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**APPLICATION OF LAKE
LIVINGSTON WATER SUPPLY AND
SEWER SERVICE CORPORATION
AND TYLER COUNTY WATER
SUPPLY CORPORATION FOR SALE,
TRANSFER, OR MERGER OF
FACILITIES AND CERTIFICATE
RIGHTS IN TYLER COUNTY (37966-S)**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its Recommendation on Final Disposition. Staff recommends that the Commission approve the application and the proposed sale and transfer transaction. In support of its Recommendation on Final Disposition, Staff states the following:

I. Background

On June 30, 2014, Lake Livingston Water Supply and Sewer Service Corporation (Lake Livingston WSC) filed an application with the Texas Commission on Environmental Quality (TCEQ). Lake Livingston WSC requested approval of the sale and transfer of its water certificate of convenience and necessity (CCN No. 10147) and its accompanying water system for the Wayward Winds Estates subdivision in Tyler County, Texas. Tyler County Water Supply Corporation (Tyler County WSC) is the purchaser/transferee. As part of the application, Lake Livingston WSC and Tyler County WSC also requested an amendment to Tyler County WSC's CCN No. 11528.

Effective September 1, 2014, the Commission began the economic regulation of water and sewer utilities. This proceeding, which was pending at the TCEQ, was transferred to the Commission for processing.

On July 21, 2015, the Administrative Law Judge entered Order No. 10, which established July 31, 2015 as the deadline for Staff to either request a hearing or file its recommendation on final disposition. Staff's Recommendation on Final Disposition is timely filed.

II. Applicable Legal Standards

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.¹

The Commission's substantive rules detail similar requirements for the sale of a water system.² The purchaser of a 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

With regards to the sale and transfer of a certificate of convenience and necessity, the Texas Water Code states that a certificate of convenience and necessity may not be sold "unless the utility 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 Section 13.246(c) [of the Texas Water Code]."⁴ The factors to be considered by the Commission are:

- (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;

¹ Tex. Water Code § 13.301(a)-(b).

² See generally 16 Tex. Admin. Code § 24.109.

³ 16 Tex. Admin. Code § 24.109(b).

⁴ Tex. Water Code § 13.251. See also 16 Tex. Admin. Code § 24.112(b).

(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

Approval of the sale and transfer of a certificate of convenience and necessity expires one year after the date of approval.⁶

III. Staff's Recommendation

Staff recommends that the Commission approve Lake Livingston WSC and Tyler County WSC's application and approve the sale and transfer transaction between Lake Livingston WSC and Tyler County WSC. Tyler County WSC has the financial, managerial, and technical capability to provide continuous and adequate service to the certificated area under water CCN No. 10147. Thus, the application meets the requirements of 16 Tex. Admin. Code §§ 24.109 and 24.112. Staff's recommendation on Tyler County WSC's application is based on the attached memorandum of Debbie Reyes Tamayo in the Water Utilities Division.

⁵ Tex. Water Code § 13.246(c).

⁶ 16 Tex. Admin. Code § 24.112(e).

A. Tyler County WSC has adequate financial, managerial, and technical capability

Staff has determined that Tyler County WSC has adequate financial, managerial, and technical capability to provide continuous and adequate service to the certificated area under water CCN No. 11439 and its other certificated areas. With regards to financial capability, Staff reviewed various financial documents submitted by Lake Livingston WSC and Tyler County WSC as part of their application. For fiscal year 2012, Tyler County WSC had long-term debt of \$1.8 million and total net assets of \$1.3 million, resulting in a debt-to-equity ratio of 1.38 to 1. While a debt-to-equity ratio of less than 1 to 1 is preferred, Tyler County WSC had other financial ratios that were more favorable. Tyler County WSC's debt service coverage ratio was 2.57 to 1, which is greater than the preferred ratio of 1.25 to 1. Additionally, Tyler County WSC's current ratio was 3.16 to 1, which is greater than the preferred ratio of 1 to 1. With regards to managerial and technical capability, Tyler County WSC provides service to over 2,000 customers in Tyler County, Texas. Tyler County WSC has an operator that holds a Class C operator license, an operator that holds a Class B Ground Water Treatment operator license, and a customer service inspector that maintains and operates public water systems.

B. Tyler County WSC is capable of providing adequate and continuous service

Staff has determined that Tyler County WSC is capable to provide continuous and adequate service to the certificated area under water CCN No. 10147. Staff's determination is based on the following factors listed in Tex. Water Code § 13.246(c):

1. Adequacy of service currently provided to the certificated area under water CCN No. 10147. Based on its review of TCEQ records, Staff has determined that adequate service is currently being provided to the service area. Retail water utility service is currently provided by the Wayward Winds Estates Public Water System No. 2290014. TCEQ records indicate that this system has no unresolved violations, pending enforcement actions, or complaints.
2. Need for service in the certificated area under water CCN No. 10147. There are currently sixteen (16) existing customers that need service.
3. The effect of granting an amendment to water CCN No. 10147. Only Lake Livingston WSC's current customers in the service area will be affected with respect to having a different retail water provider.

4. The ability of Tyler County WSC to provide adequate service. Tyler County WSC is an existing retail water utility, and it will provide water service using the existing water system.

5. The feasibility of obtaining water service from an adjacent retail public utility. Staff did not evaluate this factor.

6. The financial ability for Tyler County WSC to pay for facilities necessary to provide continuous and adequate service. The existing water system does not have any outstanding violations and does not require major capital improvements or repairs.

7. Impact on environmental integrity. There will be no impact on environmental integrity because there is a pre-existing water system in place.

8. Improvement of service or lower of cost to customers. Lake Livingston WSC customers will be charged the rates that Tyler County WSC charges its other customers.

9. Effect on land. There will be no effect on the land in the certificated area under water CCN No. 11439 because there is a pre-existing water system in place, and this pre-existing water system does not currently need any repairs or improvements.

IV. Conclusion

Staff recommends that the Commission approve Lake Livingston WSC and Tyler County WSC' application and approve the sale and transfer transaction between Lake Livingston WSC and Tyler County WSC. Tyler County WSC has the financial, managerial, and technical capability to provide continuous and adequate service in the service area.

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Date: July 31, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division



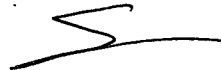
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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on July 31, 2015, in accordance with 16 TAC § 22.74.



Sam Chang

PUC Interoffice Memorandum

To: Sam Chang, Attorney
Legal Division

Through: Tammy Benter, Director
Water Utilities Division

From: Debbie Reyes Tamayo, Program Specialist
Water Utilities Division

Date: July 28, 2015

Subject: **Docket No. 43712;** *Application of Tyler County Water Supply Corporation and Lake Livingston Water Supply and Sewer Service for Sale, Transfer and Merger of Water Certificate Rights*

On July 3, 2014, Tyler County Water Supply Corporation ("Tyler County WSC" or "Buyer"), Certificate of Convenience and Necessity (CCN) No. 11528, and Lake Livingston Water Supply and Sewer Service ("Lake Livingston" or "Seller") (jointly called "Applicants") filed an application with the Texas Commission on Environmental Quality (TCEQ) to transfer a portion of CCN No. 10147 from Lake Livingston to Tyler County WSC in Tyler County. The proposed transaction transfers the customers, facilities and service area for the Wayward Winds Estates Subdivision from Lake Livingston to Tyler County WSC. As a result of the transaction, service for the Applicants' respective water CCNs will be amended to reflect the transfer. The application was filed pursuant to the criteria in the Texas Water Code §§ 13.241, 13.246, and 13.301 (TWC). On September 1, 2014, the rates and CCN programs were transferred from the Texas Commission on Environmental Quality (TCEQ) to the Public Utility Commission (PUC). This application was part of the transfer and is now under the PUC's purview. The application is now being reviewed under 16 Tex. Admin. Code §§24.102, 24.109 and 24.112 (TAC) and TWC §§13.241, 13.246 and 13.301.

The Applicant filed a sufficient large scale map on June 3, 2015, and a sufficient small scale map on July 7, 2015. The Notice updates and 2-mile notice list provided in overlap check was completed on May 6, 2015. After review of the maps and documents the Applicant has cured the deficiencies therefore, Staff recommends that the application be deemed sufficient for filing.

Proper public notice was provided on May 28, 2015, to neighboring systems, landowners, cities and affected parties in Tyler County in accordance with 16 TAC § 24.112(c). The affidavit was received by the PUC Commission on June 3, 2015. The comment period ended June 28, 2015, and no protests or requests for hearing were received.

