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

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PUBLIC UTILITY COMMISSION
OF TEXAS

AQUA TEXAS, INC.'S EXCEPTIONS TO PROPOSED ORDER

Aqua Texas, Inc. (Aqua or Intervenor) files these exceptions to the Proposed Order that would grant The Sanctuary Texas, LLC's (Petitioner) requested streamlined expedited release (SER) from Aqua's water CCN No. 13201 in this docket for Petitioner's property (Property) and which the Honorable Commission Administrative Law Judge (ALJ) distributed to the Parties and Commissioners on June 24, 2021 (Proposed Order).¹ In support, Aqua shows as follows.

I. EXCEPTIONS

Aqua has clearly informed the Commission (1) that there are no differences between Petitioner's SER request here and that denied by the Commission in Docket No. 50405² that warrant a different outcome; and (2) the Property is receiving water service from Aqua in various ways, including via facilities *within* the Property tract as proposed Finding of Fact No. 17 inexplicably disregards, describing Aqua's facilities as only in "proximity" to the tract without mention of Aqua's facilities *within* the tract in line with Aqua's evidence.³ Further, the Proposed Order would grant Petitioner's requested SER over Aqua's objections while omitting any discussion about Docket No. 50405 involving the same Petitioner, CCN territory, and relevant facts, or implementation of the SER standards recently announced by the Commissioners during

¹ Memorandum from ALJ to Commission Counsel and Parties with Proposed Order (Jun. 24, 2021).

² *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 (Oct. 16, 2020).

³ *Compare* Memorandum from ALJ to Commission Counsel and Parties with Proposed Order (Jun. 24, 2021), *with* Aqua's Response to Petition (May 3, 2021), Aqua's Responses to Commission Staff's First Request for Information (May 10, 2021), and Aqua's Response to Commission Staff's Recommendation on Final Disposition (May 24, 2021).

their May 21, 2021 open meeting.⁴ Aqua excepts to the Proposed Order in its entirety and incorporates its prior arguments against the release here.

Aqua specifically excepts to several findings of fact as follows. Finding of Fact No. 17 should reflect that Aqua's evidence provided by Mr. Darryl Waldock shows facilities *within* the Property *and* in proximity to it, not just in proximity to the tract. Aqua's lines and meter reflected on Mr. Waldock's map clearly show the locations of those facilities within the Property tract sought for SER. Similarly, Aqua excepts to Findings of Fact Nos. 24 through 28 related to Aqua's service to the Property as they are not factually correct and conflict with the evidence presented to the Commission showing that the Property receives water service from Aqua.

Aqua also excepts to proposed Conclusion of Law Nos. 9 and 10 because they misapply the law cited in proposed Conclusion of Law No. 9 in support of release; the cited provisions and court decision in conjunction with the Commission's recently announced standards support denial as the Commission has discretion to decide those standards within the applicable law and the standards expressed should lead to denial. Additionally, Aqua excepts to the absence of any consideration of Docket No. 50405 and res judicata in the context of this case. The decision here should be denial of the Petition as it was in Docket No. 50405 just last Fall. There have been no changes in the law since that decision within the PUC rules or otherwise—except for the discussion by the Commissioners during their May 21, 2021 open meeting.⁵ Finally, if the Proposed Order

⁴ Compare Memorandum from ALJ to Commission Counsel and Parties with Proposed Order (Jun. 24, 2021), with *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 (Oct. 16, 2020) and *Petition of Carnegie Development, LLC to Amend James A. Dyche d/b/a Crest Water Company Certificate of Convenience and Necessity in Johnson County by Streamlined Expedited Release*, Docket No. 51352, Petition (Sep. 21, 2020) and May 21, 2021 Open Meeting Discussion of Item No. 34 at 45:15 – 47:17 (http://www.adminmonitor.com/tx/puct/open_meeting/20210521/, last checked July 6, 2021); *see also* Aqua's Response to Commission Staff's Recommendation on Final Disposition (May 24, 2021).

⁵ *Id.*

is adopted, Aqua would except to Conclusion of Law No. 13 because the Commission would be ignoring the broad definition of “service” found both in the Texas Water Code and its rules.⁶

Finally, Aqua excepts to proposed Ordering Paragraphs 1 and 3 through 8 as they would unlawfully approve the release of the Property from Aqua’s water CCN service area. While Aqua does not except to Ordering Paragraph No. 2, this order to leave Aqua’s facilities within the Property certificated confirms the Property receives service from Aqua and should lead to denial.

II. CONCLUSION AND PRAYER

Texas CCN holders are fatigued by the SER process, and the Commission should not remove CCN areas when the facts do not justify release. Yet, granting SER seems to have become an automatic reflex for the Commission regardless of the facts. This case presents facts that should preclude SER, particularly since the Commission just decided an identical SER request by the same Petitioner for the same tract in Aqua’s favor last year. Allowing Petitioners to gerrymander their request post-filing or leaving facilities certificated (which the proposed CCN map included with the order does not even show) does not help the situation.⁷ Further, if the Commission is trying to exclude Aqua’s facilities from the released area as opposed to generally leaving Aqua’s facilities certificated, the maps attached to the Proposed Order do not accurately implement that effort.⁸ Administering the SER process in this manner makes it extremely difficult for retail public utilities to plan service for developing areas, undermines regionalization efforts, and is unjust.

Intervenor Aqua Texas, Inc. respectfully requests that the Commission modify the Proposed Order in line with the exceptions presented herein and consistent with recent standards announced by the Commissioners, find that the Petition does not meet the streamlined expedited

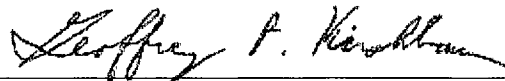
⁶ TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

⁷ If the intent here was to remove the release area surrounding Aqua’s facilities from the request, the proposed map attached to the Proposed Order does not do that accurately either. *See* Aqua’s Response to Petition (May 3, 2021), Affidavit of Darryl Waldock, Attachment 1 (showing facilities extending through the northeast quadrant of the Property and not just from the south into the middle where Aqua’s meter is located),

⁸ *Id.*

release requirements under Texas Water Code § 13.2541 or 16 TAC § 24.245(l), find the Petition cannot be granted because of the Commission's prior decision in Docket No. 50405, and deny the Petition. In the alternative, if the Commission removes the Property from Intervenor's CCN, the Commission must find that Intervenor is entitled to just and adequate compensation in an amount to be determined by the Commission before any other retail public utility may in any way render retail water or sewer service directly or indirectly to the public in the decertified area.

Respectfully submitted,

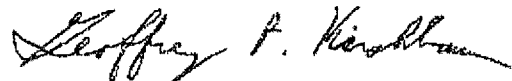
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ATTORNEY FOR AQUA TEXAS, INC.

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 July 8, 2021, in accordance with the Orders Suspending Rules filed in Project No. 50664.


Geoffrey P. Kirshbaum