



Control Number: 46077



Item Number: 27

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RECEIVED

APPLICATION OF BRUSHY CREEK §  
MUNICIPAL UTILITY DISTRICT AND §  
AQUA TEXAS, INC. FOR SALE, §  
TRANSFER, OR MERGER OF §  
FACILITIES AND CERTIFICATE §  
RIGHTS IN WILLIAMSON COUNTY §

2016 NOV 29 PM 2:35  
PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

**COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION**

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Order No. 7, Commission Staff’s Recommendation on the Transaction. Staff recommends that the transaction be approved to proceed. In support thereof, Staff shows the following:

**I. BACKGROUND**

On June 17, 2016, Brushy Creek Municipal Utility District (Brushy Creek MUD) and Aqua Texas, Inc. (Aqua) (collectively, Applicants) filed an application with the Commission for sale, transfer, or merger (STM) of facilities and certificate rights in Williamson County, Texas. Aqua seeks approval to acquire a portion of the water assets and certificate rights of Brushy Creek MUD’s CCN No. 11773. These include the transfer of water assets serving the Brushy Bend Park Subdivision and the amendment of Aqua’s water CCN No. 11157 to encompass the service area being transferred. The Applicants concurrently seek cancellation of that portion of CCN No. 11773 covering the transferred service area. Brushy Creek MUD will continue to own and service the remainder of water CCN No. 11773 following the completion of this Application.

On November 1, 2016, the Commission administrative law judge (ALJ) issued Order No. 7, deeming the Applicants’ notice sufficient and establishing a further procedural schedule. Order No. 7 included a deadline of December 9, 2016 for Staff to either request a hearing or to file a recommendation on approval of the sale to proceed. Therefore, this pleading is timely filed.

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## II. COMMENT REGARDING LETTER OF JOHN JOYAL

On October 18, 2016, John Joyal filed a letter requesting a hearing in this docket.<sup>1</sup> Mr. Joyal included in his request a list of five areas of concern regarding the proposed STM.<sup>2</sup> Mr. Joyal subsequently filed a letter withdrawing his request for a public hearing.<sup>3</sup> There were no intervenors other than Mr. Joyal. Accordingly, no party to this docket is requesting a public hearing. Furthermore, as detailed in the following section, Staff's review indicates that the Applicants have met the requirements to proceed with the sale.

## III. RECOMMENDATION TO APPROVE THE SALE TO PROCEED

As detailed in the attached memorandum of Emily Sears and Sean Scaff of the Water Utilities Division, Staff recommends that the Applicants' application to amend water CCN No. 11773 and to transfer a portion of the facilities and certificate rights from Brushy Creek MUD to Aqua be approved to move forward with the sale and transfer. Staff has reviewed the criteria of TWC §§ 13.246 and 13.301 and 16 TAC §§ 24.109 and 24.112 and determined that the Applicants meet the requirements necessary for amending and transferring the sewer CCN.

Pursuant to TWC § 13.301(e) and 16 TAC § 24.109(e), 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. Staff has determined that the application meets the pertinent requirements and is in the public interest; therefore, Staff does not request a hearing.

After the Commission ALJ issues an order granting or denying Staff's recommendation that the Applicants should be approved to move forward with the STM transaction, Staff will then coordinate with the Applicants and propose additional dates for the processing of this docket. Such dates will include deadlines for signed sales documents to be submitted by the Applicants, submittal of Staff's final recommendation regarding the transfer of the facilities and water service area held by Brushy Creek MUD to Aqua, and submittal of a joint proposed order addressing the water CCN amendments.

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<sup>1</sup> John Joyal's Request for a Public Hearing (Oct. 18, 2016).

<sup>2</sup> *Id.*

<sup>3</sup> Letter Regarding Withdraw [sic] of Request for Public Hearing (Nov. 21, 2016).

#### IV. CONCLUSION

For the reasons stated above, Staff respectfully recommends that Brushy Creek MUD and Aqua's STM transaction be approved to proceed.

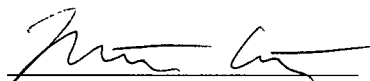
Dated: November 29, 2016

Respectfully Submitted,

#### PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Margaret Uhlig Pemberton  
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#### P.U.C. DOCKET NO. 46077 CERTIFICATE OF SERVICE

I, Matthew Arth, staff attorney for the Public Utility Commission of Texas, certify that a copy of this document was served on all parties of record on November 29, 2016, in accordance with the requirements of 16 Tex. Admin. Code § 22.74.

  
Matthew A. Arth

# *Public Utility Commission of Texas*

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## **Memorandum**

**To:** Matthew Arth, Attorney  
Legal Division

**Though:** Tammy Benter, Director  
Water Utilities Division

**From:** Emily Sears, Financial Analyst  
Sean Scaff, Engineering Specialist  
Water Utilities Division

**Date:** November 29, 2016

**Subject:** **Docket No. 46077;** *Application of Brushy Creek Municipal Utility District and Aqua Texas, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Williamson County*

### **Background**

On June 17, 2016 Aqua Texas, Inc. (Aqua or Purchaser) filed an application to purchase facilities and transfer a portion of the Certificate of Convenience and Necessity (CCN) No. 11773 of Brushy Creek Municipal Utility District (Brushy Creek or Seller) (collectively Applicants), in Williamson County, Texas. The Application was filed pursuant to Section 13.251 of the Tex. Water Code (TWC) and Title 16, Chapter 24 of the Tex. Admin. Code (TAC).

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, we do not recommend that a hearing be held based on our review of the information in the application and the criteria listed below. Staff believes that the Purchaser demonstrates adequate financial, managerial, and technical capability to provide service in the area subject to this application.

For water utility service, the Commission shall ensure that the applicant has a Texas Commission on Environmental Quality (TCEQ) approved system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and TCEQ rules, and has access to an adequate supply of water. Both the Seller and the Purchaser have TCEQ approved public water supplies that meet the requirements of TWC § 13.241(b).

TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. As a result of this application, the Seller will amend its water CCN No. 11773 to remove the transferred area and the Purchaser will amend its CCN No. 11157 to include the transferred area. Therefore, the following criteria were considered:

- 1) TWC § 13.246(c)(1) refers to the adequacy of service currently provided to the requested area.**

The Seller currently provides adequate service to the requested area. The existing water system purchases 75% of its water.

- 2) **TWC § 13.246(c)(2) refers to the need for service in the requested area.**  
The fact that there are existing customers in the requested area demonstrates the need for service.
- 3) **TWC § 13.246(c)(3) refers to the effect of granting a certificate on the recipient and on any other retail water utility servicing the proximate area.**  
As a result of the transaction, the Seller's water CCN No. 11773 will be amended, and the Purchaser's CCN No. 11157 will be amended. The Purchaser will then purchase 100% of its water supply from the Seller for this system.
- 4) **TWC § 13.246(c)(4) refers to the ability of the applicant to provide adequate service.**  
The Purchaser is a subsidiary of Aqua America, Inc., which is one of the largest publicly traded water utilities in the United States. The Purchaser has the financial ability to make any necessary repairs or improvements, and the operators are experienced and thoroughly knowledgeable about water operations, as well as the requirements for continuous and adequate service. The Applicant is required to currently employ one "Class D" drinking water operator at their facility. They currently employ thirteen operators with "Class D" or higher license status. Finally, although some of the Purchaser's systems have current violations, the Purchaser is working towards addressing the issues at these different facilities.
- 5) **TWC § 13.246(c)(5) refers to the feasibility of obtaining service from an adjacent retail public utility.**  
The Seller is currently serving customers within its CCN and no additional service is needed. Therefore, it is not necessary to consider the feasibility of obtaining service from another entity.
- 6) **TWC § 13.246(c)(6) refers to the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant.**  
The Purchaser is a subsidiary of Aqua America, Inc., which is one of the largest publicly traded water utilities in the United States. The Purchaser's parent (Aqua America, Inc.) has an A+ credit rating with S&P, which satisfies the Leverage Test given in 16 TAC § 24.11(e)(2)(D). There are no projected losses in the first five years of operations, however, the Purchaser's parent also has \$3.2 million in cash and cash equivalents that could cover any shortages in the first five years of operations, which satisfies the Operations Test given in 16 TAC § 24.11(e)(3).
- 7) **TWC § 13.246(c)(7) refers to the environmental integrity.**  
In this case, there will be no impact on the environment, as no improvements are needed and the system is currently in place.
- 8) **TWC § 13.246(c)(8) refers to the probably improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate.**

The Purchaser anticipates that the quality of utility service will remain at a high level, and the Purchaser will deal with any service issues which may arise promptly. The rates will remain unchanged.

9) **TWC § 13.246(c)(9) refers to the effect on the land to be included in the certificated area.**

In this case, there will be no impact on the land as no improvements are needed and the system is currently in place.

Purchaser meets all of the statutory requirements of TWC § 13.246(c). Approving this application and transferring a portion of the Seller's water service area, assets, and customers currently under CCN No. 11773 is necessary for the service, accommodation, convenience, and safety of the public.

The Purchaser is capable of providing continuous and adequate service. Therefore, Staff recommends that the Commission allow the Applicants to proceed with the proposed transaction.

Staff further recommends that the proposed transaction be completed and that the Applicants send documentation as evidence that all assets have been transferred to the acquiring entity and that the disposition of any remaining deposits has been addressed as soon as possible. Pursuant to 16 TAC § 24.112(e), the approval of the sale expires one year from the date of the Commission's written approval of the sale. If the sale has not been consummated within that period and unless the Applicants have requested and received an extension from the Commission, the approval is void and the Applicants must re-apply for the approval of the sale. In addition, I recommend the Applicants be informed that the CCN will remain in the name of the Seller until the transfer is complete and approved in accordance with the PUC rules and regulations.