



Control Number: 48896



Item Number: 32

Addendum StartPage: 0

**PUC DOCKET NO. 48896**

**APPLICATION OF HARPER WATER § PUBLIC UTILITY COMMISSION**  
**COMPANY, INC. AND AQUA TEXAS, §**  
**INC. FOR SALE, TRANSFER, OR § OF TEXAS**  
**MERGER OF FACILITIES AND §**  
**CERTIFICATE RIGHTS IN GILLESPIE §**  
**AND KERR COUNTIES §**

**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED NOTICE OF APPROVAL**

COME NOW Harper Water Company, Inc. and Aqua Texas, Inc. (the “Applicants”) together with the Staff of the Public Utility Commission of Texas, representing the public interest, (collectively, the Parties), and file this Joint Motion to Admit Evidence and Proposed Notice of Approval. In support thereof, the Parties show the following.

**I. BACKGROUND**

On November 20, 2018, Harper Water Company, Inc. (Harper Water) filed an application for approval of a sale and transfer to Aqua Texas, Inc. (Aqua Texas) of facilities and certificate rights in Gillespie and Kerr Counties. Specifically, Harper Water seeks approval to sell and transfer to Aqua Texas all of its assets that are used or useful in the provision of water service under certificate of convenience and necessity (CCN) number 11421. The requested transfers include approximately 932 acres and 813 current customers.

On October 1, 2019, the Commission issued Order No. 8, which required that the Parties jointly file a proposed Notice of Approval by November 12, 2019. This pleading is therefore timely filed.

**II. JOINT MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following evidence into the record of this proceeding:

1. Application, filed on November 20, 2018.
2. Applicants’ Affidavit of Notice to Current Customers, Neighboring Utilities, and Affected Parties filed on January 22, 2019.
3. Commission Staff’s Final Recommendation filed on March 19, 2019.
4. Bill of Sale, Assignment, and Assumption between Harper Water Company, Inc. and Aqua Texas, Inc. filed on August 22, 2019.

5. Applicants' Submission of Customer Deposit Report filed on September 20, 2019.
6. Commission Staff's Recommendation on Sufficiency of Closing Documents and Proposed Procedural Schedule filed on September 30, 2019.
7. Aqua Texas' Consent Form for map, certificate, and tariff filed on October 29, 2019.

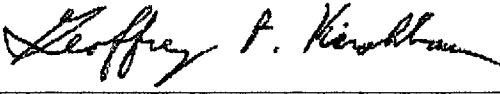
### III. PROPOSED ORDER

The Parties move for adoption of the attached Proposed Notice of Approval.

### IV. CONCLUSION

The Parties respectfully request that the Commission grant the Motion to Admit Evidence and adopt the attached Proposed Notice of Approval.

Respectfully submitted,

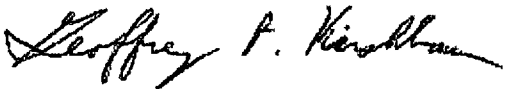
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**ATTORNEY FOR HARPER WATER  
COMPANY, INC. AND AQUA TEXAS, INC.**

### CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on November 12, 2019 in accordance with P.U.C. Procedural Rule 22.74.

  
\_\_\_\_\_  
Geoffrey P. Kirshbaum

**PUC DOCKET NO. 48896**

<b>APPLICATION OF HARPER WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>COMPANY, INC. AND AQUA TEXAS,</b>	<b>§</b>	
<b>INC. FOR SALE, TRANSFER, OR</b>	<b>§</b>	<b>OF TEXAS</b>
<b>MERGER OF FACILITIES AND</b>	<b>§</b>	
<b>CERTIFICATE RIGHTS IN GILLESPIE</b>	<b>§</b>	
<b>AND KERR COUNTIES</b>	<b>§</b>	

