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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

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COMMISSION STAFF'S SUPPLEMENTAL RECOMMENDATION

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

I. Background

On December 22, 2014, Aqua Texas, Inc. (Aqua Texas) and Union Hill Water Supply Corporation filed their application regarding the sale and transfer of certain water assets and corresponding certificate of convenience and necessity. Aqua Texas, as the purchaser, requested the approval of the sale and transfer of Union Hill Water Supply Corporation's water assets and corresponding water certificate of convenience and necessity (water CCN No. 11439) for Union Hill Water Supply Corporation's service area in Henderson County, Texas.

On February 23, 2015, Staff filed its Comments regarding Aqua Texas and Union Hill Water Supply Corporation's application. Staff recommended that the Commission deem Aqua Texas and Union Hill Water Supply Corporation's application not administratively complete due to certain deficiencies. Specifically, Staff identified deficiencies regarding mapping and the list of certain entities that are within two (2) miles of the proposed service area. Staff recommended that Aqua Texas be permitted to cure these identified deficiencies.

On February 24, 2015, the Administrative Law Judge entered Order No. 3. Order No. 3 found that Aqua Texas and Union Hill Water Supply Corporation's application was deficient and not administratively complete. Additionally, Order No. 3 permitted Aqua Texas to cure deficiencies identified by Staff by March 26, 2014 and required Staff to file a supplemental recommendation in response to Aqua Texas' cured deficiencies by April 23, 2015. Staff's Supplemental Recommendation is timely filed.

On March 25, 2015, Aqua Texas filed additional documents in response to Order No. 3.

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II. Applicable Statutes and Rules

A. Sale Transactions and Transfers of a Certificate 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.¹

The Commission's substantive rules detail similar requirements for the sale of a water system.² 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."³ With regards to the sale and transfer of a certificate of convenience and necessity (CCN), the Texas Water Code states that a CCN may not be sold "unless the utility 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 Section 13.246(c)."⁴

With regards to the processing of an application for the sale and transfer of assets, the Commission's substantive rules state:

¹ TEX. WATER CODE § 13.301(a)-(b).

² See generally 16 Tex. Admin. Code § 24.109.

³ 16 Tex. Admin. Code § 24.109(b).

⁴ TEX. WATER CODE § 13.251. See also 16 Tex. Admin. Code § 24.112(b).

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.⁵

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.⁶

B. Notice

An applicant requesting approval of the sale and transfer of assets and accompanying CCN must send notice “on the form required by the commission”⁷ The Commission’s form requires notice to be sent to current customers, neighboring systems, and municipalities. With respect to the transfer of a CCN, notice must be sent to “cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles of the requested service area boundaries, and any city with an extraterritorial jurisdiction which overlaps the proposed service area boundaries.”⁸ Additionally, the Commission may require notice to be published once each week for two consecutive weeks in a newspaper of general circulation in the area in which the retail public utility being transferred is located”⁹

C. Administrative Completeness

An application is not considered filed with the Commission until “a determination of administrative completeness is made.”¹⁰ “If the commission determines that material

⁵ 16 Tex. Admin. Code § 24.109(a).

⁶ 16 Tex. Admin. Code § 24.109(a)(1)-(3).

⁷ 16 Tex. Admin. Code § 24.109(a). The form notice is available on the Commission’s website: <http://www.puc.texas.gov/industry/water/Forms/Forms.aspx>.

⁸ 16 Tex. Admin. Code § 24.112(c)(3). A “retail public utility” is defined as: “Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.” 16 Tex. Admin. Code § 24.3(41).

⁹ 16 Tex. Admin. Code § 24.112(c)(2).

¹⁰ *Id.*

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.”¹¹

III. Supplemental Recommendation and Proposed Procedural Schedule

Staff has reviewed Aqua Texas and Union Hill Water Supply Corporation’s application and accompanying documents and the additional documents submitted by Aqua Texas on March 25, 2015. Based on this review, Staff recommends that Aqua Texas and Union Hill Water Supply Corporation’s application be found administratively complete. Staff’s recommendation is based on the attached memorandum of Elisabeth English, Engineering Specialist in the Water Utilities Division.

With regards to notice, Staff recommends that Aqua Texas and Union Hill Water Supply Corporation be required to send notice to the following: (1) any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the proposed service area and (2) any city with an extraterritorial jurisdiction which overlaps the proposed service area. The entities that should receive notice are: (1) the entities listed in Aqua Texas and Union Hill Water Corporation’s application; (2) the entities listed on the revised list submitted by Aqua Texas on March 25, 2015; (3) and Moore Station Water Supply Corporation. Additionally, Staff recommends that Aqua Texas and Union Hill Water Supply Corporation publish notice of its application once each week for two (2) consecutive weeks in a newspaper of general circulation in Henderson County, Texas. Staff recommends that the form notices and affidavits attached to Ms. English’s memorandum be used by Aqua Texas and Union Hill Water Supply Corporation.

To assist in the processing of Aqua Texas and Union Hill Water Supply Corporation’s application, Staff requests that the Commission adopt the following procedural schedule:

¹¹ *Id.*

Event	Deadline
Affidavits evidencing provision and publication of notice	May 7, 2015
Deadline for Staff to file a supplemental procedural schedule	May 21, 2015
Intervention deadline, and deadline for intervenors to file comments or request a hearing	30 days after the mailing or publication of notice, whichever occurs later

IV. Conclusion

Staff recommends that: (1) Aqua Texas and Union Hill Water Supply Corporation's application be found administratively complete; (2) Aqua Texas and Union Hill Water Supply Corporation used the form notices attached to this Supplemental Recommendation in providing and publishing notice; and (3) the Commission adopt the above-mentioned procedural schedule.

Date: April 23, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
 Division Director
 Legal Division

Shelah J. Cisneros
 Managing Attorney
 Legal Division



Sam Chang
 State Bar No. 24078333
 Attorney, Legal Division

Public Utility Commission of Texas
 1701 N. Congress Avenue
 P.O. Box 13326
 Austin, Texas 78711-3326
 (512) 936-7261
 (512) 936-7268 (facsimile)
 sam.chang@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on April 23, 2015, in accordance with 16 Tex. Admin. Code § 22.74.



Sam Chang

PUC Interoffice Memorandum

To: Sam Chang, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: Elisabeth English, Engineering Specialist
Water Utilities Division

Date: April 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 Rights in Henderson County

On December 22, 2014, Aqua Texas, Inc. (Aqua) filed an application with the Public Utility Commission (Commission) to purchase water system assets and transfer the service area under Union Hill Water Supply Corporation's (Union Hill) Certificate of Convenience and Necessity, CCN No. 11439, in Henderson County, Texas. Union Hill's CCN No. 11439 will be canceled as a result of this application. The application is being reviewed under the P.U.C. SUBST. R. 24.109.

The notice requirements for the proposed STM of CCN's are listed in P.U.C. SUBST. R. 24.112(c) which states that notice shall be provided to current customers, as well as other affected parties as determined by the Commission. The intent Aqua's STM application is to amend their current CCN, and therefore Commission staff has determined that it is appropriate that the notice requirements for CCN amendments also be met (P.U.C. SUBST. R. 24.106(b)(2)) which states "*Applicants are also required to provide notice to the county judge of each county and to each groundwater conservation district that is wholly or partly included in the area proposed to be certified*".

Therefore it is Staffs position that notice should be required for all entities as stated in original application and the revised list submitted on March 25, 2015 - as well as Moore Station WSC (11127) which was identified during the mapping review. Additionally, Staff suggests that publication of notice also be requested per CCN amendment notice requirements.

Based on staff's review of the information in the application, staff recommends that the application be deemed sufficient for filing. Staff has amended the notice documents to meet Commission requirements, which are attached to this memo. Staff further recommends the following:

- 1) The Applicant provide the attached notice of the application to the following:
 - a) any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the proposed service area;
 - b) any city with an extraterritorial jurisdiction which overlaps the proposed service area;

- c) published notice to the public which must be published once each week for two (2) consecutive weeks in a newspaper of general circulation in Henderson County;
- 2) In addition to those systems identified in the application and supplemental list thereafter, the applicant will also need to send notice with a copy of the proposed CCN map to: **Moore Station WSC (11127)**
- 3) Applicant shall include copy of a map showing the proposed service area with the individual notices to neighboring utilities, other affected parties and each landowner. It is the Applicant's burden to provide an accurate map delineating the proposed area with each individual notice. Information related to districts including addresses can be obtained by the Applicant from the TCEQ's web site located at **<http://www14.tceq.texas.gov/iwud/>**.
- 4) Applicant provide a copy of the actual individual notice sent with attached signed and notarized affidavit that the notice was given. For newspaper notice, the Applicant should provide a tear sheet of the actual newspaper publication for each week along with a publisher's affidavit as proof that sufficient notice was provided.

Notice to Current Customers, Neighboring Systems and Cities

UNION HILL WATER SUPPLY CORPORATION'S NOTICE OF INTENT TO SELL FACILITIES TO AQUA TEXAS, INC. AND CANCEL CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO 11439 IN HENDERSON COUNTY, TEXAS

To: _____ Date Notice Mailed: _____, 2015
(Name of Customer, Neighboring System, or City)

(Address)

(City State Zip)

Union Hill Water Supply Corporation PO Box 197 Brownsboro, Texas 75756
(Seller's or Transferor's Name) (Address) (City) (State) (Zip Code)

has submitted an application with the Public Utility Commission of Texas to cancel water CCN No. 11439 and sell facilities in Henderson County to:

Aqua Texas, Inc. 1106 Clayton Ln. Suite 400W Austin, Texas 78723

The sale is scheduled to take place as approved by the Commission (V.T.C.A., Water Code §13.301). The transaction and the transfer of the CCN include the following subdivision: Union Hill

The area subject to this transaction is located within approximately 3 miles east of downtown Brownsboro, Texas, and is generally located on the north by Kickapoo Creek; on the east by CR 3402; on the south by County Road 3425; and on the west by FM 314; and is confined to the location of Union Hill Water Supply Corporation water CCN facility lines, plus 200 feet.

The total area being requested includes approximately 291 acres and serves 174 current customers.

This transaction will have the following effect on the current customer's rates and services:

- (1) Current customer water rates will remain unchanged;
- (2) service quality will remain the same or improve; and
- (3) Aqua Texas service policies will apply at the completion of this transaction when it becomes the certificated retail public water utility for Union Hill customers.

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) include 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.

Only those persons who submit a written request to be notified of a hearing will receive notice if a hearing is scheduled. The Commission will issue the CCN requested in the referenced application unless a hearing is scheduled to consider the transaction. If no protests or requests for hearing are filed during the comment period, the Commission may issue the CCN 30 days after publication of this notice.

Persons who wish to protest or request a hearing on this application should write the:

Filing Clerk
Public Utility Commission of Texas
1701 North Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Se desea informacion en Espanol, puede llamar al 1-888-782-8477.

Utility Representative

Aqua Texas, Inc.

NOTICE FOR PUBLICATION

UNION HILL WATER SUPPLY CORPORATION'S NOTICE OF INTENT TO SELL FACILITIES TO AQUA TEXAS, INC. AND CANCEL CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO 11439 IN HENDERSON COUNTY, TEXAS

Union Hill Water Supply Corporation PO Box 197 Brownsboro, Texas 75756
(Seller's or Transferor's Name) (Address) (City) (State) (Zip Code)

has submitted an application with the Public Utility Commission of Texas to cancel water CCN No. 11439 and sell facilities in Henderson County to:

Aqua Texas, Inc. 1106 Clayton Ln. Suite 400W Austin, Texas 78723

The sale is scheduled to take place as approved by the Commission (V.T.C.A., Water Code §13.301). The transaction and the transfer of the CCN include the following subdivision: Union Hill

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Only those persons who submit a written request to be notified of a hearing will receive notice if a hearing is scheduled. The Commission will issue the CCN requested in the referenced application unless a hearing is scheduled to consider the transaction. If no protests or requests for hearing are filed during the comment period, the Commission may issue the CCN 30 days after publication of this notice.

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Public Utility Commission of Texas
1701 North Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Se desea informacion en Espanol, puede llamar al 1-888-782-8477.

PUBLIC UTILITY COMMISSION



AFFIDAVIT OF NOTICE TO NEIGHBORING UTILITIES AND AFFECTED PARTIES
DOCKET NO. _____

STATE OF TEXAS
COUNTY OF _____

_____ has provided individual notice to
the following entities:

	DATE
_____	_____
_____	_____
_____	_____
_____	_____

OATH

I, _____, being duly sworn, file this form as
_____ (indicate relationship to applicant, that is, owner,
member of partnership, title of officer of corporation, or other authorized representative of applicant);
that in such capacity, I am qualified and authorized to file and verify such form, am personally familiar
with the notices given with this application, and have complied with all notice requirements in the
application and application acceptance letter; and that all such statements made and matters set for
therein are true and correct.

Applicant's Authorized Representative

If the applicant to this form is any person other than the sole owner, partner, officer of the applicant, or
its' attorney, a properly verified Power of Attorney must be enclosed.

Subscribed and sworn to before me this _____ day of _____, 20____, 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 _____

PUBLIC UTILITY COMMISSION



PUBLISHER'S AFFIDAVIT
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

_____ of the _____
(TITLE) (NAME OF NEWSPAPER)

that said newspaper is regularly published in _____
(COUNTY/COUNTIES)

and generally circulated in _____, Texas;
(COUNTY/COUNTIES)

and that the attached notice was published in said newspaper on the following dates, to wit:

(DATES)

(SIGNATURE OF NEWSPAPER REPRESENTATIVE)

Subscribed and sworn to before me this _____ day of _____, 20____
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 _____