



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)**

PUBLIC UTILITY COMMISSION

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**PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK**

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 13 AND RECOMMEDATION
ON APPLICATION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Order No. 13. In support thereof, Staff shows the following:

I. BACKGROUND

On June 4, 2014, Aqua Texas, Inc. d/b/a Aqua Texas (Aqua Texas) 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.

On October 28, 2015, the Administrative Law Judge issued Order No. 13 establishing a supplemental procedural schedule. Pursuant to the procedural schedule adopted in Order No. 13, Staff is directed to file a recommendation on the application by December 2, 2015. Accordingly, this pleading is timely filed.

II. STAFF'S RECOMMENDATION

Based on the attached memorandum from Debbie Reyes Tamayo, Program Specialist with the Water Utility Regulation Division, Staff recommends that Aqua Texas address and respond to the multiple Notice of Violation (NOV) letters from the Texas Commission on Environmental Quality (TCEQ) pertaining to 30 TAC § 290 Subchapters D and F, which governs the drinking water quality and reporting requirements for public water systems (PWSs) in Texas before a final recommendation on the application is rendered.

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Aqua Texas has received several NOV letters from the TCEQ pertaining to 30 TAC § 290 Subchapter F. Specifically, Aqua Texas has the following outstanding alleged violations regarding specific PWSs that are included in this transfer application as listed below:

1. Hackberry Creek Subdivision (PWS 0360100): The total area being requested includes approximately 71 acres and 58 current customers.
 - A NOV was issued on October 21, 2015 stating the system appears to have arsenic. The TCEQ is requiring that Aqua Texas submit a compliance agreement to address this issue.
2. Oak Meadows II Subdivision and Oak Meadows III Subdivision (PWSs 1050100 and 1460096): The total area being requested includes approximately 152 acres and has 83 current customers.
 - A NOV was issued on February 13, 2015. For Oak Meadows II Subdivision, TCEQ cited that Aqua Texas will need to provide evidence that they have filed for a request for an exception for the sanitary control easements for the system's wells or provide a sanitary control easement for the wells. For Oak Meadows III Subdivision, TCEQ stated that the system appears to have well production capacity issues and Aqua Texas also needs to provide a sanitary control easement for the well. To correct this violation, TCEQ is requesting that Aqua Texas submit plans for well capacity or seek an exception to well capacity from the TCEQ in addition to addressing the easement issue.
3. Webb Way Subdivision (PWS 1460137): The total area being requested includes approximately 50 acres and has 16 current customers.
 - The TCEQ shows this system is listed as "Inactive". Aqua Texas will need to provide a copy of request of an exception from TCEQ or a sanitary control easement for the well in addition to addressing the inactivity status with the TCEQ. There are various other violations that will need to be addressed by Aqua Texas to address the inactivity issue.

Pursuant to 16 TAC § 24.109(e)(5)(B), the Commission is required to consider the adequacy of service currently provided to the requested area and may require a hearing if the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of noncompliance with the requirements of the TCEQ, the commission or the Texas Department of State Health Services under 16 TAC § 24.109(e)(3)(A).

Staff proposes the following supplemental procedural schedule, based on the procedural schedule approved in Order No. 13, for the processing of this application:

Deadline for Applicants to file documents in this docket evidencing response and resolution to the NOV letters.	December 18, 2015
Deadline for Staff to file a recommendation on the application or request a hearing	December 30, 2016
Expiration of 120-day deadline for Commission action pursuant to 16 TAC § 24.109(e).	January 28, 2016

If the ALJ determines on or before January 28, 2016 that the STM should be approved, Staff will at that point propose additional dates for the processing of this docket, such as a deadlines for signed sales documents to be submitted, submittal of a final recommendation by Staff, and submittal of a joint proposed order.

III. CONCLUSION


Staff recommends that Staffs proposed procedural schedule be adopted.

DATED: December 2, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director - Legal Division


Karen S. Hubbard
Managing Attorney - Legal Division



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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 2, 2015, in accordance with 16 TAC § 22.74.



Ralph J. Daigneault

PUC Interoffice Memorandum

To: Ralph Daigneault, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utility Regulation Division

From: Debbie Reyes Tamayo, Program Specialist
Water Utility Regulation Division

Date: November 30, 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 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 is being reviewed under the criteria in Texas Water Code § 13.301 (TWC) and Title 16 Texas Administrative Code §§ 24.109 and 24.112 (TAC).

Aqua Texas has received several Notice of Violation (NOV) letters from the Texas Commission on Environmental Quality (TCEQ) pertaining to 30 TAC § 290 Subchapter F, which governs the drinking water quality and reporting requirements for public water systems (PWSs) in Texas. The standards are written to comply with the Federal Safe Drinking Water Act and Primary Drinking Water Regulations. TWC § 13.426(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area. Aqua Texas appears to have the following outstanding alleged violations regarding specific PWSs that are included in this transfer application as listed below:

- Hackberry Creek Subdivision (PWS 0360100): The total area being requested includes approximately 71 acres and 58 current customers.
 - A NOV was issued on October 21, 2015 stating the system appears to have arsenic. The TCEQ is requiring that Aqua Texas submit a compliance agreement to address this issue.

- Oak Meadows II Subdivision and Oak Meadows III Subdivision (PWSs 1050100 and 1460096): The total area being requested includes approximately 152 acres and has 83 current customers.
 - A NOV was issued on February 13, 2015 for Oak Meadows II and III Subdivisions. TCEQ cited that Aqua Texas will need to provide evidence that they have filed a request for an exception for the sanitary control easements for the system's wells or provide a sanitary control easement for the wells. For Oak Meadows III Subdivision, TCEQ stated that the system appears to have well production capacity issues and Aqua Texas also needs to provide a sanitary control easement for the well. To correct this violation, TCEQ is requesting that Aqua Texas submit plans for well capacity or seek an exception to well capacity from the TCEQ in addition to addressing the easement issue.
- Webb Way Subdivision (PWS 1460137): The total area being requested includes approximately 50 acres and has 16 current customers.
 - The TCEQ shows this system is listed as "Inactive". Aqua Texas will need to provide a copy of request of an exception from TCEQ or a sanitary control easement for the well in addition to addressing the inactivity status with the TCEQ. There are various other violations that will need to be addressed by Aqua Texas regarding the inactivity issue.

TB/DRT