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DOCKET NO. 42958

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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 ) §  
§

OF

TEXAS

### COMMISSION STAFF'S RECOMMENDATION ON THE APPLICATION

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Recommendation on the Application and Proposed Procedural Schedule. In support of its Recommendation, 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. 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>1</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>2</sup> An application is not considered filed until "a determination of administrative completeness is made."<sup>3</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. COMMENTS ON ADMINISTRATIVE COMPLETENESS

As detailed in the attached memo (Attachment A) from Debbie Reyes-Tamayo of the Commission's Water Utilities Division, Staff has reviewed the application and recommends that the application be found materially deficient pursuant to 16 TAC §§ 24.105. Staff identified multiple mapping and related notice deficiencies in the application. Specifically, the Applicant failed to provide a general location map that accurately delineates the proposed service area within each county.

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 provide a general location map delineating the proposed service area with enough detail to accurately locate the proposed area within each county or counties. Staff also recommends that the Applicant provide a map to scale which clearly labels the proposed service area in accordance with the requirements in 16 TAC §

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<sup>1</sup> 16 TAC § 24.109(a).

<sup>2</sup> 16 TAC § 24.109(a)(1)-(3).

<sup>3</sup> *Id.*

24.105(a)(2). Staff further recommends the Applicant provide separate and additional maps of the proposed area to show the following: all facilities, illustrating separately facilities for production, transmission, and distribution of the applicant's service(s); and any facilities, customers or area currently being served outside the applicant's certificated area including a map showing requests for water service within the proposed service area. Finally, Staff recommends that the Applicant provide a written description of the proposed service areas.

Due to the deficiencies in the mapping information, Staff recommends that the notice previously provided by the Applicant is insufficient. Staff recommends that the Applicant submit to the Commission a proposed notice in the format provided at Form A of the STM application form to include: 1) notice to current customers and affected municipalities; and 2) the Commission contact information for protests or hearing requests. Staff recommends that the Applicant be directed to not mail the proposed notice until the Commission issues an order approving the proposed notice.

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 Friday, January 30, 2015 to cure the identified deficiencies and submit a revised proposed notice.

#### IV. PROPOSED PROCEDURAL SCHEDULE

Staff recommends that the application be found not administratively complete due to deficiencies in the mapping information and 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 is not administratively complete due to deficiencies in the mapping information and notice provided by the Applicant. Therefore, Staff recommends that the Applicant be given until Friday, January 30, 2015 to amend its application in order to

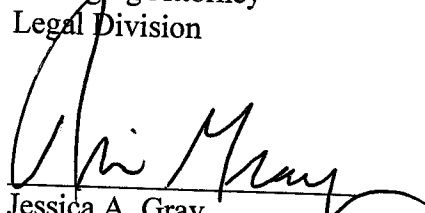
cure the mapping deficiencies identified by Staff and submit a revised proposed notice. Staff will then review this amended application for administrative completeness. In the event that Staff determines that the Applicant's amended application and notice are administratively complete, Staff will propose a procedural schedule for processing the matter. Staff respectfully requests that the ALJ issue an order consistent with this Response.

**Date: December 19, 2014**

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Shelah J. Cisneros  
Managing Attorney  
Legal Division

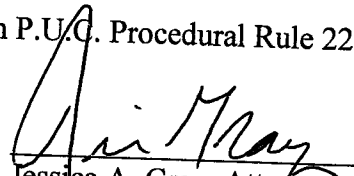


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**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served his document was served on all parties of record on December 19, 2014 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 Utility Division

**From:** Debbie Reyes Tamayo  
Program Specialist  
Water Utility Division

**Date:** December 19, 2014

**Subject:** Docket No. 42958, Application of Aqua Texas, Inc. dba Aqua Texas Certificate of Convenience and Necessity (CCN) No. 13203 to transfer portions of water service area and water system assets from Certificate of Convenience and Necessity (CCN) No. 11157 and to amend CCNs in Chambers, Jefferson and Liberty Counties (37943-S) (formerly known as Southeast Region-Gray Utility Service Water System)

On June 4, 2014, Aqua Texas, Inc. dba Aqua Texas (Applicant), CCN No. 13203, submitted an application with the Texas Commission on Environmental Quality (TCEQ) to transfer portions of areas and water system assets from CCN No. 11157 (formerly known as Southeast Region-Gray Utility Service Water System) and to amend CCNs in 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.

Aqua Texas, Inc. dba Aqua Texas, in conjunction with Aqua Utilities, Inc. dba Aqua Texas, have filed the application as part of a consolidation effort to bring all Aqua America, Inc., subsidiary Texas assets, under a single corporation, Aqua Texas, Inc., consistent with the boundaries of Aqua Texas' Southeast Region operations. This particular application is limited in scope to Aqua Texas Southeast Region-Gray Utility Service Water System areas and water system assets.

Based on staff's review of the information in the application, I recommend that the application be deemed insufficient for filing at this time. In order to continue processing this application, I recommend the Applicant do the following:

1. Provide a general location map delineating the proposed service area with enough detail to accurately locate the proposed area within each county (or counties).
2. Provide a map (to scale) clearly labeling the proposed service area by:
  - a. metes and bounds survey certified by a licensed state or registered professional land surveyor; or
  - b. projectable digital data with metadata (proposed areas should be in a single record and clearly labeled). Also a data disk labeled with the applicant's name must be provided; or
  - c. following verifiable natural and man-made landmarks; or
  - d. a copy of recorded plat map with metes and bounds.
3. Submit a proposed notice as shown on page 20 of 23 (Form A) of the application.

TB/DRT

MAILING LIST FOR  
Docket No. 42958

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