



Control Number: 52004



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DOCKET NO. 52004

2021 MAY -6 PM 12:53

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'S MOTION TO INTERVENE, REQUEST FOR RESPONSE
DEADLINE, AND INITIAL COMMENTS**

Aqua Texas, Inc. (Aqua) files this Motion to Intervene and Request for Response Deadline in response to D.P.S.F.L.P. Ltd.'s (Petitioner) Petition for Expedited Release Pursuant to Texas Water Code § 13.2541 that initiated this docket (Petition).¹ The Petition seeks to use the Commission's streamlined expedited release process to extract approximately 343.097 acres of Property (Property) from a portion of the retail water utility service area Aqua serves under CCN No. 13203 in Montgomery County, Texas. The Commission should not set a deadline requiring a substantive response from Aqua unless the Petition is deemed administratively complete.

Aqua shows 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
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@terrillwaldrop.com

¹ 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).

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 holds water CCN No. 13203 for its Southeast Texas Region, which includes Montgomery County and, allegedly, the Property.

4. On April 9, 2021, Petitioner submitted the Petition along with an affidavit in support of same.

5. Petitioner's certificate of service indicates that it mailed a copy of the Petition to Aqua via certified mail.

6. Order No. 1 set May 17, 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.² The Commission's rules³ define who can intervene:

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

² 16 TAC § 24.3(31).

³ 16 TAC § 22.103(b).

expedited release petitions specifically provide, “The current CCN holder may file a response to the petition within the timeframe specified by the presiding officer, not to exceed 20 days from the date the petition is determined to be administratively complete.”⁴ 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.”⁵ The Petition requests the Commission decertify the portion of Aqua water CCN No. 13203 in Montgomery 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.

Request for Response Deadline

11. Aqua would like to file a substantive response to the Petition at least 20 days from the date the Petition is determined administratively complete 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 commission makes a determination that the application is administratively complete.”⁶ Aqua does not know if the Commission will ever deem the Petition administratively complete. The Commission should only seek a substantive response from Aqua if the Commission finds the Petition administratively complete. In that event, Aqua respectfully requests the Commission establish a deadline for Aqua

⁴ 16 TAC § 24.245(h)(6).

⁵ TEX. WATER CODE §13.002(1); 16 TAC § 24.3(5).

⁶ 16 TAC §24.8(d) (applicable to applications under subchapter H of Chapter 24, which include all CCN applications).

to substantively respond to the Petition after the Commission's finding that is no sooner than 20 days thereafter. Aqua notes that the May 17, 2021 deadline set forth in Order No. 1 is earlier than 20 days and there is no current ruling on administrative completeness.

Initial Comments

12. Aqua has not yet found anyone within its organization who has received a copy of the Petition that Petitioner purportedly "sent by certified mail, return receipt requested, to Aqua Texas, Inc. on the same date this petition was sent to TCEQ" (which would be the wrong agency, but apparently PUC received the Petition somehow).⁷ The Petition includes no proof of service to Aqua, and the affidavit included with the Petition does not discuss the issue.⁸ Therefore, Aqua has no way to verify where Petitioner may have sent the Petition or if it even used a proper Aqua address. If Petitioner did not actually send Aqua the Petition to Aqua on the same date it was filed with the Commission, that is fatal under the Commission's rules and the Petition should be dismissed.⁹ In addition to the issues raised in Order No. 2, the Petitioner should be required to clarify this issue or face rejection of the Petition.

Conclusion and Prayer

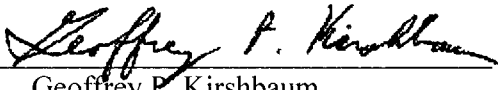
Aqua respectfully requests the presiding Honorable Administrative Law Judge issue an order that grants Aqua's Motion to Intervene and either: (1) identifies deficiencies in the Petition and concludes that it is not administratively complete, or (2) sets a deadline for Aqua's Petition response consistent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

⁷ Petition at 1.

⁸ Petition at Ex. 3.

⁹ 16 TAC §24.245(h)(3)(F).

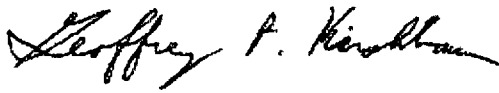
Respectfully submitted,

By: 
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TERRILL & WALDROP
810 W. 10th Street
Austin, Texas 78701
(512) 474-9100
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ATTORNEYS 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 May 6, 2021, in accordance with the Orders Suspending Rules filed in Project No. 50664.



Geoffrey P. Kirshbaum