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DOCKET NO. 51738

**PETITION OF SANCTUARY TEXAS, §
LLC TO AMEND AQUA TEXAS, INC.'S §
CERTIFICATE OF CONVENIENCE §
AND NECESSITY IN DENTON §
COUNTY BY EXPEDITED RELEASE §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

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COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

On January 20, 2021, Sanctuary Texas, LLC (Sanctuary) filed a petition for streamlined expedited release of approximately 69.113 acres of land within the boundaries of Aqua Texas, Inc.'s (Aqua Texas) water certificate of convenience and necessity (CCN) number 13201 in Denton County, Texas under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h).

On April 19, 2021, the administrative law judge (ALJ) filed Order No. 3, establishing a deadline for Staff of the Public Utility Commission of Texas (Staff) to file its recommendation on final disposition by May 10, 2021. On May 7, 2021 the ALJ filed Order No. 4, granting Staff's request for an extension to May 17, 2021. Therefore, this pleading is timely filed.

I. RECOMMENDATION ON FINAL DISPOSTION

Staff has reviewed Sanctuary's petition for a streamlined expedited release, and, as detailed in the memorandum of Patricia Garcia of the Infrastructure Division, recommends that the Sanctuary revise its mapping to leave the 100 foot by 100 foot section that removes the water meter from the area to be released and to remove the 10 foot by 570 foot strip that runs over the water line located on the property. The result would be that the water line remains certificated but that the land above the line would be decertificated.

Staff's recommendation is made so that the mapping clearly defines an area that is not receiving water service, and therefore, is eligible for streamlined expedited release. In its response to the petition, Aqua Texas asserts the following:

(1) Aqua has 2,930 linear feet of an active four-inch water main line located within the Property; (2) Aqua has a residential 5 / 8 " x 3 / 4 " meter located within the Property that until January 29 , 2020 was used to actively supply water to a billed residential connection located at 601 Garza Ln, Little Elm, TX 75068-3509 and remains on standby today; and (3) 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 No. 13201 area that includes the Property...¹

The Third Court of Appeals has held that “it is important to consider whether the facilities and lines are ‘committed’ to the tract seeking expedited release or ‘used’ to provide water to that tract.”² It is clear that the water line and meter are located on the tract and were previously used to provide service to a consuming facility with a service address of 601 Garza Lane, Little Elm, Texas 75068. It also appears that the consuming facility is located on the property owned by Sanctuary but has been removed from the area for which release is requested. What is not entirely clear from the filings in this docket, is whether the consuming facility is located within Aqua Texas’s CCN No. 13201.³

The map provided by Aqua Texas shows the location of the water meter and water line, but not the consuming facility,⁴ and the affidavit of Darryl Waldock states: “...the Petitioner appears to have carved out a small part of the 70.149 acres...[t]hat area is not within Aqua’s CCN No. 13201 and appears to be the same area in which a home is located that is connected to Aqua’s meter within the Property.”⁵ As far as Staff can tell, the information submitted by Sanctuary also has not included a map that clearly shows where the consuming facility associated with the water meter and line at issue in this proceeding is located. Therefore, Staff’s recommendation is based on the understanding that the consuming facility associated with the 601 Garza Lane service address is not within the area for which release has been requested and focuses on how to adjust the mapping to follow recent Commission precedent such that Staff can review the revised mapping and submit a subsequent recommendation that the petition be approved.

¹ Aqua Texas, Inc.’s Response to the Petition of the Sanctuary Texas, LLC for Streamlined Expedited Release at 5 (May 3, 2021) (Aqua Texas Response).

² *Tex Gen Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin, 2014, pet denied).

³ If the consuming facility with a service address of 601 Garza Lane, Little Elm, Texas 75068 is not located within Aqua Texas’s CCN No. 13201, then Aqua Texas was not required to serve this property under 16 TAC § 24.157(a)(4), which permits a denial of service if a service applicant’s primary point of use is outside a utility’s certificated service area.

⁴ Aqua Texas Response, Exhibit A at Attachment 1.

⁵ *Id.*, Exhibit A at 1-2.

A. Water meters and the residences or other consuming facilities they serve must be removed from the area to be decertificated.

The Commission has held that a water meter and the consuming facility it serves cannot be located in the area for which streamlined expedited release is requested.⁶ In Docket No. 50404, the CCN holder owned and operated infrastructure on or in close proximity to the petitioner's entire acreage.⁷ The petitioners requested streamlined expedited release of a portion of their tract of land from the certificated service area. After consideration at the open meeting held on April 7, 2021, the Commission concluded that a water meter was still located in the area to be released even though the residence served by the water meter was outside of the requested area.⁸ The petition was remanded to allow the petitioners "the opportunity to amend the petition and address water meter 1528, along with any other relevant water meters, and any residences served by any of those meters that are on the tract of land for which release is sought."⁹ In effect, the Commission allowed the petitioners the opportunity to cure the defect in the petition by removing the water meter and the residence that water meter was used to serve from the tract of land to be released.

B. The Commission may decertificate the land and leave the underlying water lines certificated.

In Docket No. 51114, the Commission granted the release of the petitioner's property, but held that the water lines running below the property would remain certificated.¹⁰ In that case, the CCN holder had an eight-inch water line that ran across the western portion of the tract of land for about 1,000 feet¹¹. The Commission stated the following:

[t]he owner of a tract of land that meets certain conditions may petition to release the tract of land from the certificated area of a retail public utility that holds a certificate of convenience and necessity. If the tract of land is

⁶ *Petition of Sterling Deason O'Donnell and Darwin Deason, Co-Trustees of the Sterling Deason O'Donnell DD Trust Under Agreement of the DD 2014-B Grantor Retained Annuity Trust to Amend Marilee Special Utility District's Certificate of Convenience and Necessity in Collin County by Expedited Release*, Docket No. 50404, Order Remanding to Docket Management at 2 (Apr. 7, 2021).

⁷ *Id.*, Marilee Special Utility District's Objection to Commission Staff's Recommendation on Final Disposition, Exhibit A (Jul. 2, 2020).

⁸ *Id.*, Order Remanding to Docket Management at 1.

⁹ *Id.*, Order Remanding to Docket Management at 2.

¹⁰ *Petition of Imperial Heights, Ltd. to Amend Aqua Texas, Inc.'s Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 51114, Order at Ordering Paragraph Nos. 1-2 (Dec. 17, 2020).

¹¹ *Id.*, Order at Finding of Fact No. 23.

not receiving utility service, the landowner is entitled to the requested release. However, the owner has no right to petition for decertification of, and the Commission has no authority to decertify, any facilities or equipment owned and operated by the CCN holder to provide retail water service or retail sewer service through the streamlined-expedited-release process under Texas Water Code 13.2541. Consequently, if the CCN holder has any facilities or equipment that lay on or under the tract of land subject to the petition for streamlined-expedited-release, such facilities and equipment remain certificated to the CCN holder even though the tract of land is release from the certificated service area.¹²

The Commission released the tract of land in the petition but did not decertify any of the CCN holder's equipment or facilities that lay on or under the petitioner's tract of land.¹³

C. Analysis

The mapping supporting Sanctuary's petition should be revised to more accurately reflect the Commission's orders in Docket Nos. 50404 and 51114. As filed, the Sanctuary's petition has removed both the water meter that was used to serve a house located at 601 Garza Lane, Little Elm, Texas 75068, and the water line running to the meter from the area for which release is requested. As in Docket No. 51114, Staff proposes that the water line remain certificated and that the land above the line be released. As in Docket No. 50404, Staff recommends the water meter be removed from the area for which release is requested, which is already reflected in the Sanctuary's mapping.

As an alternative, Staff recommends that it would be appropriate to leave the water meter certificated and decertify only the land on which the water meter sits.¹⁴ Under TWC 13.242(a):

...a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes *the area in which the consuming facility is located*.¹⁵

¹² *Id.*, Order at 1.

¹³ *Id.*, Order at Conclusion of Law No. 15 and Ordering Paragraph Nos. 1-2.

¹⁴ Staff is aware that a similar petition filed by Sanctuary was previously denied because of the presence of this water meter in the area to be released and offers this only as a possible alternative since the precedent regarding streamlined expedited release is continually evolving. *Petition of the Sanctuary Texas, LLC to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 50405, Order at Findings of Fact Nos. 21-25 (Oct. 16, 2020).

¹⁵ TWC § 12.242(a) (emphasis added); *see also*, 24.247(a) ("Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to

Further, a legitimate reason for denial of service arises when the applicant's primary point of use is outside a utility's CCN.¹⁶ The term point of use is defined as "[t]he primary service connection point *where water is used* or sewage is generated."¹⁷

Both the statute and the rule reference the location of the consuming facility as determinative when addressing questions about when a CCN is necessary before providing service or when a utility that holds a CCN may deny service. Accordingly, the fact that the building at 106 Garza Lane, Little Elm, Texas 75068, which in this case is the consuming facility, has been removed from the area to be decertificated should be sufficient to support a finding that the property is not receiving service. In addition, leaving the water meter certificated and decertificating the land below more closely mirrors the treatment of the water lines that run under a property and the land above approved by the Commission in Docket No. 51114.

