



Control Number: 51513



Item Number: 17

Addendum StartPage: 0

**DOCKET NO. 51513**  
**SOAH DOCKET NO. 473-21-2055.WS**

RECEIVED

2021 APR 29 PM 12:34

**PETITION OF KEMPNER WATER  
SUPPLY CORPORATION AND THE  
CITY OF GEORGETOWN FOR  
APPROVAL OF SERVICE AREA  
CONTRACT UNDER TEXAS WATER  
CODE § 13.248 AND TO AMEND  
CERTIFICATES OF CONVENIENCE  
AND NECESSITY IN BELL COUNTY**

§  
§  
§  
§  
§  
§  
§  
§

**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

PUBLIC UTILITY COMMISSION  
FILING CLERK

**COMMISSION STAFF'S PROPOSED LIST OF ISSUES**

**I. BACKGROUND**

On November 13, 2020, Kempner Water Supply Corporation (Kempner Water Supply) and the City of Georgetown filed a petition for approval of a service area contract under Texas Water Code (TWC) § 13.248 and to amend water certificates of convenience and necessity (CCN) in Bell County. Specifically, the applicants seek to transfer 7,617 acres of water service area from the City of Georgetown's CCN number 12369 to Kempner's CCN number 10456.

On December 8, 2020, The City of Killeen filed its motion to intervene. On December 29, 2020, the City of Killeen filed its supplemental motion to intervene and request for hearing. On December 30, 2020, the administrative law judge granted the City of Killeen's Motion to Intervene in Order No. 3. On February 24, 2021, Staff (Staff) of the Public Utility Commission (Commission) filed its request for referral.

On April 20, 2021, the Commission's Office of Policy and Docket Management issued an Order of Referral in this proceeding. The Order of Referral required the interested parties to file with the Commission a list of issues to be addressed in this proceeding, along with identifying any issues which should not be addressed in the docket, and any threshold legal and/or policy issues which should be briefed for purposes of a preliminary order by April 29, 2021. Therefore, this pleading is timely filed.

**II. LIST OF ISSUES**

The Staff recommends that the Commission adopt the following list of issues to be addressed in this docket:

1. Does the contract between Kempner Water Supply and the City of Georgetown designate areas to be served and customers to be served? TWC § 13.248.
2. Is the contract between Kempner Water Supply and the City of Georgetown valid and enforceable pursuant to TWC § 13.248 and 16 TAC § 24.253?
3. Has the applicant given notice consistent with TWC § 13.246 and 16 TAC § 24.235?
4. Does the applicant's requested water service area overlap with the certificated service area of other entities? If so, what specific areas overlap? Has the applicant received appropriate consent to provide water service within the entities' service boundaries?
5. What modifications, if any, must be made to the applicant's requested water service area to reflect land removed from the requested service area because of a qualified landowner's election to exclude some or all of the landowner's property pursuant to TWC § 13.2451(b) and 16 TAC § 24.227(i)?
6. Does the applicant possess the financial, managerial, and technical capability to provide continuous and adequate water service? TWC § 13.241(a) and 16 TAC § 24.227(a).
7. Does the applicant possess the capability to provide drinking water that meets the requirements of TWC § 13.241(b)(1) and 16 TAC § 24.227(a)(1)?
8. Does the applicant have access to an adequate supply of water? TWC § 13.241(b)(2)
9. Does the applicant possess a TCEQ-approved system that is capable of meeting TCEQ's design criteria for water treatment plants, TCEQ rules, and the Texas Water Code? 16 TAC § 24.227(a)(1)?
10. Would the requested water service area require construction of a physically separate water system? If so, has the applicant proven that regionalization or consolidation with a retail public utility for water service is not economically feasible? TWC § 13.241(d) and 16 TAC 24.227(b).
11. Is the requested water certificate necessary for the service, accommodation, convenience, or safety of the public? TWC § 13.246(b) and 16 TAC § 24.227(d).

12. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.227(e) weigh in favor of granting the requested water certificate? In answering this issue, please address the following sub-issues:
- a. Is the requested water service area currently receiving adequate water service? TWC § 13.246(c)(1) and 16 § TAC 24.227(e)(1).
  - b. Does the requested water service area need additional water service? TWC § 13.246(c)(2) and 16 § TAC 24.227(e)(2).
    - i. Have any landowners, prospective landowners, tenants, or residents requested water service?
    - ii. Are there economic needs for additional water service?
    - iii. Are there environmental needs for additional water service?
    - iv. Are there written applications or requests for water service?
    - v. Are there reports or market studies demonstrating existing or anticipated growth in the area?
  - c. What is the effect, under TWC § 13.246(c)(3) and 16 TAC § 24.227(e)(3) of granting the requested water amendment on
    - i. The applicant,
    - ii. Landowners in the requested service areas, and
    - iii. Any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested area?
  - d. Is the applicant capable of providing adequate water service, including meeting the standards of the TCEQ and the Commission, taking into consideration the current and projected density and land use of the requested area? TWC § 13.246(c)(4) and 16 TAC § 24.227(e)(4).
  - e. What is the feasibility of obtaining water service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC § 24.227(e)(5).
  - f. Is the applicant financially able to pay for the facilities necessary to provide continuous and adequate water service? TWC § 13.246(c)(6) and 16 TAC § 24.227(e)(6).

- g. Is the applicant financially stable, including, if applicable, its debt-to-equity ratio? TWC § 13.246(c)(6) and 16 TAC § 24.227(e)(6).
  - h. How would environmental integrity be affected, if at all, by granting the requested water certificate? TWC § 13.246(c)(7) and 16 TAC § 24.227(e)(7).
  - i. Is it probable that water service would be improved or costs to consumers in that area would be lowered by granting the requested certificate? TWC § 13.246(c)(8) and 16 TAC § 24.227(e)(8).
  - j. How would the land in the requested area be affected, if at all, by granting the requested certificate? TWC § 13.246(c)(9) and 16 TAC § 24.227(e)(9).
- 13.** Should the Commission require the applicant, pursuant to TWC § 13.246(d) and 16 TAC § 24.227(f), to provide a bond or other financial assurance to ensure that continuous and adequate water service is provided?
- 14.** If applicable, what were the applicant's efforts to:
- a. Extend water service to any economically distressed area, within the meaning of TWC § 15.001, located within the applicant's certified service area; and
  - b. Enforce rules adopted under TWC § 16.343, regarding minimum standards for safe and sanitary water supply? TWC § 13.246(e).

### **III. ISSUES NOT TO BE ADDRESSED**

Staff has not identified any issues that should not be addressed in this docket.

### **IV. THRESHOLD LEGAL/POLICY ISSUES**

Staff has not identified any legal or policy issues that should be briefed for the purposes of a preliminary order.

Date: April 29, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Rashmin J. Asher  
Managing Attorney

/S/ Phillip Lehmann  
Phillip Lehmann  
State Bar No. 24100140  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711  
(512) 936-7385  
(512) 936-7268 (facsimile)  
phillip.lehmann@puc.texas.gov

**DOCKET NO. 51513  
SOAH DOCKET NO. 473-21-2055.WS**

**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 April 29, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/S/ Phillip Lehmann  
Phillip Lehmann