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

ORDER NO. 6
APPROVING SALE AND TRANSFER TO PROCEED

This order addresses the application of Aqua Utilities, Inc. and Aqua Texas, Inc. dba Aqua Texas (Aqua Texas) for the sale, transfer, or merger of facilities and certificate rights in Victoria County. The applicants seek the transfer of the Brentwood Subdivision public water system and the Brentwood Manor Wastewater Treatment Facility and the corresponding portion of the service area held under Aqua Utilities' water certificate of convenience and necessity (CCN) number 11157 and sewer CCN number 20453 and the amendment of Aqua Texas's water CCN number 13203 and sewer CCN number 21065. The administrative law judge (ALJ) grants that the transfer is approved and the transaction between Aqua Utilities and Aqua Texas may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Aqua Utilities is Texas corporation registered with the Texas secretary of state under file number 0147005600.
2. Aqua Utilities owns and operates various water and wastewater systems throughout the state of Texas under water CCN number 11157 and sewer CCN number 20453.
3. Aqua Utilities owns and operates a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 2350005 and the Brentwood Manor Wastewater Treatment Facility sewer system under TPDES permit number WQ0010742001.

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4. Aqua Texas is a Texas corporation registered with the Texas secretary of state under file number 0800304878.
5. Aqua Texas owns and operates various water and wastewater systems for its geographic Southeast operating region (SE Region) under water CCN number 13203 and sewer CCN number 21065.
6. Both applicants are fully owned by Essential Utilities, Inc., a Pennsylvania corporation.

Application

7. On October 22, 2020, Aqua Utilities and Aqua Texas filed the application at issue in this proceeding.
8. In the application, Aqua Utilities and Aqua Texas seek approval of the transfer of the Aqua Utilities Brentwood Subdivision public water system and Brentwood Manor Wastewater Treatment Facility sewer system, and the corresponding service area, in Victoria County to Aqua Texas and the amendment of Aqua Texas's water CCN number 13203 and sewer CCN number 21065.
9. The application will facilitate the consolidation of all of the applicants' certificated rights and assets under Aqua Texas's regional CCNs as part of a series of applications.
10. Aqua Texas seeks to amend its water CCN number 13203 and sewer CCN number 21065 to cover the water and wastewater systems and service areas described in the application located within the applicants' geographic Southeast Region operations area.
11. In Order No. 3 filed on January 22, 2021, the ALJ deemed the application administratively complete.

Notice

12. On March 2, 2021, the applicants filed the affidavit of Geoffrey P. Kirshbaum, attorney for Aqua Texas, attesting that notice was provided to all current customers of Aqua Utilities, neighboring utilities, and affected parties on January 29, 2021.
13. In Order No. 4 filed on March 4, 2021, the ALJ deemed the notice sufficient

Evidentiary Record

14. On April 19, 2021, the parties jointly moved to admit evidence.

15. In Order No. 5, filed on April ___, 2021, the ALJ admitted the following evidence into the record: (a) the application filed on October 22, 2020; (b) applicants' sale, transfer, or merger application – mapping filed on November 10 and 17, 2021; (c) applicants' supplemental application information filed on December 28, 2020; (d) Commission Staff's supplemental recommendation on administrative completeness and proposed notice filed on January 21, 2021; (e) applicants' amended affidavit of notice to current customers, neighboring utilities, and affected parties filed on March 2, 2021; and (f) Commission Staff's recommendation on the transaction filed on March 25, 2021.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(h)(3)(A), (h)(5)(I)

16. 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.
17. The last TCEQ compliance investigation of the Brentwood Subdivision PWS was on January 16, 2020. There were some violations noted. The violations were addressed and have been returned to compliance.
18. 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.
19. 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.
20. The Commission's complaint records show no complaints against Aqua Utilities.
21. No additional construction is necessary for Aqua Texas to serve the requested area.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), 24.239(h)(5)(A)

22. The facilities requested for transfer are Brentwood Subdivision water system, an approved Texas Commission on Environmental Quality (TCEQ) public water system registered under identification number 2350005, and the Brentwood Manor Wastewater Treatment

Facility sewer system, TPDES permit number WQ0010742001, in Victoria County that meet the requirements of TWC, Chapter 26, Texas Health and Safety Code, Chapter 341, and the applicable TCEQ rules.

23. No additional construction is necessary for Aqua Texas to serve the requested area.
24. 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.

Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2), 24.239(h)(5)(B)

25. There are currently 75 existing customer connections in the requested area, which are currently served by Aqua Utilities, and there is a need for those customers to continue receiving water and sewer service.
26. No additional service is needed at this time.

Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(C)

27. Aqua Texas will be the certificated entity for the requested area and will be required to provide adequate and continuous service to the requested area.
28. There will be no effect on landowners as the requested area is currently certificated to and served by Aqua Utilities, an Aqua Texas affiliate also owned by Essential Utilities, Inc., and Aqua Texas will continue service to the requested area in place of Aqua Utilities.
29. If the proposed transaction in the application is approved, it will facilitate the applicants' efforts to consolidate their CCNs and system assets into one Essential Utilities, Inc. subsidiary with regional CCNs.
30. There will be no effect on any other retail public utility serving the proximate area as all retail public utilities in the proximate area were provided notice of the transaction proposed in the Application and none requested to intervene.

Ability to Serve; Managerial and Technical—TWC §§ 13.241(a), (b), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (e)(4), and 24.239(h)(2), (h)(5)(D)

31. Aqua Texas has numerous TCEQ-approved public water systems and wastewater treatment plants in Texas.

32. Aqua Texas has violations listed in the TCEQ database, but Aqua Texas has shown that it is actively working with TCEQ to resolve each outstanding violation.
33. Brentwood Subdivision public water system and Brentwood Manor Wastewater Treatment Facility sewer system do not have any violations listed in the TCEQ database and no additional construction is necessary for Aqua Texas to serve the requested area.
34. The proposed transaction will not have any effect on the operation of the water system because the same experienced management and personnel will operate the systems following the approval of the application and CCN amendments.
35. The proposed transfer involves only existing infrastructure and new construction is not necessary to serve the requested area as a result of the transaction.
36. Aqua Texas has the technical and managerial capability to provide continuous and adequate service to the requested area.

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), (e)(6), and 24.239(e), (h)(5)(F)

37. Essential Utilities, Inc., the parent entity of Aqua Texas, has a long-term debt-to-equity ratio of .76, which is less than 1.0, satisfying the leverage test.
38. Essential Utilities, Inc. is capable, available, and willing to cover temporary cash shortages. Aqua Texas has not projected any operations and maintenance expense shortages that will occur in the first five years of operations after completion of the transaction, and Essential Utilities, Inc. has sufficient cash to cover operations and maintenance expense shortages should they occur and the financial ability to pay for capital improvements as needed—satisfying the operations test.
39. Aqua Texas has demonstrated the financial ability and stability to provide continuous and adequate service to the requested area.

Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)

40. There is no need to require Aqua Texas to provide a bond or other financial assurance to ensure 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(c)(5), 24.239(h)(5)(E)

41. The construction of a physically separate water or sewer system is not necessary for Aqua Texas to serve the requested area; therefore, concerns about regionalization or consolidation do not apply.
42. Aqua Utilities is currently serving customers of the Brentwood Subdivision public water system and Brentwood Manor Wastewater Treatment Facility sewer system, the systems are in place, and the systems have sufficient capacity to serve the requested area.
43. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed; at a minimum, an interconnect would need to be installed.
44. Retail public utilities in the area received notice of the application and none intervened, protested, or requested a hearing.
45. It is not feasible to obtain service from an adjacent retail public utility.

Environmental Integrity and Effect on the Land—TWC § 13.246(c)(7), (c)(9); 16 TAC §§ 24.227(e)(7), (e)(9), 24.239(h)(5)(G)

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

Improvement in Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)

47. Aqua Texas will continue to provide water and sewer service to existing customers at the same rates charged by Aqua Utilities immediately following the transfer.
48. Aqua Texas does not intend to file an application to change rates as a result of the proposed transaction.
49. The quality of service for transferred Aqua Texas customers will remain high.
50. There will be no change in the quality or cost of service to Brentwood Subdivision public water system or Brentwood Manor Wastewater Treatment Facility sewer system customers as a result of the transaction.

Regionalization or Consolidation—TWC § 13.241(d); 16 TAC § 24.227(b)

51. Concerns of regionalization or consolidation do not apply because construction of a physically separate water and wastewater systems are not needed to serve the requested area.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.
2. After consideration of the factors in TWC § 13.246(c), Aqua Texas demonstrated adequate financial, managerial, and technical capability to provide adequate and continuous service to the requested area as required by TWC § 13.301(b).
3. The applicants demonstrated that transferring the Brentwood Subdivision public water system, the Brentwood Manor Wastewater Treatment Facility, and the corresponding service area under water CCN number 11157 and sewer CCN number 20453 to Aqua Texas under water CCN number 13203 and sewer CCN number 21065 will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public as required by TWC § 13.301(d) and (e).

III. Ordering Paragraphs

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

1. The sale and asset transfers proposed in the application are approved and the transactions between the applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been consummated and customer deposits have been addressed.
3. The applicants have 180 days to complete the transactions.

4. Under 16 TAC § 24.239(m), if the transactions are not consummated within this period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are advised that the water and sewer systems and the corresponding service areas will remain under CCN numbers 11157 and 20453 and held by Aqua Utilities until the sale and transfer transactions are complete in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, the applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transactions were consummated.
7. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a procedural schedule for continued processing of this docket.

Signed at Austin, Texas the 28th day of April 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



GREGORY R. SIEMANKOWSKI
ADMINISTRATIVE LAW JUDGE