

II. EXCEPTIONS TO THE PFD

Most STM applications that are approved by the TCEQ are processed in multiple steps: (1) approval of the transaction proposed in the application either affirmatively or by operation of law; (2) submission of proof that the proposed transaction closed; (3) provision of applicant consent to Commission service area maps and CCN documents that the ED staff typically prepares based on application information; and, finally, (4) an ED-executed Order reflecting the finally transferred CCN and service areas as shown within the Commission's official records. Here, this process went off track, when, as recognized in the PFD, the applications were unlawfully referred to SOAH by the ED for a hearing before steps (3) and (4) occurred.

The PFD correctly finds that Aqua Texas' applications were approved by the ED for the Commission under the Water Code. PFD, at 5; COL No. 9. However, ministerial acts still require implementation so that Aqua Texas' and Texas American's respective CCNs and CCN service areas are properly reflected in the Commission records maintained by the ED. That is typically accomplished by steps (3) and (4) described above.

Order No. 3 dismissed this matter from SOAH's docket and remanded the matter to the ED without a hearing, an action which would have permitted the ED to implement these final steps. In contrast, the PFD and Order as drafted would dismiss this matter from both SOAH and the Commission's docket without these important steps occurring. Dismissal from SOAH's docket is appropriate. But one of two actions needs to take place by or on behalf of the Commission for steps (3) and (4) to take place: the applications can be remanded to the ED for final processing; or steps (3) and (4) can be incorporated into the final Commission Order considering the PFD.

Complete dismissal of the applications by the Commission without these steps will land the applications back in procedural limbo as they have been for the past year. Thus far, the ED has been

unwilling to complete these final steps without Commission direction. The PFD was prepared, in part, based on an ED request. It is imperative that final processing of the pending applications be completely resolved during the Commission's PFD and proposed final order consideration.

III. PROPOSED CORRECTIONS

A. Proposed Final Order Corrections

For the reasons set out above, Aqua Texas respectfully recommends the following changes be made to the Proposed Final Order if the applications are to be remanded to the ED:

Conclusion of Law No. 9

Once the ED waived his right to a hearing, the applications were approved, the transaction could be completed, and the Commission no longer had authority to refer the applications for a contested case hearing at SOAH; the Commission must now complete all ministerial acts necessary to complete the requested transfer of CCNs and utility assets within the official Commission records.

Ordering Provision No. 1

This matter is dismissed for lack of jurisdiction from SOAH's docket and remanded to the ED with direction to take all ministerial acts necessary to complete the requested transfer of the CCNs and utility assets within the official Commission records within 60 days.

Alternatively, the Commission could incorporate the final steps within the order recommended by the PFD. However, the CCN documents and service area maps would need to be prepared by the ED staff for inclusion with the order as attachments, with the opportunity for review and consent by Aqua Texas. If this course of action is taken, the suggested revised Conclusion of Law No. 9 above would still be appropriate, but the addition of Conclusion No. 10 and ordering provisions as set forth below would be proper:

Conclusion of Law No. 10

The criteria set forth in Texas Water Code Sections 13.246(c), 13.254, and 13.301 have been considered, and the certificate amendments, cancellations, and issuances

requested in the STM applications filed by Aqua Texas and Texas-American Water Company are necessary for the service, accommodation, convenience, and safety of the public.

Ordering Provision No. 1

This matter is dismissed for lack of jurisdiction from SOAH's docket.

Ordering Provision No. 3

The applications are granted, Certificates of Convenience and Necessity Nos. 13114 and 21005 are transferred and canceled, and Certificates of Convenience and Necessity Nos. 11157 and 20453 of Aqua Utilities, Inc. are amended and issued in accordance with the terms and conditions set forth herein and in the certificates included as Attachments ___.

Ordering Provision No. 4

Aqua Utilities, Inc. shall serve every customer and applicant for service within the area certified under Certificates of Convenience and Necessity Nos. 11157 and 20453 and that such service shall be continuous and adequate.

B. Proposed Corrections to the Proposal for Decision

For the reasons set out above, Aqua Texas respectfully also recommends the following change to the Proposal for Decision:

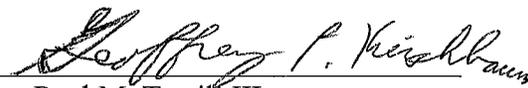
- Page 5: “In other words, the applications were approved, and SOAH does not have jurisdiction to hold a contested case hearing on the applications for the Commission. This case should be dismissed from SOAH's docket and the applications finally processed by the Commission.

IV. CONCLUSION & PRAYER

After considering the foregoing, Aqua Texas respectfully requests that the Commission adopt the ALJ's PFD and issue the ALJ's Proposed Final Order with the changes discussed herein. Aqua Texas further requests all other and further relief to which it may be entitled at law or in equity.

Respectfully submitted,

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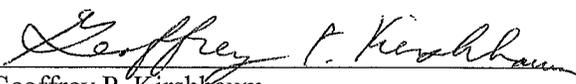
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**ATTORNEYS FOR AQUA UTILITIES, INC.
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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2012, a true and complete copy of the foregoing was sent to the following by e-filing, facsimile, overnight delivery, or by first class mail:

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SOAH Docket Clerk	Docket Clerk 300 West 15th Street, Ste 502 Austin, TX 78701	Fax: 322-2061
TCEQ Chief Clerk	Office of the Chief Clerk, TCEQ 12100 Park 35 Circle Bldg. F/1, Room 1104 Austin, Texas 78753	Fax: 239-3311
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