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 transaction will serve the public interest. For this case, I do not believe a hearing is necessary because the transaction will serve the public interest based on my review of the information in the application and the criteria listed below. I believe Tyler County WSC demonstrates adequate financial, managerial and technical (FMT) capability to provide service to the area subject to this application. In my review of the public interest factors and the FMT capability of the Applicant, I reviewed the requested amendment pursuant to TWC §13.246(c). Under this statute, the Commission shall consider the following nine criteria when amending a CCN:

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- TWC §13.4246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area. The requested transaction includes the retail water utility service provided by the Wayward Winds Estates Public Water System (PWS) No. 2290014. The requested transaction consists of 93 acres, 16 current customer connections, and the Wayward Winds Estates PWS's facilities. Reviews of TCEQ records indicate that the PWS has no unresolved violations, enforcement actions or complaints. Therefore, I believe adequate service is currently provided in the requested area.
- TWC §13.246(c)(2) requires the Commission to consider the need for service in the requested area. The fact that there are 16 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. Lake Livingston will be positively affected by the sale of the system to Tyler County WSC. Lake Livingston's offices are over 40 miles away, and they are currently having to travel 90 miles round trip to maintain and operate the Wayward Winds Estates PWS to serve only 16 connections. Lake Livingston stated that this is inefficient from a cost perspective to their utility. Tyler County WSC services in close proximity to the Wayward Winds Estates PWS and therefore, it is more cost effective and efficient for Tyler County WSC to serve the proposed area.
- 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 system, pending the closure and approval of the transaction.
- 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 from the Applicant 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. The existing system does not have any outstanding violations and does not require major capital improvements or repairs.
- 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, there will no impact on the environment or the land as the system is already in place and does not need any repairs or improvements at this time.
- TWC § 13.246(8) required the commission to consider the probable improvement in service or lowering of cost to consumers. The customers' rates will be charged the same rates as all other Tyler County WSC customers appearing to be less. The transaction will have no impact on the quality of service and only applies to the Wayward Winds Estates subdivision. Tyler County WSC provides adequate and continuous service to over 2,000 customers in Tyler County and has done so for over 30 years. This transaction is to help the subdivision become very efficient from cost perspectives.

Tyler County WSC has the financial and managerial capability to provide continuous and adequate service to the proposed area. Tyler County WSC proposes to purchase the Wayward Winds Estates subdivision portion of Lake Livingston's existing water CCN service area. Customers of the proposed area will be charged the same rate as the Tyler County WSC's current customers. Tyler County WSC provided audited financial statements for Fiscal Year (FY) 2012 and FY 2011. The auditor issued an unqualified opinion. Total net assets for FY 2012 were reported in the amount of \$1.3 million. Applicant's total long term debt to equity ratio for 2013 was \$1.8 million to \$1.3 million, or 1.38 to 1.00. A ratio of less than 1 to 1 is preferred for analysis of financial/managerial capabilities. This ratio measures the proportion of assets that are funded by debt to those funded by equity and it gives you an idea of how much a company uses debt to pay for operations. Although this ratio is greater than 1 to 1,

I also considered that Tyler County WSC's operating income for FY 2012 was \$152,000 and depreciation expense was \$251,000; principle and interest expense on long term debt for FY 2013 was \$157,000. Therefore, the debt service coverage ratio calculates to be \$403,000 to \$157,000 or 2.57 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, I noted current assets were reported for FY 2013 in the amount of \$576,000 and current liabilities in the amount of \$182,000. The current ratio calculates to be \$576,000 to \$182,000 or 3.16 to 1.00. A ratio of at least 1:00 is preferred when reviewing financial capability because it demonstrates an entity's ability to pay current debts. Tyler County WSC also provide a compiled income statement for January through October 2013 which indicated operating income was \$123,000 inclusive of depreciation expense of \$123,000.

With respect to the Buyer's technical capability, the Buyer has experienced operators on staff with thorough knowledge about water operations and the requirement for continuous and adequate service of operation for water utility systems. The experienced operator's hold a Class C operator license, Class B Ground Water Treatment operator license and also have a customer service inspector to implement, maintain, and operate public water systems.

Pursuant to 16 TAC § 24.109(f), Staff recommends the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Staff further recommends that a public hearing is not necessary. Staff also recommends that the Applicants 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

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