



Control Number: 42958



Item Number: 12

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**DOCKET NO. 42958**

**APPLICATION OF AQUA UTILITIES,  
INC. AND AQUA TEXAS, INC. D/B/A  
AQUA TEXAS FOR SALE, TRANSFER,  
OR MERGER OF FACILITIES AND TO  
AMEND CERTIFICATES OF  
CONVENIENCE AND NECESSITY IN  
CHAMBERS, JEFFERSON AND  
LIBERTY COUNTIES (GRAY UTILITY  
SERVICE WATER SYSTEM; 37943-S )**

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**PUBLIC UTILITY COMMISSION**

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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 5 AND SUPPLEMENTAL  
RECOMMENDATION ON SUFFICIENCY OF THE APPLICATION**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 5 and Supplemental Recommendation on Sufficiency of the Application. In support of its Response, Staff states the following:

**I. BACKGROUND**

On June 4, 2014, Aqua Texas, Inc. d/b/a Aqua Texas (Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ) regarding the sale, transfer, or merger (STM) and amendment of Certificate of Convenience and Necessity (CCN) No. 11157 in Chambers, Jefferson, and Liberty Counties, Texas pursuant to TEX. WATER CODE ANN. § 13.301 and Title 16, TEX. ADMIN. CODE (16 TAC) §§ 24.109 and 24.112.

Effective September 1, 2014, the Commission began the economic regulation of water and sewer utilities and this case formerly pending at the TCEQ was transferred to the Commission. On September 30, 2014, Order No. 2 Requiring Comments on Status was issued requiring Staff to file an update on the status of the proceeding, to file a recommendation on the need for a hearing or on final disposition of the application, or to propose a procedural schedule by October 21, 2014.

On October 21, 2014, Staff filed its Response to Order No. 2 and requested that the Administrative Law Judge extend the deadline for Staff to file its recommendation on processing the application until Friday, December 19, 2014. On December 19, 2014, Staff filed its Recommendation on the Application, in which Staff identified multiple deficiencies in the

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application and notice and requested that the Applicant be given additional time to cure the deficiencies.

On January 5, 2015, the Administrative Law Judge issued Order No. 4 directing the Applicant to file an amended application to cure the deficiencies by January 30, 2015. Additionally, Order No. 4 directed Staff to file a supplemental recommendation regarding administrative completeness of the amended application and notice along with a proposed procedural schedule within ten working days of receipt of the amended application. The Applicant file supplemental mapping information to cure the identified deficiencies on January 30, 2015, and Staff timely filed its Response to Order No. 4, Status Report, and Request for extension of deadline on February 13, 2015.<sup>1</sup> On February 19, 2015, the Administrative Law Judge issued Order No. 5 granting Staff's request and extending the deadline for Staff to file its supplemental recommendation on sufficiency of the application and notice, and a proposed procedural schedule, until March 30, 2015. This Response is timely filed.

## II. ADMINISTRATIVE COMPLETENESS

With respect to procedure, the Commission's substantive rules state:

On or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission and give public notice of the action.<sup>2</sup>

The 120-day period begins on the later of: (i) the filing of a sale, transfer, merger application; (ii) if mailed notice is required, the date that the applicant mailed notice; or (iii) if newspaper notice is required, the last date of publication of the notice.<sup>3</sup> An application is not considered filed until "a determination of administrative completeness is made."<sup>4</sup>

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<sup>1</sup> Ten working days from January 30, 2015 falls on Friday, February 13, 2015.

<sup>2</sup> 16 TAC § 24.109(a).

<sup>3</sup> 16 TAC § 24.109(a)(1)-(3).

<sup>4</sup> *Id.*

Staff notes that the Commission has not yet made a determination of administrative completeness in this proceeding. Therefore, the 120-day clock pursuant to 16 TAC § 24.109(a) has not yet started.

### **III. STAFF'S RECOMMENDATION ON THE APPLICATION**

Staff has reviewed the supplemental information submitted by the Applicant on January 30, 2015. As detailed in the attached memo (Attachment A) from Debbie Reyes-Tamayo and Tracy Harbour of the Commission's Water Utilities Division, Staff recommends that the supplemental information was not sufficient to cure the mapping and notice deficiencies identified by Staff in its December 19, 2015 Recommendation; therefore, Staff recommends that the application and proposed notice remain deficient. Specifically, Map 1 and Map 2 do not clearly delineate the proposed water CCN service areas subject to this transaction and cannot be used as the notice map for this case.

16 TAC § 24.8(a) provides that, if material deficiencies exist in a rate/tariff change application or notice, the application may be rejected. In order to cure the identified mapping deficiencies, Staff recommends that the Applicant submit a detailed, large-scale map for each county accurately delineating the proposed water service areas subject to this transaction with enough detail to accurately locate the proposed water service areas in the vicinity of surrounding roads, streets, and highways. These maps must be suitable for notice purposes. Staff recommends the Applicant use the Commission's Water and Sewer CCN Viewer to develop maps with the most current CCN area data.

