

Control Number: 43117



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DOCKET NO. 43117

APPLICATION OF BRAZOS VALLEY
SEPTIC & WATER, INC. AND NERRO
SUPPLY, LLC FOR SALE, TRANSFER,
OR MERGER OF FACILITIES AND
TO AMEND A CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
BRAZOS, BURLESON, AND
ROBERTSON COUNTIES (37948-S)

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JOINT PROPOSED NOTICE OF APPROVAL AND REQUEST TO ADMIT EVIDENCE

Staff of the Public Utility Commission (Staff) files this Joint Proposed Notice of Approval and Request to Admit Evidence of the Nerro Supply, LLC (Purchaser) and Brazos Valley Septic & Water, Inc. (Seller) application for the sale, transfer, or merger of a water system (Application) pursuant to TEX. WATER CODE ANN. §§ 13.246(c), 13.254, 13.301 and 30 TEX. ADMIN. CODE § 291.109.¹ This Joint Proposed Notice of Approval and Request to Admit Evidence includes findings of fact, conclusions of law, and ordering paragraphs. Purchaser and Seller have reviewed and agree to the Proposed Order attached hereto. The Proposed Notice of Approval is timely filed on or before November 18, 2014.

I. Request to Admit Evidence

The parties jointly request to admit the following evidence into the record of this proceeding: (a) Application of Purchaser and Seller and all attachments thereto, filed June 12, 2014 and (b) Commission Staff's Response to Order No. 3, Supplemental Final Recommendation and all attachments thereto, filed November [18], 2014.

II. Proposed Notice of Approval

The Proposed Notice of Approval would grant Purchaser and Seller's application for approval of the sale of all water assets held under Seller's water certificate of convenience and necessity (CCN) in Brazos, Burleson, and Robertson Counties from Seller to Purchaser and amendment of Purchaser's water CCN service area to reflect these service areas. The proposed Notice of Approval orders that, upon satisfaction of certain criteria, all water assets held under Seller's CCN No. 13094 will be transferred to Purchaser pursuant to P.U.C. SUBST. R. 24.112

¹ Currently Title 16, TEX. ADMIN. CODE § 24.109.

and that Purchaser's water CCN No. 12252 service area will be amended to reflect these service areas.

This docket was processed in accordance with applicable statutes and Texas Commission on Environmental Quality (TCEQ) and Public Utility Commission of Texas (Commission) rules. Notice of the Application was provided to interested parties. No protests and no requests for hearing were filed. Therefore, Purchaser, Seller, and Staff are the only parties to this proceeding. There are no contested issues of law or fact in this proceeding.

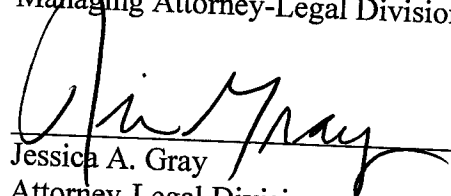
III. Conclusion

Staff has reviewed the Application and recommends its approval. Parties, therefore, respectfully request that the Commission adopt the attached findings of fact and conclusions of law as well as granting the admittance of the specified pieces of evidence.

DATED: November 18, 2014

Respectfully Submitted,

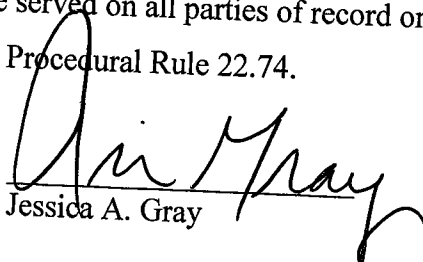
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DOCKET NO. 43117 CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 18th of November, 2014, in accordance with P.U.C. Procedural Rule 22.74.



Jessica A. Gray

ATTACHMENT 1

DOCKET NO. 43117

APPLICATION OF BRAZOS VALLEY
SEPTIC & WATER, INC. AND NERRO
SUPPLY, LLC FOR SALE, TRANSFER,
OR MERGER OF FACILITIES AND
TO AMEND A CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
BRAZOS, BURLESON, AND
ROBERTSON COUNTIES (37948-S)

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PUBLIC UTILITY COMMISSION

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PROPOSED NOTICE OF APPROVAL

This Notice of Approval grants approval to complete the sale, acquisition, lease, rental, merger, or consolidation proposed by Nerro Supply, LLC (Purchaser) and Brazos Valley Septic & Water, Inc. (Seller) pursuant to P.U.C. SUBST. R. 24.109. Further, this Notice of Approval orders that, upon the satisfaction of certain criteria discussed in further detail below, all water assets held under Seller's Certificate of Convenience and Necessity (CCN) No. 13094 will be transferred to Purchaser pursuant to P.U.C. SUBST. R. 24.112 and Purchaser's water CCN No. 12252 service area will be amended to reflect these service areas.

