

SOAH DOCKET NO. 582-12-0707  
TCEQ DOCKET NO. 2011-1566-UCR

APPLICATION FROM AQUA	§	BEFORE THE TEXAS COMMISSION
UTILITIES, INC. DBA AQUA TEXAS,	§	
INC., CCN NOS. 11157 AND 20453, TO	§	
PURCHASE FACILITIES AND TO	§	
TRANSFER AND CANCEL CCNS	§	ON
13114 AND 21005 FROM	§	
TEXAS-AMERICAN WATER	§	
COMPANY IN BRAZORIA, HARRIS,	§	
LIBERTY, MATAGORDA, AND	§	
MONTGOMERY COUNTIES	§	ENVIRONMENTAL QUALITY

TEXAS  
 COMMISSION  
 ON ENVIRONMENTAL  
 QUALITY  
 CHIEF CLERK'S OFFICE  
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**AQUA TEXAS' REPLY TO EXCEPTIONS TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW, Aqua Utilities, Inc. d/b/a Aqua Texas, Inc. ("Aqua Texas") and files this Reply to Exceptions to the Honorable Administrative Law Judge Rebecca S. Smith's ("ALJ's") Proposal for Decision ("PFD") and in support thereof would show as follows.

**I. INTRODUCTION**

The "exceptions" filed by the ED and Customers are not true exceptions to the PFD. The "exceptions" are improperly based on issues that the ALJ did not address in her PFD. No party has offered any sound basis for why the ALJ's jurisdictional decision, based on explicit provisions found in Chapter 13 of the Water Code and applicable TCEQ rules, is incorrect. Aqua Texas respectfully requests that the Commission adopt the ALJ's PFD in its entirety with the minor modifications discussed in Aqua Texas' Exceptions to the PFD.

**II. REPLY TO EXCEPTIONS TO THE PFD**

The ED and Customers' "exceptions" wrongly contend that Aqua Texas' STM notice was improper and, therefore, the statutory limits placed on the ED's review period and hearing referral

authority should be ignored. First, as discussed in Aqua Texas' briefs to the ALJ,<sup>1</sup> and as the ALJ agreed, statutory limitations on the STM review process decide this case without resort to the issue of Aqua Texas' STM notice propriety. TEX. WATER CODE §13.301(f), PFD, at 3-5. Second, while Aqua Texas' briefs to the ALJ show that its STM notice was proper and an opportunity for public participation was afforded, the ALJ's PFD specifically offers no opinion on the propriety of Aqua Texas' notice. PFD, at 5 n.5. The other parties' exceptions consist solely of contentions regarding notice that were previously submitted to the ALJ.

Thus, the other parties have not filed true PFD exceptions per 30 TEX. ADMIN. CODE §80.257. Instead, they have filed briefs premised on factual and legal conclusions not established in the record nor included within the PFD's recommended findings. The ALJ had the opportunity to consider all notice contentions and allegations and correctly determined they have no import. The ALJ did not opine on their merits. Therefore, it would be improper for the Commission to consider the other parties' notice contentions and allegations in evaluating a PFD that does not offer any recommended findings on same.<sup>2</sup>

Rejecting the PFD would stand for the proposition that the statutory Water Code limitations on the STM review process do not matter. Respectfully, Aqua Texas submits those limits are important for Texas utilities. Without them, all future sales, transfers, or mergers by Texas utilities will be unjustly impeded. Even if an ED approval letter is received prior to closing a STM transaction, the letter will be eternally subject to revocation and the transaction subject to a SOAH hearing. This will be the case even though the ED letters include a finding that the buyer/transferee

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<sup>1</sup> In reply to the other parties' exceptions, Aqua Texas hereby incorporates by reference both "Aqua Texas' Pica to the Jurisdiction, Motion for Final Summary Disposition, Motion to Dismiss/Remand, and Brief in Support" and "Aqua Texas' Response to Briefs on Jurisdiction, Remand and Party Status" previously filed in this case.

<sup>2</sup> Notwithstanding, for reasons set forth in Aqua Texas' briefs, Aqua Texas maintains that such contentions regarding its alleged improper notice are completely without merit.

has the financial, managerial and technical capability to own and operate the transferred systems and that the transaction is in the public interest. TEX. WATER CODE §§ 13.301(d),(e).<sup>3</sup>

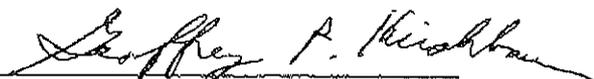
Here, Aqua Texas has owned and operated the systems acquired from Texas-American Water Company for over a year following the ED's approval to close on same. Neither party to the transaction has any interest in unwinding it. Yet, this matter continues without finality. Aqua Texas respectfully requests that the Commission provide that finality so that Aqua Texas may continue providing continuous and adequate service to its acquired customers without further litigation.

### III. 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 in Aqua Texas' Exceptions to the PFD. Aqua Texas further requests all other and further relief to which it may be entitled at law or in equity.

Respectfully submitted,

THE TERRILL FIRM, P.C.

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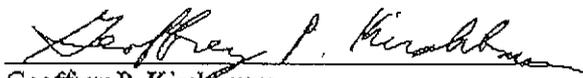
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<sup>3</sup> See TCEQ Letter to Aqua Texas dated June 15, 2011.

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 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:

<b>Parties</b>	<b>Representative / Address</b>	<b>Phone</b>
STATE OFFICE ADMINISTRATIVE HEARINGS	Rebecca S. Smith Administrative Law Judge 300 West 15th Street Ste 502 Austin, TX 78701	Fax: 322-2061
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
TCEQ Executive Director	Ron Olson Executive Director, TCEQ MC-173 P.O. Box 13087 Austin, TX 78711-3087	Fax: 239-0608 ron.olson@tceq.texas.gov
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## FAX COVER SHEET

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	Eli Martinez		(512) 239-6377
	Jim Boyle		(512) 474-1492
	SOAH Docket Clerk		(512) 322-2061
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Re: <i>Applications from Aqua Utilities, Inc. dba Aqua Texas, to Purchase Facilities and to Transfer and Cancel from CCNs 13114 and 21005 from Texas-American Water Company in Brazoria, Harris, Liberty, Matagorda, and Montgomery Counties; TCEQ Docket No. 2011-1566-UCR; SOAH Docket No. 582-12-0707</i>			
Please see attached Aqua Texas' Reply to Exceptions to the Proposal for Decision.			
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