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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 §

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

This Order address the application of Community Water Service, Inc. and Walter J. Carroll Water Company, Inc. for the sale, transfer, or merger of facilities and certificate rights in Ellis County. On February 17, 2016, the State Office of Administrative Hearings (SOAH) administrative law judge entered a proposal for decision recommending approval of the application. The Public Utility Commission of Texas adopts the ALJ's proposal for decision recommending approval of the application. However, the Commission does not adopt the ALJ's conclusion in the proposal for decision that the Commission does not have jurisdiction over the issue of fire suppression. The Commission finds that the ALJ's conclusion regarding fire suppression is not necessary to the overall conclusion in the proposal for decision that the application be approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History

1. On July 11, 2014, Community Water Service, Inc. and Walter J. Carroll Water Company, Inc. (the 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. Carroll Water Company is the purchaser of a portion of the service area of Community Water under certain purchase and sale agreements between them.
2. Effective September 1, 2014, the Public Utility Commission of Texas began the economic regulation of water and sewer utilities, and this case, formerly pending before the TCEQ, was transferred to the Commission.

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3. On November 10, 2014 and January 14, 2015, the applicants filed proof of notice.
4. The Commission deemed the application administratively complete in Commission Order No. 4, dated December 4, 2014.
5. On January 15, 2015, the city of Red Oak, Texas 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 this docket.
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 telephonic prehearing conference, during which 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 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 the city of 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 ID 0700056, Red Oak Community System, under certificate of convenience and necessity (CCN) number 10091.
16. Red Oak Community System is a retail public water system 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, Block Eight of Beckley Pike Estates Addition, Ellis County, Texas.
19. The Red Oak Community System service area is within the municipal boundaries of the city 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 number 10091 and add or merge Red Oak Community System into operation under the authority of Carroll Water Company's CCN number 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 public water systems 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 public water systems and, at this time, all of Carroll Water Company's other public water systems 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 and serve that portion of the certificated area of Community Water's CCN number 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 the city of 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 the 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 public water system.
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.

II. Conclusions of Law

1. The Commission has jurisdiction over this proceeding under 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 the 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. Under 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 number 10091 should be transferred to Carroll Water Company's CCN number 11543.

III. 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 paragraphs 5 through 7, Commission 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 *Compliance Docket Related to Community Water Service, Inc. and Walter J. Carroll Water Company Sale, Transfer, Merger from 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)*, Docket No. 45766, 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 *Compliance Docket Related to Community Water Service, Inc. and Walter J. Carroll Water Company Sale, Transfer, Merger from Docket 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)*, Docket No. 45766, 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, Commission Staff shall (a) prepare and file in *Compliance Docket Related to Community Water Service, Inc. and Walter J. Carroll Water Company Sale, Transfer, Merger from Docket 43175 (Application of Community Water Service, Inc. and Walter J. Carroll Company, Inc. for Sale, Transfer, Merger of Facilities and Certificate Rights in Ellis County)*, Docket No. 45766 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 at Austin, Texas the 30th day of March 2016.

PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER