



Control Number: 44024



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**DOCKET NO. 44024**

**APPLICATION OF AQUA TEXAS, INC. §  
AND UNION HILL WATER SUPPLY §  
CORPORATION FOR SALE, §  
TRANSFER, OR MERGER OF §  
FACILITIES AND CERTIFICATE §  
RIGHTS IN HENDERSON COUNTY §**

**PUBLIC UTILITY COMMISSION**

**OF TEXAS**

**FILING CLERK**

**COMMISSION STAFF'S COMMENTS**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its Comments. In support of its Comments, Staff states the following:

**I. Background**

On December 22, 2014, Aqua Texas, Inc. (Aqua Texas), an investor-owned utility, filed an application that requested approval of the sale and transfer the certificate of convenience and necessity (CCN No. 11439) and the accompanying water system assets of Union Hill Water Supply Corporation. Union Hill Water Supply Corporation's facilities are in Henderson County, Texas. Aqua Texas proposed May 1, 2014 as the proposed effective date of the transaction.

On December 23, 2014, the Administrative Law Judge entered Order No. 1. Order No. 1 extended the deadline for Staff to file comments on Aqua Texas' application and proposed notice to January 21, 2015.

On January 26, 2014, the Administrative Law Judge entered Order No. 2. Order No. 2 extended the deadline for Staff to file comments on Aqua Texas' application and proposed notice to February 23, 2015. Staff's Comments are timely filed.

**II. Applicable Statutes and Rules**

**A. Sale Transactions and Amendments to Certificates of Convenience and Necessity**

The Texas Water Code details the requirements for the sale of a water system. The relevant portions of the Texas Water Code state:

(a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or

consolidation with such a utility or water supply or sewer service corporation, shall:

- (1) file a written application with the utility commission; and
  - (2) unless public notice is waived by the utility commission for good cause shown, give public notice of the action.
- (b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.<sup>1</sup>

The Commission's substantive rules detail similar requirements for the sale of a water system.<sup>2</sup> The purchaser of the water system "must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person."<sup>3</sup> In the event that the sale of a water system includes the sale of a certificate of convenience and necessity (CCN), the Commission's substantive rules state that a CCN may not be sold "unless the commission has determined that the purchaser . . . is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under the TWC [Texas Water Code], § 13.246(c)."<sup>4</sup>

With respect to the approval of the amendment of a CCN, the Texas Water Code states that the Commission "shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service."<sup>5</sup> The Commission must ensure that the applicant is capable of providing drinking water that meets the requirements of Chapter 341 of the Health and Safety Code and has access to an adequate supply of water.<sup>6</sup> The Texas Water Code and the Commission's substantive rules list the factors that are to be considered by the Commission in determining whether to approve the amendment a CCN.

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<sup>1</sup> TEX. WATER CODE § 13.301(a)-(b).

<sup>2</sup> See generally P.U.C. SUBST. R. 24.109.

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

<sup>4</sup> P.U.C. SUBST. R. 24.112(b). See generally TEX. WATER CODE § 13.246(c) (list of factors that are to be considered by the Commission).

<sup>5</sup> TEX. WATER CODE § 13.241(a).

<sup>6</sup> TEX. WATER CODE § 13.241(b)(1)-(2). See generally TEX. WATER CODE § 13.246(c) and P.U.C. SUBST. R. 24.102(a)(1)-(2), (d) for a list of factors to be considered by the Commission.

## **B. Notice**

An applicant requesting approval of the sale and transfer of assets and accompanying CCNs must send notice “on the form required by the commission . . . .”<sup>7</sup> The form notice is available on the Commission’s website.<sup>8</sup> In previous sale and transfer applications, Staff has required that an applicant send notice: (1) current customers; (2) neighboring systems; (3) affected landowners; and (4) neighboring municipalities.

With respect to an application for the amendment of a certificate of convenience and necessity, an applicant must provide notice to the following: (1) any districts, groundwater conservation districts, counties, utilities, municipalities, and municipalities with an extraterritorial jurisdiction within two (2) miles of the proposed service area; (2) any municipality with an extraterritorial jurisdiction which overlaps the proposed service area; and (3) landowners that own more than twenty-five (25) acres of land, which is either wholly or partially in the proposed service area.<sup>9</sup> Additionally, the applicant must “publish notice in a newspaper having general circulation in the county or counties where a CCN is being requested, once each week for two consecutive weeks beginning with the week after the proposed notice is approved by the commission.”<sup>10</sup> Once notice is provided and published, the applicant must file an affidavit regarding such notice within thirty (30) days of the provision or publication of such notice.<sup>11</sup>

## **C. Administrative Completeness**

With respect to procedure to process an application for the sale and transfer of assets, 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

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<sup>7</sup> P.U.C. SUBST. R. 24.109(a).

<sup>8</sup> <http://www.puc.texas.gov/industry/water/Forms/Forms.aspx>.

