



## Filing Receipt

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**PUC DOCKET NO. 52197**

<b>APPLICATION OF AQUA TEXAS, INC.</b>	<b>§</b>	
<b>TO AMEND A CERTIFICATE OF</b>	<b>§</b>	<b>PUBLIC UTILITY</b>
<b>CONVENIENCE AND NECESSITY</b>	<b>§</b>	<b>COMMISSION OF TEXAS</b>
<b>IN WILLIAMSON COUNTY</b>	<b>§</b>	

**APPLICANT’S (AQUA TEXAS, INC.) LIST OF PROPOSED ISSUES TO BE  
ADDRESSED RELATED TO ITS APPLICATION TO AMEND CERTIFICATE OF  
CONVENIENCE AND NECESSITY NO. 21116 IN DOCKET NO. 52197**

**TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:**

**COMES NOW Aqua Texas, Inc.**, a Texas corporation (“Applicant”), in this Docket No. 52197, and files list of Proposed Issues to be Addressed related to its Application to amend its Sewer CCN No. 21116 in this Docket No. 52197 in response to the Commission’s (OPDM) Order issued September 9, 2021, and in support thereof would show the Administrative Law Judge (“ALJ”) as follows:

**I.  
BACKGROUND FACTS**

1. On June 1, 2021, the Applicant filed its Application to amend its Sewer CCN No. 21116.
2. On July 21, 2021, the ALJ issued Order No. 2 finding the Application to be administratively complete and setting a procedural schedule.
3. The City of Georgetown, Texas, has filed Motions to Intervene and requested a hearing on the Application.
4. Jonah Water Special Utility District (“Jonah”) filed a Motion to Intervene and requested a hearing on the Application.

5. On August 31, 2021, the ALJ issued Order No. 3 finding notice sufficient and adopting a procedural schedule, including a deadline of September 10, 2021, to file requests for contested case hearings.

6. The City's and Jonah's separate Motions to Intervene and Hearing Requests are pending.

7. On September 9, 2021, the Commission Staff filed a request to refer the Application to the State Office of Administrative Hearings ("SOAH") for a hearing on the merits.

8. On September 9, 2021, the Commission's OPDM issued an "Order" requiring the Applicant and Commission Staff to file a Lists of Issues, and allowing any other interested party to file a list of issues. The Order set September 15, 2021, as the Deadline to be addressed in this Docket, if the matter was referred to hearing.

9. The Applicant's List of Issues is hereby timely filed in response to the Commission's OPDM's September 9, 2021, Order.

## **II.**

### **APPLICANT's LIST OF PROPOSED ISSUES**

10. The Applicant has identified the following preliminary issues to be addressed in this proceeding if the matter is referred to hearing. The Applicant reserves the right to address additional issues raised by other parties, or that may arise in the future and are not set forth below.

- (a) Does the Application contain all relevant information required by TWC § 13.244(b) through (d) and 16 TAC §§ 24.233(a) and 24.257?
- (b) Does the Applicant's requested sewer service area overlap with the extraterritorial jurisdiction of any district, municipality or other authority under TWC § 13.244(c) and 16 TAC § 24.233(a)(4)?

- (c) Is the requested sewer CCN amendment necessary for the service, accommodation, convenience, or safety of the public as required by TWC §13.246(b) and 16 TAC § 24.227(d)?
- (d) Does the Application address the factors under TWC § 13.246(c) and 16 TAC § 24.227(e), including:
  - i. Adequacy of existing sewer service in the proposed CCN area under TWC § 13.246(c)(1) and 16 TAC § 24.227(e)(1)?
  - ii. Need for sewer service or additional sewer service in the proposed CCN area under TWC § 13.246(c)(2) and 16 TAC § 24.227(e)(2), including but not limited to the following:
    - 1. Have any landowners, prospective landowners, tenants, or residents in the proposed CCN area requested sewer service?
    - 2. Are there economic needs for additional sewer service in the proposed CCN area?
    - 3. Are there environmental needs for additional sewer service in the proposed CCN area?
    - 4. Are there written applications or requests for sewer service in the proposed CCN area?
    - 5. Are there reports or market studies demonstrating existing or anticipated growth in the proposed CCN area?
  - iii. Under TWC § 13.246(c)(3) and 16 TAC § 24.227(e)(3), what are the effects of granting the Applicant a CCN amendment, including but not limited to

regionalization, compliance, and economic effects, in the proposed CCN area on the following:

1. the Applicant,
  2. landowners, and
  3. any other retail public sewer utilities?
- iv. Does the Applicant have the ability to provide adequate service, including meeting the standards of the TCEQ and the Commission, in accordance with TWC § 13.246(c)(4) and 16 TAC § 24.227(e)(4) taking into consideration the current and projected density and land use of the area?
- v. What is the feasibility of obtaining sewer service within the proposed CCN area from an adjacent retail public utility in accordance with TWC § 13.246(c)(5) and 16 TAC § 24.227(e)(5)?
- (e) How would environmental integrity be affected by granting the Applicant a CCN amendment to include the proposed CCN area in accordance with TWC § 13.246(c)(7) and 16 TAC § 24.227(e)(7)?
- (f) What is the probable improvement of service or lowering of cost to consumers in the proposed CCN area resulting from granting the amendment in accordance with TWC § 13.246(c)(8) and 16 TAC § 24.227(e)(8)?
- (g) How would the land in the proposed CCN area be affected by granting the Applicant a CCN amendment to include the proposed CCN area in accordance with TWC § 13.246(c)(9) and 16 TAC § 24.227(e)(9)?

**III.**  
**APPLICANT'S IDENTIFICATION OF ISSUES THAT NEED NOT BE ADDRESSED**

11. The Applicant has identified the following issues that could be addressed in a hearing pursuant to Chapter 13, Texas Water Code and the PUC's rules relating to CCN applications if one is held; however, for the reasons articulated below they need not be referred to hearing because they are either well documented matters of fact about which the Commission can take "Official Notice," or facts which could be stipulated to and placed into the record:

- (a) Does the Applicant possess the financial, managerial, and technical capability to provide continuous and adequate service as required by Texas Water Code ("TWC") § 13.241 and 16 Texas Administrative Code ("TAC") § 24.227(a)?

**EXPLANATION:** The Applicant, Aqua Texas, Inc., has a demonstrated track record owning and operating retail public utilities providing both water and sewer service across Texas. Aqua Texas holds multiple CCNs statewide, and possesses multiple wastewater permits (TPDES) issued by TCEQ, and owns and operates wastewater treatment and collection systems statewide.

- (b) Does the Applicant possess a Texas Commission on Environmental Quality ("TCEQ")-approved system that is capable of meeting TCEQ's design criteria for sewer treatment plants, TCEQ rules, and the TWC in accordance with TWC § 13.241(c) and 16 TAC § 24.227(a)(2)(A)?

**EXPLANATION:** The owner of the entirety of the property within the proposed CCN has applied for a TPDES Permit from TCEQ which will be transferred to Aqua Texas through TCEQ's STM process upon receipt. That application is a matter of public record.

- (c) Does the Applicant have access to sewer treatment or capacity, or both, or a long-term contract for purchased sewer treatment or capacity, or both, with an entity whose system meets the requirements of 16 TAC § 24.227(a)(2)(A) in accordance with 16 TAC § 24.227(a)(2)(B)?

**EXPLANATION:** The Applicant does not have access to sewer treatment or capacity with an existing entity providing retail sewer utility services within the proposed CCN area. The owner of the entirety of the property to be included in the proposed CCN area has spoken to the City of Georgetown about connecting to the City's wastewater system. The City refused to contract with the property owner to provide retail sewer service *unless* the landowner agreed to subject the entirety of the property to the land use regulatory control of the City, as well as the ad valorem tax liability, by applying for "voluntary annexation" as a condition for sewer service. The requirement to be annexed into the City, and the consequential increased development costs resulting from the imposition of the City's land use development authority over the property, as well as the cost impact of imposing the City's ad valorem taxes on the property, as a mandatory condition of obtaining retail service to the proposed CCN area renders securing City sewer service to the property economically unviable.

- (d) Has the Applicant given notice as required by TWC § 13.246(a) and (a-1) and 16 TAC § 24.235(a) through (d)?

**EXPLANATION:** This information has been provided in this Docket, and the Administrative Law Judge has ruled on the issue in Order No. 3.

- (e) Does the proposed CCN area require the construction of a physically separate sewer system? If so, has the Applicant proven that regionalization or consolidation with the City's public sewer system and service is not economically feasible as required by TWC § 13.241(d) and 16 TAC § 24.227(b)?

**EXPLANATION:** See responses to subparagraphs (c) and (d) above.

- (f) Is the Applicant financially capable of paying for the facilities necessary to provide continuous and adequate sewer service in accordance with TWC § 13.246(c)(6) and 16 TAC § 24.227(e)(6)?
- i. What additional facilities are needed to ensure that the Applicant can provide continuous and adequate service to the proposed CCN area?
  - ii. Who will own the facilities, if constructed?
  - iii. Who will operate the facilities, if constructed?
  - iv. Who will maintain the facilities, if constructed?
  - v. Under what existing contracts, agreements, permits, authorizations and rights will the facilities be constructed, operated, and maintained?
  - vi. Has the Applicant entered into any agreements regarding the engineering or construction of the facilities? If so, does the Applicant have a timetable for when engineering and construction of the facilities will actually begin? If not, when does the Applicant expect engineering and construction will begin and conclude?
  - vii. What are the projected costs of constructing the facilities, how will construction of the facilities be financed, by whom and under what terms and conditions?



- viii. How will the construction and operational costs associated with the facilities affect the bills of the Applicants existing customers and customers in the proposed CCN area?
- ix. What are the projected annual costs of maintaining the facilities, how will maintenance of the facilities be financed?
- x. Does the Applicant possess the ability to finance facilities or upgrades to existing facilities through its retained earnings?
- xi. Is the Applicant financially stable in accordance with TWC § 13.246(c)(6) and 16 TAC § 24.227(e)(6)? If applicable, is the Applicant's debt-to-equity ratio adequate?

**EXPLANATION:** As noted above, Aqua Texas, Inc. has a long history and demonstrated ability to provide the facilities, operating and managerial capability, and financial capability to provide continuous and adequate service to areas in which it holds CCNs statewide.

- (g) Should the Commission require the Applicant, in accordance with TWC § 13.246(d) and 16 TAC § 24.227(f), to provide a bond or other financial assurance to ensure that it provides continuous and adequate sewer service?

**EXPLANATION:** A bond is neither needed or necessary in this instance. As noted above, Aqua Texas, Inc. has a long history and demonstrated ability to provide the facilities, operating and managerial capability, and financial capability to provide continuous and adequate service to areas in which it holds CCNs statewide.

- (h) Does the Applicant provide water service or plan to provide water service in the future to the proposed CCN area?

- i. If not, who provides water service to the proposed CCN area and under what contracts, agreements, terms or conditions?
- ii. If the Commission grants the Applicant a CCN amendment for all or part of the proposed CCN area, what effect will the amendment have on future access to water service for landowners in the proposed CCN area?

**EXPLANATION:** This is an application to amend a sewer CCN. The Applicant does not intend to provide retail water service to the proposed CCN area. The owner of the entirety of the property located within the proposed CCN area has previously contracted with the Jonah SUD to provide retail water utility service for the property. The proposed sewer CCN area is located within Jonah's water CCN, but not Jonah's sewer CCN. Jonah has no retail sewer service facilities within the Applicant's proposed CCN area. Based upon the existing Jonah water CCN over the Applicant's proposed Sewer CCN, and the property owner's existing contract with Jonah to provide retail water service to the property, granting the requested CCN amendment to Aqua Texas will have no impact on the ability to get retail potable water service within the proposed CCN area.

#### **IV. CONCLUSION & PRAYER**

12. The Applicant files the foregoing list of issues in response to the September 9<sup>th</sup> Order of OPDM, but believes the matter need not be referred to hearing at this time, Applicant believes that any unresolved issues can be resolved initially in the administrative process through Staff's issuance of Requests for Information ("RFIs") to the Applicant. Following that step, if unresolved issues remain, those can be referred to hearing. This process would both narrow the scope of any hearing and, in any event, avoid the unnecessary expenditure of the resources (both

economic and manpower) of Staff and the Applicant, as well as any Intervenor the Commission or SOAH might grant "Party Status."

13. WHEREFORE, PREMISES CONSIDERED, Applicant prays that the Applicant's list of issues be adopted if the Application is referred to a contested case hearing.

Respectfully submitted,

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**ATTORNEYS FOR APPLICANT,  
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### **CERTIFICATE OF SERVICE**

I hereby certify by my signature below, that on this the 15<sup>th</sup> day of September, 2021, a true and correct copy of the foregoing was:

- (i) electronically e-filed with the Commission pursuant to Rule 22.74 and the Commission's Order in Docket No. 50664 addressing Covid-19 Pandemic conditions, and
- (ii) forwarded via postage prepaid regular first-class mail and/or e-mail, where available, to the Parties to Docket No. 52197 or their legal counsel at the locations shown on the attached service list.

/s/ Edmond R. McCarthy, Jr.  
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