

Control Number: 51842



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PETITION OF BERNADINE C. KING, §
TRUSTEE OF THE HINSVARK §
FAMILY TRUST TO AMEND AQUA §
TEXAS, INC'S CERTIFICATE OF §
CONVENIENCE AND NECESSITY §
IN BASTROP COUNTY BY §
EXPEDITED RELEASE §

BEFORE THE PUBLIC UTILITY

COMMISSION OF TEXAS

PUBLIC UTILITY COMMISSION
CLERK

PETITIONER'S REPLY TO CCN HOLDER'S RESPONSE

The Hinsvark Family Trust, the petitioner, files this reply to the response from Aqua Texas, Inc, the CCN holder. Order No. 3 sets a deadline of June 28 for the Petitioner to reply to the CCN holder's response, so this reply is timely.

I. AQUA DOESN'T KNOW WHERE THE HINSVARK TRACT IS LOCATED

Aqua doesn't know where the Hinsvark Tract is located. The map attached to Aqua's pleading is wrong. The Hinsvark Tract is located more than fifteen miles south of where Aqua states that the Hinsvark Tract is located. Aqua's pleading and supporting affidavit alleges prior planning, discussions, and actions relating to a tract fifteen miles away is irrelevant to the Hinsvark Tract. Attached is the affidavit of Ronnie Moore, P.E. refuting Aqua's allegations as to the location of the Hinsvark Tract and confirming that Aqua has never provided sewer service to the Hinsvark Tract.

II. "NO TANGIBLE COMMITMENT TO SERVE"

Granting this petition is consistent with the Commissioner's discussion of Docket No. 51352 on May 21, 2021, contrary to CCN holder's response. The CCN holder does not allege any "tangible commitment" serve the Hinsvark Tract. Aqua has only moved paperwork for an area that is fifteen

15

miles away from the Hinsvark Tract and has nothing to do with the Hinsvark Tract.

III. AQUA'S THREE EXAMPLES OF SERVICE ARE JUST PAPER SHUFFLING

Aqua's three examples alleging service to the Hinsvark Tract are just paper shuffling. First, regarding the Briar Creek WWTP, it is located eight miles northwest of the Property, not southeast (the affiant is confused about the location of the Property, thinking it's the tract near Coupland). The distance makes a physical extension unreasonable as to time and cost. The alleged "hold and haul" alternative is not even recognized, or even allowed, by the CCN holder's sewer tariff.¹ Second, spending money to acquire and hold discharge permits intended to serve other tracts and areas, is not the "tangible commitment" referenced by the commissioners on May 21, but is more comparable to "moving paperwork" that isn't enough. Third, the CCN holder is required to maintain an office in the state and maintains an office in Austin for other reasons; certainly not to serve the Property.

IV. A CCN IS NOT A PROPERTY RIGHT

A CCN is not a property right. Aqua's argument that a CCN has a value for which it should be compensated presumes a CCN is a property right, which it isn't. The undersigned was counsel for Kempner Water Supply Corporation in Docket No. 46140 which was a proceeding to determine whether another utility had to compensate Kempner before the utility could serve a tract that had been removed from Kempner's CCN. Kempner's direct evidence showed the planning to serve the area and tracts, water right acquisition to serve the area and tract, and facilities available to serve the tract of land. Kempner was denied compensation, based, at least in part upon the brief by Commission staff, stating in part:

¹ See Docket No. 44176.

Kempner Water Supply Corporation (Kempner WSC) did not construct specific infrastructure to serve the decertified area, did not have specific water distribution facilities in the decertified area, and the extra capacity built into Kempner WSC's infrastructure is to address general, unknown growth in its service area, not for specific, known growth in the decertified area. Additionally, Kempner WSC did not have other facilities within 1,000 feet of the decertified area.²

Kempner also sought compensation for the loss of revenue from the loss of the CCN to serve the area in issue. The commission staff told the Administrative Law Judge:

Kempner WSC's lost economic opportunity, which represents revenues that would have been collected by Kempner WSC had it served the decertified area, is not "property" under the Texas Water Code. "CCNs [certificates of convenience and necessity] expressly do not confer property rights." A certificate of convenience and necessity only confers the exclusive right to serve a certificated service area. This exclusive right "is not a vested property right entitled to due-process protection."

If the commission applies the same criteria to the CCN holder in this proceeding as it did in Docket No. 46140, the CCN holder is not entitled to compensation.

Aqua certainly is not entitled to attorney fees to draft a response that alleges service to another tract, far distant from the Hinsvark Tract.

V. THE PETITION SHOULD BE GRANTED

The evidence submitted by the Petitioner, and the CCN holder's failure to refute the evidence shows that the petition should be granted because:

1. The tract of land is not receiving actual sewer service from Aqua.

² See Docket No. 46140, Filing no. 49, Commission Staff's Initial Brief

2. There are no sewer connections on the tract of land.
3. There is no wastewater treatment plant located on the tract of land and there has never been a permit authorizing a wastewater treatment plant on the tract of land.
4. The petitioner has never paid any fees or charges to Aqua to initiate or maintain sewer service and do not have an account with Aqua for sewer service.
5. Aqua has not committed or dedicated any facilities or lines to the tract of land for sewer service.
6. Aqua has no facilities or lines that provide sewer service to the tract of land.
7. Aqua has not performed any acts for or supplied anything to the tract of land.

The attached affidavit of Ronnie Moore, PE, refutes Aqua's allegations to the contrary and supplements the initial affidavit by Robert Gilliland that the Hinsvark Tract should be removed from Aqua's sewer CCN.

PRAYER

The Hinsvark Family Trust requests that its petition be granted and that Aqua be denied any of its requested relief.

Respectfully submitted,
DAVIDSON, TROILO, REAM & GARZA, PC

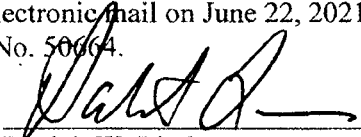
By: 

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ATTORNEYS FOR PETITIONER

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 June 22, 2021 in accordance with the Order Suspending Rules, issued in Project No. 50064.



Patrick W. Lindner

PUC DOCKET No. 51842

PETITION BY BERNADINE C KING,	§	
TRUSTEE OF THE HINSVARK	§	
FAMILY TRUST PURSUANT	§	PUBLIC UTILITY COMMISSION
TO TEXAS WATER CODE	§	OF TEXAS
SECTION 13.2541	§	

AFFIDAVIT OF RONNIE MOORE, IN REPLY TO THE RESPONSE FILED BY AQUA TEXAS, INC

STATE OF TEXAS §
 §
COUNTY OF BASTROP §

BEFORE ME, the undersigned notary, personally appeared Ronnie Moore, the affiant, a person who is known to me. After administering an oath, the affiant testified that:

1. "My name is Ronnie Moore. I am over the age of eighteen years, of sound mind, and am capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct

2. I am a professional engineer licensed in the State of Texas. I am a senior engineer with the firm of Carlson, Brigrance & Doering, Inc

3. The supplemental maps and GIS information filed in this proceeding were prepared under my supervision and reviewed and approved by me.

4. I am personally familiar with the location of the Hinsvark Tract, being the former county engineer for Bastrop County and I have been on and observed the Hinsvark Tract.


5. I have reviewed the response to the petition filed on behalf of Aqua Texas, Inc., the CCN holder. The Google Earth image attached to the Affidavit of Brent C. Reeh incorrectly shows the location of the tract of land that is the subject of this proceeding. The tract of land that is the subject of this proceeding is located approximately eight miles southeast of the pin mark labeled by Mr. Reeh as "Briarcreck WWTP" on the image and the image is not large enough to show the location of the land that is the subject of this proceeding. The tract that is the subject of this proceeding is located approximately seventeen miles from the pin mark labeled by Mr. Reeh as "Boggy Creek" on image, the area where Mr. Reeh shows the Hinsvark tract to be located.

6. There are no sewer connections on the tract of land that is the subject of this proceeding.

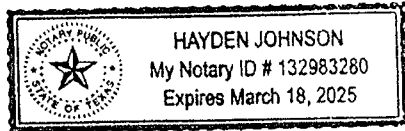
7 There is no wastewater treatment plant located on the tract of land that is the subject of this proceeding and, to my knowledge, there is no recorded commitment to or by the CCN holder or any other sewer utility for a wastewater treatment plant site or a facility for a "hold and haul" operation located on the tract of land that is the subject of this proceeding, and, to my knowledge, there has never been a permit authorizing a wastewater treatment plant on the tract of land that is the subject of this proceeding

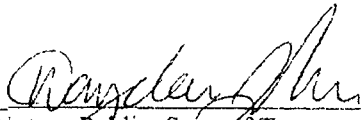
8. There are no facilities or lines used by the CCN holder or any other sewer provider to provide sewer service on the tract of land that is the subject of this proceeding or on adjacent tracts of land.

FURTHER AFFIANT SAYETH NOT


Ronnie Moore

SWORN TO AND SUBSCRIBED TO BEFORE ME by RONNIE MOORE
on June 17th, 2021




Notary Public, State of Texas