II. CONCLUSION

Staff respectfully requests the issuance of an order in accordance with the foregoing recommendation.

provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service..").

¹⁶ 16 TAC § 24.157(a)(4).

¹⁷ 16 TAC § 24.3(25) (emphasis added).

Dated: May 17, 2021

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 May 17, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/S/ Phillip Lehmann
Phillip Lehmann

Public Utility Commission of Texas

Memorandum

TO: Phillip Lehmann, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: May 17, 2021

RE: Docket No. 51738 – *Petition of Sanctuary Texas, LLC to Amend Aqua Texas Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release*

On January 20, 2021, Sanctuary Texas, LLC (Sanctuary) filed a petition for streamlined expedited release (SER) from Aqua Texas Inc.'s (Aqua Texas) water certificate of convenience and necessity (CCN) No. 13201 in Denton County, under Texas Water Code (TWC) § 13.2541(b) and 16 Texas Administrative Code (TAC) § 24.245(h). Sanctuary asserts that the land is at least 25 contiguous acres, is not receiving water service, and is located in Denton County, which is a qualifying county.

Sanctuary submitted a sworn affidavit attesting that the property was not receiving water service from Aqua Texas and a warranty deed confirming Sanctuary's ownership of the tract of land. In addition, Sanctuary submitted sufficient maps and digital data for determining the location of the requested release area within Aqua Texas's certificated service area.

On May 3, 2021, Aqua Texas filed a Response to Petition of the Sanctuary Texas, LLC for Streamlined Expedited Release. In the response Aqua Texas stated that the Petitioner is in fact receiving water service and is not eligible for SER, as Aqua Texas has a water main line and meter located within the property. Darryl Waldock, Aqua Texas's Area Manager-North Texas, submitted an affidavit attesting to the following: (1) Aqua Texas has 2,930 linear feet of an active four-inch water main line located within the Property; (2) Aqua Texas has a residential 5/8" x 3/4" meter located within the Property that until January 29, 2020 was used to actively supply water to a billed residential connection located at 601 Garza Lane, Little Elm, TX 75068-3509 and remains on standby today; and (3) Aqua Texas has other facilities immediately adjacent to the Property. A map confirming the location of the water main and a previous bill for water service provided to 601 Garza Lane was submitted with the response.

In its petition, Sanctuary proposes to exclude from the released property the land on which the house located at 601 Garza Lane, Little Elm, TX 75068-3509 sits. Sanctuary's mapping of the area requested for release also excludes a 100 foot by 100 foot section that includes the water

meter for the house and a 10 foot wide by 570 foot long strip that runs over and around the water line that connects to the water meter.

Sanctuary's proposal to exclude the strip of land running over and around the water line installed to serve the house at 601 Garza Lane is unnecessary and could cause confusion in the future about which utility is authorized to provide service as new structures needing water service are built on the property. In addition, the Commission has left water lines certificated, while decertificating the land above, in previous cases like Docket No. 51114.¹ Therefore, I recommend that Sanctuary revise its mapping to restore the 10 foot by 570 foot strip such that the final map prepared by Staff reflect that the water line remains certificated and only the land above the water line is decertificated. Making this change and leaving the 100 foot by 100 foot section that removes the water meter closely follows current Commission decisions.

As an alternative, I recommend that the water meter, like the water line, is eligible to remain certificated but that the land on which it sits should be decertificated. TWC § 13.242(a) ties the right to serve granted by a CCN to the location of a "consuming facility" rather than the location of the facilities used to serve a consuming facility such as a water line and meter. The Sanctuary's mapping already excludes the land on which the house at 601 Garza Lane, Little Elm, TX 75068-3509 is located. Therefore, the consuming facility that has been receiving water service from Aqua Texas, which is central to the TWC's provision on the right to serve, is not located in the area to be released. I recommend that the Commission reconsider the requirement to remove the land associated with a water meter that serves a consuming facility from an area to be released given that TWC § 13.242(a) ties the right to serve granted by a CCN to the location of a "consuming facility" and instead allows for the decertification of the land on which the water meter sits, while leaving the meter itself certificated, similar to how water lines have been treated.

¹ *Petition of Imperial Heights, Ltd. to Amend Aqua Texas, Inc 's Certificates of Convenience and Necessity in Harris County by Expedited Release*, Docket No. 51114, Order at Ordering Paragraph Nos. 1-2 (Dec. 17, 2020).