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DOCKET NO. 56457

PETITION OF DENTON OLIVER	§	BEFORE THE PUBLIC UTILITY
CREEK, LP TO AMEND AQUA TEXAS,	§	
INC.'S CERTIFICATE OF	§	COMMISSION OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
DENTON COUNTY BY STREAMLINED	§	
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 Denton Oliver Creek, LP's (Petitioner) Petition for Streamlined Expedited Release Pursuant to Texas Water Code § 13.2541 (Petition). The Petition seeks to avail itself of the Commission's streamlined expedited release (SER) process to extract property (Property) from a portion of the retail water utility service area Aqua serves under water CCN No. 13201 in Denton County, Texas. In support, Aqua would show as follows.

1. The name, address, and telephone number of the movant is:

Aqua Texas, Inc.
Craig Blanchette
President
1106 Clayton Lane, Suite 400W
Austin, Texas 78723
(512) 990-4400
clblanchette@aquaamerica.com

2. The name, address, and telephone number of Aqua's authorized representative is:

Geoffrey P. Kirshbaum
Elena M. Folgueras
TERRILL & WALDROP
810 West 10th Street
Austin, Texas 78701
(512) 474-9100
(512) 474-9888 (fax)
gkirshbaum@terrillwaldrop.com
efolgueras@terrillwaldrop.com

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. 13201 for the area in Denton County that Petitioner seeks to decertify.

4. On April 5, 2024, the Petitioner submitted the Petition along with an affidavit in support of the same.¹

5. Petitioner's certificate of service indicates that it mailed a copy of the Petition to Aqua via certified mail.²

6. This Motion to Intervene and Request for a Response Deadline is timely filed because Order No. 1 did not establish a deadline for response from Aqua, and further notes "[t]he deadline for the CCN holder to submit a response to the petition, verified by notarized affidavit, will be specified in a future order."³

Motion to Intervene

7. Aqua seeks to participate in this proceeding as an Intervenor.⁴ The Commission's rules⁵ 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.

¹ Petition by Denton Oliver Creek, LP to Amend Aqua Texas, Inc.'s Certificate of Convenience and Necessity in Denton County by Streamlined Expedited Release (Apr. 5, 2024).

² Petition, at Certificate of Service.

³ Order No. 1 Requiring Comments on Administrative Completeness and Notice, and Establishing a Procedural Schedule (Apr. 8, 2024).

⁴ 16 TAC § 22.2(25).

⁵ 16 TAC § 22.103(b).

8. Aqua has a right to participate in this proceeding. The Petition is seeking streamlined expedited release from Aqua's CCN. Commission rules concerning SER application matters specifically provide that "[t]he current CCN holder may file a response to the petition within a 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 asks the Commission to decertify a portion of Aqua's CCN No. 13201 in Denton County, 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 SER type of CCN decertification 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's party status as an Intervenor.

10. Aqua hereby moves to intervene in this docket and for party status as an Intervenor.

Initial Comments

11. Aqua submits that the Petition fails to give effect to the broad definition of "service" in both the TWC and Commission rules.⁸ Aqua serves the land requested to be released. Aqua will address this issue further if the Petition is deemed administratively complete.

⁶ 16 TAC § 24.245(h)(6).

⁷ TEX. WATER CODE §13.002(1); 16 TAC § 24.3(2).

⁸ TEX. WATER CODE §13.002(21); 16 TAC § 24.3(33).

12. The Petition fails to address just and adequate compensation.⁹ However, Aqua will address that issue if the Petition is deemed administratively complete.

Request for Response Deadline

13. Aqua substantively opposes the Petition and desires to file a substantive response as permitted by the Commission's SER rule at least 20 days from the date the Petition is determined to be administratively complete if that occurs.¹⁰ Aqua has provided service to the area from which the Petitioner seeks SER and the Petition is not currently deemed administratively complete. Aqua submits that the Petition should not be deemed administratively complete for the reasons discussed above.

14. The Commission does not consider Applications, such as the Petition, "filed until the commission makes a determination that the application is administratively complete."¹¹ 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 first finds the Petition administratively complete and that it has jurisdiction over the Petition.

Conclusion and Prayer

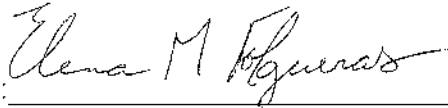
Aqua respectfully requests the Honorable Administrative Law Judge issue an order that: (1) grants Aqua's Motion to Intervene; and (2) sets a deadline for Aqua's response consistent with the request herein if the Petition is found administratively complete.

⁹ TWC § 13.254(d) and (g); TWC § 13.2541(a) and (f)-(i).

¹⁰ 16 TAC § 24.245(h)(6).

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

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 28, 2024 in accordance with the Order Suspending Rules filed in Project No. 50664.



Elena M. Folgueras