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**PUC 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 (GAP WATER SYSTEM)**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**



**STATUS UPDATE NO. 18 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. 18 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. 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 November 25, 2019, the Commission entered Order No. 7 Granting Request for Extension allowing the Applicants until May 25, 2020 to conclude the transaction.

## **II. STATUS UPDATE NO. 18**

Applicants filed Status Update No. 17 on April 27, 2020 in which the Town reported that the Town had received its closing instructions from USDA granting it permission to advertise the project for bids, but that the Town was unable to move forward because the other entities involved in the project had not yet received their authorization to proceed from their respective funding sources. As of the date of this Status Update No. 18, the City of Lawn has received authorization from the Texas Water Development Board to proceed, but the Tuscola-Taylor County Water Control and Improvement District No. 1 still has not received its closing instructions from USDA. In order to close its transaction with Aqua, the Town must advertise the project for bids, accept bids, and close with USDA. However, as the project is a joint project, the Town cannot advertise for bids until all entities involved are authorized to proceed. Aqua is waiting on the Town's process with USDA to conclude before proceeding with action to close the approved transaction with the Town and address customer deposits.

## **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).

As evidenced by the Status Updates submitted by the Applicants to the Commission, the Town has been diligently attempting to complete its required steps with USDA in order to obtain the funding with which to close the transaction with Aqua. Initially, the Town was delayed in obtaining easements from private property owners who were unresponsive or unavailable. The Town made changes to its waterline route in order to avoid further delays in obtaining consent from these difficult property owners. Now, the Town is delayed due to another entity involved with its USDA project. Because the Town is so small it was necessary to enter into an agreement with other small neighboring governmental entities to obtain less expensive and better-quality water for its residents. Although the joint nature of the project will be ultimately beneficial to the Town and its residents, it has caused complications and delays in closing with USDA. The Town has been diligent in attempting to comply with the USDA’s requirements in a timely manner but simply cannot move forward without all three entities involved in the USDA project doing the same.

The Town respectfully requests an additional extension until September 30, 2020 to close the transaction with Aqua. The Town believes that the Commission has the 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 a third party who has not yet complied with the USDA’s requirements. The Town has used its best efforts to conclude this transaction in a timely manner but cannot move

forward until Tuscola-Taylor Water Control and Improvement District No. 1 has authorization to move forward as well. The purchase of the Gap Water System remains an integral 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 September 30, 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. 7 to September 30, 2020.

Respectfully submitted,

By: /s/ Eileen M. Hayman  
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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 May 18, 2020 in accordance with P.U.C. Procedural Rule 22.74.

/s/ Eileen M. Hayman

Eileen M. Hayman