



Control Number: 45656



Item Number: 25

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APPLICATION OF AQUA TEXAS, §
INC. AND MONTGOMERY COUNTY §
MUNICIPAL UTILITY DISTRICT §
NO. 126 FOR SALE, TRANSFER, OR §
MERGER OF FACILITIES AND §
CERTIFICATE RIGHTS IN §
MONTGOMERY COUNTY §

PUBLIC UTILITY COMMISSION

OF TEXAS

SEP 17 AM 9:2
PUBLIC UTILITY COMMISS
FILING CLERK

COMMISSION STAFF'S RECOMMENDATION ON SALE

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Order No. 7 and Recommendation on Sale.

I. Background

On February 24, 2016, Aqua Texas, Inc. d/b/a Aqua Texas (Aqua) and Montgomery County Municipal Utility District No. 126 (MUD-126) filed an application for approval of a service agreement under Texas Water Code § 13.248 (TWC), which would transfer a portion of Aqua's water certificate of convenience (CCN) No. 13203 and sewer CCN No. 21065 service areas to MUD 126, and to decertify a portion of Aqua's water CCN No. 13203 and sewer CCN No. 21065 in Montgomery County. On July 28, 2016, the Administrative Law Judge (ALJ) issued Order No. 6 revising the style of the proceeding to be reviewed as a sale, transfer, or merger (STM) application.

On September 7, 2016, the ALJ issued Order No. 7 requiring Staff to request a hearing or file a recommendation on the proposed sale by September 7, 2016. Therefore, this Response is timely filed.

II. Recommendation on Sale

Staff reviewed the application pursuant to TWC §§ 13.241, 13.246, and 13.301 and 16 Tex. Admin. Code §§ 24.102, 24.109, and 24.112. As explained in the attached memorandum of Patricia Garcia, Fred Bednarski III, and Kristy Nguyen of the Water Utilities Division, Staff recommends that Aqua and MUD 126 be allowed to proceed with the proposed transaction because the proposed transaction meets the relevant statutory and regulatory requirements.

III. Conclusion

Staff respectfully requests that the ALJ issue an order consistent with this Response allowing the Aqua and MUD 126 to proceed with the transaction.


Dated: October 17, 2016

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney

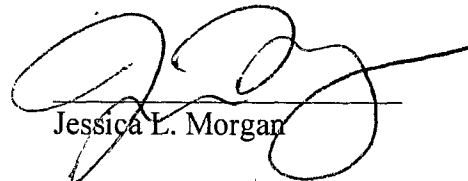


Jessica L. Morgan
State Bar No. 24079023
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7229
(512) 936-7268 (facsimile)

DOCKET NO. 45656

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this October 17, 2016 in accordance with 16 TAC § 22.74.



Jessica L. Morgan

PUC Interoffice Memorandum

To: Jessica Morgan
Legal Division

Thru: Tammy Benter, Director
Heidi Graham, Work Lead
Lisa Fuentes, Work Lead
Water Utilities Division

From: Patricia Garcia, Staff Engineer
Fred Bednarski III, Financial & Managerial Review Specialist
Kristy Nguyen, GIS Specialist
Water Utilities Division

Date: October 17, 2016

Subject: *Docket 45656, Application of Aqua Texas Inc. and Montgomery County Municipal Utility District No. 126 for Approval of a Service Agreement Designating Service Area and Certificate Rights, and to Decertify Certain Areas in Montgomery County*

On February 24, 2016, Aqua Texas, Inc. dba Aqua Texas (Aqua Texas) and Montgomery County Municipal Utility District No. 126 (Montgomery County MUD 126 or the District) (collectively, Applicants) filed an application for approval of a service agreement under Texas Water Code (TWC) § 13.248, which would transfer a portion of Aqua Texas' water Certificate of Convenience and Necessity (CCN) No. 13203 and sewer CCN No. 21065 service areas to MUD 126, and to decertify a portion of Aqua Texas' water CCN No. 13203 and sewer CCN No. 21065 in Montgomery County. The proposed service area contains 174 acres and 0 current water and sewer customers.

Staff and the Applicants reached an agreement to convert the application to a Sale, Transfer, or Merger (STM) application. On June 29, 2016, the Applicants filed supplemental information including an application for a STM of facilities and certificate rights. The purpose of the application is to decertify and transfer portions of Aqua Texas' water and sewer CCN areas to Montgomery County MUD 126. If approved, Aqua Texas' water CCN No. 13203 and sewer CCN No. 21065 will be amended by reducing its service area and Montgomery County MUD 126 will be issued water and sewer CCNs. The application is being reviewed pursuant to the criteria in the TWC §§ 13.241, 13.246, and 13.301 and 16 Tex. Admin. Code §§ 24.102, 24.109, and 24.112 (TAC). On July 28, 2016, Staff recommended that the application be deemed sufficient for filing and found administratively complete.

Notice

Proper public notice of the application was provided to neighboring systems, landowners, cities and affected parties Montgomery County. An affidavit stating notices were provided to all affected parties on August 16, 2016 was filed with the Commission on August 23, 2016. The comment period ended September 15, 2016, and no protests or opt-out requests were received.

Violations of TCEQ Standards

Montgomery County MUD 126 has a Texas Commission on Environmental Quality (TCEQ) approved Public Water System (PWS) Identification Number (ID No.) 0910006, which meets the TCEQ's drinking water standards as required by 16 TAC § 24.102(a)(1). Montgomery County MUD 126 purchases water from the City of Conroe to provide water to their customers. A review of TCEQ's records indicates that the PWS has not had any violations issued for their water system. Montgomery County MUD 126 also purchases wastewater service from the City of Conroe. Montgomery County MUD 126 does not have a wastewater discharge permit, but they are not required to have a wastewater permit for purchase of wastewater services.