The following criteria for the transfer of Seller's CCN to Purchaser must be satisfied before Purchaser may assume control of Seller's facilities, change the name under which Seller does business, or provide service to Seller's customers:

1. Within 30 days after the actual effective date of the transaction, Purchaser and Seller shall file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final. **If this is not provided within one year of the date of this Notice of Approval or an extension is not requested and granted pursuant to P.U.C. SUBST. R. 24.112(e), the approval of the transaction is void.**
2. Within 30 days after the actual effective date of the transaction, Purchaser and Seller shall file with the Commission, under oath, a list showing the names and addresses of all customers served by Seller who have to their credit a deposit, the

date such deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest.

3. Within a reasonable period of time following Seller's and Purchaser's full compliance with this Notice of Approval, Staff (Staff) of the Public Utility Commission of Texas (Commission) shall a) prepare and file any necessary maps, consented to by Purchaser and Seller, in compliance with this Notice of Approval, and b) prepare and file a proposed CCN in compliance with this Notice of Approval.

After these criteria are satisfied, the Commission will issue a CCN to Purchaser and Purchaser may assume control of Seller's facilities, change the name under which Seller does business, and provide service to Seller's customers.

Consistent with the above discussion, the Administrative Law Judge (ALJ) makes the following findings of fact and conclusions of law.

I. Findings of Fact

Procedural History

1. On June 12, 2014, Purchaser and Seller filed an Application for approval of a sale, acquisition, lease, rental, merger, or consolidation between Purchaser and Seller pursuant to P.U.C. SUBST. R. 24.109. The Application requested approval of the sale of all water assets held under Seller's CCN No. 13094 in Brazos, Burleson, and Robertson Counties, Texas from Seller to Purchaser pursuant to P.U.C. SUBST. R. 24.112 and the amendment of Purchaser's water CCN No. 12252 service area to reflect these service areas.
2. Seller holds CCN No. 13094 for the provision of service in Brazos, Burleson, and Robertson Counties, Texas.

3. The following subdivisions within Seller's CCN No. 13904 service area will be affected by the proposed transaction: Apache Hills; Benchley Oaks; Lakeview North; Marshal Oaks; Somerville Place; Lakewood Estates; Little Oak Forest; Oak Forest; Lakeway Manor; Smetana Forest; and Whispering Woods. The Post Oaks Subdivision is excluded from this transaction.
4. On June 12, 2014, Purchaser and Seller filed an Application for the sale, transfer, or merger of a water system with the Texas Commission on Environmental Quality (TCEQ) pursuant to TEX. WATER CODE ANN. (TWC) § 13.301 and P.U.C. SUBST. R. 24.109 and 24.112.
5. Purchaser sent notice of the application to its customers on August 1, 2014, triggering the 120-day deadline for STMs required by P.U.C. SUBST. R. 24.109(e). The 120-day deadline for Commission action on the application is November 29, 2014. The comment period ended on August 31, 2014.
6. Effective 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.
7. On September 24, 2014, the ALJ issued Order No. 2 Requiring Comments on Status requiring Staff to file an update on the status of the proceeding, to file a recommendation on the need for a hearing or on final disposition of the application, or to propose a procedural schedule by October 8, 2014.
8. On October 8, 2014, Staff filed its Response to Order No. 2 recommending that a public hearing on the application was not required and proposing a procedural schedule for processing the matter.

9. On October 9, 2014, the ALJ issued Order No. 3 establishing the procedural schedule for this matter. In Order No. 3, the ALJ directed Staff to file its final recommendation by November 7, 2014 and its proposed Notice of Approval by November 12, 2014.
10. On November 7, 2014, Staff filed its final recommendation.
11. On November 12, 2014, Staff filed its Request for Extension of Time to File Joint Proposed Order.
12. On November 14, 2014, the ALJ issued Order No. 4 granting Staff's request for an extension. In Order No. 4, the ALJ directed Staff to file its proposed Notice of Approval by November 18, 2014.
13. On November [18], 2014, Staff filed its Supplemental Response to Order No. 3 and Supplemental Final Recommendation.
14. Public notice of the Application was provided as required by P.U.C. SUBST. R. 24.109, P.U.C. SUBST. R. 24.112(c), and the Commission's procedural rules.
15. It is not necessary to hold a hearing on the merits regarding the Application.
16. The criteria for informal disposition pursuant to P.U.C. PROC. R. 22.35 have been satisfied in this proceeding.

