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PETITION OF D.P.S.F.L.P. LTD TO § BEFORE THE PUBLIC UTILITY
AMEND AQUA TEXAS, INC.’S §
CERTIFICATE OF CONVENIENCE § COMMISSION OF TEXAS
AND NECESSITY IN MONTGOMERY §
COUNTY BY EXPEDITED RELEASE §

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 July 15, 2021 (PO).¹ On July 15, 2021, the Honorable ALJ allowed until July 29, 2021, to file corrections or exceptions to the Proposed Order.² Therefore, these exceptions are timely filed. In support, Aqua shows as follows.

I. EXCEPTIONS

On May 6, 2021, and June 7, 2021, Aqua filed responses to the Petition that is the subject of the PO.³ For reasons expressed therein, the property Petitioner seeks to have released from Intervenor’s water CCN No. 13203 (Property) receives water service from Aqua.⁴ Therefore, per TWC § 13.2541(b),⁵ 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 water service from Intervenor.⁶ This is incorrect. Thus, Aqua excepts to the PO as follows.

¹ Memorandum from ALJ to Commissioners and Parties with Proposed Order (Jul. 15, 2021).

² Memorandum from ALJ to Commissioners and Parties with Proposal for Decision (July 15, 2021).

³ See Aqua’s Motion to Intervene, Request for Response Deadline, and Initial Comments (May 6, 2021) and Aqua’s Response to Petition (June 7, 2021).

⁴ See TWC§ 13.2541(b).

⁵ *Id.*

⁶ Memorandum from ALJ to Commissioners and Parties with Proposed Order (July 15, 2021).

1. Finding of Fact No. 8 – The referenced ALJ finding is incorrect. The PO fails to address that notice was not sent to Aqua until May 11, 2021, over a month after the Petition was filed on April 9, 2021. Commission rules require that a copy of the Petition be “mailed to the current CCN holder via certified mail on the day that the landowner filed the petition with the commission.”⁷ Therefore, the notice was not sufficient.

2. Finding of Fact Nos. 25, 26, 27 – These findings of fact are incorrect. Aqua *has* “committed or dedicated facilities or lines to the release property,” it *has* “facilities or lines that provide water service to the release property,” and Aqua *has* “performed any acts for or supplied anything to the release property.”⁸ Aqua has an entire water system located immediately adjacent to the tract.⁹

3. Conclusion of Law Nos. 9 and 10 – The tract *is* receiving water service under the referenced standards and the petitioner is not entitled to release and these conclusions of law are incorrect.¹⁰ 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.”¹¹ That standard is not addressed in either Conclusion of Law Nos. 9 or 10.¹² Where water distribution lines and other facilities are present immediately adjacent to and made available for a subject tract within the targeted CCN holder’s CCN service area as here,¹³ they are “committed” to the property and the tract is “receiving service” under those

⁷ 16 TAC § 24.245(h)(3)(F)

⁸ PO at 3.

⁹ See Aqua’s Response to Petition at Exhibit A (Affidavit of Chris A. Garcia) (June 7, 2021).

¹⁰ PO at 4.

¹¹ *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 27, 2021).

¹² PO at 4.

¹³ See Aqua’s Response to Petition at Exhibit A (Affidavit of Chris A. Garcia) (June 7, 2021).

standards such that SER should not be granted. Consequently, these conclusions of law are incorrect.¹⁴

4. Conclusion of Law No. 13 – For the same reason discussed with respect to Finding of Fact No. 8, this conclusion of law is incorrect since the Petitioner did not provide notice to Aqua on the day it filed its petition with the Commission.¹⁵

5. Ordering Paragraphs – Aqua excepts to the Ordering Paragraphs to the extent they would grant the Petition and remove certificated service area from Intervenor’s water CCN No. 13203 for the reasons outlined above with respect to other Findings of Fact and Conclusions of Law.¹⁶

II. CONCLUSION AND PRAYER

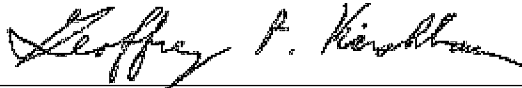
Intervenor Aqua Texas, Inc. respectfully requests that the Commission modify the Proposed Order in line with the exceptions presented herein, find that the Petition does not meet the streamlined expedited release requirements under Texas Water Code § 13.2541 or 16 TAC § 24.245(l), and deny the Petition.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

¹⁴ PO at 4.

¹⁵ 16 TAC § 24.245(h)(3)(F)

¹⁶ PO at 5.

Respectfully submitted,

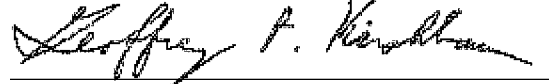
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ATTORNEY FOR AQUA TEXAS, INC.

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 29, 2021, in accordance with the Orders Suspending Rules issued in Project No. 50664.



Geoffrey P. Kirshbaum