



Control Number: 42960



Item Number: 20

Addendum StartPage: 0

**DOCKET NO. 42960**

**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 SEWER SYSTEM; 37945-S)**

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**PUBLIC UTILITY COMMISSION**  
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**OF**  
**TEXAS**

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 8 AND FINAL  
RECOMMENDATIONS ON THE APPLICATION**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 8 and Final Recommendation on the Application. 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. 20453 held by Aqua Utilities, Inc. 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. On October 28, 2014, Order No. 3 Extending Deadline was issued, requiring Staff to file a recommendation on the need for a hearing or on final disposition, or to propose a procedural schedule, 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. Additionally, Order No. 4 directed Staff to file a supplemental recommendation regarding administrative completeness of the amended application and notice along with a proposed procedural schedule within ten working days of receipt of the amended application.

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, Status Update, and Request for Extension of Deadline, requesting additional time to complete the mapping overlap check of the application. On April 1, 2015, the Administrative Law Judge issued Order No. 6 granting Staff's request and extending the deadline for Staff to file its supplemental recommendation or comments on sufficiency of the application and notice and a proposed procedural schedule until April 10, 2015. On April 10, 2015, Staff filed its Response to Order No. 6 and Recommendation on Sufficiency of the Application recommending that the Applicants had cured the identified deficiencies and proposing deadlines for the provision of notice. On April 13, 2015, the Administrative Law Judge issued Order No. 7 finding the application sufficient and establishing deadlines. Specifically, Order No. 7 directed the Applicant to file affidavits of notice by May 11, 2015 and Staff to file a supplemental procedural schedule by June 11, 2015. On May 28, 2015, Staff filed its Response to Order No. 7 in which Staff proposed a supplemental procedural schedule for the proceeding. On May 29, 2015, the Administrative Law Judge issued Order No. 8 adopting Staff's proposed procedural schedule. Pursuant to Order No. 8, Staff was directed to file a final recommendation on the application or request a hearing by June 19, 2015. This Response is timely filed.

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<sup>1</sup> Ten working days from January 30, 2015 falls on Friday, February 13, 2015.

## II. STAFF'S 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 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.

In response to Tex. Water Code § 13.246(c)(1), the requested transaction includes the sewer utility service from the Veranda Wastewater Treatment Facility System WQ0011449001-TX0066656 consisting of 523 acres and 860 current customer connections and facilities. Reviews of TCEQ records indicate that the WQ system has no unresolved violations or complaints. Therefore, Staff recommends that adequate service is currently provided in the requested area. In response to Tex. Water Code § 13.246(c)(2), the fact that there are existing customers in the requested area demonstrates the need for service. Tex. Water Code § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient and on any other retail sewer utility servicing the proximate area. Staff recommends that only the Applicants and the current customers will be affected by this transaction. The Applicant presents the application as part of a consolidation effort to consolidate all Aqua America, Inc., subsidiary Texas assets under a single corporation, Aqua Texas, Inc., consistent with the boundaries of Aqua Texas' Southeast Region operations. The Applicant is an existing sewer utility and will provide sewer service using the existing system, pending the closure and approval of the transaction. In this case, the area is already receiving service from the Applicant and no additional service is needed. Therefore, Staff recommends that it is not necessary to consider the feasibility of obtaining service from another entity since the area is already being served.

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 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.

Tex. Water Code § 13.246(8) required the commission to consider the probable improvement in service or lowering of cost to consumers. Staff recommends that 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, Staff recommends that it will add clarity to the customers regarding their service provider and its affiliates.

Staff further recommends that the Applicant has the financial and managerial capability to provide continuous and adequate service to the proposed area. With respect to the Applicant's financial and managerial capability, Aqua America, Inc. provides water and wastewater services to approximately 3 million people in 9 states. Both the Purchaser and the Seller are subsidiaries of Aqua America, Inc., and do business under the name of Aqua Texas. Aqua Texas provides water and wastewater services to approximately 177,000 people in more than 400 communities in 53 counties across Texas. Aqua America Inc.'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/managerial capabilities. A less than 1 ratio indicates that the portion of assets provided by stockholders is greater than the portion of assets provided by creditors.

With respect to the Applicant's technical capability, the Applicant has experienced operators on staff with thoroughly knowledgeable about wastewater operations and the requirement for continuous and adequate service as required by the TCEQ's rules of operation for sewer utility systems. The terms of the agreement include exchanging all the facilities and service area associated with the application to the purchaser 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 systems currently operated in Texas by consolidating them under a single corporate entity, Aqua Texas, Inc., possessing regional sewer CCN numbers.

Accordingly, Staff recommends 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. 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). 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 also recommends that the parties be informed that sewer CCN No. 21004 will remain in the name of Aqua Utilities, Inc. 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. CONCLUSION

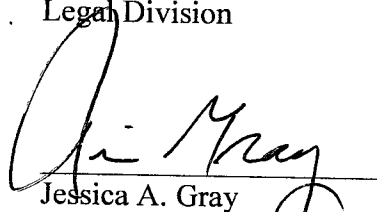
For the reasons stated above, Staff recommends that the transaction be completed and that the parties be directed to submit documentation regarding completion of the transaction. Staff respectfully requests the issuance of an order consistent with this Response.

**Date: June 19, 2015**

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Shelah J. Cisneros  
Managing Attorney  
Legal Division



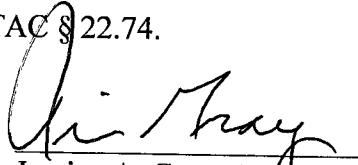
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Attorney, Legal Division

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**DOCKET NO. 42960**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served his document was served on all parties of record on June 19, 2015 in accordance with 16 TAC § 22.74.

  
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Jessica A. Gray, Attorney

## ATTACHMENT A



## PUC Interoffice Memorandum

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**To:** Jessica Gray, Attorney  
Legal Division

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

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

**Date:** June 4, 2015

**Subject:** **Docket No. 42960;** *Application of Aqua Texas, Inc. d/b/a Aqua Texas and Aqua Utilities, Inc. for Sale, Transfer and Merger of a Sewer Certificate*

On June 4, 2014, Aqua Texas, Inc. dba Aqua Texas ("Aqua Texas" or Applicant), CCN No. 21065, submitted an application with the Texas Commission on Environmental Quality (TCEQ) to transfer certain portions of the sewer facilities, customers and service area from CCN No. 20453 held by Aqua Utilities, Inc. ("Aqua Utilities" or "Seller") in Chambers County. As a result of the transaction, Service both the Applicant's and Seller's sewer CCNs will be amended to reflect the transfer. The application was filed pursuant to the criteria in the Texas Water Code (TWC) §§ 13.241, 13.246, and 13.301. On September 1, 2014, the rates and CCN programs were transferred from the Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission (PUC). This application was part of the transfer and is now under the PUC's purview. The application is now being reviewed under 16 TAC §§24.102, 24.109 and 24.112 and TWC §§13.241, 13.246 and 13.301.

The application was accepted for filing by the PUC Commission on April 10, 2015. Proper public notice was provided on April 20, 2015, to neighboring systems, landowners, cities and affected parties in Chambers County in accordance with 16 TAC § 24.112(c). The affidavit was received by the PUC Commission on May 5, 2015. The comment period ended May 20, 2015, and no protests 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 capability to provide service to the area subject to this application. In my review of the public interest factors and the financial, managerial and technical capability of the Applicant, 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 sewer utility service from the Veranda Wastewater Treatment Facility System

WQ0011449001- TX0066656 consisting of 523 acres and 860 current customer connections and facilities. Reviews of TCEQ records indicate that the WQ system 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 sewer utility servicing the proximate area. Only the Applicants and the current customers will be affected by this transaction. The Applicant is attempting to consolidate all Aqua America, Inc., subsidiary Texas assets under a single corporation, Aqua Texas, Inc., consistent with the boundaries of Aqua Texas' Southeast Region operations. In doing so, the Applicant has expressed its hope that this will provide greater clarity and efficiency for both PUC and Aqua Texas from both a regulatory and operational standpoint.
- TWC §13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service. The Applicant is an existing sewer utility and will provide sewer 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 from the Applicant 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.

I recommend that that Applicant has the financial and managerial capability to provide continuous and adequate service to the proposed area. Aqua America, Inc. provides water and

wastewater services to approximately 3 million people in 9 states. Both the Purchaser and the Seller are subsidiaries of Aqua America, Inc., and do business under the name of Aqua Texas. This application is pursuant to Aqua Texas's efforts to consolidate its southeast region wastewater systems and service area under Aqua Texas Inc., under CCN 21065 in Chambers County. Aqua America Inc. is a holding company for regulated utilities providing water or wastewater services to an estimated amount of almost 3 million people concentrated in Pennsylvania, Ohio, Texas, Illinois, North Carolina, New Jersey, Indiana, and Virginia. Aqua Texas provides water and wastewater services to approximately 177,000 people in more than 400 communities in 53 counties across Texas. Aqua America, Inc.'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 Inc.'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/managerial capabilities. A ratio of 1 or 1: 1 means 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 the indication 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 FY13 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 Applicant has experienced operators on staff with thoroughly knowledgeable about wastewater operations and the requirement for continuous and adequate service as required by the TCEQ's rules of operation for sewer utility systems.

The terms of the agreement include exchanging all the facilities and service area associated with the application to the purchaser 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 systems currently operated in Texas by consolidating them under a single corporate entity, Aqua Texas, Inc., possessing regional sewer CCN numbers.

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).