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# OPEN MEETING COVER SHEET

**MEETING DATE:** November 14, 2014

**DATE DELIVERED:** November 6, 2014

**AGENDA ITEM NO.:** 6

**CAPTION:** Docket No. 43132; SOAH Docket No. 473-15-0587 - Application of Peach Creek Dam and Lake Club Water System and City of Patton Village for Sale, Transfer, or Merger of Facilities and Certificate of Convenience and Necessity in Montgomery County (37915-S)

**ACTION REQUESTED:** Discussion and possible action with respect to Draft 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: David Smeltzer, Commission Advising

RE: October 17, 2014, Open Meeting Agenda Item No. 6  
Draft Preliminary Order, P.U.C. Docket No. 43132; SOAH Docket No. 473-15-0687 – *Application of Peach Creek Dam and Lake Club water System and City of Patton Village for Sale, Transfer, or Merger of Facilities and Certificate of Convenience and Necessity in Montgomery County, Texas (37915-S)*

DATE: November 6, 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. 473-15-0687  
PUC DOCKET NO. 43132**

<b>APPLICATION OF PEACH CREEK DAM AND LAKE CLUB WATER SYSTEM AND CITY OF PATTON VILLAGE FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE OF CONVENIENCE AND NECESSITY IN MONTGOMERY COUNTY, TEXAS (37915-S)</b>	<b>§ § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**DRAFT PRELIMINARY ORDER**

On May 9, 2014, the city of Patton Village filed with the Texas Commission on Environmental Quality (TCEQ) an application to acquire the facilities of Peach Creek Dam and Lake Club, Inc. and transfer the certificate of convenience and necessity held by Peach Creek to Patton Village under Texas Water Code (TWC) § 13.301. Notice to customers, landowners, neighboring systems, and cities was completed on June 11, 2014.

On September 1, 2014, this case transferred to the Public Utility Commission of Texas (Commission),<sup>1</sup> and on October 3, 2014, the Commission referred this docket to the State Office of Administrative Hearings (SOAH) and required Patton Village and allowed Commission Staff and any other party to file a proposed list of issues.<sup>2</sup> On October 22, 2014, Patton Village and Commission Staff timely filed proposed lists of issues.

The water system being purchased provides service in Montgomery County, covers slightly more than 20 acres, and provides service to approximately 75 customers.<sup>3</sup> The business

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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> Preliminary Order at 1 (September 1, 2014).

<sup>3</sup> Application at 19.

has net assets of approximately \$1,500 (including approximately \$6,800 in receivables and \$15,000 in accounts payable)<sup>4</sup> and projects about \$9,000 in net losses annually.<sup>5</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>6</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 Patton Village demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to Peach Creek? 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 Patton Village'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 Peach Creek's financial standing, including but not limited to its capital structure; its tangible net worth; and its credit rating, if any?
- c. Are any capital investments currently needed to ensure the provision of continuous and adequate service? If so, has Patton Village demonstrated it has the ability to provide the necessary capital investment(s)?
- d. Has Patton Village demonstrated that customer deposits or advance payments, if any, would be kept in an escrow account or segregated cash account? If not,

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<sup>4</sup> Application at 11.

<sup>5</sup> Application at 12.

<sup>6</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2008).

should the Commission require Patton Village 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 Patton Village'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 Patton Village'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 Patton Village's designated permanent employees?
3. If Patton Village has not demonstrated adequate financial capability, should the Commission require that Patton Village 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 Patton Village 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 Patton Village 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**

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**BRANDY D. MARTY, COMMISSIONER**