



## Filing Receipt

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**DOCKET NO. 51842**

<b>PETITION OF KENNETH F. JENKINS,</b>	<b>§</b>	<b>BEFORE THE PUBLIC UTILITY</b>
<b>TRUSTEE OF THE HINSVARK</b>	<b>§</b>	
<b>FAMILY TRUST TO AMEND AQUA</b>	<b>§</b>	<b>COMMISSION OF TEXAS</b>
<b>TEXAS, INC.'S CERTIFICATE OF</b>	<b>§</b>	
<b>CONVENIENCE AND NECESSITY IN</b>	<b>§</b>	
<b>BASTROP COUNTY BY EXPEDITED</b>	<b>§</b>	
<b>RELEASE</b>	<b>§</b>	

**AQUA TEXAS, INC.'S EXCEPTIONS TO PROPOSED ORDER**

Aqua Texas, Inc. (Aqua or Intervenor) files these exceptions to the Proposed Order Granting Streamlined Expedited Release distributed by the Honorable Commission Administrative Law Judge (ALJ) to the Parties and Commissioners on September 20, 2021 (PO).<sup>1</sup> On September 20, 2021, the Honorable ALJ allowed until September 30, 2021, to file corrections or exceptions to the Proposed Order.<sup>2</sup> Therefore, these exceptions are timely filed. In support, Aqua shows as follows.

**I. EXCEPTIONS**

On March 31, 2021, June 7, 2021, and June 25, 2021, Aqua filed responses to the Petition that is the subject of the PO.<sup>3</sup> For reasons expressed therein, the property Petitioner seeks to have released from Intervenor's sewer CCN No. 21116 (Property) receives sewer service from Aqua.<sup>4</sup> Therefore, per TWC § 13.2541(b),<sup>5</sup> the Commission should deny the Petition.

Yet, the PO would grant the Petitioner's requested CCN streamlined expedited release and concludes that the Property is *not* receiving sewer service from Intervenor.<sup>6</sup> This is incorrect.

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<sup>1</sup> Memorandum from ALJ to Commissioners and Parties with Proposed Order (Sept. 20, 2021).

<sup>2</sup> Memorandum from ALJ to Commissioners and Parties with Proposal for Decision (Sept. 20, 2021).

<sup>3</sup> See Aqua's Motion to Intervene, Request for Response Deadline, and Initial Comments (March 31, 2021) and Aqua's Response to Petition (June 7, 2021), and Aqua Texas' Supplemental Response to Petition (June 25, 2021).

<sup>4</sup> See TWC§ 13.2541(b).

<sup>5</sup> *Id.*

<sup>6</sup> Memorandum from ALJ to Commissioners and Parties with Proposed Order (Sept. 20, 2021).

Thus, Aqua excepts to the PO as follows.

1. Finding of Fact Nos. 26, 27, 28 – These findings of fact are incorrect. Aqua *has* “committed or dedicated any facilities or lines to the release property,” it *has* “facilities or lines that provide sewer service to the release property,” and Aqua *has* “performed any acts for or supplied anything to the release property.”<sup>7</sup> Aqua has a wastewater treatment plant nearby with available capacity for the property and has performed other acts of service for the property.<sup>8</sup>

2. Conclusion of Law Nos. 9 and 10 – The tract *is* receiving sewer service under the referenced standards, the petitioner is not entitled to release, and these conclusions of law are incorrect.<sup>9</sup> Further, the Commissioners have stated in an open meeting that they would grant SER in situations where there are “no tangible commitments” made by a utility or there is not “reliable service in a timely manner.”<sup>10</sup> That standard is not addressed in either Conclusion of Law Nos. 9 or 10.<sup>11</sup> Where sewer system facilities are present nearby and made available for a subject tract within the targeted CCN holder’s CCN service area as here,<sup>12</sup> they are “committed” to the property and the tract is “receiving service” under those standards such that SER should not be granted. Consequently, these conclusions of law are incorrect.<sup>13</sup>

3. Ordering Paragraphs – Aqua excepts to the Ordering Paragraphs to the extent they would grant the Petition and remove certificated service area from Intervenor’s sewer CCN

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<sup>7</sup> PO at 3.

<sup>8</sup> See Aqua’s Supplemental Response to Petition at Exhibit A (Corrected Affidavit of Brent C. Reeh) (June 25, 2021).

<sup>9</sup> PO at 4.

<sup>10</sup> *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/](http://www.adminmonitor.com/tx/puct/open_meeting/20210521/), last checked July 27, 2021).

<sup>11</sup> PO at 4.

<sup>12</sup> See Aqua’s Supplemental Response to Petition at Exhibit A (Corrected Affidavit of Brent C. Reeh) (June 25, 2021).

<sup>13</sup> PO at 4.

No. 21116 for the reasons outlined above with respect to other Findings of Fact and Conclusions of Law.<sup>14</sup>

## **II. CONCLUSION AND PRAYER**

Intervenor Aqua Texas, Inc. respectfully requests that the Commission modify the Proposed Order in line with the exceptions presented herein, find that the Petition does not meet the streamlined expedited release requirements under Texas Water Code § 13.2541 or 16 TAC § 24.245(l), 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,

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@terrellwaldrop.com

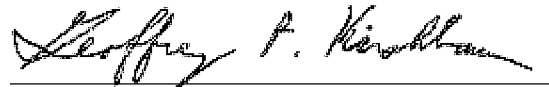
**ATTORNEY FOR AQUA TEXAS, INC.**

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<sup>14</sup> PO at 5.

### **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 September 30, 2021, in accordance with the Orders Suspending Rules issued in Project No. 50664.

  
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Geoffrey P. Kirshbaum