**JOINT PROPOSED NOTICE OF APPROVAL**

This Notice of Approval addresses the application of Harper Water Company, Inc. (“Harper Water”) and Aqua Texas, Inc. (“Aqua Texas”) filed on November 20, 2018 for approval of the sale and transfer of facilities and certificate rights in Gillespie and Kerr Counties. Harper Water seeks approval to sell and transfer to Aqua Texas all of its water systems, facilities, and service areas under certificate of convenience and necessity (“CCN”) number 11421 and cancellation of CCN No. 11421.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Harper Water Company, Inc. is a domestic for-profit corporation registered with the Texas Secretary of State under file number 120489100 (Texas Taxpayer No. 17426124925).
2. Aqua Texas, Inc. is a domestic for-profit corporation registered with the Texas Secretary of State under file number 800304878 (Texas Taxpayer No. 32014405503).
3. Both Applicants are 100% owned by Aqua America, Inc., a Pennsylvania corporation.
4. Aqua Texas owns and operates various water and wastewater systems throughout the State of Texas. Harper Water owns and operates various water systems in Gillespie and Kerr Counties.
5. Harper Water holds water CCN No. 11421.
6. Aqua Texas holds water CCN No. 13254 for a water system located outside of its geographic North and Southeast operating regions and does not currently hold a sewer CCN applicable to any sewer system located outside its geographic North and Southeast operating regions.

### **Application**

7. On November 20, 2018, Harper Water and Aqua Texas filed an application for the sale, transfer, or merger of a retail public utility with the Public Utility Commission of Texas pursuant to Texas Water Code (“TWC”) §13.246(c), 13.301 and 16 Texas Administrative Code Subchapter H (“TAC”) (the “Application”).

8. The Application was for transfer of Harper Water systems in Gillespie and Kerr counties to Aqua Texas for inclusion in the Aqua Texas Southwest operating region (the “SW Region”).

9. The purpose of the Application is to facilitate regional consolidation of all of Applicants’ SW Region certificated rights and assets within Aqua Texas as part of a series of applications.

10. Aqua Texas seeks to amend its water CCN No. 13254 to cover the water systems and service areas described in the Application and include them in its SW Region water CCN.

### **Procedural History**

11. On November 20, 2018, Harper Water and Aqua Texas filed an application for the sale, transfer, or merger of a retail public utility with the Public Utility Commission of Texas pursuant to Texas Water Code §13.246(c), 13.301 (“TWC”) and 16 Texas Administrative Code Subchapter H (“TAC”) (the “Application”).

12. The Application was for transfer of Harper Water systems in Gillespie and Kerr counties to Aqua Texas for inclusion in Aqua Texas’ SW Region. The purpose of the Application is to facilitate regional consolidation of all of Applicants’ SW Region certificated rights and assets within Aqua Texas as part of a series of applications.

13. Harper Water holds water CCN No. 11421.

14. Aqua Texas holds water CCN No. 13254 in its SW Region.

15. The Application requests approval to sell/transfer Harper Water’s systems and service areas served under CCN No. 11421 to Aqua Texas and amendment of Aqua Texas’ water CCN No. 13254 to include the CCN No. 11421 water service areas proposed for transfer.

16. The total area affected by the transfer comprises approximately 932 acres and provides water service to approximately 813 customers.

17. In Order No. 2 issued on January 2, 2019, the administrative law judge (“ALJ”) deemed the Application administratively complete.

### **Notice**

18. Notice of the application appeared in the December 7, 2018 issue of the *Texas Register*.

19. Mailed notice was provided to all affected and interested parties on January 11, 2019.
20. The Applicants filed affidavits of notice with the Commission providing proof of notice on January 22, 2019.
21. In Order No. 3 issued on January 25, 2019, the ALJ deemed the notice sufficient.

**Evidentiary Record**

22. On November 12, 2019, the parties jointly moved to admit evidence.
23. On November \_\_\_, 2019, the ALJ admitted the following evidence into the record: (a) the Application filed on November 20, 2018; (b) Applicants' Affidavit of Notice to Current Customers, Neighboring Utilities, and Affected Parties filed on January 22, 2019; (c) Commission Staff's Final Recommendation filed on March 19, 2019; (d) Bill of Sale, Assignment, and Assumption between Harper Water Company, Inc. and Aqua Texas, Inc. filed on August 22, 2019; (e) Applicants' Submission of Customer Deposit Report filed on September 20, 2019; (f) Commission Staff's Recommendation on Sufficiency of Closing Documents and Proposed Procedural Schedule filed on September 30, 2019; and, (g) Aqua Texas' Consent Form for map, certificate, and tariff, filed on October 29, 2019.

**Sale**

24. In Order No. 5 issued on March 22, 2019, the ALJ approved the transaction to proceed and required Applicants to file proof that the transaction had closed and that customer deposits had been addressed.
25. On April 23, 2019, May 22, 2019, June 14, 2019, and July 22, 2019, Applicant's filed status reports regarding efforts to complete the transaction.
26. On August 22, 2019, Applicant's filed notice that the sale had closed. On September 20, 2019, Applicant's filed additional documentation addressing the transfer of customer deposits following closure of the transaction.
27. In Order No. 8 issued on October 1, 2019, the ALJ found the closing documents sufficient.

**System Compliance – TWC §13.301(e)(3)(A); 16 TAC §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)**

28. The systems requested for transfer are approved TCEQ Public Water Systems (PWS) that meet the requirements of Texas Health and Safety Code, Chapter 341 and the applicable TCEQ rules.
29. The Applicants have occasionally received notices of violation from TCEQ, but do not currently have any outstanding compliance issues.

30. Aqua Texas has worked with TCEQ to resolve compliance issues as they arise and intends to continue that practice following the approval of the proposed transaction.

31. Aqua Texas, Inc. has not been subject to any enforcement action by the Commission, the Texas Department of State Health Services (DSHS), the Office of the Attorney General (OAG) or the Environmental Protection Agency (EPA) in the past three (3) years for non-compliance with rules, orders, or state statutes.

**Adequacy of Existing Service – TWC § 13.246(c)(1); 16 TAC §§24.227(d)(1), 24.239(j)(5)(B)**

32. The systems requested for transfer are adequate in they are approved TCEQ Public Water Systems (PWS) that meet the requirements of Texas Health and Safety Code, Chapter 341 and the applicable TCEQ rules.

33. The PWS being transferred by this application are registered under an approved Texas TCEQ PWS, ID Nos. 1330062, 1330126, 0860098, 1330009, 0860005, 0860086, and 0860100.

34. Harper Water has no existing violations with its PWS.

**Need for Additional Service – TWC § 13.246(c)(2); 16 TAC §§24.227(d)(2), 24.239(j)(5)(C)**

35. There will be no additional service in the area.

36. The purpose of the transaction is to sell and transfer to Aqua Texas all of Harper Water's water CCN No. 11421 systems, facilities, and service areas.

37. The customers are currently receiving water and sewer service from Harper Water's water systems.

**Effect of Approving the Transaction and Granting the Amendment – TWC § 13.246(c)(3); 16 TAC §§ 24.227(d)(3), 24.239(j)(5)(D)**

38. If the proposed transaction in the application is approved, the Applicants will be a step closer towards consolidating the CCNs and subsidiaries of Aqua America, Inc. under one subsidiary (*i.e.*, Aqua Texas, Inc.), one SW Region water CCN, and one SW Region sewer CCN (although the application in this docket involves only water systems).

39. There will be no effect on any other retail public utility serving the proximate area as the transaction is simply a sale and transfer of assets between existing operating subsidiaries of the same parent company.

40. Harper Water will continue to provide reliable water service in the requested area.

**Ability to Serve: Managerial and Technical – TWC §§ 13.241(a), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (d)(4), 24.239(g), (j)(5)(E)**

41. The Applicants are currently serving customers and have sufficient capacity.

42. It is not expected for the proposed transaction to have any effect on the operation of the water systems because the same experienced management and personnel will operate the above referenced systems following the approval of the STM application.

43. The proposed transfers involve only existing infrastructure and new construction is not necessary to serve the requested transfer areas as a result of the transaction.

**Ability to Serve: Financial Ability and Stability – TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a), (d)(6), 24.239(g), (j)(5)(G)**

44. 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 requested utility service area.

45. 16 TAC § 24.11(e) lists the financial tests.

46. The ultimate parent of Applicant Aqua Texas (Aqua America, Inc.) meets one out of five leverage tests for which the Applicant is only required to meet one. Aqua America, Inc. meets the debt service coverage test with a ratio of 1.95, which is above the required 1.25.