Aqua Texas has several TCEQ approved PWSs and Wastewater Discharge Permits, however they do not have a PWS ID No. or a Wastewater Discharge Permit associated with the proposed CCN service area as there are no customers in this area currently.

Financial Test

In Staff's opinion, Montgomery County MUD 126 has demonstrated adequate financial and managerial capability to provide continuous and adequate service to the area subject to this application. These conclusions are based on information provided by Montgomery County MUD 126 prior to this date and may not reflect any changes in Montgomery County MUD 126's status subsequent to this review.

Montgomery County MUD 126 was created by order of the TCEQ on November 20, 2008. Additionally noted per Montgomery County MUD 126's financial advisor, Hilltop Securities Inc., letter dated August 18, 2016, that "Based on the estimated construction costs to provide adequate water, wastewater and drainage facilities to the District in the amount of \$16,444,510 and total bond issuance amount of \$24,375,000 (provided by the District engineer) and assuming a bond interest rate of 6% and 25 years of level debt service, the average annual debt service requirement would be approximately \$1,906,776. Assuming a 95% collection rate and an ultimate taxable assessed valuation of \$235,030,000 (provided by the developer of land in the District), a tax rate of \$0.85 per \$100 assessed valuation would be necessary to meet the annual debt service requirements. Currently, the District is levying, a \$0.90 total tax rate and has average tax collections of 99.99%. Based on these facts, the District is able to issue debt (bonds) in an amount sufficient to cover capital requirements to provide continuous and adequate water, sewer and drainage service for the land within [Montgomery County] MUD 126."

TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant. Pursuant to 16 TAC § 24.11, an applicant must meet certain criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area. To provide financial assurance, 16 TAC § 24.11(e)(1) states "An owner or operator may demonstrate financial assurance by satisfying a financial test including the leverage and operations tests. Staff additionally notes pursuant to 16 TAC § 24.11(e)(4)(C) that in lieu of meeting the leverage and operations tests, if the applicant utility is a city or district, the city or district may substantiate financial capability with a letter from the city's or district's financial advisor indicating that the city or district is able to issue debt (bonds) in an amount sufficient to cover capital requirements to provide continuous and adequate service and providing the document in subparagraph (B)(i) of this paragraph. Montgomery County MUD 126 provided a letter from

their financial advisor indicating that that Montgomery County MUD 126 is able to issue debt in an amount to cover capital requirements as well as their fiscal year 2015¹ audited financial statements which contained an unqualified auditor's opinion. Therefore, Staff concludes that Montgomery County MUD 126 meets this requirement.

Criteria Considered

Pursuant to TWC §13.301(e), before the expiration of the 120-day notification period, the Commission is required to notify all known parties to the transaction whether the Commission will hold a hearing to determine if the transaction will serve the public interest. For this case, Staff does not believe a hearing is necessary because the transaction will serve the public interest. Staff believes Montgomery County MUD 126 demonstrates adequate financial, managerial and technical (FMT) capability to provide continuous and adequate service to the existing service area plus the area currently under Aqua Texas. TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. Therefore, the following criteria were considered:

- ***TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.*** Montgomery County MUD 126 receives treated water and wastewater treatment services from the City of Conroe. The Utility Services and Development Agreement with the City of Conroe states that the City will provide the district with its ultimate requirements for water and wastewater as needed and required by the District, without limitation. In addition, Montgomery County MUD 126 has demonstrated it has the ability to build infrastructure and provide adequate service to the future customers in the service area.
- ***TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.*** The purpose of the transaction is to decertify and transfer portions of Aqua Texas' water and sewer CCN areas to Montgomery County MUD 126. The proposed area is already within the District's boundaries.
- ***TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient and on any other retail water utility servicing the proximate area.*** Only the Applicants will be affected by this transaction.
- ***TWC § 13.246(c)(4) requires the Commission to consider the ability of the Applicants to provide adequate service.*** Montgomery County MUD 126 has a TCEQ approved PWS, PWS No. 1700833. Montgomery County MUD 126 receives treated water and wastewater treatment services from the City of Conroe. Through this contract Montgomery County MUD established the ability to provide service to future customers in the area.
- ***TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.*** Montgomery County MUD 126 receives treated water and wastewater treatment services from the City of Conroe, therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.
- ***TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the Applicant to pay for facilities necessary to provide continuous and adequate service.*** Based on the review of the application and information provided by the Applicants as described above, Montgomery County MUD 126 has demonstrated adequate financial and managerial capabilities to provide service to the area being requested. Therefore, Montgomery County MUD 126 demonstrates adequate financial capability to provide service.

- ***TWC §§ 13.246(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate.*** The environmental integrity of the land will be effected when Montgomery County MUD 126 begins building homes and when the District begins putting in the infrastructure for the water distribution lines and wastewater transfer facilities which will serve the area.

- ***TWC § 13.246(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.*** Currently there are no customers in this area. Montgomery County MUD 126 will provide all future residents of this community with water and sewer service through the City of Conroe, thus improving the service available to the customers.

The Applicants meet all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to decertify and transfer a portion of Aqua Texas' water CCN No. 13203 and sewer CCN No. 21065 to Montgomery County MUD 126 and issuing a water CCN No. and sewer CCN No. to Montgomery County MUD 126 is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

Pursuant to 16 TAC § 24.109(f), Staff recommends the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Staff notes there are no deposits held by Aqua Texas for the proposed CCN service area as Aqua Texas does not have customers in the proposed service areas. Staff further recommends that a public hearing is not necessary.