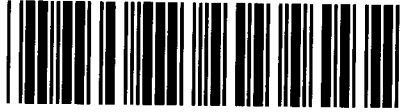




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P.U.C. DOCKET NO. 44870

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PUBLIC UTILITY COMMISSION  
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OF TEXAS

APPLICATION OF TERRA §  
SOUTHWEST INC. AND TOWN OF §  
LITTLE ELM FOR SALE, §  
TRANSFER, OR MERGER OF §  
CERTIFICATE RIGHTS IN DENTON §  
COUNTY

**COMMISSION STAFF'S FINAL RECOMMENDATION**

COMES NOW the Staff of the Public Utility Commission of Texas, representing the public interest, and files Commission Staff's Final Recommendation. In support thereof, Staff shows the following:

**I. BACKGROUND**

On June 23, 2015, Terra Southwest Inc. (Terra Southwest) and the Town of Little Elm (Little Elm) filed an application for the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Denton County. In the application, Terra Southwest proposes to transfer a portion of its existing water utility CCN containing the Hilltown subdivision from Terra Southwest CCN No. 11608 to the Town of Little Elm CCN No. 11202.

In Order No. 3, the administrative law judge (ALJ) set a deadline of January 12, 2016 for Staff to file a Final Recommendation. This pleading is timely filed.

**II. FINAL RECOMMENDATION**

Consistent with the memorandum of Leila Guerrero of the Water Utilities Division (Attachment A), Staff recommends approval to proceed with the proposed transaction. Little Elm has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the proposed area and any existing area currently served by Southwest Terra. Additionally, Staff recommends that the proposed transaction will serve the public interest and that a public hearing is not necessary.

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### III. PROCEDURAL SCHEDULE

Staff proposes the following procedural schedule:

Event	Date
Deadline for parties to file a response to Staff's recommendation.	January 19, 2015
Expiration of 120-day deadline for Commission action on STM (approval or denial of sale/transfer to proceed)	February 11, 2016
Deadline for the Applicants to file status updates	If Staff's final recommendation is adopted by the ALJ, every 30 days from the issuance of the order
Expiration of the Commission's conditional approval	One (1) year from the date of Commission approval to proceed with the transaction

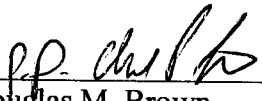
### III. CONCLUSION

Staff respectfully requests the issuance of an order consistent with the above recommendation.

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

Stephen Mack  
Managing Attorney  
Legal Division

  
\_\_\_\_\_  
Douglas M. Brown  
Attorney-Legal Division  
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Public Utility Commission of Texas  
1701 N. Congress Avenue  
P. O. Box 13326  
Austin, Texas 78711-3326

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on January 12, 2016, in accordance with 16 TAC § 22.74.

  
\_\_\_\_\_  
Douglas M. Brown

## PUC Interoffice Memorandum

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**To:** Douglas Brown, Attorney  
Legal Division

**Thru:** Tammy Benter, Director  
Lisa Fuentes, Work Leader  
Water Utilities Division

**From:** Leila Guerrero, Regulatory Accountant/Auditor  
Water Utilities Division

**Date:** December 16, 2015

**Subject:** *Docket No. 44870, Application of Terra Southwest, Inc. (Terra Southwest) and Town of Little Elm (Town) for Sale, Transfer, or Merger (STM) of Certificates Rights in Denton County, Texas*

On June 23, 2015, the Town of Little Elm (“Purchaser” or “Town”) filed an application for the STM of a portion of the existing water Certificates of Convenience and Necessity (CCN) No. 11608. The proposed transaction involved the transfer of the Hilltown Subdivision from Terra Southwest to the Town in Denton County, Texas. Specifically, the Town’s water CCN No. 11202 will be expanded to include the facilities and customers of the Hilltown Subdivision and Terra Southwest’s CCN No. 11608 will be amended to remove the proposed service area. There are 16 current water customers in the proposed area. This application is being reviewed pursuant to the criteria in the Tex. Water Code Ann. §§ 13.241, 13.246, and 13.301 (TWC) and 16 Tex. Admin. Code §§ 24.102, 24.109, and 24.112 (TAC).

The application was accepted for filing by the Commission on September 22, 2015. Notice to customers, neighboring systems, and affected parties was provided on October 4, 2015. The affidavit was received by the Commission on October 22, 2015. The comment period ended November 3, 2015, and no protests or requests for hearing were received by the Commission. Public notice was proper for the transaction.

