



Control Number: 46107



Item Number: 13

Addendum StartPage: 0

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APPLICATION OF BETHANY §
 HEARNE WATER SUPPLY §
 CORPORATION AND CITY OF §
 HEARNE FOR SALE, TRANSFER, §
 OR MERGER OF FACILITIES AND §
 CERTIFICATE RIGHTS IN §
 ROBERTSON COUNTY §

PUBLIC UTILITY COMMISSION

OF TEXAS

PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S RECOMMENDATION ON NOTICE AND PROCEDURAL SCHEDULE

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Recommendation on Notice and Procedural Schedule. In support thereof, Staff would show the following:

I. BACKGROUND

On June 29, 2016, Bethany Hearne Water Supply Company (Bethany Hearne WSC) and the City of Hearne (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate of convenience and necessity rights in Robertson County. Specifically, the City of Hearne seeks approval to acquire a portion of the water system assets of Bethany Hearne WSC held under water Certificate of Convenience and Necessity (CCN) No. 10330.

Order No. 3 set the deadline for Staff to file a recommendation on approval of the by October 17, 2016. Therefore, this pleading is timely filed.

II. RECOMMENDATION

Staff has reviewed the application and, as detailed in the attached memorandum from Debbie Reyes Tamayo, Patty Garcia, Gary Horton, Kristy Nguyen and Andrew Novak in the Commission's Water Utility Division, recommends that Applicants be allowed to proceed with the proposed transaction. Staff has reviewed the criteria of Tex. Water Code §§ 13.241, 13.246 and 13.301 (TWC) and 16 Tex. Admin. Code §§ 24.102, 24.109 and 24.112 (TAC) and determined that the proposed transaction meets the relevant statutory and regulatory requirements.

III. CONCLUSION

For the reasons outlined above, Staff respectfully requests that an order be issued allowing Applicants to proceed with the transaction. Upon receiving sales documents and documents evidencing the disposition of customer deposits from Applicants, Staff will propose an additional procedural schedule for continued processing of this docket.

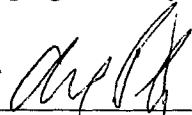
Dated: October 17, 2016

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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**DOCKET NO. 46107
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on October 17, 2016 in accordance with 16 TAC § 22.74.



Alexander Petak

PUC Interoffice Memorandum

To: Alexander Petak
Legal Division

Thru: Tammy Benter, Director
Lisa Fuentes, Manager
Debi Loockerman, Manager
Heidi Graham, Manager
Water Utilities Division

From: Debbie Reyes Tamayo, Program Specialist
Patty Garcia, Engineering Specialist
Gary Horton, GIS Specialist
Kristy Nguyen, GIS Specialist
Andrew Novak, Financial and Managerial Review Specialist
Water Utilities Division

Date: October 14, 2016

Subject: **Docket 46107**, *Application of Bethany Hearne Water Supply Company and City of Hearne for Sale, Transfer, and Merger of Facilities and Certificate Rights in Robertson County*

On June 29, 2016, City of Hearne (Hearne or Purchaser), Certificate of Convenience and Necessity (CCN) No. 10344 and Bethany Hearne Water Supply Company (Bethany Hearne or Seller), CCN No. 10330, (collectively, Applicants) filed an application for approval of a sale, transfer, or merger (STM) of facilities and certificate rights in Robertson County, Texas. The application was filed under the provisions in Texas Water Code §§ 13.241, 13.246, 13.301 (TWC) and 16 Tex. Admin. Code §§ 24.102, 24.109 and 24.112 (TAC). Specifically, Hearne seeks approval to acquire the water system assets, customers and service area of Bethany Hearne and to cancel Certificate of Convenience and Necessity (CCN) No. 10330 and to incorporate the service area into Hearne's CCN No. 10344.

The application was accepted for filing by the Commission on August 2, 2016. Proper public notice was provided for the transaction on August 16, 2016, to customers, neighboring systems, and cities in Robertson County in accordance with TWC § 13.246(a) and 16 TAC § 24.112(c). The affidavits of notice were received by the Commission on August 25, 2016. The comment period ended on September 16, 2016, and no protests or requests to Opt Out were received by the Commission.

Pursuant to TWC § 13.301(e) and 16 TAC § 24.109(d), 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. Based on staff's review of the information in the application and the criteria listed below, a hearing is not necessary because the transaction will serve the public interest. Staff also concludes that Hearne has demonstrated adequate financial, managerial, and technical (FMT) capability to provide service to its existing service area plus the additional area requested in this application, as required by TWC § 13.301(b). In review of the public interest factors and the FMT capability of Hearne, the Commission shall consider if Hearne is capable of providing continuous and adequate

service to the proposed area based the following nine criteria as listed in TWC § 13.246(c) and 16 TAC §§ 24.11 and 24.102(d):

TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1) require the Commission to consider the adequacy of service currently provided to the requested area. Hearne seeks approval to acquire the water system assets, customers and service area of Bethany Hearne and to cancel CCN No. 10330. Hearne plans to incorporate the service area into CCN No. 10344 served by Public Water System (PWS) No. 1980004 that meets the requirements of TWC §13.241(b). Based on the following factors, staff believe adequate service will be provided in the requested area.

- The service territory system that Bethany Hearne proposes to sell to Hearne currently serves 500 connections in the requested area and is comprised of 700 acres. The transfer of the area will enable Hearne to provide retail water service directly to the customers in this service area.
- No additional construction is necessary for Hearne to serve the proposed area. Upon the Commission's approval of the transaction Hearne wants to incorporate into their existing service and distribution system. Bethany Hearne currently purchases water from Hearne.

TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2), require the Commission to consider the need for service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service. The fact that there are existing customers in the requested area demonstrates the need for service. The purpose of this transaction is for Hearne to acquire the Bethany Hearne's service area which is comprised of 500 current customers and 700 acres.

TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3), require the Commission to consider the effect of granting a certificate or of an amendment on the recipient and on any other retail water utility servicing the proximate area. Only Hearne's and Bethany Hearne's current customers and CCNs will be affected by this transaction. As a result of the proposed transaction, the Commission will transfer all of Bethany Hearne's water service area and facilities to Hearne, including 500 current customers and 700 acres.

TWC §13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service. Hearne is an existing water utility and will provide water service using the existing system, pending the closure and approval of the transaction. Bethany Hearne currently purchases water from Hearne.

TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5) require the Commission to consider the feasibility of obtaining service from an adjacent retail public utility. In this case, the area requested already contains facilities and is currently being served by Hearne. Additionally, utilities within a two mile radius were noticed. Also, no protests or requests to opt out were received regarding the proposed transaction. Therefore, it is not necessary to obtain service from an adjacent retail public utility.

TWC § 13.246(c)(6) and 16 TAC §§ 24.11 and 24.102(d)(6) require the Commission to consider the financial ability of Hearne to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio.

In Staff's opinion of the FMT Review, Hearne has demonstrated adequate financial and managerial capability to provide continuous and adequate service to the area subject to this application. These conclusions are based on information provided by Hearne prior to the date of this memorandum

and may not reflect any changes in Hearne's status subsequent to this review. The application would allow Hearne to acquire the water system assets held by the Bethany Hearne.

Financial Test

Texas Water Code § 13.246(c)(6) (TWC) requires the Commission to consider the financial ability of Hearne to pay for facilities necessary to provide continuous and adequate service and the financial stability of Hearne. 16 Texas Admin. Code § 24.11 (TAC) establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area. 16 TAC § 24.11(e) lists the financial tests. The applicant must meet one of the leverage tests and the operations test. Hearne provided a draft copy of audited financial statements for the fiscal year ending September 30, 2015. Staff reviewed the portion of the draft financial statements for the Proprietary Funds which is where water operations are reported. Staff notes that the following discussion shows that the applicant does meet the required criteria:

- 1) 16 TAC § 24.11(e)(2) refers to the leverage test, which the owner or operator must meet one of:
 - a. 16 TAC § 24.11(e)(2)(A) states that the owner or operator must have a debt to equity ratio of less than one, using long term debt and equity or net assets.
 - i. Ratio = $\$5,863,827 / \$3,977,202 = 1.47$
 - ii. Net Position = $\$3,977,202$
 - iii. Long-term Notes payable 2015 = $\$5,863,827$

The applicant does not meet this ratio criterion.

- b. 16 TAC § 24.11(e)(2)(B) states the owner or operator must have a debt service coverage ratio of more than 1.25 using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt payments.
 - i. Annual Net Operating Income before depreciation and non-cash expenses = $\$1,360,327$
 - ii. Annual Long-term debt payments = $\$1,360,327$
 - iii. Ratio = $\$1,360,327 / \$1,033,803 = 1.31$

The Applicant meets this ratio criterion.

- 2) 16 TAC § 24.11(e)(3) refers to the operations test. This states that the owner or operator must demonstrate that sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations.
 - a. There are no projected operations and maintenance shortages. Therefore, the applicant meets this test.

Based on the above discussion, Hearne possesses adequate financial and managerial ability.

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 no impact on the environment and the land as the system is already in place. The quality of service will be maintained. The transaction will allow for drinking water to be served by the acquired area. Hearne wants to incorporate Bethany Hearne into their existing municipality.

TWC § 13.246(8) and 16 TAC § 24.102(d)(8) require the Commission to consider the probable improvement in service or lowering of cost to consumers. The customers' water rates will be charged the same rates from Hearne as stated in the application.

TWC §13.241(b) & 16 TAC §24.102(a)(1) require the Commission to ensure that the applicant has a Texas Commission on Environmental Quality (TCEQ) approved system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and TCEQ rules, and has access to an adequate supply of water. Hearne has access to an adequate supply of water and the water system facilities have excess capacity to serve the existing certificated area. According to TCEQ's Central Registry, Hearne has no unresolved violations. In addition, and Hearne has experienced operators.

As required by 16 TAC §§ 24.102(c), 24.109(d), and 24.112(c)(5), Hearne's experienced operators are knowledgeable about water operations, as well as the requirements for continuous and adequate service for the operations of the utility systems to the area subject to this application as required by TCEQ.

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

The approval of the sale expires one year from the date of the Commission's written approval of the sale. 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 Bethany Hearne Water Supply Company 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).

Final Recommendation

Staff has considered the City of Hearne's ability to provide continuous and adequate service pursuant to the CCN criteria outlined in 16 TAC § 24.102 (d). Pursuant to 16 TAC § 24.109(f), Staff recommends that this sale and transfer be approved.