



Control Number: 42914



Item Number: 19

Addendum StartPage: 0

RECEIVED

APPLICATION OF SAN ANTONIO §
RIVER AUTHORITY AND W&W §
WATER, INC. FOR THE SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN WILSON COUNTY §

2015 MAR 13 AM 11:16
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS
FILED CLERK

COMMISSION STAFF’S FINAL RECOMMENDATION

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Final Recommendation. In support of its Final Recommendation, Staff states the following:

I. Background

On September 5, 2014, San Antonio River Authority (SARA) and W&W Water, Inc. (W&W Water) filed an application regarding the sale and transfer of certain facilities in Wilson County, Texas and a corresponding certificate of convenience and necessity (CCN No. 12023). SARA, the seller, is a utility district, as defined by the Texas Water Code.¹ W&W Water, the purchaser, is a private entity. The proposed effective date of the transaction is February 1, 2015.

On February 23, 2015, the Administrative Law Judge entered Order No. 5, which extended the deadline for Staff to file a final recommendation regarding SARA and W&W Water’s application to March 6, 2015 and the deadline for the parties to file a joint proposed notice of approval to March 13, 2015.

On March 6, 2013, Staff filed its Second Request for an Extension. Staff requested that the deadline to file a recommendation or request a hearing be extended from March 6, 2015 to March 13, 2015. Staff also requested that the the deadline to file a proposed notice of approval be extended from March 13, 2015 to March 20, 2015. To date, the Commission has not ruled on Staff’s Second Request for an Extension.

¹ See TEX. WATER CODE § 49.001(a)(1) (defining district as “any district or authority created by authority of either Sections 52(b)(1) and (2), Article III, or Section 59, Article XVI, Texas Constitution, regardless how created.”); *Texas River Barges v. City of San Antonio*, 21 S.W.3d 347, 353 (Tex. App.–San Antonio 2000, pet. denied) (stating that SARA was created pursuant to Section 59, Article XVI of the Texas Constitution).

19

II. Statutory and Substantive Rule Requirements

The Texas Water Code details the requirements for the sale of a water system. The relevant portions of the Texas Water Code state:

(a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall:

- (1) file a written application with the utility commission; and
- (2) unless public notice is waived by the utility commission for good cause shown, give public notice of the action.

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

...
(d) The utility commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

...
(f) Unless the utility commission holds a public hearing, the sale, acquisition, lease, or rental may be completed as proposed:

- (1) at the end of the 120-day period; or
- (2) at any time after the utility commission notifies the utility or water supply or sewer service corporation that a hearing will not be held.²

The Commission's substantive rules detail similar requirements for the sale of a water system.³ The purchaser of the water system "must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person."⁴ In the event that the sale of a water system includes the sale of a certificate of convenience and necessity (CCN), the Commission's substantive rules state that a CCN may not be sold "unless the commission has determined that

² TEX. WATER CODE § 13.301.

³ See 16 Tex. Admin. Code § 24.109(b) (Public Utility Comm'n, Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction).

⁴ *Id.*

the purchaser . . . is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under the TWC [Texas Water Code], § 13.246(c).”⁵

III. Staff’s Final Recommendation

Staff has reviewed SARA and W&W Water’s application and accompanying documents, documents submitted by SARA to supplement the application, and SARA’s responses and accompanying documents to Staff’s First Request for Information. Based on Staff’s review of the foregoing, Staff recommends that the Commission approve SARA and W&W Water’s application and the sale and transfer of sale SARA’s facilities in Wilson County, Texas and corresponding CCN No. 12023 to W&W Water. Additionally, Staff recommends that the Commission find that: (1) W&W Water has adequate financial, managerial, and technical capability to provide continuous and adequate service to the service area in Wilson County, Texas; (2) W&W Water is capable of rendering adequate and continuous service to every consumer within the service area in Wilson County, Texas; and (3) the transaction between SARA and W&W Water will serve the public interest. Staff’s recommendation is based in the attached memorandum of Mary Lupo, Utility Rate Analyst/Auditor in the Water Utilities Division.

IV. Conclusion

Staff recommends that the Commission approve SARA and W&W Water’s application and the sale and transfer transaction between SARA and W&W Water.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

⁵ 16 Tex. Admin. Code § 24.112(b) (Public Utility Comm’n, Transfer of Certificate of Convenience and Necessity); *see also* TEX. WATER CODE § 13.246(c) (list of factors to be considered by the Commission).

Date: March 13, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division



Sam Chang
State Bar No. 24078333
Attorney, Legal Division

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7261
(512) 936-7268 (facsimile)
sam.chang@puc.texas.gov

DOCKET NO. 42914

CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on March 13, 2015, in accordance with P.U.C. Procedural Rule 22.74.



Sam Chang

Public Utility Commission of Texas

Memorandum

TO: Sam Chang
Legal Division

THRU: Tammy Benter, Director
Water Utilities Division

FROM: Mary Lupo, Utility Rate Analyst/Auditor
Water Utilities Division

DATE: March 10, 2015

RE: Docket No. 42914, Application of W&W Water, Inc. and San Antonio River Authority for Sale, Transfer, or Merger of Facilities and Certificate Rights in Wilson County

On September 15, 2014, W&W Water, Inc. filed an application with Public Utility Commission of Texas (PUC or Commission) to acquire facilities and transfer Certificate of Convenience and Necessity (CCN) No. 12023 from San Antonio River Authority, in Wilson County, pursuant to the criteria in the Texas Water Code 13.301 and Title 16, Texas Administrative Code, Sections 24.109 and 24.112. Public notice of the application was provided as required by PUC Substantive Rules 24.109 & 24.112 (c). The Applicant has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area as required by PUC Substantive Rules 24.109(b). Based on my review of the information in the application and the applicable laws and rules, I have determined that the Applicant has the capability of providing continuous and adequate service to the proposed area. Furthermore, I believe the transaction will serve the public interest. Therefore, it is not necessary to hold a hearing on the merits regarding the application and I recommend that the Applicant be allowed to proceed with the proposed transaction.

I further recommend that the proposed transaction be completed and the Applicant send documentation as evidence that all assets have been transferred to the acquiring entity and that the disposition of any remaining deposits has been addressed. Pursuant to Title 16, Texas Administrative Code, Section §24.112(e), the approval of the sale expires one year from the date of the Commission's written approval of the sale. If the sale has not consummated within that period and unless the Applicant has requested and received an extension from the Commission, the approval is void and the Applicant must reapply for the approval of the sale. In addition, I recommend the Applicant be informed that the CCN will remain in the name of San Antonio River Authority, under CCN No. 12023, until the transfer is complete in accordance with the PUC's rules and regulations.