



Control Number: 51492



Item Number: 9

Addendum StartPage: 0

DOCKET NO. 51492

RECEIVED

PETITION OF DENTON 114 LP TO
AMEND AQUA TEXAS, INC.'S
CERTIFICATE OF CONVENIENCE AND
NECESSITY IN DENTON COUNTY BY
EXPEDITED RELEASE

§
§
§
§
§

BEFORE THE PUBLIC UTILITY COMMISSION

COMMISSION OF TEXAS
FILING CLERK

**AQUA'S SUPPLEMENTAL RESPONSE TO PETITION
OF DENTON 114 LP FOR STREAMLINED EXPEDITED RELEASE**

Aqua Texas, Inc. (Aqua) files this Supplemental Response to the Petition of Denton 114 LP (Petitioner or Applicant) Petition for Expedited Release Pursuant to Texas Water Code § 13.2541 from Aqua Texas, Inc.'s water certificate of convenience and necessity No. 13201 in Denton County (the Petition). The Commission should deny the Petition. In support, Aqua shows as follows.

I. PROCEDURAL BACKGROUND

On November 6, 2020, Applicant filed the Petition seeking streamlined expedited release (SER) of 90.546 acres of property in Denton County (Property) from Aqua water certificate of convenience and necessity (CCN) No. 13201. The presiding Commission Administrative Law Judge (ALJ) deemed the Petition administratively complete on December 8, 2020 and set a deadline of December 30, 2020 for Aqua to file its response to same.¹ Therefore, this pleading is timely filed. The Commission should deny the Petition because Aqua serves the Property.

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

¹ Order No. 2 Finding Petition Administratively Complete and Notice Sufficient, Requiring Clarification from the Petitioner, and Establishing Procedural Schedule (Dec. 8, 2020).

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 service from Aqua under according to the term “service” as the TWC defines it, and the Property cannot be released from Aqua’s CCNs under TWC § 13.2541.² 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.³

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.⁴

Actually delivering water to 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 a property.⁵ In the *Crystal Clear* Austin Third 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.⁶

Here, the Petition claims, “None of the Property receives service from any water or sewer provider.”⁷ The Petition supports that statement with an affidavit from Julian Hawes, Jr., President

² 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).

³ TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

⁴ TWC § 13.002(9); *see also* 16 TAC § 24.3(15) (same definition).

⁵ *See Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied).

⁶ *Id.*

⁷ Petition at 2 (Nov. 6, 2020).

of Provident Realty Advisors, Inc.⁸ Yet, as shown by the attached affidavit of Darryl Waldock, North Texas Area Manager, Aqua submits that it has water service facilities proximate to the Property, and has performed various acts and supplied funds in furtherance of service to the Property and Aqua's CCN No. 13201 area that includes the Property.⁹ Mr. Waldock's affidavit includes a map showing the location of its Shale Creek water system (PWS ID No. 0610238) facilities located near the Property.¹⁰

Here, these facilities and the acts of planning, creating, and maintaining them—are all plainly “committed” or “used” by Aqua in the performance of its duties to supply water service to the targeted CCN area and Property. The Property receives water service from Aqua through its commitments to, and its existing facilities and capacity proximate to the Property. Mr. Waldock's affidavit also describes different ways Aqua has served the Property through its various service acts and funds supplied.¹¹ Under these facts, the Commission should deny the Petitioner's request to release the Property from Aqua's CCN No. 13201 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.¹² 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 construction of service facilities that are allocable to service to the area in question;

⁸ Petition at Exhibit “A”, Affidavit of Julian Hawes, Jr. (Nov. 3, 2020)

⁹ **Exhibit A** - Affidavit of Darryl Waldock.

¹⁰ *Id.*

¹¹ *Id.*

¹² TWC §§13.254(g) and 13.2541(f)-(h)

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.¹³

If the Property is removed from Aqua's CCN No. 13201, Aqua would be entitled to compensation under several of these factors.¹⁴ Aqua would also be compelled to spend time and resources to make the filing required by TWC § 13.257(r)-(s) and 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.¹⁵

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. 13201. Aqua also seeks all and further relief to which it may be justly entitled at law or in equity.

¹³ TWC §§13.254(g) and 13.2541(h).

¹⁴ See **Exhibit A**.

¹⁵ TEX. WATER CODE §13.2541(g), (i).

Respectfully submitted,

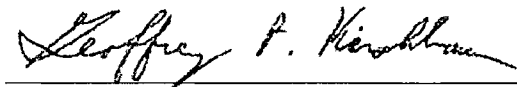
By: 

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

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 30, 2020, in accordance with the Orders Suspending Rules issued in Project No. 50664.


Geoffrey P. Kirshbaum

DOCKET NO. 51492

PETITION OF DENTON 114 LP TO	§	BEFORE THE PUBLIC UTILITY
AMEND AQUA TEXAS, INC.'S	§	
CERTIFICATE OF CONVENIENCE AND	§	COMMISSION OF TEXAS
NECESSITY IN DENTON COUNTY BY	§	
EXPEDITED RELEASE	§	

AFFIDAVIT OF DARRYL WALDOCK

THE STATE OF TEXAS '

,

COUNTY OF TARRANT '

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

My name is Darryl Waldock. I am over the age of 18 years and reside in Tarrant 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 North 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.

I created the attached map, **Attachment 1**, based on my familiarity with Aqua's facilities in the vicinity of the property tract (the "Property") for which Denton 114 LP ("Petitioner") seeks a streamlined expedited release ("SER") decertification from Aqua water certificate of convenience and necessity ("CCN") No. 13201 in PUC Docket No. 51492. **Attachment 1** shows the Property and the proximate location of Aqua's facilities.

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 its Shale Creek water system (PWS ID No. 0610238) which is just west of the Property (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the water CCN No. 13201 service area covering the Property under prevailing regulations; (3) performing acts and supplying funds necessary to obtain, transfer, renew, and maintain permits for the Shale Creek water system so that it may be used to serve the Property and CCN No. 13201 area that includes the Property; and (4) maintaining a regional office in Fort Worth, Texas with personnel specifically dedicated to operations within Aqua's geographic North Texas Region water CCN No. 13201 service areas, including the Property and CCN No. 13201 area that includes the Property. I will also note that CCNs and groundwater 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.

In sum, Aqua has performed numerous acts, supplied funds, and committed facilities to the Property and proximate areas within CCN No. 13201. 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 to nearby properties and the Property receives service from Aqua through the acts, supplied funds, and facilities I have described. Aqua stands ready to perform additional acts of service and commit additional facilities to the Property as necessary.

Further Affiant sayeth not.

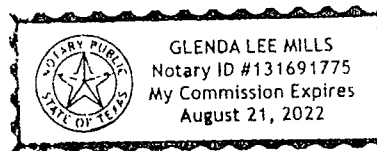


Darryl Waldock
North Texas Area Manager
Aqua Texas, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 30 day of December, 2020, to which witness my hand and official seal.



Notary Public in and for
The State of Texas



Attachment

1