47. 16 TAC § 24.11(e)(3) refers to the operations test which requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations.

48. The Applicant has not submitted projections in the application; however, based on the 2017 Annual Report of Aqua America, Inc., Aqua America, Inc. had \$328,967,000 in operating income. Thus, there are no shortages to cover.

49. Aqua Texas demonstrated adequate financial and managerial capability to provide continuous and adequate service to the requested area.

**Feasibility of Obtaining Service from Adjacent Retail Public Utility – TWC §§ 13.246(c)(5); 16 TAC §§ 24.227(d)(5), 24.239(j)(5)(F)**

50. The Applicants are currently serving customers and have sufficient capacity; therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.

**Environmental Integrity – TWC § 13.246(c)(7); 16 TAC §§ 24.227(d)(7), 24.239(j)(5)(H) and Effect on the Land – TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)**

51. The environmental integrity of the land will not be affected as no additional construction is needed, and service is currently being provided to the requested area.



**Improvement of Service or Lowering Cost to Consumers – TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(j)(5)(I)**

52. Immediately following the proposed transfers of systems, facilities, and service areas to Aqua Texas, Aqua Texas will continue to provide water service to existing customers in those areas at the same rates.

53. Aqua Texas does not intend to file an application to change rates as a result of the proposed transaction and other factors would drive any future decision regarding rate changes, which would require a separate future application.

54. The quality of service for transferred Aqua Texas customers will remain high.

**Map, Certificate, and Tariff**

55. On October 29, 2019, Aqua Texas filed a consent form concurring the proposed final map, its certificate, and its tariff.

56. The final map, certificate, and tariff were filed as an attachment to the joint motion to admit evidence and proposed Notice of Approval.

57. Harper Water has agreed to the transfer of all of its water service area under CCN No. 11421 to Aqua Texas CCN No. 13254 as ordered in this Notice.

**Informal Disposition**

58. More than 15 days have passed since the completion of notice provided in this docket.

59. No person filed a person or motion to intervene.

60. Aqua Texas, Harper Water, and Commission Staff are the only parties to this proceeding.

61. No party requested a hearing and no hearing is needed.

62. Commission Staff recommend approval of the application.

63. The decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.244, 13.246, 13.251, 13.254, and 13.301.

2. Aqua Texas and Harper Water are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59).

3. Public notice of the application was provided as required by TWC § 13.301(a) and 16 TAC § 24.239(a) through (c).
4. The Commission processed the application in accordance with the requirements of TWC § 13.301 and 16 TAC § 24.239.
5. Aqua Texas and Harper Water completed the sale within the time required by 16 TAC § 24.239(o).
6. After consideration of the factors in TWC § 13.246(c), Aqua Texas has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested transfer areas. TWC § 13.301(b).
7. After consideration of the factors in TWC § 13.246(c), Aqua Texas has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested transfer areas. TWC § 13.301(b).
8. The Applicants have demonstrated that transferring Harper Water systems, facilities, and service areas served under CCN No. 11421 as proposed in the application to Aqua Texas under water CCN No. 13254 will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public. TWC § 13.301(d), (e).

### **III. Ordering Paragraphs**

In accordance with the preceding findings of fact and conclusions of law, the Commission issues the following orders.

1. The application is approved.
2. Harper Water's CCN No. 11421 is cancelled. All Harper Water systems, facilities, and service areas described in the application and closing documents are hereby transferred to Aqua Texas' CCN No. 13254.
3. Aqua Texas's CCN No. 13254 is amended to include the Harper Water systems and service areas described in the application and closing documents, which are transferred from Harper Water and its CCN No. 11421.
4. Aqua Texas shall serve every customer and applicant for service within the area covered by its CCN No. 13254, and such service shall be continuous and adequate.

5. Aqua Texas shall comply with the recording requirements in TWC § 13.257(r) for the areas in Gillespie and Kerr counties affected by the application and submit to the Commission evidence of recording no later than 31 days after receipt of this Notice.

6. Within ten days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked Approved and filed in the Commission's tariff books.

7. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

**Signed at Austin, Texas the \_\_\_\_ day of November, 2019.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**HUNTER BURKHALTER  
ADMINISTRATIVE LAW JUDGE**