



## Filing Receipt

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**Peter M. Lake**  
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**Will McAdams**  
Commissioner

**Lori Cobos**  
Commissioner

**Jimmy Glotfelty**  
Commissioner



**Greg Abbott**  
Governor

**Thomas J. Gleeson**  
Executive Director

## *Public Utility Commission of Texas*

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TO: Chairman Peter M. Lake  
Commissioner Will McAdams  
Commissioner Lori Cobos  
Commissioner Jimmy Glotfelty

All Parties of Record

FROM: Austin Spraez  
Commission Advising

RE: *Application of Aqua Texas, Inc. to Amend its Certificate of Convenience and Necessity in Williamson County*, Docket No. 52197. Draft Preliminary Order, September 23, 2021 Open Meeting, Item No. 27.

DATE: September 16, 2021

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the September 23, 2021 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the September 23, 2021 open meeting.

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**PUC DOCKET NO. 52197**

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

**DRAFT PRELIMINARY ORDER**

Aqua Texas, Inc. filed an application to amend its certificate of convenience and necessity (CCN) number 21116 in Williamson County. This preliminary order identifies the issues that must be addressed in this proceeding.

Aqua Texas requests to amend its CCN to add approximately 127 acres to its service area.<sup>1</sup> The requested area contains no current customers and is located approximately 3 miles south of Georgetown, Texas. Aqua Texas states that the requested area is owned by AIRW 2017-7, LP, 600 Westinghouse Investments, LLC, and 800 Westinghouse Investments, LLC.<sup>2</sup> Aqua Texas states that AIRW 2017-7 is developing the tracts owned by 600 Westinghouse and 800 Westinghouse into multi-family residential developments that will result in approximately 864 total duplex units. Aqua Texas further states that AIRW 2017-7 requested sewer service from Aqua Texas, that a wastewater treatment facility will be constructed to provide the requested service,<sup>3</sup> and that AIRW 2017-7 has submitted a discharge permit application to the Texas Commission on Environment Quality (TCEQ).<sup>4</sup>

Aqua Texas filed the application on June 1, 2021. The City of Georgetown and Jonah Water Special Utility District timely filed motions to intervene. Jonah Water SUD asserts that the requested service area to be included in Aqua Texas's CCN number 21116 is wholly within Jonah Water SUD's CCN number 10970 and that Jonah Water SUD does not consent to Aqua providing sewer service in Jonah Water SUD's water CCN area.<sup>5</sup> The City of Georgetown asserts that the

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<sup>1</sup> Application of Aqua Texas, Inc. to Amend a Certificate Convenience of Necessity in Williamson County (Jun. 1, 2021).

<sup>2</sup> *Id.* at 15, Attachment 1.

<sup>3</sup> *Id.* at 5.

<sup>4</sup> *Id.* at 35-41, Attachment 5.

<sup>5</sup> Jonah Water Special Utility District's Motion to Intervene at 2 (Jul. 30, 2021).

requested area is within its extraterritorial jurisdiction, that the City of Georgetown has the current capacity and ability to provide retail wastewater service, and that amendment of Aqua Texas's CCN number 21116 is not necessary for the service, convenience, or safety of the public.<sup>6</sup>

Aqua Texas was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by September 15, 2021. Aqua Texas, Jonah Water SUD, the City of Georgetown, and Commission Staff each timely filed a list of issues to be addressed in the proceeding.

### **I. Issues to be Addressed**

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH).<sup>7</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

#### **Applicant**

1. Does the utility possess the financial, managerial, and technical capability to provide continuous and adequate service to the requested area as required by Texas Water Code (TWC) § 13.241 and 16 Texas Administrative Code (TAC) § 24.227(a)?
2. Does the utility possess a system that was approved by TCEQ and is capable of meeting TCEQ's design criteria for sewer treatment plants, TCEQ rules, and the TWC in accordance with 16 TAC § 24.227(a)(2)(A)?
3. Does the utility 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)?

#### **Notice**

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

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<sup>6</sup> City of Georgetown's Second Motion to Intervene and Request for Hearing at 2–6 (Sep. 8, 2021).

<sup>7</sup> Tex. Gov't Code § 2003.049(e).

**Application**

5. Does the utility's application contain all relevant information required by TWC § 13.244(c) and (d) and 16 TAC §§ 24.233(a) and 24.257?
6. What modifications to the application or mapping documents, if any, must be made to reflect the removal of opt-out properties from the requested area under TWC §§ 13.2541(b) and 13.246(h) and 16 TAC § 24.227(i)?

**Requested Area**

7. Does the requested service area require construction of a physically separate sewer system? If so, has the utility proven that regionalization or consolidation with a retail public utility for public sewer service is not economically feasible as required by TWC § 13.241(d) and 16 TAC § 24.227(b)?
8. Does the utility's requested area overlap with the certificated service area of a district, municipality, or other public authority under TWC § 13.244(c) and 16 TAC § 24.233(a)(4)? In answering this issue, please address the following sub-issues:
  - a. What specific areas, if any, will overlap?
  - b. Has the utility received the appropriate consent, franchise, permit, or license to provide sewer service within each affected entity's boundaries?
9. Does the utility's requested area overlap with the extraterritorial jurisdiction of any other municipality under TWC § 13.244(c) and 16 TAC § 24.233(a)(4)? In answering this issue, please address the following sub-issues:
  - a. What specific areas, if any, will overlap?
  - b. Does any municipality whose extraterritorial jurisdiction overlaps with the requested area have a population of 500,000 or more? If so, does the municipality consent to the Commission's granting of a CCN for those areas under TWC § 13.245 and 16 TAC § 24.233(c)?

**Effect of Granting the CCN Amendment**

10. Is the utility's proposal to amend its sewer CCN to include the requested area necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d)?

11. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.227(e) weigh in favor of granting the utility a CCN amendment to include the requested area? In answering this issue, please address the following sub-issues:
- a. Is the requested area currently receiving adequate sewer service in accordance with TWC § 13.246(c)(1) and 16 TAC § 24.227(e)(1)?
  - b. Does the requested area need sewer service or additional sewer service in accordance with but not limited to the following considerations under TWC § 13.246(c)(2) and 16 TAC § 24.227(e)(2)?
    - i. Have any landowners, prospective landowners, tenants, or residents in the requested area requested sewer service?
      - (1) If so, where are they, or where will they be located?
      - (2) If so, were the requests for sewer service for the entire requested area?
    - ii. Are there economic needs for additional sewer service in the requested area?
    - iii. Are there environmental needs for additional sewer service in the requested area?
    - iv. Are there written applications or requests for sewer service?
    - v. Are there reports or market studies demonstrating existing or anticipated growth in the requested area?
    - vi. Have any development agreements been reached between the utility and another entity or person regarding the development of any portion of the requested area? Please answer the following sub-issues separately for each development agreement:
      - (1) What portion of the requested area is covered by the development agreement?
      - (2) Who are the parties to the development agreement?
      - (3) Are there any current timetables for when development under the agreement will begin and be completed? If not, when does the utility contemplate development under the agreement will begin?

- c. Under TWC § 13.246(c)(3) and 16 TAC § 24.227(e)(3), what are the effects—including but not limited to regionalization, compliance, and economic effects—of granting the utility a CCN amendment to include the requested area on the following:
  - i. the utility;
  - ii. landowners in the requested area; and
  - iii. any retail public utility that provides sewer service and that is already serving any area within two miles of the boundary of the requested area?
- d. Taking into consideration the current and projected density and land use of the area, does the utility 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)?
- e. What is the feasibility of obtaining sewer service in the requested area from an adjacent retail public utility in accordance with TWC § 13.246(c)(5) and 16 TAC § 24.227(e)(5)?
- f. Is the utility 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. Does the utility have existing facilities adequate to provide continuous and adequate sewer service to the requested area? If not, are additional facilities needed to ensure that the utility can provide continuous and adequate service to the requested area?
  - ii. Is the utility planning to build facilities for the requested area? If so, please address the following sub-issues:
    - (1) What facilities is the utility planning to build, and where will the utility construct the facilities?
    - (2) Has the utility entered into any agreements regarding the construction of the facilities?
    - (3) Does the utility have a timetable or plan for when construction of the facilities will actually begin? When does the utility contemplate construction will begin and conclude?

- (4) Who will construct any sewer infrastructure necessary to serve the requested area?  
How will the utility finance that construction? Has the utility created budget projections for the construction of any necessary sewer infrastructure?
  - (5) Has the utility completed an engineering plan for any sewer infrastructure necessary to serve the requested area? If so, what are the parameters of that plan? If not, when will the utility engage an engineering firm to develop such a plan?
  - (6) How will the addition of new facilities affect the bills of the utility's existing customers?
- iii. What is the amount of credit available to the utility?
  - iv. Does the utility possess the ability to finance facilities or upgrades to existing facilities through its retained earnings? How will the utility finance new facilities or upgrades to existing facilities?
- g. Is the utility financially stable in accordance with TWC § 13.246(c)(6) and 16 TAC §§ 24.11(e) and 24.227(e)(6)? If applicable, is the utility's debt-to-equity ratio adequate?
  - h. How, if at all, would environmental integrity be affected by granting the utility a CCN amendment to include the requested area in accordance with TWC § 13.246(c)(7) and 16 TAC § 24.227(e)(7)?
  - i. What is the probable improvement of service or lowering of cost to consumers in the requested area resulting from granting the utility the CCN amendment in accordance with TWC § 13.246(c)(8) and 16 TAC § 24.227(e)(8)?
  - j. How, if at all, would the land in the requested area be affected by granting the utility a CCN amendment to include the requested area in accordance with TWC § 13.246(c)(9) and 16 TAC § 24.227(e)(9)?
- 12. Should the Commission require the utility, 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 service?
  - 13. If applicable, what were the utility's efforts to:



- a. extend sewer service to any economically distressed area, within the meaning of TWC § 15.001(11), located within the utility's certificated service area, as required by TWC § 13.246(e)(1) and 16 TAC § 24.227(g); and
  - b. enforce rules adopted under TWC § 16.343 regarding minimum standards for safe and sanitary water supply as required by TWC § 13.246(e)(2)?
14. Does the utility provide water service to the requested area or plan to provide water service to the requested area in the future? If not, and if the Commission grants the utility a CCN amendment for all or part of the requested area, what effect will the amendment have on future access to water service for landowners in the requested area?
15. If the Commission grants the utility a sewer CCN amendment, should the area added to the utility's service area include only the area in which the utility currently has facilities and is providing sewer service?
16. Alternatively, if the Commission grants the utility a sewer CCN amendment, should the area added to the utility's service area include only the area in which it currently has facilities and is providing sewer service and areas where it has a definite plan to construct facilities to provide sewer service?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

## **II. Effect of Preliminary Order**

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should

be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the \_\_\_\_\_ day of \_\_\_\_\_ 2021.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**PETER M. LAKE, CHAIRMAN**

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**WILL MCADAMS, COMMISSIONER**

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**LORI COBOS, COMMISSIONER**

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**JIMMY GLOTFELTY, COMMISSIONER**

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