



Control Number: 43183



Item Number: 36

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OPEN MEETING COVER SHEET

MEETING DATE: October 8, 2015
DATE DELIVERED: October 1, 2015
AGENDA ITEM NO.: 30
CAPTION: Docket No. 43183; SOAH Docket No. 473-16-0075.WS – Application of English Acres and Dario V. Guerra III for Sale, Transfer, or Merger of Facilities of Convenience and Necessity in Jim Wells County (37864-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 Marty Marquez

All Parties of Record

FROM: Lisa Carter, Commission Advising *LJC*

RE: October 8, 2015, Open Meeting Agenda Item No. 30
Draft Preliminary Order, PUC Docket No. 43183; SOAH Docket No. 473-16-0075.WS – *Application of English Acres and Dario V. Guerra III for Sale, Transfer, or Merger of Facilities of Convenience and Necessity in Jim Wells County (37864-S)*

DATE: October 1, 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 October 8, 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 October 8, 2015 open meeting.

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**SOAH DOCKET NO. 473-16-0075.WS
PUC DOCKET NO. 43183**

APPLICATION OF ENGLISH ACRES	§	PUBLIC UTILITY COMMISSION
AND DARIO V. GUERRA III FOR SALE,	§	
TRANSFER, OR MERGER OF	§	OF TEXAS
FACILITIES AND CERTIFICATE OF	§	
CONVENIENCE AND NECESSITY IN	§	
JIM WELLS COUNTY (37864-S)	§	

DRAFT PRELIMINARY ORDER

On February 28, 2014, English Acres and Dario V. Guerra filed an application for the sale of facilities and transfer of the certificate of convenience and necessity (CCN) number 12794. Mr. Guerra seeks to acquire the entirety of the water system from English Acres. CCN number 12794 includes approximately 95 acres, and the system currently serves 37 customers.

The Texas Commission of Environmental Quality found that the application was deficient on June 16, 2014. On September 1, 2014, this case transferred to the Public Utility Commission of Texas (Commission).¹ Commission Staff recommended that the application be deemed deficient on October 28, 2014, December 14, 2014, January 21, 2015, and March 3, 2015. Pastor Mario Benitez filed a request for hearing on March 3, 2015.

Dario Guerra provided additional information to the Commission, and on March 31, 2015, Commission Staff recommended that the application be deemed sufficient for processing. Order No. 8 deemed the application sufficient for filing. On May 26, 2015, the English Acres filed affidavits of notice.

Order No. 10 extended Commission Staff's deadline to request a hearing or make a final recommendation until August 18, 2015, so that Commission Staff could review the additional information it requested from the applicants. Commission Staff never received the information it requested from the applicants so that Staff could evaluate the financial, managerial, and technical

¹ 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.

capabilities of the buyer. Because Commission Staff did not receive the information, on September 2, 2015, Staff recommended that the docket be referred to the State Office of Administrative Hearings (SOAH). On September 8, this docket was referred to SOAH. On September 23, Commission Staff timely filed a list of issues.

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 the State Office of Administrative Hearings (SOAH).² 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 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).

² TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000).

- 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 and sewer 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 and sewer 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 and sewer 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 purchaser have access to adequate financial resources to timely correct those deficiencies and problems?

6. What are the precise boundaries of the service areas that are the subject of the purchaser's application?

This list of issues is not intended to be exhaustive. The parties and the SOAH ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the SOAH ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the SOAH 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 October 2015.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY D. MARTY, COMMISSIONER

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