



Control Number: 42959



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**DOCKET NO. 42959**

**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  
MCLENNAN COUNTY (T&A WATER  
AND VLS INC. WATER SYSTEMS;  
37944-S)**

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**PUBLIC UTILITY COMMISSION**  
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**COMMISSION STAFF’S RESPONSE TO ORDER NO. 6, SECOND SUPPLEMENTAL  
RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS, AND PROPOSED  
PROCEDURAL SCHEDULE**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 6, Second Supplemental Recommendation on Administrative Completeness, 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 held by Aqua Utilities, Inc. in McLennan County, 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 29, 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 20, 2014.

On October 20, 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 October 21, 2014, Order No. 2 Granting

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Extension was issued, requiring Staff to file a recommendation on the need for a hearing or on final disposition, or to propose a procedural schedule for processing this proceeding by 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. 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. 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>1</sup> Ten working days from January 30, 2015 falls on Friday, February 13, 2015.

<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 April 7, 2015, the Applicant submitted a revised map and supplemental information in response to Order No. 6. 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 map and supplemental information are sufficient to cure the mapping deficiencies identified by Staff in its December 19, 2014 and March 30, 2015 Recommendations. Additionally, Staff recommends that the revised map provided by the Applicant is 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 current customers and affected municipalities, including the City of Waco, and 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). At this time, Staff recommends that the Applicant be allowed to proceed with providing notice for the proposed transaction and be given until June 8, 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.

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

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

#### IV. PROPOSED PROCEDURAL SCHEDULE

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

June 8, 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
June 19, 2015	Deadline for Commission Staff to file a supplemental procedural schedule <sup>5</sup>

#### V. CONCLUSION

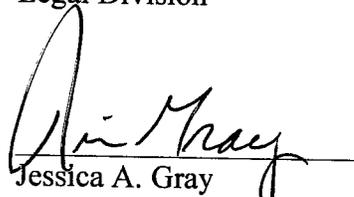
For the reasons stated herein, Staff recommends that the application be deemed administratively complete and recommends the adoption of the proposed procedural schedule. Staff respectfully requests an order consistent with these recommendations.

**Date: May 8, 2015**

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Shelah J. Cisneros  
Managing Attorney  
Legal Division



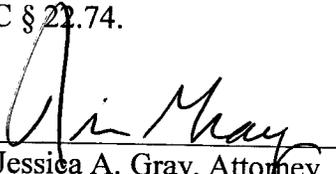
Jessica A. Gray  
State Bar No. 24079236  
Attorney, Legal Division  
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1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7228  
(512) 936-7268 (facsimile)

<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.

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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 May 8, 2015 in accordance with 16 TAC § 21.74.

  
Jessica A. Gray, Attorney

ATTACHMENT A

## PUC Interoffice Memorandum

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**To:** Jessica Grey  
Legal Division

**Thru:** Tammy Benter, Director  
Water Utilities Division

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

**Date:** May 6, 2015

**Subject:** Docket No. 42959, Application of Aqua Utilities, Inc. and Aqua Texas, Inc. dba Aqua Texas for Sale, Transfer, or Merger of Facilities and to Amend Certificates of Convenience and Necessity in McLennan County (T & A Water and VLS Inc. Water Systems; 37944-S)

On June 4, 2014, Aqua Texas, Inc. dba Aqua Texas, (Applicant) CCN No. 13201, submitted an application with the Texas Commission on Environmental Quality (TCEQ) to transfer portions of areas and water system assets from CCN No. 11157 (formally known as North Region-Tommy J. Patterson dba T&A Water and VLS Inc. Water System) and to amend CCNs in McLennan Counties pursuant to Texas Water Code, Section §13.301. 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. Staff reviews this application according to the criteria in Texas Water Code, Section §13.301, and Title 16, Texas Administrative Code (16 TAC) Sections 24.109 and 24.112.

On April 17, 2015, the Applicant filed a revised map in response to Commission Order No. 6. Staff has reviewed the revised map and recommends that this map is sufficient to meet the Commission's mapping requirements. Therefore, Staff recommends that the application be deemed sufficient for filing. Staff recommends that the Applicant provide the attached notice of the application to:

- a) Current customers; and
- b) any affected municipalities. In addition to those entities listed in the application, the applicant will also need to notify the City of Waco which is located within a 2-mile buffer of their proposed water service areas.

Pursuant to 24.106(5) the Applicant must provide an accurate map delineating the proposed area with each mailed notice.

Lastly, I recommend that the applicant be given until **June 8, 2015**, to file with the Commission a copy of the actual notices issued, the map issued with the individual mailed notice, and attached signed affidavits that the notice was given, pursuant to 16 TAC § 24.106(b)(6).

ATTACHMENT B

**Notice to Customers and Affected Municipalities**

AQUA UTILITIES, INC.'S NOTICE OF INTENT TO SELL FACILITIES AND TRANSFER PORTIONS OF CERTIFICITE OF CONVENIENCE AND NECESSITY (CCN) NO. 11157 TO PURCHASER AQUA TEXAS, INC. DBA AQUA TEXAS CCN 13201 IN MCLENNAN COUNTY, TEXAS

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

Aqua Utilities, Inc. 1106 Clayton Ln., Ste. 400 W. Austin Texas 78723  
(Sellers or Transferor's Name) (Address) (City) (State) (Zip Code)

has submitted an application with the Public Utility Commission to sell facilities and transfer portions of CCN No. 11157 area formerly served using the (North Region- T&A Water System (PWS No. 1550085) and VLS water System (PWS No. 1550113) in McLennan County to:

Aqua Texas, Inc. dba Aqua Texas 1106 Clayton Ln., Ste. 400 W. Austin Texas 78723  
(Seller's or Transferor's Name) (Address) (City) (State) (Zip Code)

The **water service areas** subject to this transaction is located approximately **10 miles northwest** of downtown **Waco**, Texas, and is **generally** bounded on the **north** by **the intersection of N. Rock Creek Road and FM 2490**; on the **east** by **the intersection of McGary Road and Rock Creek Road**; on the **south** by **the intersection of Tree Lake Drive and FM 1637**; and on the **west** by **intersection of Loyee Lane and Old China Spring Road**

The total area being requested includes approximately **207** acres.

For questions, please contact: 512-474-9100.

This transaction will have the following effect on the current customers' rates and services: None. Also, no impact or change in the quality of service is anticipated as a result of these transactions. However, operating the affected water system together under a consolidated corporate entity could ultimately improve the quality of the utility service.

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) 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.

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

Persons who wish to intervene or comment should write the:

Filing Clerk  
Public Utility Commission  
1701 N. 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.

Si desea informacion en Espanol, puede llamar al 1-512-936-7221.

ATTACHMENT C

# PUBLIC UTILITY COMMISSION



AFFIDAVIT OF NOTICE TO CURRENT CUSTOMERS AND AFFECTED PARTIES  
DOCKET NO. \_\_\_\_\_

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 OR RETAIL PUBLIC UTILITY)

that the attached notice was provided to current customers and affected parties by  
\_\_\_\_\_  
(METHOD USED TO PROVIDE NOTICE)

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

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015,  
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 \_\_\_\_\_