



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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**COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION**

**COMES NOW** the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Recommendation on Final Disposition. In support thereof, Staff shows the following:

**I. BACKGROUND**

On June 4, 2014, Aqua Utilities, Inc. dba Aqua Texas (Seller or Aqua Utilities) and Aqua Texas dba Aqua Texas Inc. (Buyer or Aqua Texas) (collectively, Applicants) submitted an application with the Texas Commission on Environmental Quality (TCEQ) to transfer portions of water service areas and water system assets held by Aqua Utilities CCN No. 11157 to Aqua Texas CCN No. 13203 in Chambers, Jefferson and Liberty Counties 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. 14 requiring Staff to either file a recommendation on the application or request a hearing by December 30, 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 the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Specifically, Staff recommends that the Commission find that Aqua Texas demonstrates adequate financial, managerial and technical (FMT) capability to provide service to its existing service area plus the area subject to this application. The attached memorandum details how the STM

application satisfies Tex. Water Code §§ 13.241, 13.246, and 13.301, and 16 TAC § 24.102, 24.109, and 24.112. Staff also recommends that the Applicants be ordered to file documentation as evidence that all assets have been transferred to the acquiring entity and that the disposition of any remaining deposits have been addressed as soon as possible pursuant to 16 TAC § 24.109(f).

### III. CONCLUSION

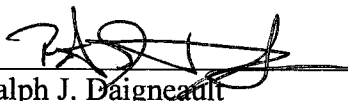
Staff respectfully requests the entry of an order consistent with the above recommendation.

**DATED: December 30, 2015**

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director - Legal Division

Karen S. Hubbard  
Managing Attorney - Legal Division

  
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Ralph J. Daigneault  
Attorney-Legal Division  
State Bar No. 24040755  
(512) 936-7348 (telephone)  
(512) 936-7268 (facsimile)  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

### CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 30, 2015, in accordance with 16 TAC § 22.74.

  
\_\_\_\_\_  
Ralph J. Daigneault

## PUC Interoffice Memorandum

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**To:** Ralph Daigneault, Attorney  
Legal Division

**Thru:** Tammy Benter, Director  
Lisa Fuentes, Team Leader  
Water Utilities Division

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

**Date:** December 30, 2015

**Subject:** **Docket No. 42958;** *Application of Aqua Utilities, Inc. and Aqua Texas, Inc. d/b/a Aqua Texas for Sale, Transfer and Merger of Facilities and to Amend Certificates of Convenience and Necessity (CCN) in Chambers, Jefferson and Liberty Counties (37943-S)*

On June 4, 2014, Aqua Utilities, Inc. dba Aqua Texas (Seller or Aqua Utilities) and Aqua Texas dba Aqua Texas Inc. (Buyer or Aqua Texas) (collectively, Applicants) submitted an application with the Texas Commission on Environmental Quality (TCEQ) to transfer portions of water service areas and water system assets held by Aqua Utilities CCN No. 11157 to Aqua Texas CCN No. 13203 in Chambers, Jefferson and Liberty Counties. As a result of the transaction, both the Buyer's and Seller's water CCN's will be amended to reflect the transfer. The application was filed pursuant to the criteria in the Tex. Water Code §§ 13.241, 13.246, and 13.301 (TWC). On September 1, 2014, the rates and CCN programs were transferred from the TCEQ to the Public Utility Commission (PUC or Commission). This application was part of the transfer and is now under the PUC's purview. The application is now being reviewed under 16 Tex. Admin. Code §§ 24.102, 24.109 and 24.112 (TAC) and TWC §§ 13.241, 13.246 and 13.301.

The application was accepted for filing by the Commission on September 4, 2015. Proper public notice was provided on September 25, 2015, to neighboring systems, landowners, cities and affected parties in accordance with 16 TAC § 24.112(c). The affidavit was received by the Commission on October 2, 2015. The comment period ended October 25, 2015, and no protests or requests for hearing were received.

Pursuant to TWC §13.301 (e), before the expiration of the 120-day notification period, the Commission is required to notify all known parties to the transaction whether the Commission will hold a hearing to determine if transaction will serve the public interest. For this case, I do not believe a hearing is necessary because the transaction will serve the public interest based on my review of the information in the application and the criteria listed below. Aqua Texas demonstrates adequate financial, managerial and technical (FMT) capability to provide service to its existing service area plus the area subject to this application. In my review of the public interest factors and the FMT capability of the Buyer, I reviewed the requested amendment pursuant to TWC § 13.246(c). Under this statute, the Commission shall consider the following nine criteria when amending a CCN:

- TWC § 13.4246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area. The requested transaction includes the water utility services from the following:
  - Gray Utility Service, Public Water System (PWS) No. 0360005: The total area being requested is approximately 600 acres and has 989 current customers.
  - Leaning Oaks Water Association and Towering Oaks I, PWS No. 0360081: The total area being requested includes approximately 176 acres and 74 current customers.
  - Trinity Cove Subdivision, PWS No. 0360084: The total area being requested includes approximately 22 acres and 32 current customers.
  - Carriage Trail Subdivision, PWS No. 0360093: The total area being requested includes approximately 26 acres and 33 current customers.
  - Hackberry Creek Subdivision, PWS No. 0360100: The total area being requested includes approximately 71 acres and 58 current customers. After the Seller acquired this system, it resolved a problem with naturally occurring arsenic by installing a treatment system. A compliance sample was taken at a time this year when the treatment system was being rehabilitated and a media change-out was occurring. The result was an abnormally high sample; however, this was an anomaly. Proper public notice was provided in accordance with TCEQ rules as a result of the high sample. A confirmation sample was collected on October 19, 2015, which showed the water being supplied to customers on a regular basis is actually substantially below the maximum contaminant level allowed by state and federal standards. Compliance is assessed on a running twelvemonth average spanning the most recent four quarters; therefore, compliance will not be officially achieved for a few more months. TCEQ does not typically provide any type of confirmation when this type of compliance is achieved. Compliance will simply be documented in records kept for this particular PWS.
  - Barrow Ranch, PWS No. 0360122: The total area being requested includes approximately 308 acres and has 195 current customers.
  - Oak Meadows II and Oak Meadows III Subdivisions, PWS Nos. 1050100 and 1460096, respectively: The total area being requested includes approximately 152 acres and has 83 current customers. The Seller possesses proper sanitary control easements for both of these systems and does not know why this became an issue for TCEQ this year as the wells have been in place for many years. The Purchaser plans to work with TCEQ to determine precisely what documentation is needed to resolve this issue.. Oak Meadows III was experiencing a capacity issue. As a result, the Applicants requested an alternative capacity requirement exception from the TCEQ. The request was submitted on September 1, 2015, by the Seller's contract engineer, Manley Engineering and Associates. The Applicants are waiting for TCEQ approval of the exception request.
  - Webb Way Subdivision, PWS No. 1460137: The total area being requested includes approximately 50 acres and has 16 current customers. Information from TCEQ shows that this system is "active" and not "inactive." For the items identified in this year's inspection of the system, the correspondence shows the Applicants resolved issues with the system. The Applicants are under a compliance plan to resolve the remaining issues by the end of the first quarter of 2016. Even though the well for this system was in place for many years under prior ownership, the Applicants have not been able to locate a recorded sanitary

control easement for the well. Therefore, the Applicants plan to file a sanitary control easement exception request with TCEQ as is sometimes required in these types of situations.

- Sun chase Subdivision, PWS No. 1230083: The total area being requested includes approximately 217 acres and has 50 current customers.

Aqua Texas is committed to continuing the work of Aqua Utilities until all outstanding items noted by Commission Staff are resolved to TCEQ's satisfaction and will correct any additional compliance issues that may be identified in the future. The Applicants note that the "NOV letters" issued by the TCEQ merely allege potential TCEQ violations and should not be construed as actual violations at this time. Therefore, I believe adequate service is currently provided in the requested area.

- TWC §13.246(c)(2) requires the Commission to consider the need for service in the requested area. The fact that there are existing customers in the requested area demonstrates the need for service.
- TWC §13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient and on any other retail water utility servicing the proximate area. Only the Applicants and the current customers will be affected by this transaction. The Buyer, in conjunction with the Seller, presents the application as part of a consolidation effort to bring all Aqua America, Inc.'s (Aqua America) Texas subsidiary under a single corporation, Aqua Texas, and make it consistent with the boundaries of the Aqua Texas' North Region operations.
- TWC §13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service. The Buyer is an existing water utility and will provide water service using the existing systems, pending the closure and approval of the transaction.
- TWC §13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility. In this case, the area is already receiving service and no additional service is needed. Therefore, it is not necessary to consider the feasibility of obtaining service from another entity since the area is already being served.
- TWC §13.246(c)(6) requires the Commission to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service. Aqua Texas is committed to continuing the work of Aqua Utilities until all outstanding items noted by Commission Staff are resolved to TCEQ's satisfaction and will correct any additional compliance issues that may be identified in the future.
- TWC §§13.246(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate. In this situation, there will no impact on the environment and the land as the system is already in place and does not need any repairs or improvements at this time.
- TWC § 13.246(8) required the Commission to consider the probable improvement in service or lowering of cost to consumers. The customers' rates will not be affected by this transaction as they will remain the same. While the transaction will have no impact on the quality of service or lower cost to consumers, I believe it will add clarity to the customers regarding their service provider and its affiliates.

With respect to the Applicant's financial and managerial capability, Aqua America's audited financial statements were provided as of December 31, 2013. These statements received an unqualified opinion by Price Waterhouse Coopers, LLP, on March 03, 2013. As of December 31, 2013, total equity of Aqua America, Inc., was \$1.54 billion. Aqua America's debt to equity ratio at December 31, 2013 was \$1.47 to \$1.54 billion, or 0.95 to 1.00. A ratio of less than 1 to 1 is preferred for analysis of financial and managerial capabilities because it signals that creditors and

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stockholders equally contribute to the assets of the business. A less than 1 ratio indicates that the portion of assets provided by stockholders is greater than the portion of assets provided by creditors and a greater than 1 ratio indicates that the portion of assets provided by creditors is greater than the portion of assets provided by stockholders. Creditors usually like a low debt to equity ratio because a low ratio (less than 1) is an indicator of greater protection to their money. Operating income was \$305 million and depreciation and amortization expense was \$124.8 million. Cash flows from principle and interest payments on debt for Fiscal Year (FY) 13 were \$300.3 million. Therefore, the debt service coverage ratio calculates to be \$429.8 million to \$300.3 million or 1.43 to 1.00. A ratio of at least 1.25:1 is preferred when reviewing financial capability to ensure that reserve funds for debt payment and repairs and maintenance are built up and maintained.

With respect to the Buyer's technical capability, the Buyer has experienced operators on staff with thorough knowledge about water operations to provide continuous and adequate service to the area subject to this application. The terms of the agreement include exchanging all the facilities and service area associated with the application to the Buyer in return for assuming all liabilities associated with the facilities and area transferred by the Seller. The transaction will serve the public interest by facilitating efficient operation and regulation of the hundreds of Aqua Texas water systems and customers currently operated and served in Texas by consolidating them under a single corporate entity, Aqua Texas.

Pursuant to 16 TAC § 24.109(f), Staff recommends the Commission find that the transaction will serve the public interest and allow the Applicant to proceed with the proposed transaction. Staff further recommends that a public hearing is not necessary. Staff also recommends that the Applicant be ordered to file documentation as evidence that all assets have been transferred to the acquiring entity and that the disposition of any remaining deposits have been addressed as soon as possible pursuant to 16 TAC § 24.109(f).

TB/DRT