



Control Number: 48565



Item Number: 14

Addendum StartPage: 0

RECEIVED

APPLICATION OF AQUA TEXAS	§	PUBLIC UTILITY COMMISSION
INC. AND TOWN OF BUFFALO GAP	§	
FOR SALE, TRANSFER, OR	§	OF TEXAS
MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS IN TAYLOR	§	
COUNTY (GAP WATER SYSTEM)	§	
	§	

2018 NOV 16 AM 11:07
PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF TRANSACTION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Recommendation on Approval of Transaction. In support thereof, Staff shows the following:

I. BACKGROUND

On August 2, 2018, Aqua Texas, Inc. (Aqua) and the Town of Buffalo Gap (Buffalo Gap) filed an application for sale, transfer, or merger of facilities and certificate rights in Taylor County. Specifically, Aqua wishes to sell a portion of its water CCN No. 13201 and transfer its Gap Water System facilities to Buffalo Gap, which will obtain a new CCN. The requested area includes approximately 1,782 acres and 269 connections.

On October 9, 2018, the Administrative Law Judge (ALJ) issued Order No. 3, deeming Aqua's notice sufficient and requiring Staff to request a hearing or file a recommendation on the approval of the sale by November 16, 2018. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO APPROVE TRANSACTION TO PROCEED

As detailed in the attached memorandum of Leila Guerrero of the Commission's Water Utility Regulation Division, Staff recommends approval of the proposed transaction. Staff's review indicates that the application satisfies Texas Water Code (TWC) §§ 13.241, 13.246, and 13.301 and 16 Texas Administrative Code (TAC) §§ 24.227 and 24.239 (formerly 16 TAC §§ 24.102 and 24.109) and that a hearing is not necessary. If the proposed transaction is permitted to proceed, Staff further recommends that the Applicants be required to file evidence that the sale has been completed. Pursuant to 16 TAC § 24.239(o) (formerly 16 TAC § 24.109(o)), approval of the sale expires six months from the date of the Commission's written

approval allowing the sale to proceed. If the sale is not consummated within that period, the approval is void and the Applicants must re-apply for approval of the sale unless the Applicants request and receive an extension from the Commission.

III. CONCLUSION

Staff respectfully recommends the entry of an order permitting the proposed transaction to proceed.

Dated: November 16, 2018

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney


A handwritten signature in black ink, appearing to read "Skyler Collins", written over a horizontal line.

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DOCKET NO. 48565

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the November 16, 2018, in accordance with 16 TAC § 22.74.


Skyler Springsteen Collins

PUC Interoffice Memorandum

TO: Skyler Collins, Attorney
Legal Division

THRU: Heidi Graham, Manager
Water Utility Regulation Division

FROM: Leila Guerrero, Regulatory Accountant/Auditor
Water Utility Regulation Division

DATE: November 9, 2018

SUBJECT: **Docket No. 48565**, *Application of Aqua Texas Inc. and Town of Buffalo Gap for Sale, Transfer, or Merger of Facilities and Certificate Rights in Taylor County*

Background

On August 2, 2018, the Town of Buffalo Gap, Texas (Buffalo Gap or Purchaser) and Aqua Texas, Inc. (Aqua Texas or Seller) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Taylor County, Texas, pursuant to Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239, formerly 16 TAC § 24.109. Specifically, Buffalo Gap seeks approval to acquire certain facilities and a portion of water service area from Aqua Texas' water Certificate of Convenience and Necessity (CCN) No. 13201. Aqua Texas' CCN will be amended and Buffalo Gap will obtain a new CCN. The total area being requested includes approximately 1,782 acres and 269 current connections.

Notice

The comment period ended on October 18, 2018, and no protests or requests for hearing were received by the Commission.

Criteria Considered:

TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. Staff considered the following nine criteria:

TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.

The public water system (PWS) being transferred by this application is the Gap Water System, PWS ID No. 2210023, which has 269 current connections. The PWS currently meets the Texas Commission on Environmental Quality's (TCEQ) drinking water standards and the requirements of the Texas Health and Safety Code, Chapter 341, TCEQ rules. The PWS also has access to an adequate supply of water as required by 16 TAC § 24.227(a)(1), formerly 16 TAC § 24.102(a)(1). In addition, Gap Water System has no outstanding TCEQ violations.

TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area. Gap Water System is currently providing service to the requested area. Therefore, the need for service was not considered.

TWC § 13.246(c)(3) requires the Commission to consider the effect of the granting of a certificate or of an amendment on the recipient, on the landowners in the area and on any other retail water utility servicing the proximate area. The effect of the proposed transaction is that it

will transfer certain facilities and a portion of service area under water CCN No. 13201 to Buffalo Gap, which will obtain a new CCN.

TWC § 13.246(c)(4) requires the Commission to consider the ability of the Purchaser to provide adequate service. Buffalo Gap intends to integrate the acquired systems into its overall system and raise the standards for quality customer service. Buffalo Gap currently purchases water from the City of Abilene indirectly through a contract with adjacent Steamboat Mountain Water Supply Corporation. Buffalo Gap is developing a project to receive its wholesale water supply directly from the City of Abilene and plans to use that water source to establish even better service in terms of reliability for both its current and future customers.

TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility. This is not applicable. The Applicants have agreed to transfer certain facilities and a portion of service area.

TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the purchaser to pay for facilities necessary to provide continuous and adequate service and the financial stability of the purchaser. 16 TAC § 24.11 establishes 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 areas. 16 TAC § 24.11(e) lists the financial tests.

Financial Tests

Pursuant to TWC § 13.246(c)(6), the Commission is required to consider the financial ability of an applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant. The criteria and tests are listed in 16 TAC § 24.11, including a leverage test and an operations test.

Leverage Test

Based on the comprehensive annual financial report (CAFR) for 2016 and 2017, filed with the application, Buffalo Gap meets two out of the five leverage tests. Buffalo Gap has a debt to equity ratio of 0.89, which is less than one, and also has sufficient unrestricted cash available as a cushion for two years of debt service. In addition, Buffalo Gap meets 16 TAC § 24.11(e)(2)(c) because it has sufficient cash to pay the long-term loan principal and interest payments as they become due. Buffalo Gap is only required to meet one of the leverage tests. Furthermore, the application included a copy of Form RD 1940-1, Request for Obligation of Funds. This form indicates that on April 3, 2018, USDA Rural Development approved a water and waste disposal loan in the amount of \$2,885,000 for the Town of Buffalo Gap.

Operations Test

Buffalo Gap satisfies the operations test, in which an owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. Buffalo Gap's financial projections for five years were not available at the time of Staff's review. However, Buffalo Gap provided CAFR for Fiscal Years ended September 30, 2016, and September 30, 2017. The operations and maintenance costs are projected based on Buffalo Gap's past financial experience. Thus, there are no shortages to cover.

Based on the review of the application and information provided, Staff recommends that Buffalo Gap has demonstrated adequate financial and managerial capabilities to provide service to the requested area.

TWC §§ 13.246(c)(7) & (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 included in the areas to be acquired should not be negatively affected by this transaction, since the area is currently receiving service. Gap Water System will no longer need to be fully reliant on groundwater wells in this arid region of Texas, which will represent an improvement to environmental integrity, particularly in times of drought.

TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers. The customers of Gap Water System should enjoy a stable water supply from a system that is professionally operated and maintained, and the rates will not change as a result of the transaction.

Recommendation on Approval of Sale

Staff has reviewed the above referenced application, and based on the information in the application and the applicable laws and rules, Staff recommends that Buffalo Gap is capable of providing continuous and adequate service to the requested area, the transaction will serve the public interest, a public hearing is not necessary, and the Applicants should be allowed to proceed with the proposed transaction.

Staff further recommends that 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.

The approval of the sale expires six months from the date of the Commission's written approval of the sale. If the sale is not consummated within that period, the approval is void and the Applicants must re-apply for the approval of the sale – unless the Applicants have requested and received an extension from the Commission. In addition, the CCN will remain in the name of the Seller until the transfer is completed and approved in accordance with the Commission rules and regulations as required by 16 TAC § 24.239(o), formerly 16 TAC § 24.109(o).