



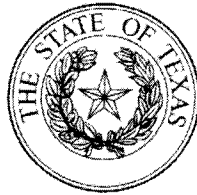
Control Number: 43175



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State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

2016 FEB 17 PM 2:50
FILED

February 17, 2016

**TO: Stephen Journey, Director
Commission Advising and Docket Management
William B. Travis State Office Building
1701 N. Congress, 7th Floor
Austin, Texas 78701**

Courier Pick-up

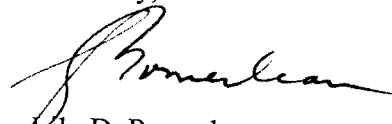
**RE: SOAH Docket No. 473-15-2274.WS
PUC Docket No. 43175**

**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**

Enclosed is the Proposal for Decision (PFD) in the above-referenced case. By copy of this letter, the parties to this proceeding are being served with the PFD.

Please place this case on an open meeting agenda for the Commissioners' consideration. There is no jurisdictional deadline in this case. Please notify me and the parties of the open meeting date, as well as the deadlines for filing exceptions to the PFD, replies to the exceptions, and requests for oral argument.

Sincerely,


Lilo D. Pomerleau
Administrative Law Judge

Enclosure

xc: All Parties of Record

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

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 OF ADMINISTRATIVE HEARINGS
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PROPOSAL FOR DECISION

On July 11, 2014, Walter J. Carroll Water Company, Inc. (Carroll Water Company), Certificate of Convenience and Necessity (CCN) No. 11643, and Community Water Service, Inc. (Community Water), CCN No. 10091, jointly filed an application for Sale, Transfer, or Merger of a Retail Public Utility (Application) concerning a service area in Ellis County, Texas. Carroll Water Company seeks to purchase the retail public utility system known as Red Oak Community System, which is currently certificated to Community Water. The Staff of the Public Utility Commission of Texas (Commission) recommends approval of the Application. Initially, the City of Red Oak (Red Oak), the only other party to this proceeding, was opposed to the Application; however, Red Oak ultimately chose not to proffer any evidence and waived its request for hearing. The Administrative Law Judge (ALJ) recommends approval of the Application.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Effective September 1, 2014, jurisdiction of this case was transferred from the Texas Commission on Environmental Quality to the Public Utility Commission of Texas (Commission). The Commission has jurisdiction and authority pursuant to Texas Water Code §§ 13.004, 13.041, 13,246(c), 13.251, 13.301 and 16 Texas Administrative Code §§ 24.109 and 24.112. On February 5, 2015, the Commission referred this case to the State Office of Administrative Hearings (SOAH). SOAH has jurisdiction over matters relating to the conduct of the hearing in this proceeding pursuant to Texas Government Code § 2003.049.

On March 12, 2015, Administrative Law Judge (ALJ) Lilo D. Pomerleau convened a prehearing conference. Subsequently, the hearing on the merits was set for August 20, 2015. On July 16, 2015, the parties engaged in a settlement conference and the case was abated. However, on October 5, 2015, Carroll Water Company requested that the case be reset for hearing. That same day, Carroll Water Company filed a motion to compel Red Oak to respond to discovery requests. The ALJ set the case for hearing on December 8, 2015, and granted Carroll Water Company's motion to compel. Additionally, the ALJ indicated that the issue of sanctions would be addressed in hearing on December 8, 2015.

On December 7, 2015, ALJ Pomerleau convened a telephone prehearing conference.¹ All parties appeared. Red Oak clarified that its main issue with Application related to the ability of Carroll Water Company to provide adequate fire suppression support and whether water distribution lines were installed at the proper depth. However, because the issue of fire suppression is not within the Commission's jurisdiction and because Commission Staff supported the Application, Red Oak had no cross-examination for the Carroll Water Company's and Community Water's (collectively, Applicants') witnesses or Staff's witnesses. Red Oak had failed to respond to Carroll Water Company's discovery requests and had failed to comply with SOAH Order No. 5, which granted Carroll Water Company's motion to compel. Consequently, Red Oak agreed that its prefiled testimony would be re-designated as a statement of position. Carroll Water Company agreed to withdraw its request for sanctions.

Because no party sought to cross-examine the any witness, ALJ Pomerleau cancelled the hearing. The parties submitted their evidence, and the ALJ admitted such in Order No. 10. Below is background information concerning the Application, with detailed findings of fact and conclusions of law and a proposed order.

¹ ALJ Fernando Rodriquez co-presided with Judge Pomerleau.

II. EVIDENCE

Community Water is the current owner and operator of the retail public utility system located at 105 Dana Street, Red Oak, Texas, known as Red Oak Community System. Currently, Community Water has a 63-acre service area with 117 active connections and provides water service to approximately 450 customers. The service area is located approximately 10 miles north of the City of Waxahachie and is generally bounded on the north by Ovilla Road, on the east by Interstate Highway 35E, and on the west by Overlook Drive, Ellis County, Texas. Community Water's certificated area for water service is dually certificated with Red Oak, which provides sewer service in the area. However, Red Oak does not have water distribution lines in the Red Oak Community System service area and would need additional infrastructure and capital investment to serve this area.²

In 2013, Community Water was having trouble maintaining the water well that served Red Oak Community System's facilities. The well required significant repairs. Community Water's president, Bonnie Frame, agreed to sell the Red Oak Community System and real property to Carroll Water Company in exchange for repairs and an additional payment of \$25,000.³ Carroll Water Company and Community Water agreed to the sale, and Carroll Water Company oversaw the repair of Red Oak Community System. Carroll Water Company has operated, managed, and maintained public water systems in the Ellis County area since approximately 1965. Since 1996, Carroll Water Company has employed Ricky Reeder as an operations manager. Mr. Reeder holds a Class C Groundwater Treatment Operator license.⁴

If the Application is approved, Carroll Water Company will amend its CCN to include the additional area, which is currently certificated to Community Water and Red Oak.

² Applicants Ex. 1-A, Carroll direct at 20-21, Ex. A-32; Staff Ex. 2, English direct at 5, 10-11. The real property is described as being located in Beckley Pike Estates, Addition . . . Lot One (1), Block Eight (8), of Beckley Pike Estates Addition . . . Applicant's Ex. 1 at 15.

³ Applicants Ex. 1-A, Carroll direct at 9-11.

⁴ Applicants Ex. 1-A, Carroll direct at 9, 11, 15. Carroll Water Company currently manages four Texas public water systems in Ellis County. Applicants Ex. 1-A, Carroll direct at 19.

Community Water's CCN will be amended to remove the proposed area, which will remain dually certificated.⁵

The seller, Community Water, has provided continuous and adequate water service to its certificated area for more than 30 years. The certificated area is fairly developed. Thus, the customer population will not significantly exceed the current demand on the facilities. The purchaser, Carroll Water Company, will be able to provide adequate service to the customers of Red Oak Community System because: (1) the area will not experience significant population growth; (2) the well's water production and the facilities are adequate to maintain continuous and adequate water service to the certificated area with moderate growth; and (3) the company has demonstrated technical and managerial capability. Approval of the transfer should have no adverse effect on other retail public utilities of the same kind serving the area. Additionally, the sale will not cause any detriment to the surrounding environment.⁶

Carroll Water Company is financially capable of providing continuous and adequate service to the certificated area. The company has a low degree of financial risk and is capable of paying off its existing debts. Carroll Water Company is financially stable and has an adequate debt-to-equity ratio to acquire the proposed area. Staff witness Fred Bednarski, III, testified that Carroll Water Company has the ability to make annual payments on its long-term debt. Mr. Bednarski also testified that no bond or other financial assurance to ensure continuous and adequate service is required for this transaction because Carroll Water Company has a low degree of financial risk, is financially capable of paying off existing debts, and has the capability of obtaining debt financing in the future.⁷

⁵ Staff Ex. 1, Bednarski direct at 6; Staff Ex. 2, English direct at 5.

⁶ Applicants Ex. 1-A, Carroll direct at 19-22; Staff Ex. 1, Bednarski direct at 12; Staff Ex. 2, English direct at 8. This Application is for the sale, transfer, merger of existing facilities, customers, and service area. There is no need for additional service. Staff Ex. 2, English direct at 10.