<sup>9</sup> P.U.C. SUBST. R. 24.106(b)(2)

<sup>10</sup> P.U.C. SUBST. R. 24.106(c)

<sup>11</sup> P.U.C. SUBST. R. 24.106(b)(6), (c)

supply or sewer service corporation shall file a written application with the commission and give public notice of the action.<sup>12</sup>

The 120-day period begins on the later of: (1) the filing of a sale, transfer, merger application; (2) if mailed notice is required, the date that the applicant mailed notice; or (3) if newspaper notice is required, the last date of publication of the notice.<sup>13</sup> Notice of an application for the sale of a water system must be sent “on the form required by the commission and the comment period will not be less than 30 days.”<sup>14</sup>

Sale, transfer, merger applications “shall be reviewed for administrative completeness within ten working days of receipt of the application.”<sup>15</sup> An application is not considered filed with the Commission until “a determination of administrative completeness is made.”<sup>16</sup> “If the commission determines that material deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are corrected.”<sup>17</sup>

### **III. Administrative Completeness**

Staff has reviewed the Aqua Texas’ application and accompanying attachments. Staff recommends that Aqua Texas’ application be found not administratively complete due to the following deficiencies:

- a. Aqua Texas must provide an updated large scale map of the proposed water service area clearly marking and labeling the proposed service area with enough detail to accurately locate the service area in the vicinity of major and minor streets, highways, and roads. Aqua Texas may contact Staff’s mapping personnel for further guidance using the CCN map-viewer to produce the requested map.

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<sup>12</sup> P.U.C. SUBST. R. 24.109(a).

<sup>13</sup> P.U.C. SUBST. R. 24.109(a)(1)-(3).

<sup>14</sup> *Id.*

<sup>15</sup> P.U.C. SUBST. R. 24.8(a).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

b. Aqua Texas must submit original color copies of the scaled map created using the Water and Sewer CCN Viewer. The map should be labeled as the proposed water map, point to the CCN facility lines, and label the area served by CCN No. 11439.

c. A complete list of the following within two (2) miles of the proposed service area: (1) utilities; (2) water district; (3) groundwater conservation districts; (4) counties; and (5) cities and areas in their extraterritorial jurisdiction.

Staff's recommendation is based on the attached recommendation of Elisabeth English, Engineering Specialist in the Waters Utilities Division.

Staff recommends that Aqua Texas be given an opportunity to cure the deficiencies identified by Staff. Once Aqua Texas cures the deficiencies identified by Staff, Staff will review Aqua Texas' application for administrative completeness. In the event that Staff recommends that Aqua Texas' be found application administratively complete, Staff will propose a procedural schedule.

#### **IV. Conclusion**

Staff recommends that Aqua Texas' application be deemed not administratively complete. Additionally, Staff recommends that Aqua Texas be given an opportunity to cure the deficiencies identified by Staff, at which time Staff will review Aqua Texas' application for administrative completeness.

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Date: February 23, 2015

Respectfully Submitted,

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**DOCKET NO. 44024**  
**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served his document was served on all parties of record on February 23, 2015 in accordance with P.U.C. Procedural Rule 22.74.

*Sam Chang w/permission Jimmy Sam*  
Sam Chang

## PUC Interoffice Memorandum

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**To:** Sam Chang, Attorney  
Legal Division

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

**From:** Elisabeth English, Engineering Specialist  
Water Utilities Division

**Date:** 02/20/2015

**Subject:** Docket No. 44024, Application of Aqua Texas Inc. and Union Hill Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate of Convenience and Necessity in Henderson County

On December 22, 2014, Aqua Texas, Inc. (Aqua) filed an application with the Public Utility Commission (Commission) for approval of the sale of water system assets and transfer of Union Hill's Certificate of Convenience and Necessity, CCN No. 11439, and in Henderson County, Texas. The application is being reviewed under the PUC Subst. R. 24.109.

Based on an administrative review of the application, the application was found to be insufficient for filing. Specifically, the Applicant has not satisfied the mapping requirements, and the notice to customers is insufficient. Staff recommends the Applicant provide the following information:

1. An updated large scale map of the proposed water service area clearly marking and labeling the proposed service area with enough detail to accurately locate the service area in the vicinity of major and minor streets, highways, and roads. The Applicant may contact mapping staff for further guidance using the CCN map-viewer to produce the requested map.
  - a. Applicant must submit original color copies of the scaled map created using the Water and Sewer CCN Viewer. We suggest zooming closer to the CCN facility lines for CCN No. 11439.
  - b. The map should be labeled as the proposed water map, point to the CCN facility lines and label as CCN No. 11439.
2. A complete list of neighboring entities within a 2-mile buffer of the proposed sewer service area including districts, counties, ground water conservation districts, cities and their extraterritorial jurisdiction that are required to receive notice.

The Applicant shall not issue notice to any party until the Applicant's proposed notice, and list of 2-mile entities, is approved by the Commission.