



Control Number: 51453



Item Number: 25

Addendum StartPage: 0

**DOCKET NO. 51453**

**APPLICATION OF AQUA UTILITIES, §  
INC. AND AQUA TEXAS, INC. FOR §  
SALE, TRANSFER, OR MERGER OF §  
FACILITIES AND CERTIFICATE §  
RIGHTS IN BANDERA COUNTY §**

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

2021 FEB 26 PM 5:37

**COMMISSION STAFF'S FINAL RECOMMENDATION ON APPROVAL OF THE SALE**

On October 21, 2020, Aqua Texas, Inc. (Aqua Texas) and Aqua Utilities, Inc. (Aqua Utilities) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Bandera County. Specifically, Applicants seek to transfer the Blue Medina Water public water system from Aqua Utilities to Aqua Texas. The total requested area consists of 474 acres with 75 customer connections.

On February 22, 2021, the administrative law judge (ALJ) filed Order No. 7, ordering Staff to file a recommendation on the approval of the sale by February 26, 2021. Therefore, this pleading is timely filed.

**I. RECOMMENDATION ON THE TRANSACTION**

Staff has reviewed the application and supplemental information and, as supported by the attached memorandum of Patricia Garcia, Infrastructure Division, recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors pursuant to Texas Water Code § 13.246(c). Additionally, Aqua Texas has demonstrated the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction. As a result, Staff recommends that the proposed transaction be permitted to proceed.

In addition, Staff recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated and that the disposition of any remaining deposits have been addressed as required under 16 Texas Administrative Code (TAC) §§ 24.109(m)-(n).

If the Commission enters an order permitting the transaction to proceed, such approval expires 180 days from the date of the Commission's written approval of the sale. If the sale is not

effectuated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for approval of the sale.

## **II. CONCLUSION**

For the reasons discussed above, Staff respectfully recommends that the sale be approved.

Date: February 26, 2021

Respectfully Submitted,

### **PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION**

Rachelle Nicolette Robles  
Division Director

Heath D. Armstrong  
Managing Attorney

/s/ Robert Dakota Parish  
Robert Dakota Parish  
State Bar No. 24116875  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7442  
(512) 936-7268 (facsimile)  
Robert.Parish@puc.texas.gov

**DOCKET NO. 51453**

**CERTIFICATE OF SERVICE**

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on February 26, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish  
Robert Dakota Parish

# *Public Utility Commission of Texas*

---

## **Memorandum**

**TO:** Robert Parish, Attorney  
Legal Division

**FROM:** Patricia Garcia, Senior Engineering Specialist  
Infrastructure Division

**DATE:** February 26, 2021

**RE:** Docket No. 51453 – *Application of Aqua Utilities, Inc. and Aqua Texas, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bandera County*

---

### **1. Application**

Aqua Texas, Inc. (Aqua Texas) and Aqua Utilities, Inc. (Aqua Utilities) filed an application for sale, transfer, or merger (STM) of facilities in Bandera County, Texas, under Texas Water Code (TWC) §§ 13.242 to 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 and § 24.239.

Specifically, Aqua Texas, Certificate of Convenience and Necessity (CCN) No. 13254, seeks approval to acquire facilities from Aqua Utilities, water CCN No. 11157. Aqua Utilities has been operating the Blue Medina Water system facilities since 1994. Aqua Utilities acquired the Blue Medina Water system through adverse possession claims on June 8, 1998. The Blue Medina Water system was added to the Aqua Utilities approved tariff during a rate case at the Texas Commission on Environmental Quality (TCEQ), Docket No. 2004-1671-UCR and 2004-1120-UCR,<sup>1</sup> finalized by the TCEQ in 2008. The requested area was under CCN No. 12585 for Blue Medina Water Supply Corporation. The CCN for Blue Medina Water Supply Corporation was revoked by the Commission on July 18, 2019. The requested area includes approximately 474 acres and 75 connections.

### **2. Notice**

Aqua Texas provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was January 27, 2021; there were no motions to intervene, protests, or opt-out requests received.

---

<sup>1</sup> Response at page 5 (February 22, 2021).

### **3. Factors Considered**

Under TWC §§ 13.241 and 13.246 and 16 TAC §§ 24.11(e), 24.227 and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

**3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(I)).***

The public water system (PWS) being transferred in this application is Blue Medina Water. Aqua Utilities provides operating services for Blue Medina Water. Blue Medina Water is a PWS that was approved to provide potable water service to its customers by the TCEQ and registered under PWS ID No. 0100030 in Bandera County. Blue Medina Water does not have any violations listed in the TCEQ database.

No additional construction is necessary for Aqua Texas to serve the requested area.

**3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).***

The purpose of the transaction is to transfer the Blue Medina Water system to Aqua Texas. The customers are currently receiving water service from Blue Medina Water's water system.

There are currently 75 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

**3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).***

Aqua Texas will be the certificated entity for the requested area and be required to provide adequate and continuous service to the requested area.

There will be no effect on landowners as the area is currently being served by Blue Medina Water's water system.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

**3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).***

Aqua Texas has several TCEQ approved PWSs. Aqua Texas has several violations listed in the TCEQ database and has shown that they are actively working with the TCEQ to resolve each of their outstanding violations in Attachment 11<sup>2</sup> to the application. No additional construction is necessary for Aqua Texas to serve the requested area.

---

<sup>2</sup> Application at 197-202 (Oct. 21, 2020).

**3.5. *The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).***

The construction of a physically separate system is not necessary for Aqua Texas to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

**3.6. *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).***

Aqua Utilities is currently serving customers of Blue Medina Water and the water system has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

**3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).***

Fred Bednarski, III, Financial Analyst in the Rate Regulation Division, provided me the following.

Aqua Texas demonstrates adequate financial and managerial capability to provide continuous and adequate service to the area subject to this application. These conclusions are based on information provided by Aqua Texas before the date of this memorandum and may not reflect any changes in Aqua Texas's status after this review.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 TAC §24.11. Aqua Texas must demonstrate that it meets one of the five leverage tests under 16 TAC §24.11(e)(2) as well as an operations test.

**Leverage tests**

The analysis is based on the financial statements of Aqua Texas' affiliate, Essential Utilities, Inc. (Essential Utilities), ending December 31, 2019. These financial statements contain an unqualified auditor's opinion from PricewaterhouseCoopers, LLC stating that the financial statements present fairly, in all material respects, the financial position of Essential Utilities as of December 31, 2019 and December 31, 2018.

Essential Utilities' 2019 financial statements report long-term debt of \$2,943,327,000 and equity of \$3,880,860,000. The debt-to-equity ratio is 0.76. Because the ratio is less than 1.0, Essential Utilities meets the test specified in 16 TAC § 24.11(e)(2)(A). Essential Utilities is also capable, available, and willing to cover temporary cash shortages. Therefore, Aqua Texas meets the test specified in 16 TAC § 24.11(e)(2)(E).

#### Operations test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations, as required by 16 TAC § 24.11(e)(3).

Essential Utilities' 2019 financial statements include operating income of \$340,159,000 and a cash and cash equivalents balance of \$1,868,922,000 that indicate Aqua Texas will have sufficient cash to cover projected shortages. Essential Utilities additionally possesses sufficient cash and the financial ability to pay for capital improvements for this application. Sufficient cash and net operating income available to cover possible future shortages provide an indication of financial stability and financial and managerial capability. Therefore, Aqua Texas meets the operations test specified in 16 TAC § 24.11(e)(3).

**3.8. *Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).***

Mr. Bednarski provided the following.

Aqua Texas meets the financial tests. Therefore, no additional financial assurance is needed.

**3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).***

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

**3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).***

Aqua Texas will continue to provide water service to the existing customers in the area. There will be no change in the quality or cost of service to customers.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer water facilities in the requested area to Aqua Texas and amending water CCN No. 13254 of Aqua Texas and amending the tariffs of the Applicants to remove Blue Medina Water from Aqua Utilities and add it to Aqua Texas is necessary for the service, accommodation, convenience and safety of the public.

#### **4. Recommendation**

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are deposits held by Aqua Utilities for six of the 75 customers being served by Blue Medina Water. I further recommend that a public hearing is not necessary.