⁷ Staff Ex. 1, Bednarski direct at 8-11.

Currently, Community Water has customer deposits totaling \$4,825. Applicants have identified unpaid interest of \$90.83. Carroll Water Company will be required to provide Staff proof that customer accounts with remaining deposit balances are either transferred from Community Water to Carroll Water Company or are returned to the customer.⁸

Community Water witness Ms. Frame testified that Community Water has never had a customer complain about fire suppression or an incident indicating it has insufficient fire suppression capabilities. There are seven fire hydrants owned by Red Oak in the Beckley Pike Estates (also known as Red Oak). Ms. Frame indicated that Community Water's water distribution lines are at an appropriate depth to prevent freezing, breakage, and tampering, and the distribution system in the Beckley Pike Estates is sufficient to serve the public interest.⁹

III. RECOMMENDATION

The ALJ recommends approval of the Application as filed.

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERING PARAGRAPHS

A. Findings of Fact

Procedural History

1. On July 11, 2014, and pursuant to certain purchase and sale agreements between Community Water Service, Inc. (Community Water) and Walter J. Carroll Water Company, Inc. (Carroll Water Company) (together, Applicants) jointly prepared and filed with the Texas Commission on Environmental Quality (TCEQ) an Application for Sale, Transfer, or Merger of a Retail Public Utility (Application). Carroll Water Company is the purchaser of a portion of the service area of Community Water.

⁸ Staff Ex. 1, Bednarski direct at 13.

⁹ Applicants Ex. 8, Frame supplemental at 4, Exh. A-32.

2. Effective September 1, 2014, the Public Utility Commission of Texas (Commission or PUC) began the economic regulation of water and sewer utilities, and this case, formerly pending at the TCEQ, was transferred to the Commission.
3. On November 10, 2014, and January 14, 2015, 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 (Red Oak), notified the Commission that it was an affected party and was opposed to the Application.
6. On February 5, 2015, the Commission referred the Application to the 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. On March 10, 2015, the Commission issued a Preliminary Order, with a list of issues to be addressed in relation to the Application and SOAH proceeding.
8. On July 20, 2015, SOAH Order No.4 granted the parties' motion to abate the procedural schedule to engage in settlement discussions.
9. On October 14, 2015, SOAH Order No. 5 granted Carroll Water Company's motion for a new procedural schedule and the case was unabated.
10. On November 6, 2015, Commission Staff filed direct testimony of Fred Bednarski, III, and Elisabeth English.
11. On December 7, 2015, ALJs Lilo D. Pomerleau and Fernando Rodriguez convened a telephone prehearing conference, during which the following occurred and was memorialized in SOAH Order No. 8, issued on December 9, 2015:
 - a. Red Oak agreed and stipulated that the direct testimony of Mr. Birkhoff would be considered and re-designated as Red Oak's statement of position in relation to the Application but would not be deemed or considered evidence in this proceeding.
 - b. Carroll Water Company agreed to waive its pending request for sanctions against Red Oak for certain claimed violations of ALJ orders and rules of discovery.
 - c. Staff did not oppose the Application.
 - d. The hearing on the merits and hearing on Carroll Water Company's motion for sanctions, which were set for December 8, 2015, were cancelled.

12. On December 8, 2015, Applicants submitted evidence to be considered by the ALJ.

Background

13. Community Water is incorporated under the laws of the State of Texas. Community Water is in good standing with the Texas Secretary of State and the Texas Comptroller.
14. Carroll Water Company is incorporated under the laws of the State of Texas. Carroll Water Company is in good standing with the Texas Secretary of State and the Texas Comptroller.
15. Since about 1978 and through the present date, Community Water has owned and operated a Public Water System (PWS) ID 0700056, Red Oak Community System, under Certificate of Convenience and Necessity (CCN) No. 10091.
16. Red Oak Community System is a retail PWS in Ellis County that is certificated to Community Water and has approximately 117 water connections and serves a population of about 450 consumers.
17. The Red Oak Community System service area is located approximately 10 miles north of the City of Waxahachie and is generally bounded on the north by Ovilla Road, on the east by Interstate Highway 35E, and on the west by Overlook Drive, Ellis County, Texas.
18. Red Oak Community System serves the area known as Lot One (1), Block Eight (8) of Beckley Pike Estates Addition, Ellis County, Texas.
19. The Red Oak Community System service area is within the boundaries of Red Oak and is dually certificated to Red Oak and Community Water.
20. Applicants desire to transfer the real property, distribution lines, and other properties and consumer accounts associated with Red Oak Community System to Carroll Water Company and to remove Red Oak Community System out of operation under Community Water's CCN No. 10091 and add or merge Red Oak Community System into operation under the authority of Carroll Water Company's CCN No. 11543.
21. By letter agreement dated July 29, 2013, Community Water agreed to sell and transfer, and Carroll Water Company agreed to purchase and accept, the real property and water system facilities associated with and known as Red Oak Community System.
22. The letter agreement dated July 29, 2013, was formally amended and affirmed on May 8, 2015, pursuant to a written agreement between Community Water and Carroll Water Company.

23. The sale was conditioned upon the following:
 - a. Carroll Water Company's repair of the well that serviced Red Oak Community System;
 - b. The TCEQ, Commission, or other applicable regulatory agency's approval of the Application; and
 - c. Carroll Water Company's payment of \$25,000 to Community Water upon the closing of the Sale-and-Transfer transaction.
24. The letter agreement dated July 29, 2013, was formally amended and affirmed on May 8, 2015, pursuant to a written agreement between Community Water and Carroll Water Company.
25. After the sale letter agreement was signed on July 29, 2013, Carroll Water Company supervised the repairs to the well that serviced Red Oak Community System.
26. Carroll Water Company has a debt-to-equity ratio of 18.4% or .184:1, which is better than the recommended 1:1 ratio.
27. Carroll Water Company has a Debt Service Coverage Ratio (DSCR) of 11.83:1, which is better than the recommended 1.25:1 DSCR.
28. No bond or other financial assurance to ensure continuous and adequate service is required for this transaction because Carroll Water Company: (a) has a low degree of financial risk; (b) is financially capable of paying off existing debts; and (c) has the capability of obtaining debt financing in the future.
29. Carroll Water Company currently operates four PWSs with approximately 447 connections.
30. Carroll Water Company has operated, managed, and maintained public water systems in the Ellis County area since approximately 1965.
31. Since 1996, Carroll Water Company has employed Ricky Reeder as an operations manager. Mr. Reeder holds a Class C Groundwater Treatment Operator license.
32. There are no outstanding violations for any of Carroll Water Company's other PWSs and, at this time, all of Carroll Water Company's other PWSs are in compliance with the applicable rules and regulations.

33. Staff recommends that the Application be approved, that Carroll Water Company be permitted to purchase the assets and facilities known as Red Oak Community System from Community Water, serve that portion of the certificated area of Community Water's CCN No. 10091, and that the water CCNs for both Carroll Water Company and Community Water be amended, as requested in the Application.
34. No rate change is requested through the Application and the sale-and-transfer transaction will shift the dual certification from Red Oak and Community Water to Red Oak and Carroll Water Company.
35. There are no other retail public utilities of the same kind that would be affected by the transaction.
36. The water service currently provided in the service area by Red Oak Community System is adequate.
37. The transfer of the Red Oak Community System to Carroll Water Company does not require any construction or disruption of the environment.
38. No landowners, prospective landowners, tenants, or residents have requested service or any additional service, and Applicants did not apply to add additional uncertificated areas to the CCNs at issue.
39. Upon the closing of the sale-and-transfer transaction, the service of 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.
40. The public water service provided by the Red Oak Community System is adequate and sufficient to provide continuous service to the certificated area.
41. 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).
42. Community Water has customer deposits in the amount of \$4,825. Community Water has customer unpaid interest in the amount of \$90.83. Upon the closing of the sale-and-transfer transaction, Community Water will deliver to Carroll Water Company, and Carroll Water Company will accept management and oversight of Community Water's customer deposits and customer interest.
43. The TCEQ inspected Red Oak Community System and notified Community Water that there were no violations as of April 7, 2015.

