



Control Number: 51738



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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 §**  
**§**

**BEFORE THE PUBLIC UTILITY**

**COMMISSION OF TEXAS**

**AQUA TEXAS, INC.'S MOTION TO INTERVENE, INITIAL COMMENTS,  
AND REQUEST FOR RESPONSE DEADLINE**

Aqua Texas, Inc. (Aqua) files this Motion to Intervene, Initial Comments, and Request for Response Deadline in relation to The Sanctuary Texas, LLC's (Petitioner) Petition for an Expedited Release that initiated this docket (Petition).<sup>1</sup> The petition seeks to avail itself of the Commission's expedited release process to extract 69.133 acres of property (Property) from a portion of the retail water utility service area Aqua serves under CCN No. 13201 in Denton County, Texas. However, the Commission should not find the Petition administratively complete and the Commission should not set a deadline requiring a substantive response to the Petition from Aqua unless the Commission disagrees. The Commission just denied a similar petition in October 2020.

In support, Aqua would show as follows.

1. The name address, and telephone number of the movant is:

Aqua Texas, Inc.  
Robert L. Laughman  
President  
1106 Clayton Lane, Suite 400W  
Austin, Texas 78723  
(512) 990-4400  
rllaughman@aquaamerica.com

<sup>1</sup> For purposes of this proceeding, the Petition is considered the Application as defined in the Commission's Procedural Rules under 16 TAC § 22.2(6).

2. The name, address, and telephone number of Aqua's authorized representative is:

Geoffrey P. Kirshbaum  
TERRILL & WALDROP  
810 West 10th Street  
Austin, Texas 78701  
(512) 474-9100  
(512) 474-9888 (fax)  
gkirshbaum@terryillwaldrop.com

Service of all pleadings and other documents should be made upon Aqua's authorized representatives.

3. Aqua is an investor-owned utility with water and wastewater facilities throughout the state of Texas. Aqua has affiliate utility companies with similar facilities operating elsewhere in the state of Texas. Aqua holds water CCN No. 13201 for its North Texas Region, which includes Denton County and the Property.

4. On January 20, 2021, Petitioner submitted the Petition along with an affidavit in support of same.

5. Petitioner attests that it mailed a copy of the Petition to Aqua via certified mail.

6. Order No. 1 set February 25, 2021 as the "Deadline for response from Aqua Texas." Order No. 1 also states, "Additional deadlines will be established if the petition is deemed administratively complete." Thus, this Motion to Intervene is timely filed.

#### **Motion to Intervene**

7. Aqua seeks to participate in this proceeding as an Intervenor.<sup>2</sup> The Commission's rules<sup>3</sup> define who can intervene:

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<sup>2</sup> 16 TAC § 24.3(31).

<sup>3</sup> 16 TAC § 22.103(b).

A person has standing to intervene if that person:

- (1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or
- (2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.

8. Aqua has a right to participate in this proceeding. The Petition is seeking a streamlined expedited release from Aqua's CCN. Commission rules concerning streamlined expedited release petitions specifically provide that the "CCN holder may file a response to the petition within a timeframe specified by the presiding officer."<sup>4</sup> Further, Aqua has a justiciable interest that may be adversely affected by the outcome of this proceeding and is an "affected person" in that it is a "retail public utility affected by [the requested] action of the regulatory authority."<sup>5</sup> The Petition requests the Commission decertify the portion of Aqua water CCN No. 13201 in Denton County that includes the Property, thereby depriving Aqua of its exclusive right to provide retail water utility service to this particular area.

9. Because the Commission rules permit a response by the CCN holder in response to the type of expedited release petition filed in this docket, because Aqua is an affected person with respect to the Petition, and because Aqua has a justiciable interest which may be adversely affected by the outcome of the proceeding, the Commission should grant Aqua party status as an Intervenor.

10. Aqua hereby moves to intervene in this docket and for party status as an Intervenor.

#### **Initial Comments**

11. There appears to be no facts expressed in the Petition relevant to Aqua's service to the Property that are different from those presented in Petitioner's nearly identical SER petition

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<sup>4</sup> 16 TAC § 24.245(h)(6).

<sup>5</sup> TEX. WATER CODE §13.002(1); 16 TAC § 24.3(5).

that the Commission denied just a few months ago.<sup>6</sup> Aqua continues to have facilities and the same meter located within the Property by which it receives water service from Aqua. This should lead the Commission to conclude the Petition should not be deemed administratively complete and reject it outright.

12. Additionally, the Petition appears to again request release of acreage that is not included within Aqua's CCN. A similar issue with the previous Petition was reflected in the final Order.<sup>7</sup> Petitioner should be required to clarify the acreage of release requested, but, regardless, should ultimately be denied that request.

13. In sum, the Petition fails to acknowledge that the Property is receiving service from Aqua, the Commission's previous findings on the same SER request, and omits basic information that would allow Aqua and the Commission to be notified concerning precisely what specific land Petitioner seeks to remove from Aqua's CCN. Aqua will further address substantive issues with the Petition if it is ultimately deemed administratively complete. However, it is premature to require Aqua to address those issues given Petitioner's administratively incomplete filing. Respectfully, Aqua requests the Commission not deem the Petition administratively complete and, instead, reject it.

#### **Request for Response Deadline**

14. Aqua substantively opposes the Petition and desires to file a substantive response as permitted by 16 TAC § 24.245(h)(6) if the Petition is deemed administratively complete, but not before. The Commission does not consider Applications, such as the Petition, "filed until the

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<sup>6</sup> Compare *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, Petition (Jan. 2, 2020) and Order (Oct. 16, 2020), with *Petition of Sanctuary Texas, LLC to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release*, Docket No. 51738, Petition (Jan. 20, 2021).

<sup>7</sup> See *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 3, Finding of Fact No. 2 (Oct. 16, 2020) (referencing a 59-acre portion tract within the 70-acre tract sought for release).

commission makes a determination that the application is administratively complete.”<sup>8</sup> Aqua does not know what Commission Staff’s recommendation on the Petition will be or if the Commission will ever deem the Petition administratively complete. Aqua submits the Petition should not be deemed administratively complete. The Commission should only seek a substantive response from Aqua if the Commission disagrees and finds the Petition administratively complete over Aqua’s objections. In that event, Aqua respectfully requests the Commission establish a reasonable deadline for Aqua to substantively respond to the Petition after the Commission’s finding, preferably no sooner than 20 days thereafter in accord with 16 TAC § 24.245(h)(6).

**Conclusion and Prayer**

Aqua respectfully requests the presiding Honorable Administrative Law Judge issue an order that grants Aqua’s Motion to Intervene and either: (1) identifies deficiencies in the Petition and concludes that it is not administratively complete, or (2) sets a deadline for Aqua’s Petition response consistent with the request herein if the Petition is found administratively complete.

Respectfully submitted,

By: 

Geoffrey P. Kirshbaum  
State Bar No. 24029665  
TERRILL & WALDROP  
810 W. 10<sup>th</sup> Street  
Austin, Texas 78701  
(512) 474-9100  
(512) 474-9888 (fax)  
gkirshbaum@terrillwaldrop.com

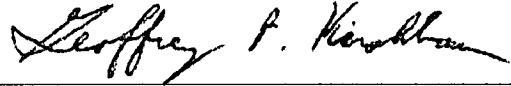
**ATTORNEYS FOR AQUA TEXAS, INC.**

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<sup>8</sup> 16 TAC §24.8(d) (applicable to applications under subchapter H of Chapter 24, which include all CCN applications).

### **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 February 5, 2021, in accordance with the Orders Suspending Rules issued in Project No. 50664.

A handwritten signature in black ink, reading "Geoffrey P. Kirshbaum". The signature is written in a cursive style with a horizontal line underneath it.

Geoffrey P. Kirshbaum