



Control Number: 46127



Item Number: 5

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August 1, 2016

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PUBLIC UTILITY COMMISSION
FILING CLERK

Public Utility Commission of Texas
Attention: Filing Clerk
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Subject: Docket Number 46127

Dear Public Utility Commission of Texas:

I am a customer of Westwood Utility Corporation, a resident of the certificated area they serve, and a homeowner within that area. The proposed sale of the public water utility by Westwood to the City of Fairfield as documented within Docket Number 46127 is not in the public interest. Hence, pursuant to Texas Water Code Chapter 13 I hereby protest the purchase/sale of Westwood Utility Corporation to the City of Fairfield. Furthermore, I hereby request a public hearing on this matter.

I respectfully provide the enclosed comments to substantiate my claim and request.

Please let me know your decision. Feel free to contact me if clarification of my comments is needed.

Very truly yours,



Mark D. Berend

Enclosure

5

Docket Number 46127
Sale, Transfer or Merger of a Retail Public Utility
Westwood Utility Corporation, CCN-12126

Application Form:

MDB-1 Part B, Item 5

Application form reads, "Please provide a list of all customers affected by this transaction who have deposits held by the transferor or seller utility, if any, and include the following information (attach additional sheets if necessary):"

Applicant response reads, "List will be attached to back of document"

MDB comment(s): This list found in the documents posted on the PUC website for Docket 46127 does not include utility customer addresses, nor was there mention of redaction. It is essential for public stakeholders to have this information to reach out to other customers on this issue. The City has this information. Furthermore "Instructions for an Application for Sale, Transfer, or Merger of a Retail Public Utility" states "You must answer each question on the attached forms completely."

MDB-2 Part C, Item 11, Section B

Application form reads, "Has the applicant acquiring the CCN or facilities or an affiliated interest of the applicant been under enforcement action by the PUC, TCEQ, Texas Department of Health (TDH), the Office of the Attorney General (OAG) or the Environmental Protection Agency (EPA) in the past for noncompliance with rules, orders or State Statutes?"

Applicant response reads, "No"

MDB comment(s): Please see "Executive Summary - Enforcement Matter; Docket No. 2007-2000-PWS-E; TCEQ ID: RN101231660; Case No. 35105; Respondent Name: City of Fairfield" This document appears to indicate Fairfield was indeed subject to an enforcement action. https://www.tceq.texas.gov/assets/public/comm_exec/agendas/comm/backup/Agendas/2008/6-18-2008/2000PWS.pdf

MDB-3 Part C, Item 11, Section E

Application form reads, "How will the transaction serve the public interest?"

Applicant response reads, "The greatest benefit to the public is the assurance of faithful, continuous, quality water and exceptional service in the future being provided by a financially stable Municipality."

MDB comment(s): This claim may be truthful and no doubt is well intended, however it is incomplete and underwhelming to the public. All benefits and detractions should be identified. Texas Water Code Chapter 13, Subchapter H, Section 13.301(2)(d) reads, "The utility commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest." The applicant should seize this opportunity to assist the Utility Commission and the public with the review process.

MDB-4 Part C, Item 12

Application form reads, "Please describe the nature of the proposed transaction:"

Applicant response reads, "The Alford's would like to sell to the most responsible buyer. They have concluded the entity which could guarantee long term stability and quality, for their customers would be the City of Fairfield. They have agreed to owner finance the debt to make the transaction more convenient for the City."

MDB comment(s): Convenience should not be a principal or defining reason for this financing arrangement. In this instance owner financing implies inefficient Federal income tax implications. Furthermore, terms of the financing arrangement have not been made available to the public. There is no discussion of the reasoning for the City to not use tax-free bond financing. Additionally, the financial merit of this purchase/sale transaction has not passed the independent muster of public bonding. Please provide the economic evaluation for selecting the proposed financing arrangement.

MDB-5 Part C, Item 13, Section A

Application form reads, "If the transferee applicant is an Investor Owned Utility (IOU) and will be under the rate jurisdiction of the PUC, please provide the following information. Water supply and sewer service corporations and political subdivisions of the state should mark this section N/A:"
"A. Total Purchase Price _____"

Applicant response reads, "\$3,000,000.00"

MDB comment(s): Thank you for providing this information.

MDB-6 Part C, Item 14

Application form reads, "Please indicate the proposed effect of this transaction on the rates to be charged to the affected customers:"

Applicant response reads, "All customers will be charged the same rates as they were charged before the transaction."

MDB comment(s): A public meeting was held in Fairfield on July 11, 2016 and principally attended by City officials, Oak Forest residents, and friends of Oak Forest residents. Oak Forest is a subdivision and subset of the Westwood Utility service area. In that meeting the City implied the water rates for Oak Forest water customers could be reduced. Please clarify this apparent discrepancy.

MDB-7 Part D

Application form Table of Contents for this Part reads, "Historical Financial Information"

Applicant response reads, "Purchaser's financial information attached to the back of the application: City of Fairfield - Annual Financial Reports, 2012-2015"

MDB comment(s): Indeed extensive financial information was supplied by the City and made available to the public. However, it is not apparent all response requirements for "Part D" have been fulfilled by the applicant. Pages 9 to 11 are missing. Please provide.

MDB-8 Part E

Application form Table of Contents reads, "Projected Information"

Applicant response reads,

MDB comment(s): There is no applicant response. The availability of this information is vital for the public to assess the viability of the proposed purchase/sale. Pages 12 to 15 are missing. Please provide.

MDB-9 Part F, Item 18, Section C

Application form reads, "Provide details for each required major capital improvement to correct the deficiencies and meet the TCEQ and PUC standards:"

Applicant response reads, "Engineering plans for previously installed booster pumps submitted for approval"; (Scheduled to Complete) "7/30/2016"; (Estimated Cost) "\$3,000.00"

MDB comment(s): Please provide confirmation this task was completed.

MDB-10 Part F, Item 21

Application form reads, "List the number of existing connections to be effected by this transaction."

Applicant response reads, in part: 420 (5/8" or 3/4" meter)

MDB comment(s): The purchase price of \$3,000,000 as stated in Item 13(A) divided by the number of existing connections of 420 reveals a "per connection" average purchase price of \$7,142. Using the City's separately claimed average monthly consumption of 5,100 gallons per meter at an average billable cost of \$50.62 it will require the equivalent of 141 months revenue, that is almost 12 years, for the City to recover the acquisition principal cost alone for Westwood. This is outrageously expensive. As a future customers the public is greatly concerned an excessive purchase price will result in a negative impact on service, upward pressure on rates of others within the municipality, and needlessly further expose the City to financial risks. Furthermore, the public is concerned the City will breach its repeated claim in this application that rates for other Westwood customers will not change by seeking cost recovery under Water Code Chapter 13, Sections 132.182 to .185, and others.

MDB-11 Part F, Item 22

MDB comment(s): There is no Item 22.

MDB-12 Part F, Item 24

Application form reads: "Attach the following maps with each copy of the application:"

Applicant response reads, in part: (none found)

MDB comment(s): These maps are not available to the public on the Utility Commission web site. A proper assessment of the application cannot be made without the required maps. Please provide the maps and ample time for public review.

MDB-13 Part G, Oath for Seller or Former Service Provider

Application form reads, in part: "I further state that I have provided to the purchaser or transferee a written disclosure statement about any contributed property..."

MDB comment(s): This disclosure statement is not available to the public. Please provide this.

MDB-14 Part G, Form A, Notice to Current Customers, Neighboring Systems and Cities

Notice form reads, in part: "The total area being requested includes approximately _____ acres and serves _____ current customers."

Applicant response reads: "750" and "420"

MDB comment(s): Dividing 750 acres by 420 customers reveals there are about 1.8 acres per customer in the certificated service area.

MDB-15 Part G, Form A, Notice to Current Customers, Neighboring Systems and Cities

Notice form reads, in part: "This transaction will have the following effect on the current customer's[sic] rates and services:"

Applicant response reads: "No effect"

MDB comment(s): It is not apparent to the public how the Seller, Westwood, would know this in advance. Or how the Seller would exert influence or control so this occurs in the future. Or what the remedies are to the Customer if this does not occur. Please provide the legal instrument that enables this claim by the applicant.

Bill of Sale reads, in part: "Consideration: Cash and a note of even date executed by Grantee and payable to the order of Grantor in the principal amount of TWO MILLION SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$2,750,000.00). The note is secured by a first and superior vendor's lien and superior title retained in this Bill of Sale and by a first-lien Security Agreement of even date, executed by Buyer in favor of Seller."

MDB comment(s): This purchase is a highly leveraged purchase/sale transaction. The City may consider the implied cash down payment of \$250,000 as the mere cost of a call option. The City may return the water utility to the first lien holder, Westwood, when the City's separate subsequent and iniquitous initiative to annex the Oak Forest subdivision ultimately fails. Please provide the loan documents and security agreement.

MDB-17 Additional concerns not addressed in the application:

Local Government Code; Title 2 - Organization of Municipal Government; Subtitle C - Municipal Boundaries and Annexation; Chapter 43 - Municipal Annexation; Subchapter B - General Authority to Annex; Section 43.033 - Authority of General-Law Municipality to Annex Area; Subsection (b) reads: "If, after one year but before three years from the passage of an ordinance annexing an area under this section, a majority of the landowners or registered voters in the area vote by petition submitted to the municipality for disannexation, the municipality disannexes the area under this subsection, the municipality may discontinue providing the area with water and sewer service."

MDB comment(s): The above cited code causes the public grave concern. It appears to attempt to enable a municipality, which in this docket is the proposed water service provider, to stop providing water to a disannexed area if the residents of such area should democratically vote in a certain manner. This apparent provision and, if implemented, outcome is totally unacceptable to the public. Please confirm the Public Utility Commission of Texas will not allow any certificated water service provider to cease providing water to disannexed customers.