



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) §

PUBLIC UTILITY COMMISSION

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**COMMISSION STAFF'S RESPONSE TO ORDER NO. AND RECOMMENDATION ON  
SUFFICIENCY OF CLOSING DOCUMENTS**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 6 and Recommendation on Sufficiency of Closing Documents. In support of this Response, Staff states the following:

**I. BACKGROUND**

On June 12, 2014, Nerro Supply, LLC (Nerro or Applicant) filed a sale, transfer, merger (STM) application with the Texas Commission on Environmental Quality (TCEQ) pursuant to TEX. WATER CODE ANN. § 13.301 and Title 16, TEX. ADMIN. CODE (16 TAC) §§ 24.109 and 24.112. The application addresses the proposed sale of water assets owned by Brazos Valley Septic & Water, Inc. (Brazos Valley) in Hood, Johnson, and Tarrant Counties, Texas from Brazos Valley to Nerro. The application also addresses the sale and transfer of a portion of CCN No. 13094 currently owned by Brazos Valley in Hood, Johnson, and Tarrant Counties, Texas from Brazos Valley to Nerro and to amend Nerro's current water certificated service area to reflect these service areas. Nerro sent notice of the application to its customers on August 1, 2014, triggering the 120-day deadline for STMs required by 16 TAC § 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.

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. On September 24, 2014, the Administrative Law Judge (ALJ) issued Order No. 2 Requiring Comments on Status requiring Staff to file an update on the status of the proceeding,

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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. 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. 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.

On November 7, 2014, Staff filed its Response to Order No. 3 recommending that the transaction be completed. On November 12, 2014, Staff filed a Request for Extension of Time to File Joint Proposed Order. On November 14, 2014, the ALJ issued Order No. 4 granting Staff's request for extension and directing Staff to file a proposed notice of approval by November 18, 2014. On November 18, 2014, Staff filed a Joint Notice of Approval and Request to Admit Evidence. On November 19, 2014, Staff filed its Response to Order No. 3 and Supplemental Final Recommendation to clarify its prior filing. On November 25, 2014, the ALJ issued Order No. 5 admitting the requested evidence into the record. On December 4, 2014, the ALJ issued Order No. 6 Approving the Sale/Transfer to Proceed and directed the parties to submit proof in the form of closing documents to the Commission that the sale/transfer has been consummated within 365 days of the date of the order. Further, Order No. 6 directed Staff to file a recommendation regarding the sufficiency of these documents and to propose a schedule for the continued processing within ten working days of receipt of closing documents. On April 29, 2015, Nerro filed Closing Documents in response to Order No. 6. This Response is timely filed.<sup>1</sup>

## **II. STAFF'S RECOMMENDATION ON SUFFICIENCY OF NOTICE DOCUMENTS**

Pursuant to 16 TAC § 24.109(g), the parties must file with the Commission "a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final." On April 29, 2015, Nerro submitted a special warranty deed and bill of sale, along with various attached documents, purporting to transfer the properties and assets between the parties to the transaction.<sup>2</sup> However, the warranty deed and bill of sale submitted by Nerro is

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<sup>1</sup> Ten working days from April 29, 2015 is May 13, 2015.

<sup>2</sup> The closing documents were originally filed in error in PUC Docket No. 44117 on April 29, 2015. The documents were transferred to PUC Docket No. 43117 on May 12, 2015. Closing Documentation, PUC Docket No. 43117 (April 29, 2015).

signed only by Brazos Valley, the grantor of the transaction.<sup>3</sup> Staff notes that the notice of assignment<sup>4</sup> attached to the bill of sale is signed by both parties to the transaction, though it is unclear whether this assignment addresses all aspects of the transaction at issue in this matter.

While the notice of assignment is signed by both parties, Staff contacted Nerro to express its concern over the lack of both parties' signatures on the bill of sale. Nerro has agreed to file a letter with the Commission, signed by both parties to the transaction, stating that the transaction has been completed as referenced in the filed closing documents. Once Staff receives this document signed by both parties to the transaction clearly showing that the transaction has been completed, Staff will revise the maps to reflect the transaction and send them out to the parties for consent.

Staff notes that pursuant to 16 TAC 24.112(e) and Order No. 6 in this proceeding, the parties have until December 4, 2015 to submit sufficient documentation to the Commission that the transaction has been consummated.

Staff recommends that Nerro be required to file the additional closing document described above by **June 3, 2015**. Staff proposes to file a supplemental recommendation regarding the sufficiency of the documents and a proposed schedule for the continued processing of this docket by **June 17, 2015**.

### III. CONCLUSION

For the reasons stated above, Staff recommends that the closing documents submitted by Nerro on April 29, 2015 are not sufficient to show that the transaction has been fully completed. Staff further recommends that Nerro be directed to submit a document signed by both parties to the transaction that clearly shows that the transaction has been completed.

**Date: May 13, 2015**

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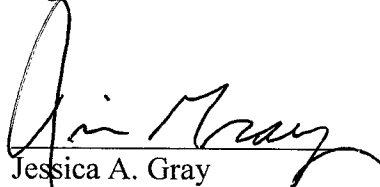
<sup>3</sup> Closing Documentation at 5-6 and 14-16 (April 29, 2014).

<sup>4</sup> Closing Documentation at 33-34 (April 29, 2014).

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Shelah J. Cisneros  
Managing Attorney  
Legal Division



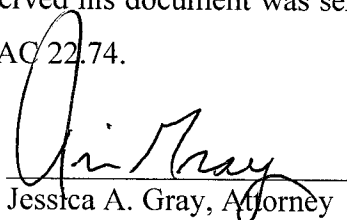
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document was served his document was served on all parties of record on May 13, 2015 in accordance with 16 TAC 22.74.



Jessica A. Gray, Attorney