



Control Number: 46169



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DOCKET NO. 46169

**APPLICATION OF EL PINON WATER §
SUPPLY AND SIMPLY AQUATICS, §
INC. FOR SALE, TRANSFER, OR §
MERGER OF FACILITIES AND §
CERTIFICATE RIGHTS IN SAN §
AUGUSTINE COUNTY §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

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OF TEXAS

COMMISSION STAFF'S RECOMMEDATION ON THE APPROVAL OF SALE

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

I. Background

On July 14, 2016, El Pinon Water Supply (El Pinon) and Simply Aquatics, Inc. (Simply Aquatics) (collectively the Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in San Augustine County. Specifically, Simply Aquatics seeks approval to acquire all of the water system assets of El Pinon held under water certificate of convenience and necessity (CCN) No. 12206. If approved, Simply Aquatics will be issued a water CCN and CCN No. 12206 will be cancelled. The total area being requested includes approximately 69 acres and serves 76 current customers.

On June 14, 2017, Order No. 8 was issued finding notice sufficient and requiring Staff to request a hearing or file a recommendation on approval of the sale by July 17, 2017. Accordingly, this pleading is timely filed.

II. Recommendation

As supported by the attached memorandum of Patricia Garcia, Engineering Specialist of the Commission's Water Utility Regulation Division, Staff recommends that the Applicants be approved to proceed with the proposed transaction. Staff recommends approval of the application because it satisfies Tex. Water Code §§ 13.241, 13.246, and 13.301, and 16 Tex. Admin. Code §§ 24.102, 24.109 and 24.112 (TAC). Approving this application to transfer the water system assets to Simply Aquatics and issuing a water CCN number to Simply Aquatics is necessary for the service, accommodation, convenience and safety of the public. Staff notes there are no deposits

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held by El Pinon for the customers being served. Staff further recommends that a public hearing is not necessary and that the Applicants file documentation as evidence that all assets have been transferred to the acquiring entity as soon as possible.

III. Conclusion

Staff respectfully requests that an order be issued consistent with this Recommendation.

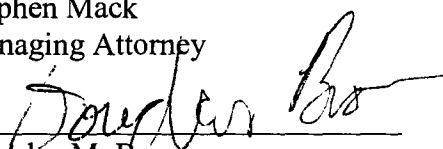
Dated: July 17, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney

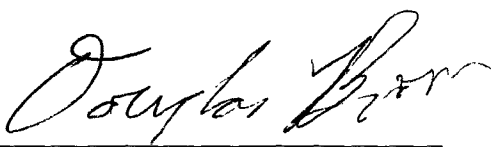


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on July 17, 2017, in accordance with 16 TAC § 22.74.



Douglas M. Brown

PUC Interoffice Memorandum

To: Ralph Daigneault
Legal Division

Thru: Tammy Benter, Director
Heidi Graham, Manager
Water Utilities Division

From: Patricia Garcia, Engineering Specialist
Water Utilities Division

Date: July 17, 2017

Subject: **Docket 46169**, *Application of El Pinon Water Supply and Simply Aquatics, Inc. for Sale, Transfer or Merger of Facilities and Certificate Rights in San Augustine County*

On July 14, 2016, Simply Aquatics, Inc. (Simply Aquatics or Purchaser) and El Pinon Water Supply (El Pinon or Seller), (Collectively Applicants), filed an application for the sale, transfer, or merger of facilities and certificate rights in San Augustine County, Texas pursuant to Texas Water Code Ann. § 13.301 (TWC) and the 16 Tex. Admin. Code §§ 24.109 (TAC). Specifically, Simply Aquatics seeks approval to acquire facilities, customers and service area under El Pinon's Certificate of Convenience and Necessity (CCN) No. 12206. If approved, Simply Aquatics will be issued a water CCN and CCN No. 12206 will be cancelled.

Notice

Proper public notice of the application was provided to customers, neighboring systems, landowners, cities and affected parties in San Augustine County. An affidavit stating notices were provided to all affected parties on May 17, 2017 was filed with the Commission on May 30, 2017. The comment period ended June 16, 2017, and no protests or opt-out requests were received.

Criteria Considered

Pursuant to TWC §13.301(e), 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. For this case, Staff does not believe a hearing is necessary because the transaction will serve the public interest. Staff believes Simply Aquatics demonstrates adequate financial, managerial and technical (FMT) capability to provide continuous and adequate service to the existing service area plus the area currently under El Pinon. TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. Therefore, the following criteria were considered:

TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.

The public water systems (PWS) being transferred by this application is El Pinon Estates Water System, Identification Number (ID No.) 2030013, which meets the Texas Commission on Environmental Quality's (TCEQ) drinking water standards as required by 16 TAC § 24.102(a)(1). The El Pinon Estates Water System is a groundwater system with one active well to provide service to the 55 connections in the area.

Simply Aquatics has been operating El Pinon since September 2014, when the previous operator turned over the system operations to them. A review of TCEQ's records indicates that the PWS has several violations for routine monitoring for various chemicals, maximum contaminant level (MCL) for trihalomethane (TTHM), lead and copper, public notice and reporting violations. Simply Aquatics will be resolving the violations. As the operator they are not made aware of all the violations from the TCEQ. As the owner of the water system they will be the recipient of the violation letters and be able to address them as needed. Approving the requested transaction will allow Simply Aquatics to address the violations as required.

TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.

The purpose of the transaction is to transfer El Pinon to Simply Aquatics. The customers are currently receiving water from El Pinon. Simply Aquatics is currently operating the water system.

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 Applicants will be affected by this transaction.

TWC § 13.246(c)(4) requires the Commission to consider the ability of the Applicants to provide adequate service.

El Pinon is a groundwater system with one active well.

TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.

El Pinon is currently serving the customers in the CCN area, therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.

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.

Based on the information provided by the Purchaser in this filing, the Purchaser 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.

The requirements for the financial test to meet financial assurance are described in 16 TAC §24.11(e) and include the requirement that the applicant meet one or more of several leverage tests and an operations test.

The Applicant has a debt service coverage (DSC) ratio of 3.0. After unpaid bills are paid in full and net losses from the subsidiary utilities are covered, the Applicant has a DSC ratio of 1.39. A ratio of more than 1.25 is preferred because this means that the utility is able to pay back its debts adequately. The DSC is calculated using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt service (payments). Therefore, the Applicant meets the leverage test requirement.

The operations test requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. The Applicant has enough net income, after unpaid bills are paid in full and debt service payments are made, to cover the utility's shortages. Therefore, the Applicant meets the operations test requirement.

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.

The environmental integrity of the land will not be effected as El Pinon is currently serving the customers in the requested area.

TWC § 13.246(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.

El Pinon is currently being operated by Simply Aquatics. The approval of this application will allow Simply Aquatics to continue to provide service to the customers of El Pinon.

The Applicants meet all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer the water CCN No. 12206 to Simply Aquatics and issuing a water CCN number to Simply Aquatics is necessary for the service, accommodation, convenience and safety of the public.

Recommendation

Pursuant to 16 TAC § 24.109(f), Staff recommends that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. Staff notes there are no deposits held by El Pinon for the customers being served.