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PUBLIC UTILITY COMMISSION

# OPEN MEETING COVER SHEET

**MEETING DATE:** March 6, 2015

**DATE DELIVERED:** February 27, 2015

**AGENDA ITEM NO.:** 26

**CAPTION:** Docket No. 43175; SOAH Docket No. 473-15-2274.WS - Application of Community Water Service, Inc. and Walter J. Carroll Water Company, Inc. for Sale Transfer or Merger of Facilities and Certificate Rights in Ellis County (37981-S)

**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 Marty Marquez

All Parties of Record

FROM: John Kramer, Commission Advising

RE: March 6, 2015, Open Meeting Agenda Item No. 26  
Draft Preliminary Order, PUC Docket No. 43175; SOAH Docket No. 473-15-2274.WS – *Application of Community Water Service, Inc. and Walter J. Carroll for Sale, Transfer, or Merger of Facilities and Certificate Rights in Ellis County*

DATE: February 27, 2015

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 March 6, 2015 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 March 6, 2015 open meeting.

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SOAH DOCKET NO. 473-15-2274.WS  
PUC DOCKET NO. 43175

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APPLICATION OF COMMUNITY §  
WATER SERVICE, INC. AND WALTER §  
J. CARROLL FOR SALE, TRANSFER, §  
OR MERGER OF FACILITIES AND §  
CERTIFICATE RIGHTS IN ELLIS §  
COUNTY (37981-S) §

PUBLIC UTILITY COMMISSION  
FILING CLERK  
PUBLIC UTILITY COMMISSION  
OF TEXAS

**DRAFT PRELIMINARY ORDER**

On July 11, 2014, the Walter J. Carroll Water Company, Inc. (purchaser) filed an application with the Texas Commission on Environmental Quality to purchase facilities and a portion of the CCN No. 10091 service area held by Community Water Service, Inc. (seller) in Ellis County, Texas. The water system being purchased serves approximately 340 customers in the Beckley Pikes Estates within the city limits of Red Oak. Red Oak is opposed to the application. On December 8, 2014, the Red Oak city council considered and denied the purchaser's request for dual CCN certification.

On September 1, 2014, this case transferred to the Public Utility Commission of Texas (Commission),<sup>1</sup> and on February 5, 2015, the Commission referred this docket to the State Office of Administrative Hearings (SOAH). On February 17, 2015, Red Oak timely filed a proposed list of issues. Commission Staff filed a list of issues on February 18.

**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>2</sup> After reviewing the pleadings

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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> Tex. Gov't Code Ann. § 2003.049(e) (West 2008 & Supp. 2014).

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 sale?
2. Has the purchaser demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person? TWC 13.301(b); 16 TAC § 24.112(b).
  - a. If the purchaser has not demonstrated adequate financial capability, should the Commission require that it provide financial assurance to ensure continuous and adequate utility service is provided, consistent with TWC § 13.301(c) and 16 TAC § 24.109(b)?
  - b. If the Commission requires the purchaser to provide financial assurance, what form and amount of financial assurance should the Commission should require?
3. Will approving the proposed sale serve the public interest? TWC § 13.301(d), (g); 16 TAC § 24.112(c)(5).
  - a. Is the purchaser capable of rendering adequate and continuous service to every consumer within the certificated area, taking into account the factors under the TWC, § 13.251; 16 TAC § 24.112(c)(5)(B)?
    - i. Is the service currently provided in the area adequate? TWC § 13.246(c)(1).
    - ii. Is additional service needed in the requested area? Have any landowners, prospective landowners, tenants, or residents requested service? TWC § 13.246(c)(2).
    - iii. What is the effect of approving the proposed sale on the purchaser, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area? TWC § 13.246(c)(3).
    - iv. Taking into consideration the current and projected density and land use of the area, does the purchaser have the ability to provide adequate service and meet the standards of the TCEQ? TWC § 13.246(c)(4).
    - v. Is it feasible to obtain service from an adjacent retail public utility? TWC § 13.246(c)(5).

- vi. Is the purchaser financially stable considering, if applicable, the adequacy of the debt-equity ratio of the purchaser if the proposed sale is approved? TWC § 13.246(c)(6).
  - vii. What is the effect of approving the sale on environmental integrity? TWC § 13.246(c)(7).
  - viii. What is the probable improvement of service or lowering of cost to consumers in that area resulting from approving the proposed sale? TWC § 13.246(c)(8).
  - ix. What is the effect on the land to be included in the certificated area? TWC § 13.246(c)(9).
- b. Have the conditions of any judicial decree, compliance agreement, or other enforcement order not been substantially met? 16 TAC § 24.112(c)(5)(B).
  - c. What is the experience of the purchaser as a utility service provider? 16 TAC § 24.112(c)(5)(C).
  - d. Does the purchaser have a history of noncompliance with the requirements of the TCEQ, the Commission, or the Texas Department of State Health Services or continuing mismanagement or misuse of revenues as a utility service provider? TWC § 13.301(e)(3); 16 TAC § 24.112(c)(5)(D).
  - e. Does the purchaser have the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water system? TWC § 13.301(e)(4); 16 TAC § 24.112(c)(5)(E).
  - f. Has the purchaser failed to comply with any orders of the TCEQ or the Commission? 16 TAC § 24.109(e)(5)(A).
  - g. Was the water system partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges as provided by TWC § 13.301(j)? If so, has the notice required by TWC § 13.301(j) been provided?
  - h. Was the notice required by TWC § 13.301(k) provided?

4. Does the seller currently retain any customer deposits? If so,
  - a. what is the total amount of customer deposits retained;
  - b. does the seller have proper records of to allow deposits and any unpaid interest to be returned; and
  - c. will customer deposits be returned to customers or transferred to the purchaser?
5. Does the water system being purchased have any deficiencies or problems that need correction to be in compliance with the rules of the Commission and the TCEQ? If so,
  - a. what are those deficiencies or problems;
  - b. how and when will those deficiencies or problems be corrected; and
  - c. does the purchase have access to adequate financial resources to timely correct those deficiencies and problems?
6. What are the precise boundaries of the service area that is the subject of the purchaser's application?

## **II. Issue not to be Addressed**

The Commission takes the position that the following issue need not be addressed in this proceeding for the reasons stated:

- 1 Whether the city of Red Oak should be awarded the right to provide water service to the area that is the subject of the purchaser's application.

The purpose of this docket is to evaluate an application to purchase a water service and transfer a portion of a CCN to the applicant. Awarding Red Oak the right to provide water service to the subject area is not part of the current application. Further, Red Oak has not filed an application seeking such an award.<sup>3</sup>

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<sup>3</sup> See, *Southwestern Public Service Company v. Public Utility Commission of Texas*, 578 S.W. 2d 507, 510-11, 514-15 (Tex. Civ. App. – Austin 1979, writ ref'd n.r.e.).

### **III. Effect of Preliminary Order**

The Commission's discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, 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 March 2015.

**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 MARTY MARQUEZ, COMMISSIONER**

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