



Control Number: 43175



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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 WATER COMPANY, INC. §
FOR SALE, TRANSFER, OR MERGER §
OF FACILITIES AND CERTIFICATE §
RIGHTS IN ELLIS COUNTY §

BEFORE THE STATE OFFICE
PUBLIC UTILITY COMMISSION
FILING CLERK
OF
ADMINISTRATIVE HEARINGS

WALTER J. CARROLL WATER CO., INC.'S
NOTICE OF FILING PROPOSED ORDER TO PROCEED WITH TRANSACTION

COMES NOW Walter J. Carroll Water Co., Inc., and files this *Notice of Filing Proposed Order to Proceed with Transaction*, and requests that the Administrative Judge assigned herein, and all parties of record take notice of the document herein filed, and that the ALJ enter the *Proposed Order to Proceed with Transaction*.

Respectfully submitted,

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

/s/ Cory Halliburton
CORY D. HALLIBURTON
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ATTORNEYS FOR WALTER J. CARROLL
WATER CO., INC.

CERTIFICATE OF CONFERENCE

The undersigned does hereby certify that all parties of record have received a copy of, and have approved the form of the attached Proposed Order to Proceed.

/s/ Cory Halliburton
Cory Halliburton

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this 19th day of January, 2016, a true and correct copy of the forgoing Notice of Filing Proposed Order to Proceed with Transaction has been forwarded to the parties listed on the service list below as indicated. I certify that this Certificate of Service complies with Title 1, Part 7, Chapter 155, Subchapter C, Rule § 155.103 of the Texas Administrative Code.

/s/ Cory Halliburton
Cory Halliburton

SERVICE LIST

<u>PARTIES</u>	<u>REPRESENTATIVE / ADDRESS</u>
SOAH	<u>Via Email</u> The Honorable Lilo D. Pomerleau State Office of Administrative Hearings PO Box 13025 Austin, Texas 78711-3025
PUBLIC UTILITY COMMISSION	<u>Via Email</u> Mr. Doug M. Brown Attorney-Legal Division Public Utility Commission 1701 N Congress Ave., Ste 8-110 Austin, TX 78711
Community Water Service, Inc.	<u>Via Email</u> Ms. Bonnie Frame Community Water Service, Inc. P.O. Box 850155 Mesquite, TX 75185 <u>Via Email</u> Mr. Dustan Dewinne Consulting Environmental Engineers, Inc. 150 N. Harbin Dr., Ste. 408 Stephenville, TX 76401
City of Red Oak	<u>Via Email</u> Mr. Robert E. Hager NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P. 1800 Ross Tower 500 North Akard Dallas, Texas 75201

**SOAH DOCKET NO. 473-15-2274.WS
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APPLICATION OF COMMUNITY	§	
WATER SERVICE, INC. AND WALTER	§	PUBLIC UTILITY COMMISSION
J. CARROLL FOR SALE, TRANSFER,	§	
OR MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS IN ELLIS	§	OF TEXAS
COUNTY (37981-S)	§	

PROPOSED ORDER TO PROCEED WITH TRANSACTION

This Proposed Order to Proceed with Transaction addresses the application of Community Water Service, Inc. (Community) and Walter Carroll Company (Walter Carroll) (Jointly Applicants) for approval of a Sale, Transfer, or Merger of a Retail Public Utility, which is referred to herein as the “Application.” Joint Applicants and Commission Staff are the only parties to this proceeding with evidence filed in support of the Application. The City of Red Oak, Texas (the “City of Red Oak”) filed a statement of position in opposition to the Application, but, as further indicated herein, no evidence was admitted in relation to the City of Red Oak’s position.

Commission Staff recommended approval of the Application. Therefore, Consistent with Commission Staff’s recommendation, the Application is approved. The Commission adopts the following findings of fact and conclusions of law in support of this approval:

I. FINDINGS OF FACT

A. Procedural History

1. On July 11, 2014, and pursuant to certain purchase and sale agreements between Community (seller) and Walter Carroll (purchaser), Applicants jointly prepared and filed with the Texas Commission on Environmental Quality, an Application for Sale, Transfer, or Merger of a Retail Public Utility (Application).

