAMLINED EXPEDITED RELEASE**

Aqua Texas, Inc. (Aqua) files this Supplemental Response to the Petition of Imperial Heights, Ltd. (Applicant or Petitioner) to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release (the Petition).¹ In support, Aqua shows as follows.

I. PROCEDURAL BACKGROUND

On July 24, 2020, Applicant filed the Petition seeking streamlined expedited release (SER) of 37.8 acres of property in Harris County (Property) from Aqua water certificate of convenience and necessity (CCN) No. 13203 and sewer CCN No. 21065. The presiding Commission Administrative Law Judge (ALJ) deemed the Petition administratively complete on August 31, 2020 and set a deadline of September 18, 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. 2 Finding Petition Administratively Complete and Notice Sufficient, Establishing Procedural Schedule, and Granting Intervention (Aug. 31, 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 and sewer 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 CCNs under TWC § 13.2541.³ The Water Code broadly defines “service” as:

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[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 or collecting wastewater from a property is plainly “service,” but a property can also receive water or sewer service under the statute without a utility delivering “actual water” onto or collecting wastewater from a property.⁶ In the *Crystal Clear Austin Third*

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).

Court of Appeals decision, the court held that facilities or lines “used” or “committed” to providing such service might cause a property to “receive service” under the statutory and regulatory definition.⁷ But where water lines or wastewater 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 Petition claims, “None of the Property receives service from any water or sewer provider.”⁹ The Petition supports that statement with a self-serving affidavit from Mr. Louis Trapolino, Development Manager for the Petitioner.¹⁰ But Aqua has both a fully charged water main line and a wastewater collection line located within the Property.

As shown by the attached affidavit of Chris Garcia, Southeast Texas Area Manager, Aqua submits that: (1) Aqua’s Imperial Valley water and wastewater facilities were originally built with the intent of serving the Property and the adjacent subdivision Aqua currently serves next to the Property; (2) Aqua has 1,000 linear feet of an active eight-inch water main line located within the Property; (3) Aqua has 400 linear feet of four-inch sewer force mains located within the property; and (4) Aqua has other facilities immediately adjacent to the Property, and has performed various acts and supplied funds in furtherance of service to the Property and Aqua’s CCN Nos. 13203 and 21065 area that includes the Property, as detailed in Mr. Garcia’s affidavit.¹¹ Mr. Garcia’s affidavit includes a map showing the location of its Imperial Heights water system (PWS ID No. 1013153)

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 Petition at 2 (Jul. 24, 2020).

¹⁰ Petition at Exhibit A, Affidavit of Louis Trapolino (Jul. 23, 2020).

¹¹ **Exhibit A** - Affidavit of Chris A. Garcia.

and sewer system (TPDES Permit No. WQ014106-001) facilities which serve the Property and nearby areas, including the location of the eight-inch water line and four-inch sewer force main within the Property.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 and sewer service to the targeted CCN area. At a minimum, the water main line and wastewater line located within the Property provide water and sewer service to the Property, but the Property also receives water and sewer service from Aqua through its commitments to, and its existing facilities and capacity adjacent to, the Property. Mr. Garcia’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 and sewer 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. 13203 and CCN No. 21065 because that would violate TWC § 13.2541.

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 areas are 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

¹² *Id.*

¹³ *Id.*

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

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. 13203 and CCN No. 21065, 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 lines located within the Property, along with corresponding real property interests, plus line relocation and installation costs. Further, decertification of Property may impede Aqua's ability to serve areas of the CCN adjacent to the Property using the water and wastewater main lines located within the Property, potentially increasing expense to all Aqua customers.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 portions of its water CCN No.

¹⁵ TWC §§13.254(g) and 13.2541(h).

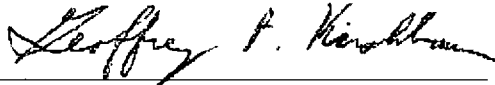
¹⁶ See **Exhibit A**.

¹⁷ *Id.*

¹⁸ TEX. WATER CODE §13.2541(g), (i).

13203 and sewer CCN No. 21065. Aqua also seeks all and further relief to which it may be justly entitled at law or in equity.

Respectfully submitted,

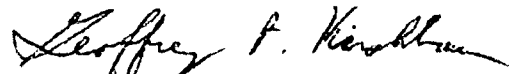
By: 

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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 September 17, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.


