



Control Number: 42958



Item Number: 29

Addendum StartPage: 0

**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**

**OF**

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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 11, SUPPLEMENTAL  
RECOMMENDATION ON SUFFICIENCY OF THE APPLICATION, AND PROPOSED  
PROCEDURAL SCHEDULE**

COMES NOW Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) and files this Response to Order No. 11, Supplemental Recommendation on Sufficiency of the Application, and Proposed Procedural Schedule. 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.<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.

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.

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

On May 26, 2015, the Administrative Law Judge issued Order No. 8 granting Staff's request and 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. On June 26, 2015, Staff filed its Response to Order No. 9 recommending that the Applicant had not cured the identified notice deficiencies. On June 29, 2015, the Administrative Law Judge issued Order No. 10 finding that the application remained deficient, directing the Applicant to file supplemental information to cure the deficiencies by July 3, 2015, and ordering Staff to file a supplemental recommendation regarding administrative completeness of the amended application and notice along with a proposed procedural schedule by July 17, 2015. On July 17, 2015, Staff filed its Response to Order No. 10 and Supplemental Recommendation on Sufficiency of the Application in which Staff recommended that the supplemental information provided by the Applicant remained insufficient to cure the identified deficiencies.

On July 21, 2015, the Administrative Law Judge issued Order No. 11 finding that the application remained incomplete and deficient, directing the Applicant to provide supplemental information to cure the identified deficiencies by August 14, 2015, and directing Staff to file a supplemental recommendation on sufficiency of the application, along with a procedural schedule, by August 28, 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>

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<sup>2</sup> 16 TAC § 24.109(a).

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>

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 July 23, 2015 and August 12, 2015, the Applicant submitted revised mapping documents and supplemental notice information in response to Order No. 11. Staff has reviewed the revised map supplemental information and, 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 revised maps and supplemental information are sufficient to cure the mapping and notice deficiencies identified by Staff. Additionally, Staff recommends that the revised maps provided by the Applicant are sufficient to meet the Commission’s mapping requirements. Therefore, Staff recommends the application be deemed sufficient for filing.

Staff has included the notice (Attachment B) the Applicant must provide to any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two miles of the proposed service area, and any city with an extraterritorial jurisdiction which overlaps the proposed service area. In addition to those systems identified in the application and supplemental list provided thereafter, Staff recommends that the Applicant also provide notice to the following municipalities: City of Baytown; City of Beach City; City of Cove; City of Mont Belvieu; and Old River-Winfree. Staff has also attached the affidavits (Attachment C) the Applicant must sign and file with Commission after providing notice in accordance with 16 TAC § 24.106(b)(6). The Applicant should provide an accurate map delineating the proposed area with each mailed notice as required by 16 TAC § 24.106(b)(5). The Applicant filed revised small and large maps with the Commission on July 2, 2015, July 23, 2015, and August 12, 2015. Staff recommends that the Applicant include the following maps in the notice to notice customers and

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

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

municipalities subject to this application: maps in Interchange Item No. 24 at page 8 (native files); maps in Interchange Item No. 27 at pages 6, 7, 9 through 12 (native files); and maps in Interchange Item No. 28 at pages 4 through 7 and all remaining oversized map documents. At this time, Staff recommends that the Applicant be allowed to proceed with providing notice for the proposed transaction and be given until **October 9, 2015** to file a copy of the actual notices issued, the map issued with the mailed notices, and signed affidavits that the notice was given.

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

In order to accomplish the provision of notice as stated above, Staff recommends the following procedural schedule:

October 9, 2015	Deadline for Applicant to file affidavits of notice for mailed notice
30 days after the mailing or publication of notice, whichever occurs later	Intervention deadline, and deadline for intervenors to file comments or request a hearing
October 23, 2015	Deadline for Commission Staff to file a supplemental procedural schedule <sup>5</sup>

#### **V. CONCLUSION**

For the reasons stated herein, Staff recommends that the application be deemed administratively complete and recommends the adoption of the proposed procedural schedule. Staff respectfully requests an order consistent with these recommendations.

**Date: August 28, 2015**

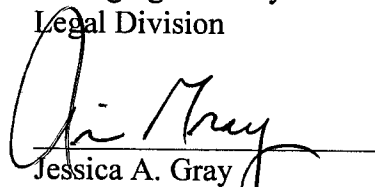
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<sup>5</sup> Staff notes, because the 120-day time period does not begin until the last date notice was provide, it is not able to set additional deadlines such as a deadline for Staff to file a final recommendation or request for hearing until the Applicant files the affidavits of notice specifying when notice was complete.

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

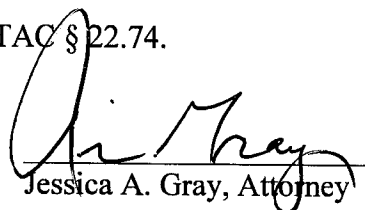
Karen Hubbard  
Managing Attorney  
Legal Division



Jessica A. Gray  
State Bar No. 24079236  
Attorney, Legal Division  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7228  
(512) 936-7268 (facsimile)

**DOCKET NO. 42958**  
**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served his document was served on all parties of record on August 28, 2015 in accordance with 16 TAC § 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:** August 28, 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" or "Aqua Texas") 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 Aqua Texas 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 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.

