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

PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
FILING CLERK  
OF TEXAS

**STATUS UPDATE NO. 12 AND  
REQUEST FOR EXTENSION OF DEADLINE**

COME NOW, Aqua Texas, Inc. ("Aqua") and the Town of Buffalo Gap ("Town") (collectively, the "Applicants") and file this Status Update No. 12 and Request for Extension of Deadline and would show the Commission as follows:

**I. BACKGROUND**

On August 2, 2018, the Applicants filed an application for Sale, Transfer or Merger of Facilities and Certificate Rights in Taylor County (the "Application") related to the Town's purchase of the Gap Water System and associated CCN owned by Aqua. The Application included multiple references to the Town's intention to obtain funding from the United States Department of Agriculture ("USDA") for a project involving the City of Lawn and the Tuscola-Taylor County Water Control and Improvement District No. 1 which includes acquisition of the Gap Water System and which would ultimately result in acquiring water from Abilene, Texas for sale to customers in the Town and surrounding areas. The Application included USDA Financing Information which evidenced the Town's request for funding from USDA. *See Application for Sale, Transfer or Merger of Facilities and Certificate Rights on file with the Commission at Attachment F.* The Application also included the Asset Purchase Agreement between the Applicants which made the timing of closing on the Gap Water System contingent both on

Commission approval and receipt of funding from USDA. *See Application for Sale, Transfer or Merger of Facilities and Certificate Rights on file with the Commission at Attachment G, Page 4.*

On November 28, 2018, the Commission issued Order No. 4 Approving Transaction to Proceed, to be concluded by May 28, 2019. Order No. 4 required the Applicants to submit monthly updates regarding the status of efforts to conclude the transaction, address customer deposits, and submit documents evidencing same beginning on December 20, 2018, and each month thereafter. On May 23, 2019, the Commission entered Order No. 5 Granting Request for Extension allowing the Applicants until November 25, 2019 to conclude the transaction. On July 17, 2019, the Commission entered Order No. 6 Status Update Required directing the Applicants to continue to file monthly updates regarding the status of efforts to conclude the transaction, address customer deposits, and submit documents evidencing same monthly beginning on July 25, 2019.

## **II. STATUS UPDATE NO. 12**

Applicants filed Status Update No. 11 on October 21, 2019 in which the Town reported that three (3) easements were still lacking. As of the date of this Status Update No. 12, the Town has obtained the easement on the property owned by multiple heirs. The two (2) remaining easements are still outstanding. The substance of both have been finalized, but the Town has not yet received an executed copy of either. Both property owners have reported that they are trying to get the easements signed as soon as possible.

## **III. REQUEST FOR EXTENSION OF DEADLINE**

The Texas Administrative Code says that approval of a sale, transfer, or merger application is void if the transaction has not been completed within 180 days, “unless the commission in writing extends the time period for good cause shown”. 16 TEX. ADMIN. CODE §24.239(o). Additionally, the general rules of procedure for the Public Utility Commission state that a deadline

may be extended if “there is good cause for such extension of time and ... the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion.” 16 TEX. ADMIN. CODE §22.4(b).

The Applicants have timely filed Status Updates with the Commission reflecting the efforts to conclude this transaction and all of those Status Updates have included references to the various requirements regarding USDA dispersal of funding for the Town’s purchase of the Gap Water System. The Town has encountered unexpected delays in obtaining the easements necessary to request closing instructions from USDA, and those delays have been outside of Town’s control. The Town has made progress since it last requested an extension, and it believes it is very close to having the final two (2) executed easements in hand. Once those are received, the Town will request closing instructions from USDA, seek bids for construction of the project, and await approval from USDA to award the bid. The Town’s engineers currently estimate that this process will take 2 to 3 months to complete, after final executed easements are received and filed of record.

The Town respectfully requests an additional 180-day extension, until May 25, 2020, to close the transaction with Aqua. The Town believes that the Commission has legal authority to grant this request. This extension is requested in good faith, as the only reason for the delay in closing this transaction is complying with the extensive requirements to close on a loan with USDA, which is a complicated process on its own but especially with three governmental entities involved. The Town has used its best efforts to obtain easements and seek approvals necessary to comply with USDA’s requirements to close the USDA loan to be able to conclude this transaction. The purchase of the Gap Water System remains a very important part of the Town’s plans to provide better water to its citizens and the current customers of the Gap Water System.

#### **IV. CONCURRENCES**

The Town has informed Aqua and Commission Staff of the need for this extension. Aqua has concurred in the request for the extension. Counsel for Aqua and the Town are working on an amendment to the Asset Purchase Agreement between the parties to extend the time for closing under that Agreement to May 25, 2020. Commission Staff does not oppose the extension of the deadline requested herein.

#### **V. CONCLUSION**

The Town respectfully requests an extension to the deadline to complete the Application transaction established in Order No. 5 to May 25, 2020.

Respectfully submitted,

By: 

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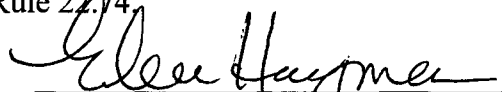
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**ATTORNEY FOR AQUA TEXAS, INC.**

#### **CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on November 19<sup>th</sup>, 2019 in accordance with P.U.C. Procedural Rule 22.74.

  
Eileen M. Hayman