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DOCKET NO. 44875

APPLICATION OF AQUA TEXAS, INC. DBA AQUA TEXAS TO AMEND CERTIFICATES OF CONVENIENCE AND NECESSITY IN MONTGOMERY COUNTY	§ § § § §	<div data-bbox="1185 252 1510 336">2015 JUL 23 01:56</div> <div data-bbox="941 294 1429 420">PUBLIC UTILITY COMMISSION OF TEXAS</div> <div data-bbox="1250 336 1510 399">PUBLIC UTILITY COMMISSION FILING CLERK</div>
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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 3
DEFICIENCY RECOMMENDATION**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to Order No. 3 recommending that the application is deficient. In support thereof, Staff shows the following:

I. BACKGROUND

On June 24, 2015, Aqua Texas, Inc. d/b/a Aqua Texas (Applicant) filed an application to amend its water and sewer certificates of convenience and necessity (CCN) Nos. 13203 and 21065 in Montgomery County, Texas, pursuant to Tex. Water Code Ann. Subchapter G and Title 16, Tex. Admin. Code (16 TAC) Subchapter G. In this application, the Applicant requests the addition of approximately 195.46 acres of property owned by Pulte Homes.

On September 28, 2015, the Administrative Law Judge (ALJ) issued Order No. 3 finding the application deficient. Order No. 3 allowed time for the Applicant to cure its application and allowed Staff until November 23, 2015 to file a supplemental recommendation regarding administrative completeness of the amended application.

II. DEFICIENCY RECOMMENDATION

On October 22, 2015, the Applicant submitted its response to Order No. 3 along with supplemental information disputing the boundaries of Montgomery County Municipal Utility District No. 47 (District). As detailed in the attached memorandum from Debbie Reyes Tamayo and Tracy Harbour in the Commission's Water Utilities Division, Staff has reviewed the supplemental information and recommends that the application be found materially deficient pursuant to 16 TAC § 24.106. Specifically, the information provided by the Applicant is insufficient for Staff to determine whether the District's boundaries are inaccurate. The deficiency identified by Staff prevent Staff from completing a mapping overlap check of the

application to determine the actual location of the proposed new CCN service area. The overlap check is integral in determining whether the information submitted by the Applicant in its application sufficient. The overlap check allows Staff to determine whether the Applicant's proposed CCN area overlaps with other existing CCN areas and whether the Applicant has provided notice to the proper affected parties.

In order to cure the deficiency identified by Staff, the attached memorandum provides a list of information that the Applicant may submit to prove that the District's boundaries are incorrect. If the Applicant cannot do so, or the mapping information continues to display an overlap with the District's boundaries, then the Applicant must submit written consent from the District allowing the Applicant to provide retail water and sewer services within the District's boundary. Staff recommends that the Applicant be given until December 21, 2015 to cure the identified deficiency and Staff be allowed until January 18, 2016 to file a supplemental recommendation on the application and notice. Staff further recommends that the Applicant be directed to not publish notice of the application until the maps, digital data, notice documents, and a five-mile list of entities have been approved by Staff.

III. PROPOSED PROCEDURAL SCHEDULE

Staff recommends that the application be found not administratively complete due to deficiencies in the mapping and application information supplied by the Applicant. Accordingly, Staff has not proposed a procedural schedule for this application at this time.

III. CONCLUSION

Staff respectfully requests that the ALJ issue an order consistent with this Response.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
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Managing Attorney
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CERTIFICATE OF SERVICE

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



Christina R. Switzer

Attachment

PUC Interoffice Memorandum

To: Christina Switzer, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: Debbie Reyes Tamayo, Program Specialist
Tracy Harbour, GIS Specialist
Water Utilities Division

Date: November 20, 2015

Subject: **Docket No. 44875**, *Application of Aqua Texas, Inc. dba Aqua Texas to amend Certificates of Convenience and Necessity in Montgomery County*

On May 22, 2014, Aqua Texas, Inc. dba Aqua Texas (Applicant), filed an application to amend its Certificate of Convenience and Necessity (CCN) Nos. 13203 and 21065, in Montgomery County, Texas. The application is being reviewed under Tex. Water Code § 13.246 (TWC) and 16 Tex. Admin. Code §§ 24.102, 24.105, and 24.107.

The application remains deficient and administratively incomplete due the following mapping issues.

In Staff's last recommendation, filed on September 23, 2015, Staff determined the Applicant's proposed water and sewer service areas would overlap with MCMUD 47's district boundaries. In response, on October 22, 2015, the Applicant submitted mapping documentation disputing the location of district boundary for Montgomery County MUD No. 47's (MCMUD47).

Staff has reviewed the Applicant's evidence and concluded that it is insufficient for Staff to determine whether MCMUD 47's district boundaries are inaccurate. For instance, based on the Exhibits 3 and 5 submitted, the Applicant is proposing the district boundary should be moved slightly east to align with the road easement for Buckshot Road. This mapping method is done by visually interpreting the location of road easements and property lines as displayed on ESRI's World Imagery base map. If the Applicant intends on adjusting the district boundary using this method, then the district boundary should also be moved slightly south to align with the road easement for FM 1488. By using this method, a new overlap results on the north side of the proposed service areas with the new position of the district.

Staff requests the following mapping documentation for MCMUD47's actual location in relation to the proposed water and sewer service area:

1. Submit a large scale map along with digital data obtained from MCMUD47 with enough detail to show the accurate location of the district's boundary in reference to verifiable man-made and/or natural landmarks such as roads, streets and rivers. The digital data should be in a shapefile format including the metadata used to create the shapefile. The Applicant should confirm that the map and digital data were obtained from MCMUD47;

OR

2. Submit a large scale map along with digital data for MCMUD 47 obtained from another reliable data source, such as Montgomery Central Appraisal District (MCAD). The Applicant should provide the digital data in a shapefile format including the metadata used to create the shapefile. The Applicant should identify the specified data source where the the map and digital data were obtained from; AND
3. Submit a large scale map similar to Exhibit 5 showing both the proposed service areas and the Applicant's new location proposed for MCMUD47 by using digital data obtained from MCMUD47 or another reliable data source. The map should only display the outer boundary (no cross hatching) for the new district boundary proposed for MCMUD47 in reference to ESRI's World Imagery base map. **OR**
4. Revised digital data, small and large scale maps showing the proposed water and sewer service areas after the removal of the overlap with MCMUD47's district boundary. The revised digital data must correspond to the same proposed water and service areas as shown on the revised small and large scale maps and must include the same total acres as provided on notice documents.

If the Applicant's mapping information continues to display overlaps with MCMUD47's district boundary, the Applicant must submit the following:

1. Written consent from MCMUD47 allowing the Applicant to provide retail water and sewer services within the district's boundary.

TB/DRT