

Control Number: 45026



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APPLICATION OF T. JOHNSON INDUSTRIES AND WATER NECESSITIES, INC. FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN HARDIN COUNTY	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS	2016 FEB 19 PM 1:41 PUBLIC UTILITY COMMISSION FILING CLERK
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### COMMISSION STAFF'S FINAL RECOMMENDATION

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

#### I. BACKGROUND

On August 6, 2015, T. Johnson Industries and Water Necessities, Inc. (Water Necessities) (jointly, Applicants) filed an application for sale, transfer, or merger of facilities and certificate rights in Hardin County. Specifically, Water Necessities seeks approval to acquire all of the water assets of T. Johnson Industries. According to the application, T. Johnson Industries' water Certificate of Convenience and Necessity (CCN) No. 12647 and assets will be transferred to Water Necessities.

On December 10, 2015, the Administrative Law Judge (ALJ) issued Order No. 4 finding notice sufficient and establishing deadlines. The deadline for parties to file comments, intervene or request a hearing was December 11, 2015, and no parties did so. The deadline for Staff to request a hearing or file a final recommendation on final disposition is February 19, 2016. Therefore, this pleading is timely filed.

#### II. RECOMMENDATION

As stated in the attached memorandum (Attachment A) of Heidi Graham of the Water Utilities Division, Staff recommends that Water Necessities has demonstrated adequate financial and technical capability for providing continuous and adequate service to the proposed area and any existing area currently served by Water Necessities, subject to the recommended condition set out below. Additionally, Staff recommends that the proposed transaction will serve the

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public interest and a public hearing is not necessary, subject to the recommended condition set out below.

Staff has identified three unresolved Texas Commission on Environmental Quality (TCEQ) violations that Water Necessities should remedy before the close of the transaction. Therefore, Staff recommends the inclusion of a special condition in an order permitting the transaction to proceed, which would require the Applicant to resolve certain outstanding TCEQ violations within six months of the date of the Commission's order. Subject to this condition, Staff recommends the Applicants be allowed to proceed with the proposed transaction. Following the close of the transaction, Staff recommends that T. Johnson Industries' CCN No. 12647 be cancelled and Water Necessities' CCN be expanded to include the area currently in CCN No. 12647.

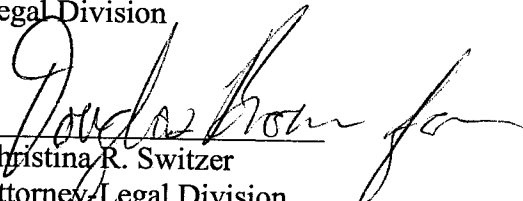
## **I. CONCLUSION**

Staff respectfully requests that the ALJ issue an order consistent with this Final Recommendation.

Respectfully Submitted,

Margaret Uhlig Pemberton  
Division Director  
Legal Division

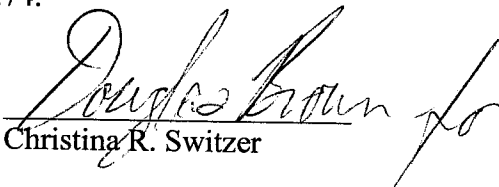
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**DOCKET NO. 45026**

**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on February 19, 2016 in accordance with 16 TAC § 22.74.

  
Christina R. Switzer

**Attachment A**  
**Staff Memorandum**

## PUC Interoffice Memorandum

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**To:** Christina Switzer, Attorney  
Legal Division

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

**From:** Heidi Graham, Staff Engineer  
Kristy Nguyen, GIS Specialist  
Water Utilities Division

**Date:** February 17, 2016

**Subject:** **Docket No. 45026;** *Application of T. Johnson Industries and Water Necessities, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hardin County*

On August 6, 2015, Water Necessities, Inc. (Water Necessities or Buyer), holder of water Certificate of Convenience and Necessity (CCN) No. 12243, and T. Johnson Industries d/b/a Johnson Water Service (Johnson or Seller), holder of water CCN No. 12647, (collectively, Applicants) filed an application for the sale, transfer, or merger (STM) of facilities, customers and service area in Hardin County, Texas. As a result of the proposed transaction, Water Necessities' CCN No. 12243 will be expanded to include the service area of CCN No. 12647 of Johnson and all the assets and customers will be transferred to Water Necessities. In turn, Johnson's CCN No. 12647 will be cancelled and Johnson will no longer be in the utility business. The 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 deemed sufficient for filing by the Commission on September 8, 2015. Notice of the transaction was published in the *Silsbee Bee* on September 30, 2015, November 4, 2015 and November 11, 2015. Notice to customers, neighboring systems, and affected parties was provided on September 25, 2015. The affidavits were received by the Commission on October 22, 2015 and December 7, 2015. The comment period ended December 11, 2015, and no protests or requests for hearing were received by the Commission. Public notice was proper for the transaction.

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. Staff reviewed the public interest factors and the financial, managerial, and technical capability of the Buyer to provide continuous and adequate service to the requested area plus the area already certified to the Buyer. Pursuant to TWC § 13.246(c), Staff considered the following nine criteria during the review:

- **TWC §§ 13.4246(c)(1) and 13.246(c)(4)** require the Commission to consider the adequacy of service currently provided to the requested area and the ability of the applicant to provide adequate service. The Seller's owner, Mr. Kelly Brewer, has been the operator for the Buyer's public water systems (PWSs) since 2005. The area is currently served by the Buyer through Breakaway Trail Subdivision, PWS No. 1000069 and North Woods Subdivision, PWS No. 1000060. The facilities cover service area of 10,121 acres and 84 current customers. The Buyer currently manages 14 PWSs with a total connection count of 945. Reviews of TCEQ records indicate that the Buyer currently has unresolved TCEQ violations for some of its PWSs; however, the Buyer is currently undergoing actions to resolve the issues through current and future filings with TCEQ. The violations are:
  - Failure by the Timer Water System, PWS No. 1810170, to have operating records accessible for review during inspections and to have a complete monitoring plan.
  - Failure by the Corbett Water System, PWS No. 1810123, to submit a signed certificate of delivery to the TCEQ certifying that public notice was issued pursuant as required by TCEQ for a disinfectant monitoring and reporting violation.
  - Failure by New Forest Estates Water System, PWS No. 1000062, to provide a map of a 150-foot sanitary easement around a well inclusive of Highway 69 and adjacent property to the west of Highway 69.

Staff proposes a condition below that should alleviate concerns over the unresolved TCEQ violations.

- **TWC § 13.246(c)(2)** requires the Commission to consider the need for service in the requested area. Staff recommends that since there are existing customers in the requested area, there is an existing need for service in the requested area.
- **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 Buyer, Seller, and the current customers will be affected by this transaction. As a result of the proposed transaction, ownership of the Seller's water CCN No. 12647 be transferred to the Buyer, along with all customers, facilities and service area. No other retail public utilities will be affected by this proposed 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 and no additional service is needed. Therefore, Staff recommends that 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 require major capital improvements or repairs. The Buyer has

agreed to purchase the facilities and service area for \$90,000. According to the Buyer's annual report from 2014 and its federal tax return for 2014, its total equity for Fiscal Year (FY) 2014 was \$309,579. The Buyer's debt to equity ratio for FY 2014 including long term debt was \$9,510 to \$309,579 or 0.03:1.00. A ratio of less than 1 to 1 is preferred for analysis of financial and managerial capabilities because it demonstrates that the Buyer is funding capital and operations expenses with more equity than debt. The Buyer's net income was \$37,604 and depreciation expense was \$20,552. Principle and interest expense on long term debt was \$14,859. Therefore, the debt service coverage ratio calculates to be \$58,156 to \$14,859 or 2.91 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, the Seller generated \$86,407.24 in income exclusive of depreciation from 2009 thru 2014. After the proposed sale is complete, the Buyer will acquire the Seller's utility and will have the potential to generate the additional revenue. Therefore, Staff recommends that the Buyer has the financial capability to proceed with the transaction.

- **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, Staff recommends that there will no impact on the environment and the land as the water systems are already in place and do not need any major capital 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 transfer of facilities and service area will allow the Buyer the opportunity to provide a more reliable source of retail water service in the area. The customers' water rates will not be affected by the transaction as the rates will remain unchanged; therefore, Staff opines that there will be an improvement in service if the transaction is approved and that there will be no effect on the customers' rates.

### **Staff's Recommendation**

Pursuant to 16 TAC § 24.109(f), Staff recommends the following:

1. The Applicants be notified that a public hearing is not necessary;
2. The Commission conditionally find that the transaction will serve the public interest and to conditionally allow the Applicants to proceed with the proposed transaction;
3. 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 customer deposits have been addressed as soon as possible pursuant to 16 TAC § 24.109(f);
4. The Applicants be ordered and required to resolve all TCEQ outstanding violations within six months of the date of the Commission's order. In addition, Staff recommends that Water Necessities shall file in this docket copies of documentation from TCEQ that all outstanding violations have been resolved.



5. Specify in the order allowing the Applicants to proceed with the proposed transaction that the approval is conditional and will be revoked if the remaining outstanding TCEQ violations remain unresolved or unaddressed within the six months timeframe specified in Item 4 above.

The approval of the sale expires one year from the date of the Commission's written approval of the sale, and is recommended to be contingent upon meeting the requirements of the Staff's recommendations above. If the sale has not been consummated within that period and unless the Applicants have requested and received an extension from the Commission, the approval is void and the Applicants must re-apply for the approval of the sale. In addition, the Applicants should be informed that the CCN will remain in the name of Johnson until the transfer is complete and approved in accordance with the Commission's rules and regulations.