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DOCKET NO. 43371

**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) §**

2015 JUN 11 AM 10:10
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

COMMISSION STAFF'S RESPONSE TO ORDER NO. 6 AND RECOMMENDATION ON SALE

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to Order No. 6 and Recommendation on Sale. 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 (TWC) and 30 TEX. ADMIN. CODE Section 291.109 (TAC).

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. On April 7, 2015, Staff recommended that the application and notice be deemed sufficient and complete. On April 8, 2015, Order No. 6 found the application and notice

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sufficient and established June 11, 2015 as the deadline for Commission Staff to file a supplemental procedural schedule. Therefore, this response is timely filed.

II. Recommendation

After review of the application, in combination with the supplemental filing, Staff recommends the Applicants to be allowed to proceed with the transaction. As further explained in the attached memorandum of Debbie Reyes Tamayo, Program Specialist in the Commission's Water Utilities Division, Staff finds the transaction will serve the public interest and recommends Applicant be allowed to proceed with the proposed transaction. Staff finds that with respect to the Applicant's technical capability, Mr. Lozano, owner and operator of HDU Services LLC, has 20 years of experience in implementing, maintaining, and operating public water systems, and currently holds a Class C operator license. The Applicant has experienced operators with thorough knowledge about water operations and the requirement for continuous and adequate service. In addition, Staff finds that HDU has the financial capability to pay for facilities necessary to provide continuous and adequate service as demonstrated by the debt service coverage ratio, which was calculated to be \$95,000 to \$68,200 or 1.39 to 1.00.

Staff further recommends that the Applicant be ordered to file documentation as evidence that all assets have been transferred to the acquiring entity and that the disposition of any remaining deposits have been addressed as soon as possible, pursuant to 16 TAC § 24.109(f). At that time, Staff will make a final recommendation regarding the filed documents. In addition, Staff notes that the Commission's approval for sale will expire one year after the Commission's written approval of the sale.¹

III. Conclusion

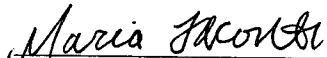
Staff recommends the Applicants to be allowed to proceed with the transaction. In addition, Staff urges the parties to promptly provide the final sale documents so that final mapping can be completed.

DATED: June 11, 2015

¹ Pursuant to 16 TAC 24.112(e), approval of a sale expires one year from the date of the commission's written approval of sale. 16 TCA 24.112(e) further specifies that if the sale has not been consummated within the one-year period and unless the applicant has requested and received an extension from the commission, the approval is void and the applicant must reapply for approval of the sale. The commission will review the application as though it was being filed for the first time (*de novo*).

Respectfully Submitted,
Margaret Uhlig Pemberton
Division Director-Legal Division

Shelah J. Cisneros
Managing Attorney-Legal Division



Maria Faconti
Attorney-Legal Division
State Bar No. 24078487
(512) 936-7235
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

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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 11th of June, 2015, in accordance with P.U.C. Procedural Rule 22.74.



Maria Faconti

PUC Interoffice Memorandum

To: Maria Faconti, Attorney
Legal Division

Through: Tammy Benter, Director
Water Utility Division

From: *DKT*
6-11-15 Debbie Reyes Tamayo, Program Specialist
Water Utility Division

Date: June 11, 2015

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

On July 20, 2014, HDU applied to purchase facilities and transfer all the service area and customers from Certificate of Convenience and Necessity (CCN) No. 11699 held by Wilderness Sound Birch Creek d/b/a in Brazos County. As a result of the proposed transaction, HDU will acquire CCN No. 11699 from Wilderness Sound. The application was filed pursuant to the criteria in the Texas Water Code (TWC) §§ 13.241, 13.246, and 13.301, and the Texas Commission on Environmental Quality's (TCEQ) rules in 30 Tex. Admin. Code §§ 291.102, 291.109 and 291.112 (TAC). On September 1, 2014, the rates and CCN programs were transferred from the TCEQ to the Public Utility Commission (PUC or Commission). This application was part of the transfer and is now under the PUC's purview. The application is now being reviewed under 16 TAC §§ 24.102, 24.109 and 24.112 and TWC §§ 13.241, 13.246, and 13.301.

The application was received by the TCEQ Commission on July 23, 2014 and was transferred to the Commission on September 1, 2014. Thereafter, the application was accepted for filing by the Commission on April 7, 2015. Proper public notice was provided on May 4, 2015, to neighboring systems, landowners, cities, and affected parties in Brazos County in accordance with 16 TAC § 24.112(c). The affidavit was received by the Commission on May 7, 2015. The comment period ended June 5, 2015, and no protests or requests for hearing were received by the Commission.

