



Control Number: 42998



Item Number: 12

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**PUC DOCKET NO. 42998**

<b>APPLICATION OF CYPRESS GARDENS HOMES AND VALERIA LYNN RAUB FOR SALE, TRANSFER, OR MERGER OF FACILITIES IN HARRIS COUNTY (37759-S)</b>	<b>§ § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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CLERK

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 3  
AND FINAL RECOMMENDATION**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 3. In support of its Response to Order No. 3, Staff states the following:

**I. Background**

On October 3, 2013, the Texas Commission on Environmental Quality (TCEQ) received Valeria Lynn Raub's d/b/a Cypress Gardens Mobile Home Subdivision (Cypress Mobile Home) application to acquire facilities and certificate of convenience and necessity (CCN) No. 12999 previously held by Valerie Raye Raub d/b/a Cypress Gardens Homes (Cypress Gardens) in Harris County. On December 13, 2013, Cypress Mobile Home provided additional materials to the TCEQ in support of its application. On March 20, 2014, the TCEQ accepted Cypress Mobile Home's application for filing. On August 6, 2014, the TCEQ informed Cypress Mobile Homes that it would not request a hearing in this matter and granted it permission to complete the proposed transaction as scheduled. On September 1, 2014, the Commission began the economic regulation of water and sewer utilities and this case formerly pending at the TCEQ was transferred to the Commission. On October 9, 2014, the Director of the Commission's Docket Management Division issued Order No. 3, approving Staff's proposed procedural schedule, which suggested that Staff issue a final recommendation by October 17, 2014. Therefore, this filing is timely.

**II. Statutory and Substantive Rule Requirements**

The Texas Water Code details the requirements for the transfer 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 120<sup>th</sup> 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.<sup>1</sup>

The Commission's substantive rules also detail similar requirements for the transfer of a water system.<sup>2</sup> 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."<sup>3</sup> In the event that the transfer of a water system includes the transfer of a CCN, the Commission's substantive rules state that a CCN may not be transferred "unless the commission has determined that the purchaser . . . is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under the TWC, § 13.246(c)."<sup>4</sup> The factors listed in the Water Code that are to be considered by the Commission are:

- (1) the adequacy of service currently provided to the requested area;

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<sup>1</sup> TEX. WATER CODE § 13.301.

<sup>2</sup> See generally, P.U.C. SUBST. R. 24.112.

<sup>3</sup> P.U.C. SUBST. R. 24.112(b).

<sup>4</sup> *Id.*

- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity;
- (8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.<sup>5</sup>

### **III. Staff's Recommendation**

Staff has determined that the Application is sufficient and complete, that Cypress Mobile Homes has the capability of providing continuous and adequate service to the proposed area, and believes the transaction will serve the public interest. Further, Staff has reviewed the proposed notice, which is in the form used by TCEQ, and finds it sufficient.<sup>6</sup>

Initially, Staff was unclear as to the ownership of the facilities and CCN in this proceeding subsequent to the passing of Ms. Valeria Lynn Raub,<sup>7</sup> who initially owned this water system and corresponding CCN. However, the additional materials that Cypress Mobile Home provided to the TCEQ on December 13, 2013 in support of its application clarified this ownership issue. Specifically, Cypress Mobile Home provided a copy of a warranty deed conveying the property from Cypress Gardens (Valeria Raye Raub) to Cypress Mobile Homes (Valeria Lynn Raub) on June 7, 2001.<sup>8</sup> The documents also included a letter from the attorney of

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<sup>5</sup> TEX. WATER CODE § 13.246(c).

<sup>6</sup> Supporting Documents at 52 (Sept. 24, 2014) (P.U.C. Interchange Item No. 3).

<sup>7</sup> Cypress Mobile Home also provided Valeria Raye Raub's Certificate of Death, which indicated that she passed away on Sept. 1, 2012; *See Confidential – Certificate of Death for Raye Valeria Raub*; Bates Stamp: 1 of 1 (Sept. 11, 2014) (P.U.C. Interchange Item No. 7).

<sup>8</sup> *See* Supporting Documents at 5.

the executor of Valeria Raye Raub's estate stating that Valeria Lynn Raub's claim to the water well and appurtenant water system is uncontested by the estate.<sup>9</sup> The warranty deed and the letter from the executor of Valeria Raye Raub's estate is sufficient for Staff to conclude that any disputes that may have previously existed over the ownership of this system and CCN are now resolved.

For the foregoing reasons, and based on the attached memorandum of Mary Lupo, Utility Rate Analyst and Auditor in the Commission's Water Utilities Division, Staff recommends that the applicant be allowed to proceed with the proposed transaction.

#### **IV. Conclusion and Prayer**

Staff requests that the Administrative Law Judge issue an order consistent with this Recommendation and allow the applicant to proceed with the proposed transaction.

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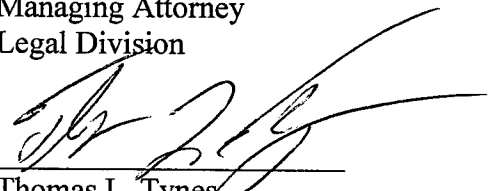
<sup>9</sup> *Id.* at 3.

**DATE: October 17, 2014**

Respectfully Submitted,

Joseph P. Younger  
Division Director  
Legal Division

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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this the 17<sup>th</sup> day of October in accordance with P.U.C. Procedural Rule 22.74.

  
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Thomas L. Tynes

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Thomas Tynes, Attorney, Legal Division

**THROUGH:** Tammy Benter, Director, Water Utilities Division

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

**DATE:** October 7, 2014

**RE:** Staff Recommendation for Docket No. 42998

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On December 3, 2013, Valeria Lynn Raub dba Cypress Garden Mobile Home Subdivision applied to acquire and transfer facilities held by Valeria Raye Raub dba Cypress Gardens Homes, Certificate of Convenience and Necessity (CCN) No. 12999, in Harris County, Texas.

The applicant meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to acquire and to transfer facilities for CCN No. 12999 is necessary for the service, accommodation, convenience and safety of the public.

The applicant is capable of providing continuous and adequate service. Staff recommends approval of the order.

TB/ML