B. Conclusions of Law

1. The Commission has jurisdiction over this proceeding pursuant to Texas Water Code §§ 13.004, 13.041, 13.246(c), 13.251, 13.301 and 16 Texas Administrative Code §§ 24.109 and 24.112.
2. SOAH has jurisdiction over this matter pursuant to applicable law, including 1 Texas Administrative Code § 155.51.
3. Carroll Water Company and Community Water are public utilities as defined in 16 Texas Administrative Code § 24.3.
4. The public water utility service currently provided by Red Oak Community System is adequate.
5. Public notice of the Application was provided as required by Texas Water Code § 13.301(a)(2).
6. The Application was processed in accordance with the requirements of the Administrative Procedures Act, Texas Government Code §§ 2001.001-.902, the Texas Water Code, and the Commission's rules
7. Approval of the transaction serves the public interest.
8. After consideration of the factors in Texas Water Code § 13.246(c), the Purchaser, Carroll Water Company, and Seller, Community Water, have demonstrated that Carroll Water Company has adequate financial, managerial, and technical capability for providing continuous and adequate service to every consumer within the certificated area and any areas certificated to Community Water.
9. Pursuant to 16 Texas Administrative Code § 24.112(e), the Applicants 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 unless an extension is granted, approval of this transaction is void.
10. The area served by Red Oak Community System is served with existing infrastructure, and the transfer of Red Oak Community System to Carroll Water Company does not require any construction or disruption of the environment and will maintain the environmental integrity of the area.
11. The boundaries of 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 Water's well by Carroll Water Company. Tex. Water Code § 13.246(c)(8) and (9).
13. No additional service is needed in the area certificated to the Red Oak Community System. Tex. Water Code § 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 Commission or TCEQ.
15. Carroll Water Company 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 Red Oak Community System. Tex. Water Code § 13.246(d); 16 Tex. Admin. Code § 24.03(e).
16. The Application filed by Community Water and Carroll Water Company should be granted and approved as filed. The certificated service area, assets, and facilities known as Red Oak Community System held under Community Water's CCN No. 10091 should be transferred to Carroll Water Company's CCN No. 11543.

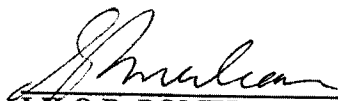
C. Ordering Paragraphs

In accordance with the above findings of fact and conclusions of law, the Public Utility Commission of Texas issues the following Order:

1. Approval is granted to complete the sale, transfer, merger proposed by Purchaser Carroll Water Company and Seller Community Water.
2. Upon the satisfaction of the criteria discussed in Ordering Paragraph Nos. 5 through 7, Staff shall file a recommendation on the sufficiency of closing documentation and the transfer of certificated service area known as Red Oak Community System Community Water's CCN to Carroll Water Company's CCN, pursuant to 16 Texas Administrative Code § 24.112.
3. The Commission's approval of the sale of Community Water's facilities expires one year from the date of this Order. Unless Carroll Water Company or Community Water 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, Carroll Water Company may not assume control of Community Water's facilities, change the name under which Community Water does business, or provide service to Community Water's customers.
5. Within 30 days after the actual effective date of the transaction, Purchaser Carroll Water Company and Seller Community Water shall file in *Community Water Service, Inc. and Walter J. Carroll Water Company Sale, Transfer, Merger Compliance Docket*, Docket No. _____ 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 Carroll Water Company and Seller Community Water shall file in *Community Water Service, Inc. and Walter J. Carroll Water Company Sale, Transfer, Merger Compliance Docket*, Docket No. _____, 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 Paragraph Nos. 5 and 6, Staff shall (a) prepare and file *Community Water Service, Inc. and Walter J. Carroll Water Company Sale, Transfer, Merger Compliance Docket*, Docket No. _____ any necessary maps, consented to by Carroll Water Company and Community Water, in compliance with this Order, and (b) prepare and file a proposed CCN in compliance with this Order.
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, are denied.

SIGNED February 17, 2016.



LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS