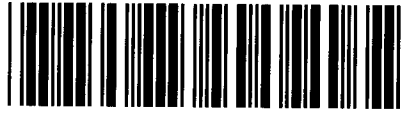


Control Number: 44046



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PLANNING DEPARTMENT

# OPEN MEETING COVER SHEET

**MEETING DATE:** July 30, 2015

**DATE DELIVERED:** July 23, 2015

**AGENDA ITEM NO.:** 3

**CAPTION:** Docket No. 44046; SOAH Docket No. 473-15-4390.WS - Application of Laguna Vista, Ltd. and Laguna Tres, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hood County

**ACTION REQUESTED:** Discussion and possible action with respect to Preliminary Order

- Distribution List:
- Commissioners' Office (9)
  - Lloyd, Brian
  - Whittington, Pam
  - Phillips, Michael
  - Central Records
  - Rogas, Keith (2)
  - Pemberton, Margaret (5)
  - Journey, Stephen
  - Kramer, John
  - Hernandez, Nancy
  - Burch, Chris
  - Tietjen, Darryl (2)
  - Long, Mick (2)
  - Smyth, Scott (2)
  - Benter, Tammy (3)

**Donna L. Nelson**  
Chairman

**Greg Abbott**  
Governor



**Kenneth W. Anderson, Jr.**  
Commissioner

**Brandy Marty Marquez**  
Commissioner

**Brian H. Lloyd**  
Executive Director

***Public Utility Commission of Texas***

2015 JUL 23 AM 9:10  
PUBLIC UTILITIES CLERK

TO: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: John Kramer, Commission Advising

RE: July 30, 2015, Open Meeting Agenda Item No. 3  
Draft Preliminary Order, P.U.C. Docket No. 44046; SOAH Docket No. 473-15-4390.WS – *Application of Laguna Vista, Ltd. and Laguna Tres, Inc. for a Sale, Transfer, or Merger of Facilities and Certificate Rights in Hood County.*

DATE: July 23, 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 July 30, 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 July 30, 2015 open meeting.

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**SOAH DOCKET NO. 473-15-4390.WS  
PUC DOCKET NO. 44046**

2015 JUL 23 AM 9:18

**APPLICATION OF LAGUNA VISTA,  
LTD. AND LAGUNA TRES INC. FOR  
SALE, TRANSFER, OR MERGER OF  
FACILITIES AND CERTIFICATE  
RIGHTS IN HOOD COUNTY**

§  
§  
§  
§  
§

**PUBLIC UTILITY COMMISSION  
  
OF TEXAS**

FILING CLERK

**DRAFT PRELIMINARY ORDER**

On December 30, 2014, Laguna Vista, Ltd. (seller) and Laguna Tres Inc. (purchaser) filed an application with the Public Utility Commission for the sale, transfer or merger of facilities and certificate rights in Hood County, Texas. Specifically, Laguna Tres seeks approval to acquire all of the water and sewer assets of Laguna Vista. The application requests that Laguna Vista's water Certificate of Convenience and Necessity No. 11983 be cancelled and the assets transferred to Laguna Tres. Additionally, the application requests the transfer of Laguna Vista's sewer CCN No. 20766 to Laguna Tres. In the first year following the prospective acquisition, Laguna Tres projects serving approximately 445 taps.<sup>1</sup>

On June 22, 2015, the Commission referred this docket to the State Office of Administrative Hearings (SOAH). On July 10, 2015, Commission Staff timely filed a proposed list of issues. Laguna Vista and Laguna Tres jointly filed a list of issues also on July 10, 2015.

**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 SOAH.<sup>2</sup> After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

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<sup>1</sup> Application at 13.

<sup>2</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2008 & Supp. 2014).

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).
    - 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?

## **II. Effect of Preliminary Order**

The Commission's discussion and conclusions in this Order regarding issues that are not to be addressed should be considered dispositive of those matters. Questions, if any, regarding issues that are not to be addressed may be certified to the Commission for clarification if the SOAH ALJ determines that such clarification is necessary. As to all other issues, 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 July 2015.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**DONNA L. NELSON, CHAIRMAN**

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**KENNETH W. ANDERSON, JR., COMMISSIONER**

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**BRANDY MARTY MARQUEZ, COMMISSIONER**

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