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 that the Town 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 Purchaser, 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 proposed area is currently served by Terra Southwest through Public Water System (PWS) Identification (ID) No. 0610112, known as the Hilltown Addition water system. The facilities subject to this application include 164 acres and 16 water current connections. Review of the records of the Texas Commission on Environmental Quality (TCEQ) indicate that the PWS has no unresolved violations or complaints. The transfer of facilities and service area will allow the Town the opportunity to provide a more reliable source of water service in the area. Therefore, I believe adequate service will be 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 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 of a certificate or of an amendment on the recipient and on any other retail water utility servicing the proximate area. Only the Town, Terra Southwest, and the current customers will be affected by this transaction. As a result of the proposed transaction, the Commission will amend the Town's water CCN No. 11202 to include the facilities, customers, and service area of a portion of Terra Southwest's water CCN No. 11608. The portion of Terra Southwest to be transferred is the Hilltown Addition water system located inside the Town's corporate limits.
- TWC §13.246(c)(4) requires the Commission to consider the ability of the Purchaser to provide adequate service. The Purchaser will provide retail water utility service using the existing water systems being acquired, pending the closure and approval of the transactions.
- 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 residents in the proposed area are 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 Purchaser 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 be no impact on the environment and the land as the water systems are already in place and do not need any repairs or improvements at this time.
- TWC § 13.246(8) requires the commission to consider the probable improvement in service or lowering of cost to consumers. The customers' water rates will not be affected by the transaction as the rates will remain unchanged.

With respect to the Town's financial and managerial capability, the Town's audited financial statements for 2014 were provided with the application. The Town's Comprehensive Annual Financial Report (CAFR) for the Fiscal Year (FY) Ended September 30, 2014, was submitted with the original application. The CAFR includes an *Independent Auditor's Report* which states that "they have audited the accompanying financial statements of the government activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the Town as of September 30, 2014, and the related notes to the financial statements, which collectively comprise the Town's basic financial statements as listed in the table of contents." The auditor's report also states that the respective changes in financial position, and, where applicable, cash flows thereof for the year then ended in accordance with accounting principles generally accepted in the United States of America.

The Town's total assets were \$213.78 million and net position of \$130.44 million. The Town's long term debt to net position ratio at September 30, 2014, for the primary government fund was \$76.97 million to \$130.44 million, or 0.59 to 1.00 (0.59:1). The Town's Proprietary Funds – Water and Sewer's total assets were \$69.16 million; long term debt to net position ratio as of September 30, 2014, was \$29.59 million to \$35.61 million, or 0.83 to 1.00 (0.83:1). A ratio of less than 1 to 1 is preferred for analysis of financial and managerial capabilities. Lower values of debt to equity ratios are favorable indicating less risk. Higher ratios mean that the entity relies more on external lenders and is at higher risk, especially at higher interest rates. I also noted that for the FY2014, the Town's proprietary funds indicate net operating income for water and sewer of \$3.10 million prior to depreciation of \$1.84 million and current portion of long-term debt service for the year including interest of \$2.68 million, which results in a Debt Service Coverage Ratio (DSCR) of 1.84:1. Typically, DSCR of more than 1.25:1 is preferred using net operating income before depreciation and other non-cash expenses when Staff analyzes financial capability to ensure that reserve funds for debt payment and repairs and maintenance are built up and maintained. The DSCR also reflects the Town's ability to make annual payments on its long-term debt.

As required by 16 TAC §§ 24.102(c), 24.109(d), and 24.112(c)(5), the North Texas Municipal Water District (NTMWD) provides water for the Town on a "take-or-pay" basis. The Town has certified water operators on staff and has been providing retail water utility service for many years. The Town has no unaddressed outstanding violations with the TCEQ. Therefore, I believe the Town has the managerial capability to provide continuous and adequate utility service to the area requested in this transaction plus any area already being served by the Town.

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

Lastly, the approval of the sale expires one year from the date of the Commission's written approval of the sale. If the sale is not consummated within that period and unless the Town and Terra Southwest request and received an extension from the Commission, the approval is void and the Town and Terra Southwest must re-apply for the approval of the sale. In addition, the Town

and Terra Southwest should be informed that the CCNs will remain in the name of Terra Southwest until the transfer is complete and approved in accordance with the PUC rules and regulations as required by 16 TAC §§ 24.109(g) and 24.112(d).