2. Effective September 1, 2014, the Public Utility Commission (Commission or PUC) began the economic regulation of water and sewer utilities, and this case formerly pending at the Texas Commission of Environmental Quality was transferred to the jurisdiction of the PUC.
3. On November 10, 2014 and January 14, 2015, Joint Applicants filed proof of notice.
4. By PUC Order No. 4, dated December 4, 2014, the Commission deemed the Application administratively complete.
5. On January 15, 2015, the City of Red Oak, Texas notified the Commission that the City of Red Oak, an affected party, was opposed to the Application.
6. By PUC Order of Referral dated February 5, 2015, the Commission referred the Application and associated PUC Docket No. 43175 to the Texas State Office of Administrative Hearings (SOAH) and requested the assignment of an administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision.
7. By Preliminary Order dated March 10, 2015, the Commission referred to SOAH a list of issues to be addressed in relation to the Application and SOAH proceeding.
8. On May 12, 2015, Applicant, Walter Carroll filed in the SOAH Proceeding, direct testimony of Walter J. Carroll (president of Walter Carroll), Ricky Reeder (operations manager of Walter Carroll), Charlie P. Gillespie, Jr., P.E. (engineer consultant of Applicants and principal of Consulting Environmental Engineers, Inc.), and Bonnie Frame (president of Community), as well as documentary exhibits in support of said testimonies.
9. On June 15, 2015, the City of Red Oak filed direct testimony of John W. Birkhoff, P.E.
10. On June 23, 2015, July 6, 2015, August 4, 2015 and November 12, 2015, Walter Carroll filed supplemental documentation in support of the Application, including supplemental testimony of Bonnie Frame (president of Community).
11. On July 20, 2015, SOAH Order No.4 granted the parties' motion to abate the procedural schedule to engage in settlement discussions.
12. On October 14, 2015, SOAH Order No. 5 granted Walter Carroll's motion for a new procedural schedule and the case was unabated.

13. On November 6, 2015, the PUC filed direct testimony of Fred Bednarski, III and Elisabeth English.
14. On December 7, 2015, the ALJ in the SOAH Proceeding convened a telephone prehearing conference, where the following occurred and was memorialized in SOAH Order No. 8, issued on December 9, 2015:
 - a. The City of Red Oak agreed and stipulated that the direct testimony of John W. Birkhoff, P.E. filed by the City of Red Oak would be considered and re-designated as the City of Red Oak's statement of position in relation to the Application but would not be deemed or considered evidence in this SOAH Proceeding.
 - b. Walter Carroll agreed to waive its pending request for sanctions against the City of Red Oak for certain claimed violations of ALJ orders and rules of discovery.
 - c. The Staff of the Commission was not opposed to the sale, transfer, merger application and has filed testimony in support of Commission approval.
 - d. The hearing on the merits and hearing on Walter Carroll's motion for sanctions, which were set for December 8, 2015, were cancelled.
15. After the prehearing conference, Parties submitted evidence to be considered by the ALJ.

B. Background

16. Community is incorporated under the laws of the State of Texas. Community is in good standing with the Texas Secretary of State and the Texas Comptroller.
17. Walter Carroll is incorporated under the laws of the State of Texas. Walter Carroll is in good standing with the Texas Secretary of State and the Texas Comptroller.
18. Since about 1978 and through the present date, Community has owned and operated a Public Water System (PWS) ID 0700056, known commonly as the Community, Inc. – Red Oak or Red Oak Community system (referred to herein as the Red Oak Community System), under Certificate of Convenience and Necessity (CCN) #10091.
19. The Red Oak Community System has approximately 117 water connections and serves a population of about 450 consumers.

20. The area of the Red Oak Community System within the boundaries of the City of Red Oak are dually certificated with the City of Red Oak.
21. Applicants desire to transfer the real property, distribution lines and other properties and consumer accounts associated with the Red Oak Community System to Walter Carroll, and to thereby remove the Red Oak Community System out of operation under Community's CCN 10091 and add or merge the Red Oak Community System into operation under the authority of Walter Carroll's CCN 11543.
22. By letter agreement dated July 29, 2013, Community agreed to sell and transfer, and Walter Carroll agreed to purchase and accept the real property and water system facilities associated with and known as the Red Oak Community System.
23. The letter agreement dated July 29, 2013 was formally amended and affirmed on May 8, 2015 pursuant to a written agreement between Community and Walter Carroll.
24. The sale was conditioned upon the following:
 - a. Walter Carroll's repair of the well that serviced the Red Oak Community System;
 - b. The TCEQ, PUC or other applicable regulatory agency's approval of the Application for Sale, Transfer, or Merger of a Retail Public Utility which forms the basis of this SOAH proceeding; and
 - c. Walter Carroll's payment of \$25,000 to Community upon the closing of the Sale-and-Transfer transaction.
25. After the sale letter agreement was signed on July 29, 2013, Walter Carroll caused the repairs to the well that serviced the Red Oak Community System.
26. Walter Carroll has a debt-to-equity ratio of 18.4% or .184:1, which is better than the recommended 1:1 ratio.
27. Walter Carroll has a Debt Service Coverage Ratio of 11.83:1, which is better than the recommended 1.25:1 DSCR.
28. Walter Carroll currently operates four PWSs with approximately 447 connections.