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Pursuant to TWC § 13.301(e), before the expiration of the 120-day notification period, the Commission is required to notify all known parties to the transaction whether the Commission will hold a hearing to determine if the transaction will serve the public interest. For this case, I do not believe a hearing is necessary because I believe the transaction will serve the public interest based on my review of the information in the application and the criteria listed below. I find HDU demonstrates adequate financial, managerial, and technical capability to provide service to the area subject to this application, as required by TWC § 13.301(b). In my review of the public interest factors and the financial, managerial, and technical capability of the Applicant, I reviewed the requested transaction pursuant to TWC § 13.246(c). Under this statute, the Commission shall consider the following nine criteria when granting a CCN:

- TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area. The requested transaction includes the water utility service from the Yegua Water System (Yegua), Public Water System (PWS) No. 0260039 and Birch Creek Village Water (Birch Creek), PWS No. 0260042, consisting of 650 acres and 132 current customer connections and facilities. There are no outstanding violations for either system; however, both systems, on their own, are operating at 85% of their capacity based on TCEQ's minimum requirements in 30 TAC § 290, Subchapter D. In the application, HDU stated that after the transaction is complete HDU will acquire an approved loan from Citizen Bank to upgrade the systems and to interconnect it to bring them into compliance with a shared water source. The transfer will allow the system to provide more reliable source of water.
- TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area. The fact that there are existing customers in the requested area demonstrates the need for service.
- TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient and on any other retail water utility servicing the proximate area. Only the Applicants and the current customers will be affected by this transaction. In the application, HDU stated that after the transaction is complete HDU will acquire an approved loan from Citizen Bank that will allow it to upgrade the systems and to interconnect the systems and bring them into compliance with a shared water source.

The transfer will allow the system to provide more reliable source of water and to ultimately improve the quality of utility service.

- TWC § 13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service. The Applicant is an existing water utility and will provide water service using the existing systems, pending the closure and approval of the transaction. Under current ownership, the systems are operating at 85% of their capacity based on TCEQ's minimum requirements in 30 TAC § 290, Subchapter D. In the application, HDU stated that after the transaction is complete HDU will upgrade the systems and interconnect them to bring them into compliance with a shared water source. The transfer will improve the adequacy of water for the requested area.
- TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility. In this case, the area is already receiving service and no additional service is needed. Therefore, it is not necessary to consider the feasibility of obtaining service from another entity since the area is already being served.
- TWC § 13.246(c)(6) requires the Commission to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service. HDU noted that the transfer of the system will allow him to obtain the approved loan from Citizen State Bank to upgrade the system to provide safe water with uninterrupted service. To demonstrate that HDU has the financial capability, HDU provided a historical balance sheet for years 2009 through 2013 and income tax returns for FY 2013 and FY 2012. For the accounting year 2013, HDU reported total equity in the amount of \$424,000. HDU's total long term debt to equity ratio for 2013 was \$310,000 to \$424,000, or 0.73 to 1.00. A ratio of less than 1 to 1 is preferred for analysis of financial/managerial capabilities because lower ratios means that the utility has less debt and this reduces risk. For Tax Year 2013, net operating income was \$19,100 and depreciation was \$76,000. Cash payments for principle and interest payments on long term debt for FY 2013 were \$68,200. Therefore, the debt service coverage ratio calculates to be \$95,000 to \$68,200 or 1.39 to 1.00. A ratio of at least 1.25:1 is preferred when reviewing financial capability to ensure that reserve funds for debt payment and repairs and maintenance are built up and maintained. Additionally working capital and cash for 2013 were reported for a total balance of \$67,100. Because of the healthy ratios

exhibited by the acquiring entity in this transaction, I believe HDU has the financial capability to pay for facilities necessary to provide continuous and adequate service.

- TWC §§ 13.246(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate. In this situation, because the infrastructure is mostly in place, there will be a minimal impact on the environment and the land during the time frame that the lines between the two systems will be interconnected.
- TWC § 13.246(8) required the Commission to consider the probable improvement in service or lowering of cost to consumers. The customers' rates will not be affected through this transaction as they will remain the same; however, HDU plans to increase the rates in the future to offset costs of future system improvements.

With respect to the Applicant's technical capability, Mr. Lozano, owner and operator of HDU Services LLC, has 20 years of experience in implementing, maintaining, and operating public water systems, and currently holds a Class C operator license. The Applicant has experienced operator's thorough knowledge about water operations and is able to provide continuous and adequate service to the area subject to this application.

Pursuant to 16 TAC § 24.109(f), Staff recommends the Commission find that the transaction will serve the public interest and allow the Applicant to proceed with the proposed transaction. Staff further recommends that a public hearing is not necessary. Staff also recommends that the Applicant be ordered to file documentation as evidence that all assets have been transferred to the acquiring entity and that the disposition of any remaining deposits have been addressed as soon as possible pursuant to 16 TAC § 24.109(f).

TB/DRT