



Control Number: 45627



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PUBLIC UTILITY COMMISSION  
MEETING CLERK

# OPEN MEETING COVER SHEET

**MEETING DATE:** January 12, 2017

**DATE DELIVERED:** January 5, 2017

**AGENDA ITEM NO.:** 1

**CAPTION:** Docket No. 45627; SOAH Docket No. 473-17-1318.WS - Application of Charles Branch DBA Doucette Water System and Lakeside Water Supply and Thomas and Danasa Rawls for Sale, Transfer, or Merger of Facilities and Certificate Rights in Tyler County

**ACTION REQUESTED:** Discussion and possible action with respect to 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: Davida Dwyer ~~DD~~  
Commission Advising

RE: January 12, 2017 Open Meeting, Agenda Item No  
*Application of Charles Branch d/b/a Doucette Wa  
Supply and Thomas and Danasa Rawls for Sale, 1  
Facilities and Certificate Rights in Tyler County, -  
Docket No. 473-17-1318.WS, Draft Preliminary Order*

DATE: January 5, 2017

Hi, Ruby!  
This is ready for  
filing + circulation.  
Thank you!  
-Davida

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 January 12, 2017 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 January 12, 2017 open meeting.

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**PUC DOCKET NO. 45627**  
**SOAH DOCKET NO. 473-17-1318.WS**

|                                     |          |                                  |
|-------------------------------------|----------|----------------------------------|
| <b>APPLICATION OF CHARLES</b>       | <b>§</b> | <b>PUBLIC UTILITY COMMISSION</b> |
| <b>BRANCH DBA DOUCETTE WATER</b>    | <b>§</b> |                                  |
| <b>SYSTEM AND LAKESIDE WATER</b>    | <b>§</b> | <b>OF TEXAS</b>                  |
| <b>SUPPLY AND THOMAS AND DANASA</b> | <b>§</b> |                                  |
| <b>RAWLS FOR SALE, TRANSFER, OR</b> | <b>§</b> |                                  |
| <b>MERGER OF FACILITIES AND</b>     | <b>§</b> |                                  |
| <b>CERTIFICATE RIGHTS IN TYLER</b>  | <b>§</b> |                                  |
| <b>COUNTY</b>                       | <b>§</b> |                                  |

**DRAFT PRELIMINARY ORDER**

Charles Branch, who does business as the Doucette Water System and the Lakeside Water Supply, together with Thomas and Danasa Rawls, filed an application seeking Commission approval of the sale and transfer of the Doucette Water System and the Lakeside Water System assets and the corresponding water certificate of convenience and necessity number 12001 to the Rawls.<sup>1</sup> Doucette Water System (hereinafter, the two water systems are jointly referred to as Doucette Water System) is located in Tyler County, Texas. The applicants report that Doucette Water System served a combined total of 726 meters at the end of 2015.<sup>2</sup>

On October 31, 2016, Commission Staff filed a request that this proceeding be referred to the State Office of Administrative Hearings (SOAH). Commission Staff asserted there are factual issues in the proceeding that need to be adjudicated.<sup>3</sup> These issues include whether the Rawls have the financial ability to provide continuous and adequate service, the applicants' failure to provide correct balance-sheet and income-statement information, and the applicants' failure to provide information to support a public interest determination in light of the disparity between the proposed purchase price of \$625,000 and the applicant-provided \$60,000 book value of the system assets, net of tax depreciation.<sup>4</sup>

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<sup>1</sup> Doucette Water System's and the Rawls' Joint Application at 2 (Feb. 17, 2016).

<sup>2</sup> *Id.* at 10.

<sup>3</sup> Commission Staff's Request for Referral to the State Office of Administrative Hearings (SOAH) at 1 (Oct. 31, 2016).

<sup>4</sup> *Id.* at attached memorandum dated Oct. 31, 2016.

On November 21, 2016, this proceeding was referred to SOAH. Doucette Water System and the Rawls were directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in the docket and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by December 8, 2016. Commission Staff timely filed a list of issues. Doucette Water System and the Rawls did not file a 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.<sup>5</sup> 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 transaction?
2. Have the Rawls demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to them? Texas Water Code (TWC) § 13.301(b) and 16 Texas Administrative Code (TAC) § 24.109(g).<sup>6</sup>
  - a. If the Rawls have not demonstrated adequate financial capability, should the Commission require that they provide a bond or other form of financial assurance? TWC § 13.301(c) and 16 TAC § 24.109(h).
  - b. If the Commission requires the Rawls to provide financial assurance, what form and amount of financial assurance should the Commission should require?
3. Will approving the proposed transaction serve the public interest? TWC §§ 13.301(d), (g) and 16 TAC § 24.109(i).
  - a. Did Doucette Water System provide notice to the public? TWC § 13.301(a)(2) and 16 TAC §§ 24.109(a)-(f).

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<sup>5</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2016).

<sup>6</sup> Citations in this Preliminary Order are to the new 16 TAC § 24.109, relating to a proposed sale, transfer, merger, consolidation, acquisition, lease, or rental under Texas Water Code § 13.301, that was effective December 21, 2016.

- b. Are the Rawls 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 § 24.109(j)(5)(B)-(I)? 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 the Rawls, 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, do the Rawls have the ability to provide adequate service and meet the Texas Commission on Environmental Quality's (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. Are the Rawls able to pay for facilities necessary to provide continuous and adequate service to the requested area? TWC § 13.246(c)(6).
  - vii. Are the Rawls financially stable considering, if applicable, the adequacy of their debt-equity ratio if the proposed transaction is approved? TWC § 13.246(c)(6).
  - viii. What is the effect, if any, 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 transaction? TWC § 13.246(c)(8).
  - x. What is the effect, if any, on the land to be included in the amended certificated area? TWC § 13.246(c)(9).

- c. What is the experience of the Rawls as a utility service provider? TWC § 13.301(b) and 16 TAC § 24.109(g).
  - d. Do the Rawls 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) and 16 TAC § 24.109(j)(3).
  - e. Have the conditions of any judicial decree, compliance agreement, or other enforcement order not been substantially met? 16 TAC § 24.109(j)(5)(A).
  - f. Have the Rawls failed to comply with any orders of the Commission? 16 TAC § 24.109(j)(5)(A).
  - g. Do the Rawls have the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to customers of the water system? TWC § 13.301(e)(4) and 16 TAC § 24.109(j)(4).
  - h. Is the proposed transaction a sale and was the water system partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges, as identified in TWC § 13.301(j) and 16 TAC § 24.109(s)? If so, has the disclosure required by TWC § 13.301(j) and 16 TAC § 24.109(s) been provided?
4. Does Doucette Water System currently retain any customer deposits? 16 TAC § 24.109(m). If so, what is the total amount of customer deposits retained? Does Doucette Water System have proper records to allow deposits and any unpaid interest to be returned? Will customer deposits be returned to customers or transferred to the purchaser in accordance with 16 TAC § 24.109(m)(4)?
5. Does Doucette Water System 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? Do the Rawls have access to adequate financial resources to timely correct those deficiencies and problems?

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

may identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.049(e).

## **II. 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 January 2017.**

**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**