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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

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PUBLIC UTILITY COMMISSION
OF TEXAS
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COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its Recommendation on Final Disposition. Staff recommends that the Commission approve the application and the proposed sale and transfer transaction. In support of its Recommendation on Final Disposition, Staff states the following:

I. Background

On December 22, 2014, Aqua Texas, Inc. (Aqua Texas) filed its sale/transfer/merger application. Aqua Texas requested Commission approval of the purchase and transfer of Union Hill Water Supply Corporation's water assets and corresponding water CCN No. 11439. The service area is in Henderson County, Texas.

On April 23, 2015, Staff recommended that Aqua Texas' application be deemed administratively complete. Staff also recommended that Aqua Texas provide and publish notice of its application on forms provided by Staff.

On April 28, 2015, the Administrative Law Judge entered Order No. 4. Order No. 4 required Aqua Texas to file affidavits regarding notice of its application by May 15, 2015.

On May 15, 2015, Aqua Texas submitted affidavits regarding the provision and publication of notice of its application. Aqua Texas provided notice of its application to affected parties on May 5, 2015. Additionally, Aqua Texas published notice of its application in the *Athens Daily Review*, a newspaper of general circulation in Henderson County, Texas, on May 1 and 8, 2015.

On June 8, 2015, the Administrative Law Judge entered Order No. 5, which established a supplemental procedural schedule for the processing of Aqua Texas' application. Order No. 5 established July 20, 2015 as the deadline for Staff to either request a hearing or file its recommendation on final disposition. Staff's Recommendation on Final Disposition is timely filed.

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II. Applicable Legal Standards

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 a 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, the Texas Water Code states that a certificate of convenience and necessity 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) [of the Texas Water Code]."⁴ The factors to be considered by the Commission are:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;

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).

(3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;

(5) the feasibility of obtaining service from an adjacent retail public utility;

(6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) environmental integrity;

(8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and

(9) the effect on the land to be included in the certificated area.⁵

Approval of the sale and transfer of a certificate of convenience and necessity expires one year after the date of approval.⁶

III. Staff's Recommendation

Staff recommends that the Commission approve Aqua Texas' application and approve the sale and transfer transaction between Aqua Texas and Union Hill Water Supply Corporation. Aqua Texas has the financial, managerial, and technical capability to provide continuous and adequate service to the certificated area under water CCN No. 11439. Thus, Aqua Texas' application meets the requirements of 16 Tex. Admin. Code §§ 24.109 and 24.112. Staff's recommendation on Aqua Texas' application is based on the attached memorandum of Elisabeth English in the Water Utility Division.

⁵ Tex. Water Code § 13.246(c).

⁶ 16 Tex. Admin. Code § 24.112(e).

A. Aqua Texas has adequate financial, managerial, and technical capability

Staff has determined that Aqua Texas has adequate financial, managerial, and technical capability to provide continuous and adequate service to the certificated area under water CCN No. 11439 and its other certificated areas. Aqua Texas' financial capability is based on the finances of its parent corporation, Aqua America, Inc. (Aqua America). Aqua Texas submitted unaudited financial statements of Aqua America and Aqua America's other subsidiaries. As of December 31, 2013, Aqua America total assets amounted to \$5.05 billion, total equity of \$1.54 billion, and total long term debt of \$1.47 billion. The debt-to-equity ratio for Aqua America was \$1.47 billion (total long term debt) to \$1.54 billion (total equity), which is 95% or 0.95:1. A ratio of less than 1:1 is preferred when demonstrating financial capability because it demonstrates that an entity is funding capital and operations with more equity than debt. Additionally, for the year ending December 31, 2013, Aqua America had a net operating income of \$425 million (before depreciation and other non-cash expenses) and debt service of \$300 million. The debt service coverage ratio is 1.42:1. A debt service coverage ratio of at least 1.25:1 is preferred. With regards to managerial and technical capability, Aqua Texas currently provides retail water service to over 60,000 connections in Texas, operating three hundred and seventy-five (375) public water supply systems. Aqua Texas employs six (6) operators that have a cumulative thirteen (13) water operation licenses.

B. Aqua Texas is capable of providing adequate and continuous service

Staff has determined that Aqua Texas is capable to provide continuous and adequate service to the certificated area under water CCN No. 11439. Staff's determination is based on the following factors listed in Tex. Water Code § 13.246(c):

1. Adequacy of service currently provided to the certificated area under water CCN No. 11439. Based on its review of TCEQ records, Staff has determined that adequate service is currently being provided to the service area. Union Hill Water Supply Corporation currently provides water service to 174 service connections via an interconnection with a neighboring Aqua Texas-operated public water supply, Phoenix Water Works (ID No. 1070211). The connections are split into two separate pressure planes serving 34 (PP-1) and 140 (PP-2) connections, respectively. The PP-2 area is served under direct pressure via the interconnection; the area in PP-1 is served via a water plant. Union Hill Water Supply Corporation has two (2) groundwater wells

that will be transferred in the proposed transaction. PP-1 is served by one of these wells, which produces 20 gallons per minute (GPM) production. The second well is not in service at this time.

The following table shows the minimum required capacity (per 30 Tex. Admin. Code § 290.45(b)(1)(D)) and the current provided capacity in terms of total volume:

Table 1: PP-1 Capacity Requirements

	Required	Provided
Production	20.4 GPM	20 GPM
Storage	0.007 MG	0.06MG
Pressure	680 G	2000 G
Pump	68 GPM	304 GPM

Table 2: PP-2 Capacity Requirements

	Required	Provided
Production	280 GPM	400 GPM

The area served in PP-1 does not meet the minimum capacity requirement via the groundwater well, but additional water can be purchased in order to supplement demand when necessary. Additionally, the maximum purchase rate of 400 GPM meets the minimum capacity requirements for the cumulative connections of both pressure planes (300 GPM). The water system is also interconnected with the City of Brownsboro for emergency purposes only.

Union Hill Water Supply Corporation does not have any TCEQ-issued violations. The water service provided to the area currently meets the TCEQ water quality requirements and is therefore safe for household usage.

2. Need for service in the certificated area under water CCN No. 11439. No landowners, prospective landowners, tenants, or residents have requested service.

3. The effect of granting an amendment to water CCN No. 11439. Only Union Hill Water Supply Corporation's current customers in the service area will be affected. Aqua Texas' water CCN No. 13201 will be amended to include the service area, and Union Hill Water Supply Corporation's CCN No. 11439 will be canceled.

4. The ability of Aqua Texas to provide adequate service. Aqua Texas currently provides retail water service to over 60,000 connections in Texas, operating three hundred and seventy-five (375) public water supply systems. Aqua Texas employs six (6) operators that have a cumulative thirteen (13) water operation licenses. Additionally, Aqua Texas has sufficient financial ability, through customer collections, infusions of capital from lenders, and capital contributions from Aqua America, to make all necessary repairs and improvements to its water systems.

5. The feasibility of obtaining water service from an adjacent retail public utility. Staff did not evaluate this factor.

6. The financial ability for Aqua Texas to pay for facilities necessary to provide continuous and adequate service. Staff has determined that Aqua Texas has the financial ability to pay for the facilities necessary to provide continuous and adequate service to the area certificated under water CCN No. 11439.

7. Impact on environmental integrity. There will be no impact on environmental integrity because there is a pre-existing water system in place.

8. Improvement of service or lower of cost to customers. Water service will be maintained in accordance with the way in Union Hill Water Supply Corporation currently operates the water system.

9. Effect on land. There will be no effect on the land in the certificated area under water CCN No. 11439 because there is a pre-existing water system in place, and this pre-existing water system does not currently need any repairs or improvements.

IV. Conclusion

Staff recommends that the Commission approve Aqua Texas' application and approve the sale and transfer transaction between Aqua Texas and Union Hill Water Supply Corporation. Aqua Texas has the financial, managerial, and technical capability to provide continuous and adequate service in the service area.

Date: July 20, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on July 20, 2015, in accordance with 16 TAC § 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: July 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. (“Purchaser” or “Aqua”) and Union Hill Water Supply Corporation (“Seller” or “Union Hill”) (collectively called “Applicants”) filed an application with the Public Utility Commission of Texas (Commission) to transfer the Union Hill service area and water system assets associated with the Certificate of Convenience and Necessity (CCN) No. 11439, in Henderson County, Texas. The application was reviewed pursuant to Texas Water Code (TWC), §§ 13.241, 13.246 and 13.301 and 16 Tex. Admin Code (TAC) §§ 24.102, 24.109 and 24.112.

On or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water system required by law to possess a CCN, a utility shall file a Sale, Transfer or Merger (STM) application with the Commission and give public notice of the action. The Commission deemed the Applicants STM application as administratively complete on April 28, 2015, via Order No. 4 and was consequently accepted for filing. Order No. 4 also requested that the Applicants provide notice to affected parties and return proof of notice to the Commission prior to May 15, 2015. The 120-day period begins on the last date of the publication of the notice in the newspaper as stated in the affidavit of publication pursuant to 16 TAC § 24.109(a)(3). On May 15, 2015, Aqua filed an affidavit of notice, along with a copy of the notices sent, and an affidavit verifying publication of notice. According to the affidavits, notice was mailed to neighboring systems, landowners and cities on May 5, 2015, and published in *Athens Daily Review* on May 1 and May 8, 2015. On March 13, 2015, Commission Staff filed a proposed procedural schedule, which was adopted via Order No. 5. The deadline for intervention was June 8, 2015. The Commission did not receive any requests for a hearing during the 30 day comment period. The 120-day notification period concludes on September 5, 2015.

Staff was also requested, via Order No. 5, to provide a recommendation for final disposition no later than July 20, 2015. Pursuant to TWC § 13.301(e) and 13 TAC § 24.109(e), prior to the expiration of the 120-day notification period, the Commission shall either approve the sale administratively or require a public hearing to determine if the transaction will serve the public interest. Additionally, the Applicants proposed transaction will cancel the Seller’s CCN No. 11439 and amend the Purchaser’s CCN No. 13201; therefore, the nine criteria for CCN amendments outlined in TWC § 13.246(c) and 16 TAC § 24.102(d) were considered during the review. Staff have reviewed the above referenced application and recommend that the sale be administratively approved at this time. Staff do not request that the application be referred to hearing to determine

if the proposed transaction will serve the public interest. Furthermore, Staff have found that the Purchaser has met the requirements for a CCN amendment. A detailed review is provided below.

TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1)

In considering whether to amend a certificate, the Commission shall consider the adequacy of service currently provided to the requested area. The area subject to this application is served by the Union Hill WSC water system (ID No. 170032), which is a TCEQ approved public water supply (PWS).

The Union Hill PWS provides water service to 174¹ service connections via an interconnect with a neighboring Aqua-operated PWS,² Phoenix Water Works (ID No. 1070211). The connections are split into two separate pressure planes serving 34 (PP-1) and 140 (PP-2) connections, respectively. The PP-2 area is served under direct pressure via the interconnect; the area in PP-1 is served via the water plant. Union Hill PWS has 2 groundwater wells that will be transferred in the proposed transaction. PP-1 is served by one of these wells, which produces 20 gallons per minute (GPM) production. The second well is not in service at this time.

The following table shows the minimum required capacity per 30 TAC § 290.45(b)(1)(D) and the current provided capacity (in accordance with TCEQ records), in terms of total volume.

Table 1: PP-1 Capacity Requirements

	Required	Provided
Production	20.4 GPM	20 GPM
Storage	0.007 MG	0.06MG
Pressure	680 G	2000 G
Pump	68 GPM	304 GPM

Table 2: PP-2 Capacity Requirements

	Required	Provided
Production	280 GPM	400 GPM

The area served in PP-1 does not meet the minimum capacity requirement via the groundwater well, but the purchase water can supplement demand when necessary. Additionally, the maximum purchase rate of 400 GPM meets the minimum capacity requirements for the cumulative connections of both pressure planes (300 GPM). The water system is also interconnected with the City of Brownsboro for emergency purposes only.

The Union Hill PWS does not have any TCEQ issued violations pertaining to 30 TAC 290 Subchapter F, which governs the drinking water quality and reporting requirements for PWS's in Texas. The standards are written to comply with the Federal *Safe Drinking Water Act* and *Primary Drinking Water Regulations*. The service provided to the area currently meets the TCEQ water quality requirements and is therefore safe for household usage. However, the system has issued 12 boil water notices since 2009, per TCEQ record. All of these incidents have subsequently been closed.

¹ Per *Application of Aqua Texas, Inc. and Union Hill Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Henderson County*, December 22, 2015.

² TCEQ Drinking Water Watch lists 2 ground water wells, the application states that water is 100% purchased for this service area

TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2)

In considering whether to amend a certificate, the Commission shall consider the need for additional service in the proposed area. This application is for the transfer of existing facilities, customers and service area. Aqua did not apply to add additional uncertificated area to the CCN. Therefore, the need for additional service in the requested area was not evaluated.

TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3)

In considering whether to amend a certificate, the Commission shall consider the effect of granting an amendment on the Applicant, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area. The effect of the proposed transaction is that it would amend the existing CCN of the Purchaser and cancel the CCN of the Seller. The Seller's CCN service area, 271 acres, would be transferred to the Purchaser. In turn, the Purchaser's CCN service area will be canceled. The facilities, and the existing customers, of the Seller that are currently in the 271 acres would be transferred to the Purchaser, however, the retail rates will not be changing for these customers due to the transfer. There are no other retail public utilities of the same kind that would be affected by the proposed transaction. Granting the certificate amendment meets the expectations of the Seller who has entered into an agreement with the Purchaser to transfer their facilities and certificate rights. Additionally, the Commission did not receive any protests during the comment period from neighboring utilities, or current customers.

TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4)

In considering whether to amend a certificate, the Commission shall consider the ability of the Applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area. Aqua is a subsidiary of Aqua America, one of the largest publicly traded water utilities in America. Aqua currently operates 375 PWSs in Texas. Aqua has the financial ability through customer collections and infusions of capital from lenders, as well as capital contributions from its parent Aqua America, to make all necessary repairs and improvements its public water systems, as needed, to keep them in full compliance with all TCEQ and Commission regulations. Additionally, Aqua employs six operators in their North region with a cumulative 13 water operation licenses.

TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5)

In considering whether to grant or amend a certificate, the Commission shall consider the feasibility of obtaining service from an adjacent retail public utility. The proposed area will be provided water utility service from the Union Hill's existing infrastructure; therefore, the feasibility of obtaining service from an adjacent retail public utility was not evaluated.

TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6)

In considering whether to grant or amend a certificate, the Commission shall consider the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio. A staff financial review found that the Applicant demonstrated adequate financial and managerial capability to provide service to the area subject to this application.

The unaudited Annual Financial Statements as of December 31, 2013, for the Purchaser's parent company, Aqua America, Inc. ("Aqua America") and the parent company's subsidiaries were submitted with the STM application. Aqua is a wholly owned subsidiary of Aqua America and provides retail water service to over 60,000 connections in Texas. As of December 31, 2013, Aqua America's total assets amounted to \$5.05 billion, total equity of \$1.54 billion, and total long term

debt of \$1.47 billion. The debt-to-equity ratio for Aqua America was \$1.47 billion (total long term debt) to \$1.54 billion (total equity), which is 95% or .95:1. A ratio of less than 1:1 is preferred when demonstrating financial capability because it demonstrates that the applicant funds capital and operations with more equity than debt. Aqua America's ratio for 2013 more than meet this criteria.

For the year ending December 31, 2013, Aqua America indicated a net operating income of \$425 million prior to depreciation of \$119 million and debt service paid for the year of \$300 million, which results in a Debt Service Coverage Ratio (DSCR) of 1.42:1. Typically, when Staff analyzes financial capability a DSCR of more than 1.25:1 is preferred (using net operating income before depreciation and other non-cash expenses). The DSCR reflects the company's ability to make annual payments on its long-term debt.

TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7)

In considering whether to grant or amend a certificate, the Commission shall consider the environmental integrity of the proposed area resulting from the granting of the certificate or amendment. Because the area will be served with existing infrastructure, the amendment will not require any construction or disruption of the environment and will maintain the environmental integrity of the area.

TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8)

In considering whether to grant or amend a certificate, the Commission shall consider the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment. The service will be maintained in accordance with the way in which it is currently operated. Aqua did not include any anticipated upgrades or changes in the operation of the PWS which would indicate an improvement in service. It should be noted that Aqua has been the contracted water management company for this certificated area for the previous four years. The rates of the former Union Hill customers will not change as a result of this application.

TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9)

In considering whether to grant or amend a certificate, the Commission shall consider the effect on the land to be included in the certificated area. The transfer of the facilities from Union Hill to Aqua does not require any construction or disruption of the land.

Final Recommendation

Staff have considered the Purchaser's ability to provide continuous and adequate service pursuant to the CCN criteria outlined in TAC § 24.102(d). Pursuant to 16 TAC § 24.109(f), Staff recommends the following:

1. The Applicants be notified that a public hearing is not necessary;
2. The Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction
3. The Applicants 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).

Staff would also like to highlight that the certificate that is being transferred is a facility line only CCN, which includes a buffer of 200 feet. The lines can, but may not necessarily, correspond to distribution lines or facilities in the ground. Any extension of service beyond the certificated area, as shown in this application, shall be approved via a CCN amendment application submitted to the

Commission.