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Item Number: 36

Addendum StartPage: 0

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# OPEN MEETING COVER SHEET

**MEETING DATE:** October 17, 2014

**DATE DELIVERED:** October 10, 2014

**AGENDA ITEM NO.:** 33

**CAPTION:** Docket No. 42899; SOAH Docket No. 473-15-0274 - Application of Green Acres Riverview Water Works and Green Acres Mobile Home Park-Riverview Estates for Sale, Transfer, or Merger of Facilities and Certificate Rights in El Paso County (37894-S)

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

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**Public Utility Commission of Texas**

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

All Parties of Record

FROM: David Smeltzer, Commission Advising 

RE: October 17, 2014, Open Meeting Agenda Item No. 33  
Draft Preliminary Order, P.U.C. Docket No. 42899; SOAH Docket No. 473-15-0274 – *Application of Green Acres Riverview Water Works and Green Acres Mobile Home Park-Riverview Estates for Sale, Transfer, or Merger of Facilities and Certificate Rights in El Paso County (37894-S)*

DATE: October 10, 2014

Please find enclosed the draft preliminary order filed by Commission Advising in the above-referenced docket. The Commission will consider this draft preliminary order at the October 17, 2014 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the October 17, 2014 open meeting.

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**SOAH DOCKET NO. 473-15-0274  
PUC DOCKET NO. 42899**

<b>APPLICATION OF GREEN ACRES</b>	<b>§</b>	
<b>RIVERVIEW WATER WORKS AND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>GREEN ACRES MOBILE HOME PARK-</b>	<b>§</b>	
<b>RIVERVIEW ESTATES FOR SALE,</b>	<b>§</b>	
<b>TRANSFER, OR MERGER OF</b>	<b>§</b>	<b>OF TEXAS</b>
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN EL PASO COUNTY (37894-S)</b>	<b>§</b>	

**DRAFT PRELIMINARY ORDER**

On April 22, 2014, Ms. Brenda Lucero d/b/a Green Acres/Riverview Water Works (the purchaser) and Mr. Terry Bourbon d/b/a Green Acres Mobile Home Park (the seller) filed an application for the sale of the seller's water system and certificate of convenience and necessity number 11785 to the purchaser. Notice to customers, landowners, neighboring systems, and cities was undertaken in June 2014 and copies of the notices were filed with the Texas Commission on Environmental Quality (TCEQ) on July 15, 2014.

On September 1, 2014, this case transferred to the Public Utility Commission of Texas (Commission),<sup>1</sup> and on September 18, 2014, Commission Advising referred this docket to the State Office of Administrative Hearings (SOAH). On October 1, 2014, Commission Staff timely filed a proposed list of issues.

The water system being purchased provides service in El Paso County, covers slightly more than 160 acres, and provides service to approximately 59 customers. The business has net assets of approximately \$175,000 (including approximately \$45,000 in receivables) and has generated about \$17,000 in net income annually.

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<sup>1</sup> 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.

### 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.<sup>2</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Have the applicants provided public notice of the sale of the water system in compliance with the requirements of Texas Water Code (TWC) § 13.301(a) and P.U.C. SUBST. R. 24.112(c), 16 Tex. Admin. Code (TAC) § 24.112(c)? Did the notices properly identify the purchaser and seller and the system being sold?
2. What is the effective date of the proposed sale?
3. 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 person? TWC 13.301(b); P.U.C. SUBST. R. 24.112(b), 16 TAC § 24.112(b).
  - a. If the purchaser has not demonstrated adequate financial capability, should the Commission require that it provide financial assurance to ensure continuous and adequate utility service is provided, consistent with TWC § 13.301(c) and P.U.C. SUBST. R. 24.109(b), 16 TAC § 24.109(b)?
  - b. If the Commission requires the purchaser to provide financial assurance, what form and amount of financial assurance should the Commission should require?
4. Will approving the proposed sale serve the public interest? TWC § 13.301(d), (g); P.U.C. SUBST. R. 24.112(c)(5), 16 TAC § 24.112(c)(5).
  - a. Is Green Acres MHP capable of rendering adequate and continuous service to every consumer within the certificated area, taking into account the factors under the TWC, § 13.251; P.U.C. SUBST. R. 24.112(c)(5)(B), 16 TAC § 24.112(c)(5)(B).
    - i. Is the service currently provided in the area adequate? TWC § 13.246(c)(1).

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<sup>2</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2008 & Supp. 2014).

- ii. Is additional service needed in the requested area? Have any landowners, prospective landowners, tenants, or residents requested service? TWC § 13.246(c)(2).
  - iii. What is the effect of approving the proposed sale on the purchaser, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area? TWC § 13.246(c)(3).
  - iv. Taking into consideration the current and projected density and land use of the area, does the purchaser have the ability to provide adequate service and meet the standards of the TCEQ? TWC § 13.246(c)(4).
  - v. Is it feasible to obtain service from an adjacent retail public utility? TWC § 13.246(c)(5).
  - vi. Is the purchaser financially stable considering, if applicable, the adequacy of the debt-equity ratio of the purchaser if the proposed sale is approved? TWC § 13.246(c)(6).
  - vii. What is the effect of approving the sale on environmental integrity? TWC § 13.246(c)(7).
  - viii. What is the probable improvement of service or lowering of cost to consumers in that area resulting from approving the proposed sale? TWC § 13.246(c)(8).
  - ix. What is the effect on the land to be included in the certificated area? TWC § 13.246(c)(9).
- b. Have the conditions of any judicial decree, compliance agreement, or other enforcement order not been substantially met? P.U.C. SUBST. R. 24.112(c)(5)(B), 16 TAC § 24.112(c)(5)(B).
  - c. What is the experience of the purchaser as a utility service provider? P.U.C. SUBST. R. 24.112(c)(5)(C), 16 TAC § 24.112(c)(5)(C).
  - d. Does the purchaser have a history of noncompliance with the requirements of the TCEQ, the Commission, or the Texas Department of State Health Services or continuing

- mismanagement or misuse of revenues as a utility service provider? TWC § 13.301(e)(3); P.U.C. SUBST. R. 24.112(c)(5)(D), 16 TAC § 24.112(c)(5)(D).
- e. Does the purchaser have the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water system? TWC § 13.301(e)(4); P.U.C. SUBST. R. 24.112(c)(5)(E), 16 TAC § 24.112(c)(5)(E).
  - f. Has the purchaser failed to comply with any orders of the TCEQ or the Commission? P.U.C. SUBST. R. 24.109(e)(5)(A), 16 TAC § 24.109(e)(5)(A).
  - g. Was the water system partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges as provided by TWC § 13.301(j). If so, has the notice required by TWC § 13.301(j) been provided.
  - h. Was the notice required by TWC § 13.301(k) provided.
5. Does the seller currently retain any customer deposits? If so,
- a. what is the total amount of customer deposits retained;
  - b. does the seller have proper records of to allow deposits and any unpaid interest to be returned; and
  - c. will customer deposits be returned to customers or transferred to the purchaser?
6. Does the water system being purchased have any deficiencies or problems that need correction to be in compliance with the rules of the Commission and the TCEQ? If so,
- a. what are those deficiencies or problems;
  - b. how and when will those deficiencies or problems be corrected; and
  - c. does the purchase have access to adequate financial resources to timely correct those deficiencies and problems?

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 October 2014.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

\_\_\_\_\_  
**BRANDY D. MARTY, COMMISSIONER**