29. There are no outstanding violations for any of Walter Carroll's Other PWSs and at this time, all of Carroll's Other PWSs are in compliance with the applicable rules and regulations.
30. The Staff Witnesses of the PUC recommend that the Application be approved, and that Walter Carroll's be permitted to purchase a portion of CCN 10091 from Community and to amend the respective water CCNs for both Walter Carroll and Community as requested in the Application.
31. No rate change is requested through the Application, and because the requested service area is currently dually certified to the City of Red Oak and Seller (Community), the Sale-and-Transfer transaction would shift the dual certification between the City of Red Oak and the Purchaser (Walter Carroll).
32. There are no other retail public utilities of the same kind that would be affected by the proposed transaction.
33. The water service currently provided in the service area by the Red Oak Community System is adequate.
34. No landowners, prospective landowners, tenants, or residents have requested service or any additional service, and Applicants did not apply to add additional uncertificated area to the CCNs in issue.
35. Upon the closing of the Sale-and-Transfer transaction, the service of the Red Oak Community System will be maintained in accordance with the way in which it is currently operated; there are no anticipated upgrades or changes in the operation of the PWS.
36. The public water service provided by the Red Oak Community System is adequate and sufficient to provide continuous service to the certificated area.
37. The Red Oak Community System was not constructed with customer contributions in aid of construction derived from specific surcharges as provided in Texas Water Code § 13.301(j).
38. Community has customer deposits in the amount of \$4,825. Community has customer unpaid interest in the amount of \$90.83. Upon the closing of the Sale-and-Transfer

transaction, Community will deliver to Walter Carroll, and Walter Carroll will accept management and oversight of Community's customer deposits and customer interest.

39. The TCEQ inspected the Red Oak Community System and notified Community that there were no violations as of April 7, 2015.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding pursuant to Texas Water Code (TWC) §§ 13.004, 13.041, 13.251, 13.255. 301.
2. SOAH has jurisdiction over this matter pursuant to applicable law, including Texas Administrative Code, Title 1, Part 7, Chapter 155, Subchapter B, Rule § 155.51.
3. Applicant, Walter J. Carroll Company, Inc., and Applicant, Community are public utilities as defined in 16 Tex. Admin. Code § 24.3 (TAC).
4. The public water utility service currently provided by the Red Oak Community System is adequate.
5. Public notice of the Application was provided as required by TWC § 13.301(a)(2).
6. The Application was processed in accordance with the requirements of the Administrative Procedures Act,¹ TWC, and the Commission's rules.
7. Approval of the transaction serves the public interest.
8. After consideration of the factors in TWC § 13.246(c), Purchaser (Walter Carroll) and Seller (Community) 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.
9. Pursuant to 16 Tex. Admin. Code § 24.112(e), the Purchaser (Walter Carroll) and Seller (Community) have 365 days to submit proof to the Commission that the transaction has been consummated. If closing documents are not submitted within this period, or an extension granted, approval of this transaction is void.

¹ Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.001-.902 (West 2008 & Supp. 2014) (APA).

10. The area served by the Red Oak Community System is served with existing infrastructure, and the transfer of the Red Oak Community System to Walter Carroll does not require any construction or disruption of the environment and will maintain the environmental integrity of the area.
11. The boundaries of the Red Oak Community System are adequately described in the Application and the evidence.
12. There is no effect on the land from this transaction and there has already been an improvement of service from the transaction due to the repairs made on Community's well by Walter Carroll. TWC § 13.246(c)(8) and (9).
13. No additional service is needed in the area certificated to the Red Oak Community System. TWC § 13.246(c)(2).
14. The Red Oak Community System has no deficiencies or problems that need correction to be in compliance with the rules of the PUC or TCEQ
15. The Purchaser (Walter Carroll) should not be required to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided to the certificated area served by the Red Oak Community System. TWC § 13.246(d); 16 TAC § 24.03(e).
16. The Seller (Community) has customer deposits in the amount of \$4,825 and the same shall be transferred to Applicant, Walter J. Carroll Water Company, Inc. upon the effective date of the Sale-and-Transfer transaction.
17. The Seller (Community) has customer deposits in the amount of about \$4,825 and customer unpaid interest in the amount of about \$90.83, and all customer deposits and unpaid interest shall be transferred to Applicant, Walter J. Carroll Water Company, Inc. upon the effective date of the Sale-and-Transfer transaction to be managed according to applicable law.
18. The Application for Sale, Transfer, or Merger of a Retail Public Utility filed by Applicants, Community Water Service, Inc. and Walter J. Carroll Water Company, Inc. and which forms the basis of this proceeding should be granted and approved as filed.

III. ORDERING PARAGRAPHS

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

1. Approval is granted to complete the sale, acquisition, lease, rental, merger, or consolidation proposed by Purchaser (Walter Carroll) and Seller (Community) pursuant to 16 TAC § 24.109.
2. Upon the satisfaction of the criteria discussed in Ordering Paragraphs 5 through 7, Staff shall file a recommendation on the sufficiency of closing documentation and the transfer of Seller's CCN to Purchaser (Walter Carroll) pursuant to 16 TAC § 24.112.
3. The Commission's approval of the sale of Seller's (Community) CCN expires one year from the date of this Notice of Approval. Unless Purchaser (Walter Carroll) or Seller (Community) 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 (Walter Carroll) may not assume control of Seller's (Community) facilities, change the name under which Seller does business, or provide service to Seller's customers.
5. Within 30 days after the actual effective date of the transaction, Purchaser (Walter Carroll) and Seller (Community) shall file in this docket 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 (Walter Carroll) and Seller (Community) shall file in this docket, 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 (Walter Carroll) and Seller (Community), in compliance with

this Notice of Approval, and (b) prepare and file a proposed Certificate of Convenience and Necessity in compliance with this Notice of Approval.