



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
OF TEXAS**

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 9 AND FINAL
RECOMMENDATION**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 9 and Final Recommendation. In support of its Response, Staff states the following:

I. BACKGROUND

On June 4, 2014, Aqua Texas, Inc. d/b/a Aqua Texas (Applicant or Buyer) 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. (Aqua Utilities or Seller) 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 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, 2015.¹ 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 in which Staff recommended that the application be deemed administratively complete. On May 8, 2015, the Administrative Law Judge issued Order No. 8 finding the application sufficient for filing and directing Staff to file a supplemental procedural schedule by June 19, 2015.

On June 19, 2015, Staff filed its Response to Order No. 8 and Proposed Procedural Schedule for the processing of this matter. On June 22, 2015, the Administrative Law Judge issued Order No. 9 memorializing the procedural schedule for this proceeding. Pursuant to the schedule adopted in Order No. 9, the deadline for Staff to file a recommendation on the application or to request a hearing is July 24, 2015. This Response is timely filed.

II. STAFF'S FINAL RECOMMENDATION

As stated in the Staff memo (Attachment A) from Debbie Reyes-Tamayo of the Commission's Water Utilities Division, Staff recommends that the Applicant has demonstrated

¹ Ten working days from January 30, 2015 falls on Friday, February 13, 2015.

adequate financial, managerial, and technical capability for providing continuous and adequate service to the proposed area, as required by 16 TAC §§ 24.109(b) and 24.112(b). Staff notes that proper notice was provided pursuant to 16 TAC §§ 24.109 and 24.112(c). After reviewing the factors found in 16 TAC § 24.102, Staff recommends that the transaction will serve the public interest and that a public hearing is not necessary.

The requested transaction includes the water utility service from two public water systems (PWSs) currently owned by the Seller: Tommy J. Patterson dba T&A Water (PWS 1550085) and VLS, Inc. (PWS 1550113). The area consists of approximately 207 acres including facilities and approximately 306 connections. Reviews of TCEQ records indicate that the PWS has no unresolved violations or complaints. Only the Applicants and the current customers will be affected by this transaction. The Buyer is an existing water utility and will provide water service using the existing system, pending the closure and approval of the transaction. 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. The existing system does not have any outstanding violations and does not require major capital improvements or repairs. 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. 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 the cost to consumers, Staff recommends that the transaction will provide clarity to the customers regarding their service provider and its affiliates.

Tex. Water Code § 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. Staff recommends that the Applicant has the financial and managerial capability to provide continuous and adequate service to the proposed area. Aqua America's audited financial statements were provided as of December 31, 2013.² 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

² 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 WLS Inc. Water Systems; 37944-S) at Attachment 3 (June 4, 2014).

\$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 stockholders equally contribute to the assets of the business. 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) 2013 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 Applicant's technical capability, the Buyer has demonstrated that it has experienced operators on staff with 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. Staff recommends that the transaction will serve the public interest by facilitating efficient operation and regulation Aqua Texas's water systems by consolidating them under a single corporate entity.

Accordingly, Staff recommends that no hearing on the application is required and that the proposed transaction be completed. Staff recommends that the parties be required to, within thirty days after the effective date of the transaction, file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been finalized and that customer deposits have been addressed in accordance with 16 TAC § 24.109(g). Additionally, the parties must file, under oath, a list showing the names and addresses of any customers who have to their credit a deposit. The list must also include the date such deposit was made, the amount of the deposit, and the amount of unpaid interest on the deposit. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest. Staff notes that if this documentation is not provided within one year of the date of the Notice of Approval or if an extension is not requested and granted, the Commission's approval of the transaction is void pursuant to 16 TAC § 24.112(e). Staff also recommends that the parties be informed that water CCN No. 11157 will remain in the name of Aqua Utilities until the transfer is complete in accordance with the Commission's rules.

Once Staff has received documentation evidencing the completion of the sale, Staff will revise the Commission's mapping information to reflect the transaction. Upon completion of

mapping, the parties must submit to the Commission signed consent forms evidencing their consent to the revised maps.

III. STAFF'S PROPOSED REVISED PROCEDURAL SCHEDULE

The procedural schedule adopted in Order No. 9 directs the parties to file a joint proposed notice of approval by September 8, 2015. However, Staff recommends that a proposed notice of approval is not appropriate at this point in the proceeding. In this pleading, Staff recommends that the Applicant be directed to proceed with the transaction. Once Staff has received documentation evidencing the completion of the sale, Staff will revise the Commission's mapping information to reflect the transaction. Upon completion of mapping, the parties must submit to the Commission signed consent forms evidencing their consent to the revised maps. As such, Staff proposes the following revised procedural schedule:

Deadline for Staff to file a recommendation on the application or request a hearing.	July 24, 2015
Expiration of 120-day deadline for Commission action pursuant to 16 TAC § 24.109(e).	September 23, 2015

IV. CONCLUSION

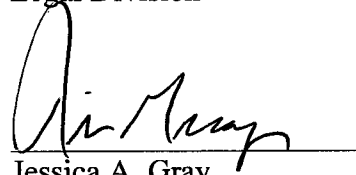
For the reasons stated above, Staff recommends that the transaction be completed and that the parties be directed to submit documentation regarding completion of the transaction. Staff further recommends adoption of the procedural schedule as revised in this pleading. Staff respectfully requests the issuance of an order consistent with this Response.

Date: July 24, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division

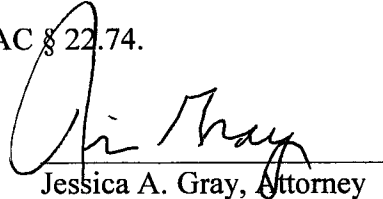


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CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on July 24, 2015 in accordance with 16 TAC § 22.74.



Jessica A. Gray, Attorney

ATTACHMENT A

PUC Interoffice Memorandum

To: Jessica Gray, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: Debbie Reyes Tamayo, Program Specialist
Water Utilities Division

Date: July 23, 2015

Subject: **Docket No. 42959;** *Application of Aqua Texas, Inc. d/b/a Aqua Texas and Aqua Utilities, Inc. (Aqua Utilities) for Sale, Transfer and Merger of a Water Certificate*

On June 4, 2014, Aqua Texas, Inc. dba Aqua Texas (Buyer) and Aqua Utilities, Inc. (Seller) submitted an application with the Texas Commission on Environmental Quality (TCEQ) to transfer certain portions of the water facilities, customers and service area from Certificate of Convenience and Necessity (CCN) No. 11157 held by Aqua Utilities to CCN No. 13201 held Aqua Texas in McLennan County. As a result of the transaction, both the Buyer's and Seller's water CCNs 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 May 8, 2015. Proper public notice was provided on May 26, 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 June 2, 2015. The comment period ended June 26, 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 I believe the transaction will serve the public interest based on my review of the information in the application and the criteria listed below. I believe 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 §13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area. The requested transaction includes the water utility service from two public water systems (PWSs) currently owned by the Seller. The systems are named Tommy J. Patterson dba T&A Water (PWS 1550085) and VLS, Inc. (PWS 1550113) the

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area consists of 207 acres, approximately 306 connections and facilities. Reviews of TCEQ records indicate that the PWS has no unresolved violations or complaints. 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, Inc. 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 system, 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. The existing system does not have any outstanding violations and does not require major capital improvements or repairs.
- 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 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(g).

TB/DRT

MAILING LIST FOR
Docket No. 42959

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