



Control Number: 51454



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DOCKET NO. 51454

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

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COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

On October 22, 2020, Aqua Texas, Inc. (Aqua Texas) and Aqua Utilities, Inc. (Aqua Utilities) (collectively, Applicants) filed an application for approval of the sale and transfer of certificate of convenience and necessity (CCN) rights in Victoria County. Aqua Texas seeks approval to acquire facilities and to transfer a portion of Aqua Utilities' service area under water CCN No. 11157 and all of Aqua Utilities' service area under sewer CCN No. 20453. The requested area includes approximately 174 acres and 75 connections.

On March 4, 2021, the administrative law judge filed Order No. 4, establishing a deadline of March 26, 2021 for the Staff of the Public Utility Commission of Texas (Staff) to request a hearing or file a recommendation on approval of the sale and on the CCN amendment. Therefore, this pleading is timely filed.

I. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

As detailed in the attached memorandum of Patricia Garcia of the Commission's Infrastructure Division, Staff's review indicates that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in Texas Water Code Chapter 13 and under 16 Texas Administrative Code Chapter 24. Additionally, based upon its review, Staff recommends that Aqua Texas has demonstrated that it possesses the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction.

II. CONCLUSION

For the reasons discussed above, Staff respectfully requests that an order be issued allowing the proposed transaction to proceed.

Dated: March 25, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 on March 25, 2021 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Merritt Lander
Merritt Lander

Public Utility Commission of Texas

Memorandum

TO: Merritt Lander, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: March 25, 2021

RE: Docket No. 51454 – *Application of Aqua Utilities, Inc. and Aqua Texas, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Victoria County*

Aqua Texas, Inc. (Aqua Texas) and Aqua Utilities, Inc. (Aqua Utilities) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Victoria County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Aqua Texas, certificates of convenience and necessity (CCN) Nos. 13203 and 21065, seeks approval to acquire facilities and to transfer a portion of the water service area under water CCN No. 11157 and all of the sewer service area under sewer CCN No. 20453 from Aqua Utilities. The requested area includes approximately 174 acres and 75 connections.

2. Notice

Aqua Texas provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was March 1, 2021; there were no motions to intervene, protests, or opt-out requests received.

3. Factors Considered

Under TWC §§ 13.241 and 13.246 and 16 TAC §§ 24.11(e), 24.227 and 24.239, the Public Utility Commission of Texas (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)).*

Aqua Utilities has two Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) and one wastewater discharge permit. The PWS being transferred in this application is the Brentwood Subdivision registered under PWS ID: 2350005. The wastewater discharge permit being transferred is the Brentwood Manor Wastewater Treatment Plant registered under Wastewater Discharge Permit No.

WQ0010742001. The last TCEQ compliance investigation of the Brentwood Subdivision PWS was on January 16, 2020. There were some violations noted. Some of the violations were addressed and have been returned to compliance. The last TCEQ compliance investigation of the Brentwood Manor Wastewater Treatment Plant was on January 9, 2020. There were some violations noted. Some of the violations were addressed and have been returned to compliance. Aqua Texas indicates it is working with the TCEQ to address and resolve all of the violations for the public water system and wastewater treatment plant. In addition, the Commission's complaint records show no complaints against Aqua Utilities.

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 Brentwood Subdivision and Brentwood Manor Wastewater Treatment Plant to Aqua Texas. The customers are currently receiving water and sewer service from Aqua Utilities' water and sewer systems; 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 certificated.

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 the ability to provide adequate service in the requested area. Aqua Texas has 87 TCEQ approved public water systems and 49 wastewater treatment plants. These systems serve a total of approximately 20,000 connections. Aqua Texas does have some violations listed in the TCEQ database for their water and sewer systems and provided a list of all the violations and a timeline for expected dates for completion of the improvements needed at those individual public water systems and wastewater treatment plants that have violations. The Commission's complaint records show 769 complaints against Aqua Texas since 2015.

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 water or sewer 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 and 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 a 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 the financial and managerial capability needed 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' 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 the operations test under 16 TAC § 24.11(e)(3).

Leverage test

This 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 leverage 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.

Because Aqua Texas meets the financial tests, 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 and sewer service to the existing customers in the area. There will be no change in the quality or cost of service to customers.

4. Recommendation

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, and a portion of the water service area held under water CCN No. 11157 and to transfer sewer facilities in the requested area, and all of the sewer service area of the sewer CCN No. 20453 to Aqua Texas and amending water CCN No. 13203 and sewer CCN No. 21065 is necessary for the service, accommodation, convenience, and safety of the public.

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 some of the customers being served by the Brentwood Subdivision and the Brentwood Manor Wastewater Treatment Plant. I further recommend that a public hearing is not necessary.