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

AQUA TEXAS, INC.'S MOTION FOR RECONSIDERATION

Aqua Texas, Inc. (Aqua or Intervenor) files this Motion for Reconsideration in response to the Public Utility Commission of Texas (Commission) Order (Order) issued July 30, 2021, granting The Sanctuary Texas, LLC's (Petitioner) streamlined expedited release (SER) from Aqua's water certificate of convenience and necessity (CCN) No. 13201 for certain property in Denton County (Property).¹ This motion is timely filed.² In support, Aqua shows as follows.

I. MOTION FOR RECONSIDERATION

The Commission should reconsider and reverse its Order, which grants Petitioner's requested SER over the majority of the requested Aqua CCN area despite (1) there being no material differences between Petitioner's SER request here and that denied by the Commission in Docket No. 50405;³ and (2) the fact that the Property receives water service from Aqua in various ways, including via facilities *within* the Property tract. The Order leaves those facilities certificated in part and yet omitted from the decertification area in part through post-filing gerrymandering. Further, the Order omits any discussion about Docket No. 50405, and does not implement the SER standards recently announced by the Commissioners during their May 21, 2021, open meeting.⁴

¹ Order (Jul. 30, 2021).

² 16 TAC § 22.123(b)(2).

³ *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).

⁴ *Compare Order* (Jul. 30, 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

The Order immediately prejudices a substantial or material right of Aqua and materially affects the course of this proceeding as it effects the removal of the majority of the Aqua CCN area requested and begins a proceeding to determine the amount of compensation to be awarded to Aqua for the release.⁵ The Order is unjustified, improper, and should be reversed.⁶ The Commission should reconsider the Order and deny the Petition.

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, Findings of Fact Nos. 24 through 25 and 27 through 29 related to Aqua's service to the Property are not factually correct and conflict with the evidence presented to the Commission showing that the Property receives water service from Aqua. Finding of Fact No. 26 omits that the lines also serve the Property.

Conclusion of Law Nos. 9 and 10 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. Regardless, the Commission is engaging in improper ad hoc SER rulemaking in a situation where there is no need.⁷ The Commission has had jurisdiction over SER for seven years now and continues to set evolving standards for the same CCN issue without a focused rulemaking. This is particularly problematic in the SER context because CCN holders are given no evidentiary hearing rights under the Texas Administrative Procedures Act.

(http://www.adminmonitor.com/tx/puct/open_meeting/20210521/, last checked August 6, 2021); *see also* Aqua's Response to Commission Staff's Recommendation on Final Disposition (May 24, 2021).

⁵ 16 TAC 22.123(b)(1).

⁶ 16 TAC § 22.123(b)(3).

⁷ *See Texas State Bd. of Pharm. v. Witcher*, 447 S.W.3d 520, 535-544 (Tex. App.—Austin 2014, pet denied).

Additionally, the Order fails to consider the Commission’s prior order in 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.⁸ Further, Conclusion of Law No. 13 ignores the broad definition of “service” found both in the Texas Water Code and its rules.⁹

Finally, Ordering Paragraphs 1 and 3 through 8 unlawfully approve the release of the Property from Aqua’s water CCN service area. The problem with Ordering Paragraph No. 2 in the context of the remaining Ordering Paragraphs is that it leaves Aqua facilities certificated within land that is taken away from Aqua’s service territory. This means a new water provider and development will ultimately appear and operate on property that contains Aqua facilities. This is likely to create operational and safety problems for Aqua’s facilities and customers by inviting cross-bores, easement encroachments, and other interference into the area. If the Commission intends to incorporate this approach (decertifying the land while retaining the certification on facilities located on the land) into SER standard policy without rulemaking or formal notice to CCN holders,¹⁰ Aqua would prefer it direct SER petitioners to work with CCN holders and pay for removal of their facilities if desired. But Aqua implores the Commission to reconsider its approach which puts invested capital facilities throughout Aqua’s CCN areas at risk for similar treatment. The Commission’s Order should have found that the existence of facilities within the Property means the Property receives service from Aqua warranting Petition denial. Leaving uncertificated areas ripe for new development by another water provider on top of Aqua facilities

⁸ *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 August 6, 2021).

⁹ TWC § 13.002(21); see also 16 TAC § 24.3(33) (same definition).

¹⁰ See *Texas State Bd. of Pharm. v. Witcher*, 447 S.W.3d 520, 535-544 (Tex. App.—Austin 2014, pet denied).

is not a compromise of positions or a benefit to the decertified CCN holder or its customers. The Commission should reverse the Order and deny the Petition.

II. CONCLUSION AND PRAYER

The Commission should not remove CCN areas when the facts do not justify release and should provide CCN holders a clear standard for preventing release through formal rulemaking. Yet, granting SER petitions through evolving standards seems to have become automatic at the Commission. 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 a gerrymandered CCN release post-filing or leaving facilities certificated within removed CCN land (which the proposed CCN map included with the order does not even show) does not help the situation.¹¹ 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 Order map does not accurately implement that effort because it leaves a stretch of line to the northeast of the gerrymandered area within the removed land.¹² 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.

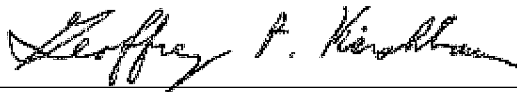
For all these reasons, the Order is unjustified and improper. Intervenor Aqua Texas, Inc. respectfully requests that the Commission: (1) grant reconsideration; (2) reverse its Order in line with the discussion herein and consistent with recent standards announced by the Commissioners; (3) find that the Petition does not meet the streamlined expedited release requirements under Texas

¹¹ 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),

¹² *Id.*

Water Code § 13.2541 or 16 TAC § 24.245(h)(1); (4) find the Petition cannot be granted because of the Commission's prior decision in Docket No. 50405; and (5) deny the Petition.

Respectfully submitted,

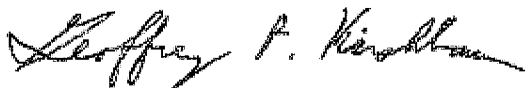
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ATTORNEY FOR AQUA TEXAS, INC.

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 August 6, 2021, in accordance with the Orders Suspending Rules filed in Project No. 50664.



Geoffrey P. Kirshbaum