Pursuant to 16 TAC § 24.8(a), the application is not considered filed until the Commission determines that the application and notice are both administratively complete. Staff has identified deficiencies in the mapping information and proposed notice. Therefore, Staff recommends that the application package be found not administratively complete pursuant to TEX. WATER CODE ANN. § 13.301 and Title 16, TEX. ADMIN. CODE (16 TAC) §§ 24.105. Staff recommends that the application package be rejected pursuant to 16 TAC § 24.8(a) until the deficiencies are cured and that the Applicant be given until **April 7, 2015** to cure the identified deficiencies and submit a revised proposed notice. Staff proposes to provide a second supplemental recommendation on the application and notice on or before **May 8, 2015**.

### **IV. PROPOSED PROCEDURAL SCHEDULE**

Staff recommends that the application remains administratively incomplete due to deficiencies in the mapping information provided by the Applicant. Accordingly, Staff has not proposed a procedural schedule for this application at this time.

#### V. CONCLUSION

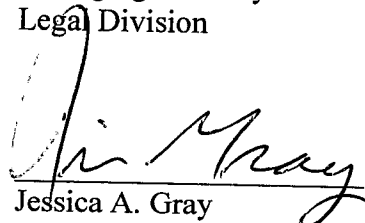
Staff recommends that the application remains administratively incomplete due to deficiencies in the mapping information provided by the Applicant on January 30, 2015. Therefore, Staff recommends that the Applicant be given until **April 7, 2015** to amend its application in order to cure the mapping deficiencies identified by Staff. Staff will then review this amended application for administrative completeness and proposes to provide a second supplemental recommendation on the application and notice by **May 8, 2015**. In the event that Staff determines that the Applicant's amended application and notice are administratively complete, Staff will propose a procedural schedule for processing the matter. Staff respectfully requests that the ALJ issue an order consistent with this Response.

**Date: March 30, 2015**

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Shelah J. Cisneros  
Managing Attorney  
Legal Division

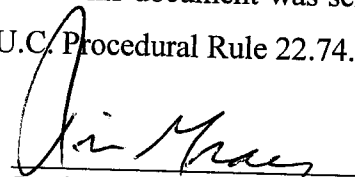


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**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served his document was served on all parties of record on March 30, 2015 in accordance with P.U.C. Procedural Rule 22.74.

  
Jessica A. Gray, Attorney

## ATTACHMENT A

## PUC Interoffice Memorandum

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**To:** Jessica Gray, Attorney  
Legal Division

**Thru:** Tammy Benter, Director  
Water Utilities Division

**From:** Debbie Reyes Tamayo, Program Specialist  
Tracy Harbour, GIS Specialist  
Water Utilities Division

**Date:** March 27, 2015

**Subject:** Docket No. 42958, Application of Aqua Texas, Inc. dba Aqua Texas Certificate of Convenience and Necessity (CCN) No. 11157, to transfer portions of water service areas and water system assets for their Southeast Region in Chambers, Jefferson and Liberty Counties

On June 4, 2014, Aqua Texas, Inc. dba Aqua Texas (Applicant) CCN No. 11157 submitted an application with the Texas Commission on Environmental Quality (TCEQ) to transfer portions of areas and water system assets for their Southeast Region in Chambers, Jefferson and Liberty Counties. The application was filed pursuant to the criteria in the Texas Water Code, Section 13.301. Effective September 1, 2014, jurisdiction over the economic regulation of water and sewer utilities was transferred from the TCEQ to the Public Utility Commission (PUC). This included the rates and CCN programs for water and sewer utilities. This application was affected by the transfer and is now under the purview of the PUC. The application was filed pursuant to the criteria in Texas Water Code, Section §13.301, and Title 16, Texas Administrative Code, Sections, §24.109 and §24.112.

After reviewing the maps submitted on January 30, 2015, staff determined Map 1 and Map 2 do not clearly delineate the proposed water CCN service areas subject to this transaction and cannot be used as the notice map for this case. In straight transfer cases, staff recommends the Applicant use the Water and Sewer CCN Viewer to show the most current CCN service areas to be transferred.

The Applicant has not satisfied the mapping requirements as listed on page 5 of the CCN Amendment Application and as required in the P.U.C. SUBST. Rule in Chapter 24.105(a) (2). To resolve the mapping deficiency, the Applicant must submit a revised large scale map.

1. The Applicant must submit a **detailed (large scale) map for each county** accurately delineating the proposed water service areas subject to this transaction with enough detail to accurately locate the proposed water service areas in the vicinity of surrounding roads, streets, and highways. These maps will be used for notice purposes.

TB/DRT