Geoffrey P. Kirshbaum

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	§	

AFFIDAVIT OF CHRIS A. GARCIA

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

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

My name is Chris A. Garcia. I am over the age of 18 years and reside in Harris 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 Southeast 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**, shows the property tract ("Property") that the Petition filed by Imperial Heights, Ltd. ("Petitioner") in Docket No. 51114 seeks to remove through streamlined expedited release ("SER") from areas for which Aqua holds water and sewer certificates of convenience and necessity ("CCNs") Nos. 13203 and 20165. I am familiar with Aqua's facilities in the vicinity of the Property and their location in relation to same. **Attachment 1** shows the Property and the location of Aqua's Imperial Valley water and wastewater facilities adjacent to and within the

Property. Those facilities are part of Aqua's Imperial Valley water system (PWS ID No. 1013153) and Imperial Valley sewer system (TPDES Permit No. WQ014106-001) which serves the Property and nearby areas. The Imperial Valley water and wastewater facilities were originally built with the intent of serving the Property and the adjacent subdivision Aqua currently serves next to the Property.

Specifically, Aqua's Imperial Valley water system facilities include: one water well that produces 260 gallons per minute ("gpm") a ground storage tank that holds 65,000 Gallons, a hydro tank that holds 5,000 Gallons, two 15 horse power service pumps that pump 250 gpm each, 109 active 5/8" x 3/4" meter water customers and 2 active 4" meter water customers with corresponding service lines, plus 7 additional inactive 5/8" x 3/4" water meters, and over 4,000 linear feet of water lines, of which 1000 linear feet is 8" water line that runs through the Property. Aqua's Imperial Valley sewer system facilities include: an 80,000 gallon per day ("gpd") wastewater treatment plant, an offsite lift station with two lift pumps, chlorine disinfection system, two blower units, 20 manholes, 111 active sewer customers, plus 7 additional inactive connections, with corresponding sewer lateral collection lines, and over 5,900 linear feet of sewer gravity and force main lines, of which 400 linear feet of 4" sewer force main runs through the Property. Thus, Aqua's Imperial Valley facilities are located both adjacent to and within the Property.

Aqua has constructed its Imperial Valley water and sewer system facilities with capacity that exceeds immediate need in order to respond quickly to anticipated new development within the Property. Aqua's Imperial Valley water system facilities have the capacity to provide water to approximately 136 additional equivalent single-family connections. Aqua's Imperial Valley sewer system facilities have the capacity to provide sewer services to approximately 140 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 Imperial Valley water system facilities located within and adjacent to the Property; (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the water CCN No. 13203 service area covering the Property under prevailing regulations; (3) performing acts and supplying funds necessary to obtain, transfer, renew, and maintain permits for the Imperial Valley water system so that it may be used to serve the Property and CCN No. 13203 area that includes the Property; (4) maintaining a regional office in Spring, Texas with personnel specifically dedicated to operations within Aqua's geographic Southeast Texas Region water CCN No. 13203 service areas, including the Property and CCN No. 13203 area that includes the Property; and (5) analyzing and responding to past service inquiries and service requests for the Property.

Aqua has provided sewer service to the Property in several ways: (1) performing acts and supplying funds to permit, plan, design, construct, own, and operate the Imperial Valley sewer system facilities located within and adjacent to the Property; (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the water CCN No. 21065 service area covering the Property under prevailing regulations; (3) performing acts and supplying funds necessary to obtain, transfer, renew, and maintain permits for the Imperial Valley sewer system so that it may be used to serve the Property and CCN No. 21065 area that includes the Property; (4) maintaining a regional office in Spring, Texas with personnel specifically dedicated to operations within Aqua's geographic Southeast Texas Region water CCN No. 21065 service areas, including the Property and CCN No. 21065 area that includes the Property; and (5) analyzing and responding to past service inquiries and service requests for the Property.

CCNs, groundwater, and wastewater 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 prevent Aqua from using these rights within the Property.

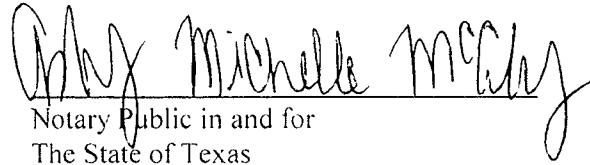
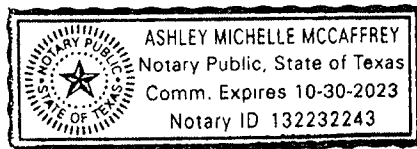
In sum, Aqua has performed numerous acts, supplied funds, and committed facilities to the Property. Aqua has also performed acts, supplied funds, and committed facilities to areas adjacent to the Property in CCN Nos. 13203 and 21065. Aqua is incurring legal expenses and is likely to incur other professional 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 and sewer services to the Property and nearby properties. The Property receives water and sewer 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.



Chris A. Garcia
Southeast Texas Area Manager
Aqua Texas, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 17th day of September, 2020, to which witness my hand and official seal.



Notary Public in and for
The State of Texas

Attachment

1

Aqua Water Plant



1000 LF 8" Water Line through Tract in question



Tract in Question with
Red Boundary

400 LF 4" Sewer Force Main through Tract in question

Imperial
Valley WWTP



Aqua WW
Treatment Plant



Imperial
Valley Lift
Station



Aqua Lift Station

