



Control Number: 44024



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

BEFORE THE PUBLIC UTILITY  
COMMISSION OF TEXAS

**AQUA TEXAS, INC. AND UNION HILL WATER SUPPLY CORPORATION'S  
RESPONSE TO ORDER NO. 3**

COME NOW, Aqua Texas, Inc. ("Aqua Texas") and Union Hill Water Supply Corporation ("Union Hill") (collectively "Applicants") and file this Response to Order No. 3 Finding Application Incomplete and Deficient, Establishing Deadlines and Opportunity to Cure. In support, Applicants would show as follows.

1. On December 22, 2014, Aqua Texas filed an application for the Applicants that requested approval of the sale and transfer of CCN. No. 11439 and the accompanying Union Hill water system assets from Union Hill to Aqua Texas ("Application"). Union Hill, with the support of its members, entered into a conditional sales agreement with Aqua Texas several years ago that required Aqua Texas to file the Application after certain applicable conditions were met so that Aqua Texas can acquire the Union Hill system assets. Aqua Texas has been the contract operator for the Union Hill water system for over four years, but not its owner.

2. On February 23, 2015, PUC Staff filed their Comments on the Application. Staff requested that the Application not be found administratively complete because of the following alleged deficiencies set forth below together with Staff's requested cures:

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.

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 districts; (3) groundwater conservation districts; (4) counties; and (5) cities and areas in their extraterritorial jurisdiction.

3. On February 24, 2015 PUC issued Order No. 3 and provided until March 26, 2015 for Applicants to amend the application and cure the deficiencies identified by PUC Staff.

4. On March 6, 2015, Applicants submitted draft revised maps to PUC Staff for review, but have not received feedback as to whether the maps satisfy Staff's alleged map deficiencies. Applicants respectfully disagree that the map submitted with the Application was deficient. Yet, Applicants are submitting the same revised maps with this Response previously provided to PUC Staff to review for sufficiency.

5. Applicants respectfully disagree that the specific list of entities Staff identified as an alleged deficiency is required by either the Commission's STM application form, rules, or other applicable law. Neither the rules nor application forms for STM applications have substantively changed since the transfer to PUC from TCEQ.<sup>1</sup> STM applications have always had a form and instructions that are distinct from those applicable to CCN amendment applications and separate notice requirements. For example, published notice has not typically been required in addition to mailed notice even though it is within the Commission's discretion to require both.<sup>2</sup> There is discretionary authority to allow published notice in lieu of mailed notice, but the TCEQ did not typically require it.<sup>3</sup> The notice discussion in Commission Staff's Comments appears to conflate the

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<sup>1</sup> P.U.C. SUBST. R. 24.109(a) and 24.112(c).

<sup>2</sup> *Id.*

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

requirements for CCN amendment notice with those specifically applicable to STMs. Commission Staff's Comments, p. 3.<sup>4</sup>

6. In contrast, Part A., Section 15, of the STM application form requires a list that is even more limited, instructing applicants to "List all neighboring water and/or sewer utilities, cities, and political subdivisions providing the same service within two (2) miles of area affected by this proposed transaction." As referenced in that Application section, Attachment 5 of the Application includes such a list. In that Application section, Aqua Texas additionally requested that Commission Staff "specifically identify any additional entities for which notice is requested." This request does not provide the Commission authority to: (1) find the Attachment 5 list deficient for the reasons Staff identified; or (2) require Applicants to provide notice to entities, such as groundwater conservation districts, who are not specifically entitled to STM notice under either an applicable STM statute or rule. Nevertheless, Applicants hereby submit a new list that accords with Staff's recommendation.

7. In sum, under protest, Applicants hereby provide the documents PUC Staff identified in its Comments as deficiencies to comply with Order No. 3. Applicants hereby file the following documents:

- a. Large Map - Proposed Water CCN Service Area
- b. Small Map - Proposed Water CCN Service Area
- c. Entity List for Notices

This should be sufficient to cure the alleged deficiencies and Applicants respectfully request that the Honorable Presiding Officer find the Application administratively complete so that the STM application process may proceed to the notice stage. However, in light of the Commission Staff's Comments, Applicants also request a finding that published notice is not necessary or required for

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<sup>4</sup> Compare *id.*, with P.U.C. SUBST. R. 24.106(b), (c), and (d).

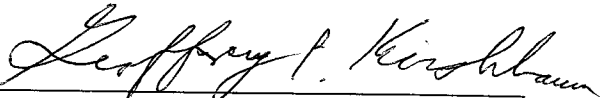
the Application in addition to mailed notice, and that only those entities required by statute or rule to receive an STM notice will be required to receive a mailed notice. Otherwise, unnecessary notice costs will be added to the proposed transaction.

### **CONCLUSION**

Applicants hereby submit the documents required by Order No. 3 in response to same and respectfully request the Application be declared administratively complete. Further, Applicants request the Honorable Administrative Law Judge find that notice is only required to entities identified in the STM rules or application form/instructions, that published notice is not required for STM application approvals, and that published notice will not be required for the Application. Finally, Applicants request the Commission ultimately approve the Application.

**Respectfully submitted,**

**THE TERRILL FIRM, P.C.**

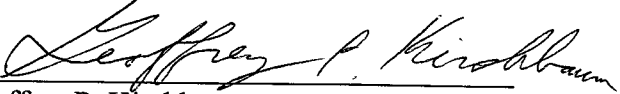
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**ATTORNEYS FOR AQUA TEXAS, INC.**

### **CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on March 25, 2015 in accordance with P.U.C. Procedural Rule 22.74.

  
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Geoffrey P. Kirshbaum

**OVERSIZED DOCUMENT(S)**

**TO VIEW**

**OVERSIZED DOCUMENT(S)**

**PLEASE GO TO**

**CENTRAL RECORDS**

**(512) 936-7180**

**OVERSIZED DOCUMENT(S)**

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**PUC DOCKET NO. 44024**  
**LIST OF NEIGHBORING SYSTEMS, DISTRICTS, AND CITIES**  
**WITHIN 2 MILES**

- (1) Utilities - Retail Public  
Leagueville Water Supply Corporation  
Edom Water Supply Corporation  
Three Community Water Supply Corporation
- (2) Water Districts  
No water districts within 2 miles of the proposed service area
- (3) Groundwater Conservation Districts  
Neches and Trinity Valleys Groundwater Conservation District
- (4) Counties  
Henderson
- (5) Cities and Areas in their Extraterritorial Jurisdiction  
Brownsboro, Texas