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PUBLIC UTILITY COMMISSION
HEARING CLERK

OPEN MEETING COVER SHEET

MEETING DATE: October 28, 2016

DATE DELIVERED: October 21, 2016

AGENDA ITEM NO.: 26

CAPTION: Docket No. 45510; SOAH No. 473-17-0249, WS
Application of HOE Water Supply
Corporation and Harris County MUD No.
480 for Sale, Transfer, Merger of Certificate
Rights in Harris County

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

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PUBLIC UTILITY COMMISSION
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Public Utility Commission of Texas

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

All Parties of Record

FROM: Adrienne Waddell *dw*
Commission Advising

RE: *Application of HOE Water Supply Corporation and Harris County MUD
No. 480 for Sale, Transfer, Merger of Certificate Rights in Harris County,
Docket No. 45510, SOAH Docket No. 473-17-0249.WS, Draft Preliminary
Order, Agenda Item No. 26*

DATE: October 21, 2016

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 October 28, 2016 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 October 28, 2016 open meeting.

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**SOAH DOCKET NO. 473-17-0249.WS
PUC DOCKET NO. 45510**

**APPLICATION OF HOE WATER
SUPPLY CORPORATION AND HARRIS
COUNTY MUD NO. 480 FOR SALE,
TRANSFER, OR MERGER OF
CERTIFICATE RIGHTS IN HARRIS
COUNTY**

**§ PUBLIC UTILITY COMMISSION
§
§ OF TEXAS
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DRAFT PRELIMINARY ORDER

On January 11, 2016, HOE Water Supply Corporation and Harris County Municipal Utility District No. 480 filed an application for the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Harris County, Texas. Harris County MUD is seeking to acquire the HOE Water Supply's certificated service area (CCN No. 12756) and corresponding water utility facilities. The area sought is approximately 18 acres of undeveloped land with no current customers.¹

On February 24, 2016, the application was deemed administratively complete. On September 6, 2016, Commission Staff requested a hearing because it is unknown whether the Texas Commission on Environmental Quality (TCEQ) has approved facility and distribution plans for the new water system to be installed in the area sought. As a result, Commission Staff wants additional information to fully evaluate the technical qualifications of Harris County MUD. On September 20, 2016, the proceeding was referred to the State Office of Administrative Hearings (SOAH). On October 6, 2016, Commission Staff timely filed a list of issues. On October 10, 2016, HOE Water Supply filed a response to Commission Staff's list of issues clarifying that since it is a water service corporation, it does not collect customer deposits

¹ Application at 19 (Jan. 11, 2016).

but instead maintains memberships and associated membership fees. Otherwise, HOE Water Supply recommended approval of Commission Staff's list of issues.

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.² After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. What is the effective date of the proposed sale?
2. Has Harris County MUD demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to Harris County MUD? Texas Water Code § 13.301(b) (TWC) and 16 Texas Administrative Code §§ 24.109(b), 24.112(b) (TAC).
 - a. If Harris County MUD has not demonstrated adequate financial capability, should the Commission require that it provide financial assurance to ensure continuous and adequate utility service provided? TWC § 13.301(c), 16 TAC § 24.109(c).
 - b. If the Commission requires Harris County MUD 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) and 16 TAC §§ 24.109(d) and (h), 24.112(c)(5).
 - a. Did Harris County MUD provide the required notice? TWC § 13.301(k), 16 TAC § 24.109(l).

² Tex. Gov't Code Ann. § 2003.049(e) (Vernon 2000).

b. Is the Harris County MUD capable of rendering adequate and continuous service to every customer within the certificated area, taking into account the factors under TWC § 13.246(c) and 16 TAC § 24.112(c)(5)(B)? TWC § 13.251.

- i. Is the service currently provided to the requested 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? If so, has the requested service been provided? TWC § 13.246(c)(2).
- iii. What is the effect of approving the proposed sale on Harris County MUD, 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 Harris County MUD have the ability to provide adequate service and meet TCEQ standards? 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 Harris County MUD able to pay for facilities necessary to provide continuous and adequate service to the requested area? TWC § 13.246(c)(6).
- vii. Is Harris County MUD financially stable considering, if applicable, the adequacy of the debt-equity ratio of Harris County MUD if the proposed sale is approved? TWC § 13.246(c)(6).
- viii. What is the effect of approving the sale on environmental integrity? TWC § 13.246(c)(7).

- ix. What is the probable improvement of service or lowering of cost to consumers in the requested area resulting from approval of the proposed sale? TWC § 13.246(c)(8).
 - x. What is the effect on the land to be included in the amended certificated area? TWC § 13.246(c)(9).
 - c. What is the experience of Harris County MUD as a utility service provider? 16 TAC § 24.112(c)(5)(C).
 - d. Does Harris County MUD have a history of noncompliance with the requirements of the Commission, TCEQ, or the Texas Department of State Health Services or mismanagement or misuse of revenues as a utility service provider? TWC § 13.301(e)(3), 16 TAC § 24.112(c)(5)(D).
 - e. Have the conditions of any judicial decree, compliance agreement, or other enforcement order not been substantially met? 16 TAC § 24.112(c)(5)(B).
 - f. Has Harris County MUD failed to comply with any orders of the Commission? 16 TAC § 24.109(e)(5)(A).
 - g. Does the Harris County MUD have the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to customers of the water or sewer system? TWC § 13.301(e)(4), 16 TAC § 24.112(c)(5)(E).
 - h. Was the water system partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges as provided by TWC § 13.301(j), 16 TAC § 24.109(k)? If so, has the disclosure required by TWC § 13.301(j), 16 TAC § 24.109(k) been provided?
4. Does HOE Water Supply currently retain any customer deposits, including any membership fees or other types of retained funds from its members? 16 TAC § 24.112(d). If so, what is the total amount of those retained funds? Does HOE Water Supply have

- proper records to allow retained funds and any unpaid interested to be returned? Will retained funds be returned to customers or transferred to Harris County MUD in accordance with 16 TAC § 24.112(d)?
5. Does the water system being purchased have any deficiencies or problems that need correction to be in compliance with the rules of the Commission or TCEQ? If so, what are those deficiencies or problems? How and when will those deficiencies or problems be corrected? Does Harris County MUD have access to adequate financial resources to timely correct those deficiencies and problems?
 6. If Harris County MUD is not seeking sale, transfer, or merger of the entire CCN service area, for what portion of the service area is Harris County MUD seeking sale, transfer, or merger?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Texas Government Code § 2003.049(e).

IV. Effect of Preliminary Order

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 October 2016.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER