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DOCKET NO. 54646

PETITION OF DEBLOCK, LTD. TO § BEFORE THE PUBLIC UTILITY
AMEND AQUA TEXAS, INC.'S §
CERTIFICATE OF CONVENIENCE AND § COMMISSION OF TEXAS
NECESSITY IN DENTON COUNTY BY §
STREAMLINED EXPEDITED RELEASE §

AQUA'S MOTION TO INTERVENE AND RESPONSE TO PETITION

Aqua Texas, Inc. (Aqua or Intervenor) files this Response to the Petition of DEBLOCK, Ltd. (Applicant or Petitioner) to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Expedited Release as supplemented (the Petition).¹ In support, Aqua shows as follows.

I. PROCEDURAL BACKGROUND

On February 13, 2023, Applicant filed the Petition seeking streamlined expedited release (SER) for the Property from Aqua's certificate of convenience and necessity (CCN) No. 13201. On March 31, 2023, Petitioner filed revised maps and shapefile information for the Petition. The presiding Commission Administrative Law Judge (ALJ) deemed the Petition as supplemented administratively complete on May 16, 2023, and set a deadline of June 5, 2023 for Aqua to file its response to same.² Therefore, this pleading is timely filed.

II. MOTION TO INTERVENE

Aqua is a retail public utility³ which seeks to participate in this proceeding as an Intervenor.⁴ 16 TAC § 22.103(b) of the Commission's rules defines who can intervene. A person has standing to intervene if that person:

¹ Petition of DEBLOCK, Ltd. for Streamlined Expedited Release (Feb. 13, 2023); PUC Filing Letter - Updated Maps and Shapefiles (Mar. 31, 2023).

² Order No. 3 Finding Petition, as Supplemented, Administratively Complete and Notice Sufficient and Establishing Procedural Schedule (May 16, 2023).

³ Texas Water Code (TWC) § 13.002(19); 16 Texas Administrative Code (TAC) § 24.3(31).

⁴ 16 TAC § 22.2(25).

- (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.⁵

Aqua has a right to participate in this proceeding. The Petition is seeking a streamlined expedited release from Aqua's CCN. Order No. 1 recognizes Commission rules concerning SER 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."⁶ 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."⁷ The Petition requests the Commission decertify a portion of Aqua water CCN No. 13201 in Denton County that includes 63.005 acres of contiguous property (the Property), thereby depriving Aqua of its exclusive right to provide retail water utility service to this particular area.

III. ARGUMENTS & AUTHORITIES

The Commission should deny the Petition because the SER requested cannot lawfully be granted under TWC § 13.2541 and 16 TAC § 24.245. The Property is receiving service from Aqua and not eligible for SER. Alternatively, if the Commission releases the Property despite this fact, Aqua is entitled to just and adequate compensation.

⁵ 16 TAC § 22.103(b)(1)-(2).

⁶ 16 TAC § 24.245(h)(6); *see also* Order No. 1 at 1 (Feb. 14, 2023).

⁷ TWC §13.002(1); 16 TAC § 24.3(2).

A. The Property Receives Service from Aqua

The Property receives water service from Aqua according to the term “service” as the TWC defines it, and the Property cannot be released from Aqua’s CCNs under TWC § 13.2541.⁸ The Water Code broadly defines “service” as:

any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties . . . to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.⁹

The embedded term “facilities” is defined as:

[a]ll the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.¹⁰

Actually delivering water to a property is plainly “service,” but a property can also receive water or sewer service under the statute without a utility delivering “actual water” onto a property.¹¹ In the *Crystal Clear* Austin Third Court of Appeals decision, the court held that facilities or lines “used” or “committed” to providing such service might cause a property to “receive service” under the statutory and regulatory definition.¹²

Here, the Petition claims, “None of the Property receives service from any water or sewer provider.”¹³ The Petition supports that statement with an affidavit from Moretta Ann Weatherford, an officer of the Petitioner.¹⁴ Yet, as shown by the attached affidavit of Darryl Waldock, North

⁸ TWC § 13.2541(b) (allowing streamlined expedited release of a tract of land that “is not receiving water or sewer service.”); *see also* 16 TAC § 24.245(h)(1)(B).

⁹ TWC § 13.002(21); *see also* 16 TAC § 24.3(33) (same definition).

¹⁰ TWC § 13.002(9); *see also* 16 TAC § 24.3(15) (same definition).

¹¹ *See Tex. Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130, 140 (Tex. App.—Austin 2014, pet. denied).

¹² *Id.*

¹³ Petition at 2 (Feb. 13, 2023).

¹⁴ Petition at Exhibit “A”, Affidavit of Moretta Ann Weatherford (Feb. 9, 2023).

Texas Area Manager, Aqua submits that it has water service facilities immediately adjacent to the Property, and has performed various acts and supplied funds in furtherance of service to the Property and Aqua’s CCN No. 13201 area that includes the Property.¹⁵ In fact, before constructing the 4-inch water main running along the right of way of Dove Hill Road on the west side of the Property, Aqua conducted a thorough financial analysis that included evaluation of the line’s potential to provide service to adjoining lots, including the Property, and the line’s extensive coverage along the entire western border of the Property played a significant role in Aqua’s decision to allocate funds towards its construction.¹⁶ Mr. Waldock’s affidavit includes a map showing the location of its facilities located adjacent to and near the Property.¹⁷

Here, these facilities and the acts of planning, creating, and maintaining them—are all plainly “committed” or “used” by Aqua in the performance of its duties to supply water service to the targeted CCN area and Property. The Property receives water service from Aqua through its commitments to, and its existing facilities and capacity near the Property. Mr. Waldock’s affidavit also describes different ways Aqua has served the Property through its various service acts and funds supplied.¹⁸ Under these facts, the Commission should deny the Petitioner’s request to release the Property from Aqua’s CCN No. 13201 because that would violate TWC § 13.2541.

B. Aqua Must Be Compensated If the Property Is Removed from Aqua’s CCN Area.

Aqua is entitled to a determination of just and adequate compensation if its CCN areas are reduced.¹⁹ The value of real property owned and utilized by the retail public utility for its facilities shall be determined according to the standards set forth in Chapter 21, Property Code, governing

¹⁵ **Exhibit A** - Affidavit of Darryl Waldock.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ TWC §§13.254(d), (g) and 13.2541(f)-(j).

actions in eminent domain, and compensation for personal property is to be based on several factors, including the following:

the amount of the retail public utility's debt allocable for service to the area in question; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues lost from existing customers; necessary and reasonable legal expenses and professional fees; and other relevant factors.²⁰

If the Property is removed from Aqua's CCN No. 13201, Aqua would be entitled to compensation under several of these factors.²¹ Aqua would also be compelled to spend time and resources to make the filing required by TWC § 13.257(r)-(s) and be entitled to receive compensation for that too. If required, the monetary amount shall be determined by an appraiser—either one agreed upon by the retail public utilities involved, or one hired by each retail public utility, and a third appointed by the Commission.²²

CONCLUSION AND PRAYER

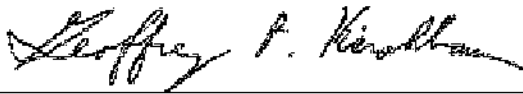
Aqua respectfully requests the Commission deny the Petition because it cannot lawfully be granted under TWC § 13.2541. Alternatively, if the Commission approves the Petition, Aqua seeks just and adequate compensation for the decertified portion of its water CCN No. 13201. Aqua also seeks all and further relief to which it may be justly entitled at law or in equity.

²⁰ TWC §§13.254(g) and 13.2541(h).

²¹ See **Exhibit A**.

²² TEX. WATER CODE §13.2541(g), (i).

Respectfully submitted,

By: 

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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 June 5, 2023 in accordance with the Order Suspending Rules filed in Project No. 50664.



Geoffrey P. Kirshbaum

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AFFIDAVIT OF DARRYL WALDOCK

THE STATE OF TEXAS '

COUNTY OF TARRANT '

BEFORE ME, the undersigned official on this day personally appeared Darryl Waldock, who is personally known to me and first being duly sworn according to law, upon his oath deposed and said:

My name is Darryl Waldock. I am over the age of 18 years and reside in Tarrant County, Texas. I am of sound mind and fully competent to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

I am the North Texas Area Manager for Aqua Texas, Inc. dba Aqua Texas ("Aqua"), Intervenor in the above styled and numbered case, and I am authorized to make this affidavit on behalf of Aqua.

On February 13, 2023, DEBLOCK, LTD. ("Petitioner") filed a motion to decertify 63.005 acres of contiguous property (the "Property"), in Denton County Texas for which Aqua holds a water certificate of convenience and necessity (CCN) No. 13202. Moretta Ann Weatherford, an officer of the Petitioner submitted an affidavit contending that the Property is not receiving service from Aqua.

I understand "service" to mean any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties to its

patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities. Further, I understand "facilities," as used above, means all the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

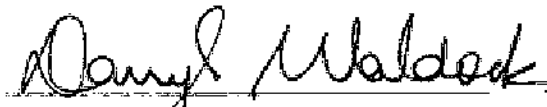
Aqua has undertaken various acts of service for the Property. The attached map, **Attachment 1**, shows the Property the Petitioner in PUC Docket No. 54646 seeks to remove through streamlined expedited release ("SER"). Within Attachment 1, I have illustrated the location of Aqua's existing facilities in relation to the Property. These facilities are part of Aqua's Trail Creek Water System (PWS ID No. 0610203) ("Trail Creek"). Specifically, Aqua has a major Aqua water plant (Trail Creek Water Plant #1) located directly along the Property's southern border. In addition, there is a 4-inch water main running along the right of way of Dove Hill Road on the west side of the Property. Aqua conducted thorough financial analysis as a precursor to the construction of the 4-inch water main. This analysis encompassed an evaluation of the line's potential to provide service to adjoining lots, including the Property. Notably, the extensive coverage of the water main along the entire western border of the Property played a significant role in Aqua's decision to allocate funds towards the construction of said infrastructure.

Aqua has also performed other acts of service for the Property including: (1) performing acts and supplying funds to permit, plan, design, construct, own, and operate its Trail Creek Water System which is directly south of the Property; (2) performing acts and supplying funds necessary to obtain, transfer, and maintain the water CCN No. 13201 service area covering the Property under prevailing regulations; (3) performing acts and supplying funds necessary to obtain, transfer, renew, and maintain permits for the Trail Creek Water System so that they may be used to serve

the Property and CCN No. 13201 area that includes the Property; and (4) maintaining a regional office in Fort Worth, Texas with personnel specifically dedicated to operations within Aqua's geographic North Texas Region water CCN No. 13201 service areas, including the Property and CCN No. 13201 area that includes the Property. I will also note that CCNs and groundwater permits have value that purchasers of utilities will pay for when acquiring a utility because of the rights to serve the public that they accord and because the time and expense to acquire the CCNs and permits has already been spent.

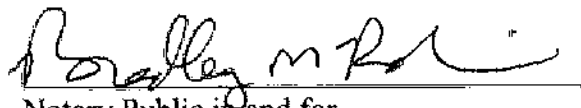
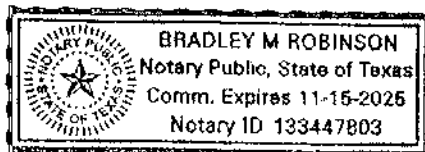
In sum, Aqua has performed numerous acts, supplied funds, and committed facilities to the Property and proximate areas within CCN No. 13201. Aqua is incurring legal expenses and is likely to incur other professional expenses as a result of the decertification and Petition. If the decertification is approved, Aqua will be compelled to spend time and resources to make the filing required by TWC § 13.257(r)-(s). Aqua is actively supplying water to nearby properties and the Property receives service from Aqua through the acts, supplied funds, and facilities I have described. Aqua stands ready to perform additional acts of service and commit additional facilities to the Property as necessary.

Further Affiant sayeth not.



Darryl Waldock
North Texas Area Manager
Aqua Texas, Inc.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 1st day of June 2023,
to which witness my hand and official seal.



Notary Public in and for
The State of Texas

Trail Creek - Water Plant # 1 & 4 inch Water Line along Dove Hill Rd.



Attachment
1