Sale, Acquisition, Lease, Rental, Merger, or Consolidation between Seller and Purchaser

17. Purchaser has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas certificated to the Purchaser.
18. Purchaser and Seller have demonstrated that approval of the transaction serves the public interest.

Transfer of Certificate of Convenience and Necessity

19. The Commission has considered the factors listed in TWC § 13.246(c) (Vernon 2008 & Supp. 2013), including (1) the adequacy of service currently provided to the requesting area; (2) the need for additional service in the requested area, including whether any landowners or prospective landowners, tenants, or residents have requested service; (3) the effect of the approval of the Application on any retail public utility of the same kind already serving the proximate area; (4) the ability of the Purchaser 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 Purchaser to pay for the facilities necessary to provide continuous and adequate service and the financial ability of the Purchaser, including, if applicable, the adequacy of the Purchaser's debt-to-equity ratio; (7) environmental integrity; (8) the probability 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 included in the certificated area.
20. After consideration of the factors in TWC § 13.246(c), Purchaser and Seller have demonstrated that Purchaser is capable of rendering adequate and continuous service to every consumer within the certificated area.
21. Pursuant to P.U.C. SUBST. R. 24.112(e), the Commission's approval of the sale of all water assets held under Seller's CCN No. 13094 expires one year from the date of this Notice of Approval. Unless Purchaser or Seller has requested and received an extension from the Commission, this approval is void if the sale has not been consummated within that period.

II. Conclusions of Law

1. The Commission has jurisdiction over this proceeding pursuant to TWC §§ 13.041, 24.246, 13.251, 13.255, and 13.301.
2. Seller and Purchaser are water and sewer utilities as that term is defined in TWC § 13.002(23).
3. Public notice of the Application was provided as required by TWC § 13.301(a)(2).
4. The Application was processed in accordance with the requirements of the Administrative Procedures Act,² TWC, and the Commission's rules.
5. Approval of the transaction serves the public interest.
6. After consideration of the factors in TWC § 13.246(c), Purchaser and Seller have demonstrated that Purchaser has adequate financial, managerial, and technical capability for providing adequate and continuous service to every consumer within the certificated area and any areas certificated to the Purchaser.
7. Pursuant to P.U.C. SUBST. R. 24.109(g) and P.U.C. SUBST. R. 24.112(d), within 30 days after the actual effective date of the transaction, the Purchaser and Seller must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final and documentation that customer deposits have been transferred or refunded to the customer with interest as required by the Commission's rules.
8. Pursuant to P.U.C. SUBST. R. 24.112(e), the Commission's approval of the transaction expires one year from the date of this Notice of Approval. Unless Purchaser or Seller has

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Administrative Procedures Act, TEX. GOV'T CODE ANN. §§ 2001.001-.902 (Vernon 2008 & Supp. 2013).

requested and received an extension from the Commission, this approval is void if the sale has not been consummated within that period.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the ALJ issues the following ordering paragraphs:

1. Approval is granted to complete the sale, acquisition, lease, rental, merger, or consolidation proposed by Purchaser and Seller pursuant to P.U.C. SUBST. R. 24.109.
2. Conditional approval is granted to the request to transfer Seller's CCN No. 13094 to Purchaser. Upon the satisfaction of the criteria discussed in Ordering Paragraphs 5 through 7, Seller's water assets in Brazos, Burleson, and Robertson Counties will be transferred to Purchaser pursuant P.U.C. SUBST. R. 24.112 by operation of this Notice of Approval.
3. The Commission's approval of the sale of all water assets held under Seller's CCN No. 13094 expires one year from the date of this Notice of Approval. Unless Purchaser or Seller has requested and received an extension from the Commission, this approval is void if the sale has not been consummated and evidence of the consummation has not been filed with the Commission within that period.
4. At this time, Purchaser may not assume control of Seller's facilities, change the name under which Seller does business, or provide service to Seller's customers until the following criteria discussed in Ordering Paragraphs 5 through 7 are satisfied.
5. Within 30 days after the actual effective date of the transaction, Purchaser and Seller shall file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final.

6. Within 30 days after the actual effective date of the transaction, Purchaser and Seller shall file with the Commission, under oath, a list showing the names and addresses of all customers served by Seller who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest.
7. Within a reasonable period of time following receipt of the documentation required by Ordering Paragraphs 5 and 6, Staff shall a) prepare and file any necessary maps, consented to by Purchaser and Seller, in compliance with this Notice of Approval, and b) prepare and file a proposed CCN in compliance with this Notice of Approval.
8. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are denied.

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

PUBLIC UTILITY COMMISSION OF TEXAS