Based on staff's review of the information in the application, staff recommends that the application be deemed sufficient for filing. Staff has amended the notice documents to meet Commission requirements, staff further recommends the following:

- 1) The Applicant provide the attached notice of the application to the following:
  - a) any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the proposed service area;
  - b) any city with an extraterritorial jurisdiction which overlaps the proposed service area;

The Applicant filed revised small and large maps through the PUC's Interchange System on July 2, 2015 with item # 24, on July 23, 2015 with item #27, and on August 12, 2015 with item #28. The following maps submitted on these dates are sufficient for the pages and tem numbers specified below. Please use these maps to notice customers and municipalities subject to this application.

- Maps on page 8 filed in the native files (zip) with item # 24
- Maps on pages 6, 7, 9 through 12 filed in the native files (zip) with item # 27
- Maps on pages 4 through 7 and remaining oversized map documents submitted with item #28

- 2) In addition to those systems identified in the application and supplemental list thereafter, the applicant will also need to send notice with a copy of the proposed CCN map to the following municipalities located within a two-mile buffer of the proposed water service areas subject to this application:
  - City of Baytown
  - City of Beach City
  - City of Cove
  - City of Mont Belvieu
  - Old River-Winfree
- 3) Applicant shall include copy of a map showing the proposed service area with the individual notices to neighboring utilities, other affected parties and each landowner. It is the Applicant's burden to provide an accurate map delineating the proposed area with each individual notice. Information related to districts including addresses can be obtained by the Applicant from the TCEQ's web site located at <http://www14.tceq.texas.gov/iwud/>.
- 4) Applicant shall include a copy of the actual individual notice sent with attached signed and notarized affidavit that the notice was given as proof that sufficient notice was provided.

TB/DRT

## ATTACHMENT B

## Notice to Neighboring Systems, Landowners and Cities

### NOTICE OF APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) TO TRANSFER PORTIONS OF WATER SERVICE AREAS AND WATER SYSTEM ASSETS FOR SOUTHEAST REGION IN CHAMBERS, JEFFERSON AND LIBERTY COUNTIES

To: \_\_\_\_\_ Date Notice Mailed: \_\_\_\_\_, 2015  
 (Name of Customers)  
 \_\_\_\_\_  
 (Address)  
 \_\_\_\_\_  
 (City State Zip)

Aqua Utilities, Inc. 1106 Clayton Ln., Ste. 400 W. Austin TX 78723  
 (Sellers) (Address) (City) (State) (Zip Code)

has submitted an application with the Public Utility Commission to transfer portions of CCN No. 11157 areas and water system assets for Southeast Region in Chambers, Jefferson and Liberty Counties:

Aqua Texas, Inc. dba Aqua Texas 1106 Clayton Ln., Ste. 400 W. Austin TX 78723  
 (Purchaser) (Address) (City) (State) (Zip Code)

The **water service areas** subject to this transaction are located as described below:

- **1 - Gray Utility Service:** The water service area subject to this transaction consists of seven areas located approximately 3 miles southeast of downtown **Mont Belvieu, Chambers County**, Texas and generally bounded on the north by IH 10; on the east by Old River Lake; on the south by Wildlife Way; and on the west by Grand Parkway. The total area being requested is approximately **600 acres** and has **989 current customers**.
- **2 - Leaning Oaks Water Association and Towering Oaks I:** The water service area subject to this transaction is located approximately 2.4 miles northeast of downtown **Old River-Winfree, Chambers and Liberty Counties**, Texas and is generally bounded on the north by Picketts Bayou; on the east by Solis Road; on the south by Lost Lake; and on the west by Goodyear Road and FM 565. The total area being requested includes approximately **176 acres** and **74 current customers**.

- **3 - Trinity Cove Subdivision:** The water service area subject to this transaction is located approximately 3 miles southwest of downtown **Cove, Chambers County**, Texas and is generally bounded on the north by South FM 565; on the east by FM 3180; on the south by FM 2354; and on the west by the intersection of FM 565 and FM 2354. The total area being requested includes approximately **22 acres** and **32 current customers**.
- **4 - Carriage Trail Subdivision:** The water service area subject to this transaction is located approximately .8 miles south-southeast of downtown **Old River-Winfree, Chambers County**, Texas and is generally bounded on the north by FM 565; on the east by FM 565; on the south by B and B Lane; and on the west by Sunnyside Drive. The total area being requested includes approximately **26 acres** and **33 current customers**.
- **5 - Hackberry Creek Subdivision:** The water service area subject to this transaction is located approximately 2 miles southwest of downtown **Cove, Chambers County**, Texas and is generally bounded on the north by Harmon Road; on the east by the intersection of Harmon Rd and FM 565; on the south by FM 565; and on the west by FM 3180. The total area being requested includes approximately **71 acres** and **58 current customers**.
- **6 - Barrow Ranch:** The water service area subject to this transaction is located approximately .5 miles north of downtown **Beach City, Chambers County**, Texas and is generally bounded on the north by Skylane Drive; on the east by Trinity Bay; on the south by McCollum Park Road; and on the west by South Cotton Lake Road. The total area being requested includes approximately **308 acres** and has **195 current customers**.
- **7 - Oak Meadows II Subdivision and Oak Meadows III Subdivision:** The water service area subject to this transaction is located approximately 1.7 miles northeast of downtown **Old River-Winfree, Liberty County**, Texas and is generally bounded on the north by Picketts Bayou; on the east by CR 4014; on the south by Lost Lake; and on the west by CR 4001. The total area being requested includes approximately **152 acres** and has **83 current customers**.

