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APPLICATION OF WILDERNESS §
SOUND AND HDU SERVICES, LLC FOR §
SALE, TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
BURLESON COUNTY (37990-S) §

DOCKET NO. 43371

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PUBLIC UTILITY COMMISSION
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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 5 – SUPPLEMENTAL
RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to Order No. 5 – Supplemental Recommendation on Administrative Completeness. In support of its Response, Staff states the following:

I. Background

On July 20, 2014, Wilderness Sound and HDU Services, LLC filed an application with the Texas Commission on Environmental Quality (TCEQ) for the sale, transfer, or merger of the facilities and service area of Wilderness Sound, Certificate of Convenience and Necessity (CCN) No. 11699 and to obtain a CCN, pursuant to TEX. WATER CODE ANN. §§ 13.246(c), 13.254, 13.301 and 30 TEX. ADMIN. CODE Section 291.109.

On September 1, 2014, the Public Utility Commission of Texas (Commission or PUC) began the economic regulation of water and sewer utilities and this case was transferred from the TCEQ to the Commission for further review. On October 1, 2014, the Administrative Law Judge (ALJ) issued Order No. 2, which required Staff to file comments on the status of the application by October 26, 2014, including a recommendation on the application and if appropriate a proposed procedural schedule. Subsequently on October 23, 2014, January 9, 2015, and March 11, 2015, Staff found the application, including supplements, to not be administratively complete. On October 27, 2014, January 9, 2015, and March 13, 2015, Order Nos. 3, 4, and 5, respectively deemed the application incomplete and deficient, and therefore not administratively complete or ready for further review. Order No. 5 required the Applicants to amend their application to cure the deficiencies noted by Staff by March 27, 2015 and requires Staff to file a supplemental recommendation regarding administrative completeness of the amended application and notice, along with a proposed procedural schedule, on or before April 16, 2015. Therefore, this response is timely filed.

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II. Statutory and Substantive Rule Requirement

The Texas Water Code details the requirements for the sale of a water system. The relevant portions of the Texas Water Code state:

(a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall:

- (1) file a written application with the utility commission; and
- (2) unless public notice is waived by the utility commission for good cause shown, give public notice of the action.

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

...

(d) The utility commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

...

(f) Unless the utility commission holds a public hearing, the sale, acquisition, lease, or rental may be completed as proposed:

- (1) at the end of the 120-day period; or
- (2) at any time after the utility commission notifies the utility or water supply or sewer service corporation that a hearing will not be held.¹

The Commission's substantive rules detail similar requirements for the sale of a water system.² The purchaser of the water system "must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person."³ In the event that the sale of a water system includes the sale of a CCN, the Commission's substantive rules state that a CCN may not be sold "unless the commission has determined that the purchaser . . . is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under the TWC, § 13.246(c)."⁴ The factors listed in the Water Code that are to be considered by the Commission are:

¹ TEX. WATER CODE § 13.301.

² See generally 16 TAC § 24.109.

³ *Id.*

⁴ 16 TAC § 24.112(b).

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity;
- (8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.⁵

III. Staff's Recommendation

On March 27, 2015, HDU Services, LLC supplemented the application and provided an updated STM Form A with corrected language. Additionally, on March 30, 2015, HDU Services, LLC, provided a Bill of Sale for the transaction.

Staff has determined that the application, in combination with the supplemental filing, is sufficient and complete. Staff has also reviewed the proposed notice and finds it sufficient. Based on the attached memorandum of Debbie Reyes Tamayo, Program Specialist in the Commission's Water Utilities Division, Staff recommends the application be deemed sufficient for filing. In addition, Staff has included the notice to current customers, neighboring systems, and cities. At this time, Staff recommends that Applicant be allowed to proceed with notice for the proposed transaction. Staff also recommends that Wilderness Sound, CCN No. 11699 remain in the name of Wilderness Sound until the transfer is complete and approved in accordance with Commission rules.

Staff also notes that HDU Services, LLC provided a Bill of Sale dated March 19, 2015, on March 30, 2015. The Bill of Sale should not have been submitted until after the comment

⁵ TEX. WATER CODE § 13.246(c).

period of notice is completed. Therefore, HDU Services, LLC should be advised that their Bill of Sale will need to be redone and re-dated to indicate the later date.

IV. Proposed Procedural Schedule

Staff proposes the following procedural schedule for this proceeding.

May 7, 2015	Deadline for Applicant to file affidavits of notice for mailed and published notice
30 days after the mailing or publication of notice, whichever occurs later	Intervention deadline, and deadline for intervenors to file comments or request a hearing
June 11, 2015	Deadline for Commission Staff to file a supplemental procedural schedule ⁶

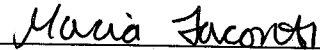
IV. Conclusion

Staff recommends that the application be deemed administratively complete and recommends the adoption of the proposed procedural schedule.

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director-Legal Division

Shelah J. Cisneros
Managing Attorney-Legal Division



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Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

DATED: April 7, 2015

⁶ Staff notes that it is not able to set additional deadlines, such as deadline for Staff to file a final recommendation or request for hearing, until the Applicant files the affidavits of notice specifying when notice was complete.

