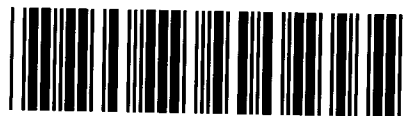




Control Number: 42897



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OPEN MEETING COVER SHEET

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MEETING DATE: November 14, 2014

DATE DELIVERED: November 12, 2014

AGENDA ITEM NO.: 2 – corrected

CAPTION: Docket No. 42897; SOAH Docket No. 473-15-0615 - Application of Turner Crest Village Waste Water, LLC and JDB Turner Crest Wastewater, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Caldwell County (37845-S)

ACTION REQUESTED: Discussion and possible action with respect to Preliminary Order

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TO: Chairman Donna L. Nelson
Commissioner Kenneth W. Anderson, Jr.
Commissioner Brandy D. Marty

All Parties of Record

FROM: Hannah Turner, Commission Advising

RE: November 14, 2014, Open Meeting Agenda Item No. 2
Correction to Draft Preliminary Order, P.U.C. Docket No. 42897; SOAH Docket
No. 473-15-0615 – *Application of Turner Crest Village Waste Water, LLC and
JDB Turner Crest Wastewater, LLC for Sale, Transfer, or Merger of Facilities
and Certificate Rights in Caldwell County (37845-S)*

DATE: November 12, 2014

Please find enclosed the corrected draft preliminary order filed by Commission Advising in the above-referenced docket. This corrected draft preliminary order rectifies a grammatical error previously found in the fourth issue to be addressed. The Commission will consider this corrected draft preliminary order at the November 14, 2014 open meeting. Parties shall not file responses or comments addressing this corrected draft preliminary order.

Any modifications to the corrected draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the November 14, 2014 open meeting.

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**SOAH DOCKET NO. 473-15-0615
PUC DOCKET NO. 42897**

APPLICATION OF TURNER CREST VILLAGE WASTE WATER, LLC AND JDB TURNER CREST WASTEWATER, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN CALDWELL COUNTY (37845-S)	§ § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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CORRECTED DRAFT PRELIMINARY ORDER

On February 3, 2014, Turner Crest Village Waste Water Company, LLC (the seller) and JDB Turner Crest Wastewater, LLC (the purchaser) filed an application for the sale of the seller's sewer certificate of convenience and necessity (CCN) number 21004 to the purchaser. This transaction concerns the transfer of the CCN only; there is no existing sewer system or infrastructure in place. Notice to neighboring systems and other affected parties was undertaken in June 2014, and copies of the notices were filed with the Texas Commission on Environmental Quality (TCEQ) on June 25, 2014.

The CCN is being transferred as part of the sale of an 8.24-acre parcel of real property that has been designated as the site for a future wastewater facility near Lockhart, Texas. The wastewater plant is intended to serve a future subdivision, which is to be developed by JDB Turner Crest, LLC on an adjacent 3,400-acre site. The 8.24-acre parcel and a wastewater permit have already been transferred to the purchaser as part of the sale.

The applicants estimate that construction of the wastewater treatment plant will cost \$4,000,000. John D. Byram is the sole shareholder and member of both the purchaser and of JDB Turner Crest, LLC, which owns the 3,400-acre tract. Mr. Byram has an individual net worth in excess of \$100 million, and he will provide the financial backing for the eventual wastewater improvements.

On September 1, 2014, this case transferred to the Public Utility Commission of Texas (Commission),¹ and on October 6, 2014, Commission Advising referred this docket to the State Office of Administrative Hearings (SOAH). On October 22, 2014, Commission Staff timely filed a proposed list of issues. On October 29, 2014, Commission Staff filed an unopposed motion to abate this proceeding until December 29, 2014 to allow for possible resolution of all material issues by the parties.

I. Issues to be Addressed

The Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be addressed in any proceeding referred to SOAH.² After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. What is the effective date of the proposed transaction?
2. Has the purchaser demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the seller? TWC § 13.302(b); P.U.C. Subst. R. 24.111(b), 16 TAC § 24.111(b). In answering this question, please address the following sub-issues:

Financial Capability

- a. How would the proposed transaction affect the purchaser's financial standing, including but not limited to its capital structure; its tangible net worth; and its credit rating, if any?
- b. How, if at all, would the proposed transaction affect the seller's financial standing, including but not limited to its capital structure; its tangible net worth; and its credit rating, if any?
- c. Are any capital investments currently needed to ensure the provision of continuous and adequate service? If so, has the purchaser demonstrated it has the ability to provide the necessary capital investment(s)?

¹ Act of May 13, 2013, 83rd Leg., R.S., ch. 170 (HB 1600), § 2.96, 2013 Tex. Gen. Laws 725, 730; Act of May 13, 2013, 83rd Leg., R.S., ch. 171 (SB 567), § 96, 2013 Tex. Gen. Laws 772.

² Tex. Gov't Code Ann. § 2003.049(e) (West 2008).

- d. Has the purchaser demonstrated that customer deposits or advance payments, if any, would be kept in an escrow account or segregated cash account? If not, should the Commission require the purchaser to acquire and maintain financial assurance, such as an irrevocable stand-by letter of credit payable to the commission, in an amount sufficient to cover 100% of the outstanding customer deposits and advance payments held at the close of each month? TWC § 13.302(c) and P.U.C. Subst. R. 24.111(c), 16 TAC § 24.111(c).

Managerial Capability

- e. What experience do the purchaser's principals or permanent employees in managerial positions have in water utility finances, accounting, planning and engineering, operations and maintenance, regulatory compliance, and customer service?

Technical Capability

- f. What technical experience do the purchaser's designated permanent employees have in operating a water utility and ensuring continuous and adequate provision of service?
 - g. What relevant certifications or degrees are held by the purchaser's designated permanent employees?
3. If the purchaser has not demonstrated adequate financial capability, should the Commission require that the purchaser provide a bond, irrevocable standby letter of credit, or other financial assurance to ensure continuous and adequate utility service is provided, consistent with TWC § 13.302(c) and P.U.C. Subst. R. 24.111(c), 16 TAC § 24.111(c)?
 4. If the Commission requires the purchaser to provide financial assurance, what form and amount of financial assurance should the Commission require?
 5. Would the proposed transaction serve the public interest? TWC § 13.302(f); P.U.C. Subst. R. 24.111(g), 16 TAC § 24.111(g).

In answering this question, please address the following sub-issues:

- a. Does the purchaser or an affiliated person have a history of
 - i. noncompliance with the requirements of the Commission, TCEQ, or the Department of State Health Services; or
 - ii. continuing mismanagement or misuse of revenues as a utility service provider?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any

limitations imposed by the ALJ, or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

II. Effect of Preliminary Order

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

SIGNED AT AUSTIN, TEXAS the _____ day of November 2014.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER