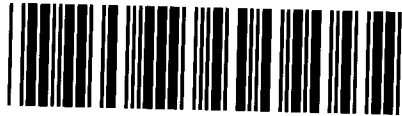


Control Number: 42958



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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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OF

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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 9 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. 9 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

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, 2015.¹ 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.

On March 30, 2015, Staff filed its Response to Order No. 5 and Recommendation on the Application in which Staff recommended that the application remained deficient and requested that the Applicant be given additional time to cure the deficiencies. On March 31, 2015, the Administrative Law Judge issued Order No. 6 directing the Applicant to file supplemental information to cure the identified mapping and notice by April 7, 2015 and directing Staff to file a second supplemental recommendation regarding administrative completeness of the application and proposed notice and to propose a procedural schedule for continued processing by May 8, 2015. On May 8, 2015, Staff filed its Response to Order No. 6 and Request for Extension of Deadline, requesting additional time to develop the proper form and substance of the notice documents. On May 13, 2015, the Administrative Law Judge issued Order No. 7 granting the extension and directing Staff to file a recommendation on administrative completeness of the amended application, including proposed notice, and to propose a procedural schedule, if appropriate by May 26, 2015.

On May 22, 2015, Staff filed its Response to Order No. 7 and Request for Extension of Deadline requesting additional time for Staff to develop the proper form and substance of notice. On May 26, 2015, the Administrative Law Judge issued Order No. 8 granting Staff's request and

¹ Ten working days from January 30, 2015 falls on Friday, February 13, 2015.

directing Staff to file its recommendation on administrative completeness of the amended application, including proposed notice, and to propose a procedural schedule, if appropriate, by June 12, 2015. On June 12, 2015, Staff filed a Response to Order No. 8 requesting an extension of the deadline to file a supplemental recommendation on the application. On June 12, 2015, the Administrative Law Judge issued Order No. 9 granting the requested extension and directed Staff to file a supplemental recommendation on the administrative completeness of the amended application, a proposed procedural schedule, and approved notices by June 26, 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.²

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.³ An application is not considered filed until "a determination of administrative completeness is made."⁴

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

On May 22, 2015, the Applicant submitted revised notice descriptions in response to Order No. 6. Staff has reviewed the supplemental information submitted by the Applicant and recommends that the supplemental information was not sufficient to cure the notice deficiencies identified by Staff in its December 19, 2015 Recommendation. Therefore, Staff recommends that

² 16 TAC § 24.109(a).

³ 16 TAC § 24.109(a)(1)-(3).

⁴ *Id.*

the proposed notice remains deficient. Specifically, the revised notice descriptions do not identify the proposed areas subject to the application with enough clarity to be identified by the public. Additionally, while sixteen individual tracts are proposed to be transferred under the application, the Applicant provided notice descriptions for only eleven subdivisions, of which two descriptions are incorrect. Finally, the descriptions provided for eight of the tracts include reference points too far away to provide proper notice of location to the public.

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 notice deficiencies, Staff recommends that the Applicant provide corrected, written descriptions for each of the tracts to be transferred under the application using subdivision names instead of PWS numbers. Staff also recommends that the cities used as reference points in the descriptions be located no farther than seven miles from the tract. Staff recommends that the Applicant provide a notice map clearly labelling the tracts with numbers corresponding to the matching description. Staff is working with the Applicant to develop proper notice descriptions and a notice map clearly identifying the areas subject to the application.

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 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 **July 3, 2015** to cure the identified deficiencies and submit a revised proposed notice and notice map. Staff proposes to provide a supplemental recommendation on the notice on or before **July 17, 2015**.

IV. PROPOSED PROCEDURAL SCHEDULE

Staff recommends that the application remains administratively incomplete due to deficiencies in the revised notice 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 revised notice provided by the Applicant on May 22, 2015. Therefore, Staff recommends

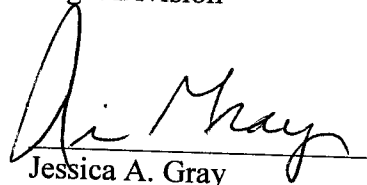
that the Applicant be given until **July 3, 2015** to amend its application in order to cure the notice deficiencies identified by Staff. Staff will then review this amended application for administrative completeness and proposes to provide a supplemental recommendation on the notice by **July 17, 2015**. In the event that Staff determines that the Applicant's amended notice is administratively complete, Staff will propose a procedural schedule for processing the matter. Staff respectfully requests that the Administrative Law Judge issue an order consistent with this Response.

Date: June 26, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division

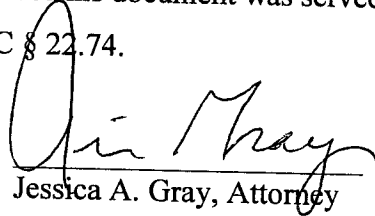


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CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on June 26, 2015 in accordance with 16 TAC § 22.74.


Jessica A. Gray, Attorney