



Control Number: 42961



Item Number: 11

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## OPEN MEETING COVER SHEET

**MEETING DATE:** November 14, 2014

**DATE DELIVERED:** November 7, 2014

**AGENDA ITEM NO.:** 5

**CAPTION:** Docket No. 42961; SOAH Docket No. 473-15-0614  
- Request of Greenwood Water Corporation for  
Approval of Water Utility Stock Transfer CCN No.  
11792

**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: Davida Dwyer, Commission Advising *DD*

RE: November 14, 2014, Open Meeting Agenda Item No. 5  
Draft Preliminary Order, PUC Docket No. 42961; SOAH Docket No. 473-15-0614 - *Request of Greenwood Water Corporation for Approval of Water Utility Stock Transfer CCN No. 11792*

DATE: November 7, 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 November 14, 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 November 14, 2014 open meeting.

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**SOAH DOCKET NO. 473-15-0614  
PUC DOCKET NO. 42961**

<b>REQUEST OF GREENWOOD WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>CORPORATION FOR APPROVAL OF</b>	<b>§</b>	
<b>WATER UTILITY STOCK TRANSFER</b>	<b>§</b>	<b>OF TEXAS</b>
<b>CCN NO. 11792</b>	<b>§</b>	

**DRAFT PRELIMINARY ORDER**

On August 20, 2014, Greenwood Water Corporation filed with the Texas Commission on Environmental Quality (TCEQ) an application for approval of the transfer of 100% of the stock and ownership interest in Greenwood from Mr. Paul R. Wilhite to Permian Basin Water Resources, LLC.

On September 1, 2014, jurisdiction over this proceeding transferred to the Public Utility Commission of Texas (Commission)<sup>1</sup> and on October 1, Commission Staff requested a hearing. On October 6, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH) and directed Greenwood and Permian and allowed Commission Staff and any other interested party to file a list of issues to be addressed in the docket by October 22, 2014.<sup>2</sup> Lists of issues were timely filed by Permian and Commission Staff.

Greenwood provides service in Midland County to approximately 289 metered connections.<sup>3</sup> Greenwood recently reported approximately \$355,000 in annual revenues and \$379,000 in annual expenses, including nonrecurring expenses for treatment mandated by the United States Environmental Protection Agency.<sup>4</sup>

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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.

<sup>2</sup> Order of Referral at 1 (Oct. 6, 2014).

<sup>3</sup> Greenwood Application at 11, 15 (Aug. 20, 2014).

<sup>4</sup> Greenwood's First Supplement to Its Application at 5 (Oct 21, 2014).

The address for Permian is in Scottsdale, Arizona.<sup>5</sup> However, the application states that Mr. Wilhite, the current owner of Greenwood and a Class C-licensed water operator, will assist as an employee or consultant for up to twelve months after the proposed transfer is completed.<sup>6</sup> Additionally, Mr. Curtis Forsberg, another current Greenwood employee with a Class C water operator license, will be retained as an operator after the proposed transfer is completed.<sup>7</sup>

### **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>8</sup> 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 Permian demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to Permian? 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 Permian'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 Greenwood's financial standing, including but not limited to its capital structure; its tangible net worth; and its credit rating, if any?

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<sup>5</sup> Greenwood Application at 3.

<sup>6</sup> *Id.* at 2.

<sup>7</sup> *Id.*

<sup>8</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2008).

- c. Are any capital investments currently needed to ensure the provision of continuous and adequate service? If so, has Permian demonstrated it has the ability to provide the necessary capital investment(s)?
- d. Has Permian 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 Permian 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 Permian'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 Permian'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 Permian's designated permanent employees?
  - h. Would Permian or Greenwood continuously maintain an office located within Texas for the purpose of overseeing technical operations and maintenance, providing customer service, accepting service of process, and making available in that office books and records sufficient to establish Permian's and Greenwood's compliance with the Texas Water Code and applicable Commission rules?
3. If Permian has not demonstrated adequate financial capability, should the Commission require that Permian 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 Permian to provide financial assurance, what form and amount of financial assurance should the Commission should 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 Permian 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**

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**DONNA L. NELSON, CHAIRMAN**

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

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