- **8 - Icet Cove:** The water service area subject to this transaction consists of three areas located approximately 3.8 miles east-southeast of downtown **Mont Belvieu, Liberty County**, Texas and is generally bounded on the north by the intersection of Old Irish Farm and FM 535; on the east by FM 565; on the south by IH 10; and on the west by Eagle Drive. The total area being requested includes approximately **238 acres** and has **0 current customers**.
- **9 - Webb Way Subdivision:** The water service area subject to this transaction is located approximately 6.5 miles northwest of downtown **Dayton, Liberty County**, Texas and is generally bounded on the north by Parish Road 684; on the east by State Hwy 321; on the south by Webb Road. The total area being requested includes approximately **50 acres** and has **16 current customers**.
- **10 - Sunchase Subdivision:** The water service area subject to this transaction is located approximately 2 miles north of downtown **Hamshire, Jefferson County**, Texas and is generally bounded on the north by FM 365; on the east by IH 10; on the south by IH 10; and on the west by League Road. The total area being requested includes approximately **217 acres** and has **50 current customers**.

***See enclosed map of the proposed service areas.***

Affected persons may file written protests and/or request a public hearing within 30 days of this notice.

To request a hearing, you must:

- (1) state your name, mailing address and daytime telephone number;
- (2) state the applicant's name, application number or another recognizable reference to this application;
- (3) include the statement "I/we request a public hearing";
- (4) write a brief description of how you, the persons you represent, or the public interest would be adversely affected by the proposed transaction and transfer of the CCN; and
- (5) state your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

Only those persons who submit a written request to be notified of a hearing will receive notice if a hearing is scheduled. The Commission will issue the CCN requested in the referenced application unless a hearing is scheduled to consider the transaction. If no protests or requests for hearing are filed during the comment period, the Commission may issue the CCN 30 days after publication of this notice.

**Persons who wish to intervene or comment should write the:**

Filing Clerk  
Public Utility Commission of Texas  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

within thirty (30) days from the date of this publication or notice. A public hearing will be held only if a legally sufficient hearing request is received or if the commission on its own motion requests a hearing. Only those individuals who submit a written hearing request or a written request to be notified if a hearing is set will receive notice if a hearing is scheduled.

If a public hearing is requested, the commission will not issue the CCN and will forward the application to the State Office of Administrative Hearings (SOAH) for a hearing. If no settlement is reached and an evidentiary hearing is held, the SOAH will submit a recommendation to the commission for final decision. If an evidentiary hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If you are a landowner with a tract of land at least 25 acres or more, that is partially or wholly located within the proposed area, you may request to be excluded from the proposed area (or "opt out") by providing written notice to the commission within (30) days from the date that notice was provided by the applicant. All requests to opt out of the requested service area must include a scaled, general location map and a metes and bounds description of the tract of land.

**Persons who meet the requirements to opt out, and wish to request this option should file the required documents with the:**

Filing Clerk  
Public Utility Commission of Texas  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

A copy of the request to opt out of the proposed area must also be sent to the applicant. Staff may request additional information regarding your request.

**Si desea informacion en Espanol, puede llamar al 1-888-782-8477**

## ATTACHMENT C



# PUBLIC UTILITY COMMISSION



## AFFIDAVIT OF NOTICE TO NOTICE TO NEIGHBORING SYSTEMS, LANDOWNERS AND CITIES

DOCKET NO. 42958

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared

\_\_\_\_\_, who being by me

duly sworn, deposes and that (s)he is the \_\_\_\_\_  
(TITLE)

of the \_\_\_\_\_  
(NAME OF UTILITY)

that the attached notice was provided to customers and other affected  
parties by

\_\_\_\_\_  
(METHOD USED TO PROVIDE NOTICE)

on or about the following date, to wit: \_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(SIGNATURE OF UTILITY OFFICIAL)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
to certify which witness my hand and seal of office.

\_\_\_\_\_  
Notary Public in and for the State of Texas

\_\_\_\_\_  
Print or Type Name of Notary Public

Commission Expires \_\_\_\_\_