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CERTIFICATE OF SERVICE


I certify that a copy of this document will be served on all parties of record on this the 7th of April, 2015, in accordance with P.U.C. Procedural Rule 22.74.

Maria Faconti
Maria Faconti

PUC Interoffice Memorandum

To: Maria Faconti, Attorney
Legal Division

Through: Tammy Benter, Director
Water Utility Division

From:  Debbie Reyes Tamayo, Program Specialist
Water Utility Division

Date: April 7, 2015

Subject: Docket No. 43371, Application of Wilderness Sound and HDU Services, LLC for Sale, Transfer, or Merger of Facilities and Certificate of Convenience and Necessity (CCN) in Burleson County (37990-S)

On July 20, 2014, HDU Services, LLC, (Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ) for the Sale, Transfer, Merger (STM) of the facilities and service area of Wilderness Sound, CCN No. 11699 and to obtain a new CCN. The application was filed pursuant to the criteria in Section 13.301 of the Texas Water Code. Effective September 1, 2014, jurisdiction over the economic regulation of water and sewer utilities was transferred from the TCEQ to the Public Utility Commission (PUC). This transfer included the rates and CCN programs for water and sewer utilities. This application was affected by the transfer and is now under the purview of the PUC. The application is being reviewed under the PUC's Substantive Rules §§24.109 and 24.112.

Based on a review of the information in the application and the proposed notice received March 27, 2015, from HDU Services, LLC, I recommend the application be deemed administratively complete and sufficient for filing. I further recommend the Applicant be ordered to do the following:

- 1) Provide notice of the application to:
 - a) any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two miles of the proposed service area;
 - b) any city with an extraterritorial jurisdiction which overlaps the proposed service area; and
 - c) any customers transferred, or other affected parties in the requested area.

- 2) Include copy of a map showing the proposed service area with the individual notices to neighboring utilities, other affected parties and each landowner. It is the Applicant's burden to provide an accurate map delineating the proposed area with each individual notice. Information related to districts including addresses can be obtained by the

Applicant from the TCEQ web site located at <http://www14.tceq.texas.gov/iwud/>.

- 3) Notify **Burleson, Lee, and Washington Counties** in addition to the neighboring entities listed in the application.
- 4) By May 7, 2015, the Applicant should submit a copy of the actual notice issued, the map issued with the individual mailed notice, and the signed affidavit (copy attached) that the notice was given.

TB/DRT

Notice to Current Customers, Neighboring Systems and Cities

Wilderness Sound 'S
(Seller's or Transferor's Name)

NOTICE OF INTENT TO SELL FACILITIES AND TRANSFER CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO 11699 TO HDU Services LLC/ Dustin J. Lozano
(Purchaser's or Transferee's Name)
IN Burleson COUNTY, TEXAS

To: (Name of Customer, Neighboring System or City) Date Notice Mailed , 20

(Address)
City State Zip

Wilderness Sound 2714 Finfeather RD Bryan, TX 77801
Sellers or Transferors' Name Address City/State/Zip Code

has submitted an application with the Public Utility Commission of Texas to sell facilities and transfer water or sewer (please select) CCN No. 11699 in Burleson [County Name]

County to:

HDU Services, LLC / Dustin J. Lozano 13193 County Road 424 Somerville, TX 77879
Purchasers or Transferee's Name Address City/State/Zip Code

The sale is scheduled to take place as approved by the Commission (V.T.C.A., Water Code §13.301). The transaction and the transfer of the CCN include the following subdivision(s):

Wildernes Sound

The area subject to this transaction is located approximately 7 miles Southwest [direction] of downtown Lyons, [City or Town] Texas, and is generally bounded on the north by the intersection of Overlook Loop and Houston Ave.; on the east by Birch Creek; on the south by the intersection of Redskins Rd. and State Park Rd. 57; and on the west by State Park Rd. 57

The total area being requested includes approximately 650 acres and serves 132 current customers. This transaction will have the following effect on the current customer's rates and services: Provide a more reliable source of safe drinking water. "The rates will remain the same and will not affect the current customers".

Affected persons may file written protests and/or request a public hearing within 30 days of this notice.

To request a hearing, you must:

- (1) state your name, mailing address and daytime telephone number;
- (2) state the applicant's name, application number or another recognizable reference to this application;
- (3) include the statement "I/we request a public hearing";
- (4) write a brief description of how you, the persons you represent, or the public interest would be adversely affected by the proposed transaction and transfer of the CCN; and
- (5) state your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

Only those persons who submit a written request to be notified of a hearing will receive notice if a hearing is scheduled. The Commission will issue the CCN requested in the referenced application unless a hearing is scheduled to consider the transaction. If no protests or requests for hearing are filed during the comment period, the Commission may issue the CCN 30 days after publication of this notice.

Persons who wish to protest or request a hearing on this application should write the:

Filing Clerk
Public Utility Commission of Texas
1701 North Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

**Se desea informacion en Espanol, puede llamar al
1-888-782-8477**

Dustin J. Lozano

Utility Representative

HDU Services, LLC

Utility Name