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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**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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PUBLIC UTILITY COMMISSION
FILING CLERK

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 2 AND SUPPLEMENTAL
RECOMMENDATION ON THE APPLICATION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Order No. 2 and Supplemental Recommendation on the Application. In support of this Response, Staff would show 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. The Applicant projects to serve an additional 577 retail water and sewer connections in the proposed area.

On June 26, 2015, the Commission Administrative Law Judge (ALJ) issued Order No. 1, requiring Commission Staff to file comments on the administrative completeness of the application and proposed notice by July 24, 2015. On July 24, 2015, Staff filed its Response to Order No. 1 and recommended that the application was deficient. On July 28, 2015, the ALJ issued Order No. 2 finding the application incomplete and deficient, ordering the Applicant to amend its application to cure the deficiencies by August 24, 2015, and directing Staff to file a supplemental recommendation on administrative completeness of the application and notice and to propose a procedural schedule, if necessary, by September 24, 2015. This Response is timely filed.

**II. STAFF'S SUPPLEMENTAL RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS**

In response to Order No. 2, the Applicant submitted supplemental information on August 24, 2015 and August 25, 2015. As detailed in the attached memo (Attachment A) 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. Staff identified deficiencies in the mapping data and application information supplied by the Applicant. Specifically, the revised digital data provided by the Applicant results in an overlap between the proposed water and sewer service areas and the district boundaries of Montgomery County Municipal Utility District No. 47 (MCMUD 47). The deficiencies 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 areas. The overlap check is integral in determining whether the information submitted by the Applicant in its application is 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.

Additionally, the Applicant's Public Water System (PWS) No. 1700666 and Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ014141001 appear to have active notices of violation (NOV) and an enforcement issue pending with the Texas Commission on Environmental Quality (TCEQ).

In order to cure the identified deficiencies, Staff recommends that the Applicant follow one of two courses of action. If the Applicant intends to obtain the portion of proposed service area overlapping with MCMUD 47, Staff recommends that the Applicant file proof of written consent from MCUD 47 allowing Applicant to provide retail water and sewer services within a portion of the proposed service areas overlapping with the district boundary of MCMUD 47. However, if the overlap with MCMUD47 is unintentional, Staff recommends that the Applicant file revised proposed digital data as well as small and large scale maps showing the proposed water and sewer service areas by removing the overlap with MCMUD 47. If the Applicant chooses to provide revised digital data to resolve the overlap, the revised digital data must correspond to the same proposed water and service areas as shown on the revised small and large scale maps. Additionally, the revised digital must include the same total acres as provided on small and large scale maps and notice documents.

Finally, Staff recommends that the Applicant file a copy of a response from TCEQ stating the pending PWS and TPDES violations have been resolved.

16 TAC § 24.8(a) provides that, if material deficiencies exist in a rate/tariff change application or notice, the application may be rejected. Pursuant to 16 TAC § 24.8(a), the application is not considered filed until the Commission determines that the application and notice are both administratively complete. Staff has identified deficiencies in the application and cannot complete its administrative review of the application until the deficiencies are cured. Therefore, Staff recommends that the application package be found **not administratively complete** pursuant to Tex. Water Code Ann. Subchapter G and 16 TAC Subchapter G. Staff recommends that the application package be rejected pursuant to 16 TAC § 24.8(a) until the deficiencies are cured and respectfully requests that the Applicant be given until **October 23, 2015** to cure the identified deficiencies. Upon receipt of information responsive to this recommendation, Staff proposed to file a supplemental recommendation on the application and notice by **November 23, 2015**. 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.

IV. CONCLUSION

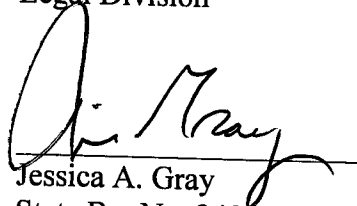
Staff recommends that the application is not administratively complete due to deficiencies in the mapping information and application information filed by the Applicant. Therefore, Staff respectfully recommends that the Applicant be given until **October 23, 2015** to cure the identified deficiencies. Upon receipt of information responsive to this recommendation, Staff proposed to file a supplemental recommendation on the application and notice by **November 23, 2015**. In the event that Staff determines that the Applicant's amended application is administratively complete, Staff will propose a procedural schedule. Staff respectfully requests that the ALJ issue an order consistent with this Response.

Date: September 23, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

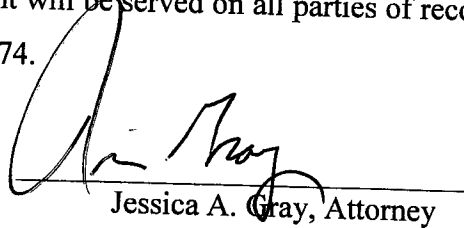
Karen S. Hubbard
Managing Attorney
Legal Division



Jessica A. Gray
State Bar No. 24079236
Attorney, Legal Division
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7228
(512) 936-7268 (facsimile)

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CERTIFICATE OF SERVICE

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



Jessica A. Gray, Attorney

ATTACHMENT A

PUC Interoffice Memorandum

To: Jessica Gray, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

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

Date: September 22, 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 Certificates of Convenience and Necessity (CCNs) 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 requested area consists of approximately 195.46 acres adjoining the water and sewer CCN service areas currently owned by Aqua Texas. The Applicant proposes to provide retail water and sewer service to the Pulte Homes (Pulte) Addition, a subdivision in Montgomery County. The Applicant projects to serve an additional 577 retail water and sewer connections in the proposed area.

Insufficient maps and digital data submitted with application

The Applicant submitted revised digital data on August 24, 2015, for the proposed water and sewer service areas. The revised digital data resulted in an overlap between the proposed water and sewer service areas and the district boundaries of Montgomery County Municipal Utility District No. 47 (MCMUD 47). The Applicant must resolve the overlap by either obtaining consent from MCMUD 47 to allow for the overlap or removing the overlap from the proposed digital data and the corresponding, small and large scale maps.

Staff recommends the Applicant must submit one of the following items to resolve the mapping deficiencies:

1. Submit consent allowing Applicant to provide retail water and sewer services within a portion of the proposed service areas overlapping with the district boundary of MCMUD 47.
OR
2. Revise the proposed digital data, small and large scale maps showing the proposed water and sewer service areas by removing the overlap with MCMUD 47.

- a. The revised digital data must correspond to the same proposed water and service areas as shown on the revised small and large scale maps.
- b. The revised digital must include the same total acres as provided on small and large scale maps and notice documents.

Staff recommends that the Applicant discuss how to resolve the mapping deficiencies with PUC mapping staff.

Additional Information Needed During the Technical Review Phase

Aqua Texas owns and operates existing Public Water System (PWS) No. 1700666 and holds Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ014141001 for Old Egypt. The PWS and TPDES permit appear to have active notices of violation (NOV) and an enforcement issue under TCEQ Enforcement No. 2015-0598-MWD-E pending with the Texas Commission on Environmental Quality (TCEQ). Please provide a copy of a response from TCEQ stating the violations have been resolved.

TB/DRT