



Control Number: 46205



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APPLICATION OF JOHN FRIAS §
WASTE WATER UTILITY AND §
OLMITO WATER SUPPLY §
CORPORATION FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN CAMERON COUNTY §
§

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PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

COMMISSION STAFF'S FINAL RECOMMENDATION

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Final Recommendation in response to Order No. 3. In support thereof, Staff would show the following:

I. Background

On July 22, 2015, John Frias Waste Water Utility (Frias) and Olmito Water Supply Corporation (Olmito) filed an application for sale, transfer, or merger of certificate rights in Cameron County. Applicants seek approval of a sale, transfer or merger in which Olmito will acquire all of Frias's certificated service area under sewer Certificate of Convenience and Necessity (CCN) No. 20714 in Cameron County, and associated facilities. Olmito's CCN would be amended. There are 79 customers.

In Order No. 3, issued October 5, 2016, the Administrative Law Judge (ALJ) found the application to be administratively complete and established November 9, 2016, as the deadline for Staff to file its final recommendation or request a hearing on the approval of the sale. This recommendation is therefore timely filed.

II. Applicable Legal Standards

The Texas Water Code details the requirements for the sale of a water or sewer system. The relevant portions of the Texas Water Code state:

- (a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the

effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall:

- (1) file a written application with the utility commission; and
- (2) unless public notice is waived by the utility commission for good cause shown, give public notice of the action.

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.¹

The Commission's substantive rules detail similar requirements for the sale of a water or sewer system.² The purchaser of a water or sewer system “must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.”³

With regards to the sale and transfer of a certificate of convenience and necessity, the Texas Water Code states that a certificate of convenience and necessity may not be sold “unless the utility commission has determined that the purchaser ... is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under Section 13.246(c) [of the Texas Water Code].”⁴ The factors to be considered by the Commission are:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;

¹ Tex. Water Code § 13.301(a)-(b) (TWC).

² See generally 16 Tex. Admin Code § 24.109 (TAC).

³ 16 TAC § 24.109(b)

⁴ TWC § 13.251; see also 16 TAC § 24.112(b).

- (6) the financial ability of the applicant to pay for the 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;
- (7) environmental integrity;
- (8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.⁵

Approval of the sale and transfer of a certificate of convenience and necessity expires one year after the date of approval.⁶

III. Staff's Recommendation

As supported by the attached memorandum of Fred Bednarski, Jolie Mathis, and Gary Horton of the Water Utility Division, Staff recommends that a public hearing is not necessary. No hearing requests were filed in this docket. Staff further recommends the Commission find that the transaction will serve the public interest and allow Olmito and Frias to proceed with the proposed transaction. In Staff's opinion, Olmito has the financial, managerial, and technical capability to provide continuous and adequate service to the area currently included in Frias's CCN No. 20714 in Cameron County. Staff further recommends that Olmito and Frias be ordered to file documentation as evidence that all assets have been transferred from Frias to Olmito and that the disposition of any remaining deposits have been addressed as soon as possible pursuant to 16 TAC § 24.109(f).

III. Conclusion

Staff recommends that the sale and transfer be permitted to proceed.

⁵ TWC § 13.246(c).


⁶ 16. Tex. Admin. Code § 24.112 (e).

PUBLIC UTILITY COMMISSION
LEGAL DIVISION

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney




Landon J. Lill
State Bar No. 24092700
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7228
(512) 936-7268 (facsimile)

P.U.C. DOCKET NO. 46205

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on November 9, 2016, in accordance with P.U.C. Procedural Rule 22.74.



Landon J. Lill

PUC Interoffice Memorandum

To: Landon Lil, Attorney
Legal Division

Thru: Tammy Benter, Director
Lisa Fuentes, Manager
Debi Looockerman, Financial Manager
Heidi Graham, Engineer Manager
Water Utilities Division

From: Fred Bednarski, Financial Examiner
Jolie Mathis, Engineering Specialist
Gary Horton, GIS Specialist
Water Utilities Division

Date: November 09, 2016

Subject: **Docket 46205**, *Application of John Frias and Olmito Water Supply Corporation for Sale, Transfer or Merger of Facilities and Certificate Rights in Cameron County*

On July 22, 2016, Olmito Water Supply Corporation, (Purchaser or Olmito), Certificate of Convenience and Necessity (CCN) No. 20784, and John Frias, (Seller or Frias), CCN No. 20714, (collectively, Applicants), filed an application for sale, transfer or merger (STM) of facilities and certificate rights in in Cameron County. The application was filed under the provisions in the Tex. Water Code Ann. § 13.301 (TWC) and 16 Tex. Admin Code §§ 24.109 and 24.112 (TAC). Specifically, Olmito seeks approval to acquire the wastewater system assets, customers and service area of the Seller and to cancel Certificate of Convenience and Necessity (CCN) No. 20714. Olmito plans to incorporate the service area into their CCN No. 20784.

The application was accepted for filing by the Commission on August 24, 2016. Proper public notice was provided for the transaction on September 9 & 15, 2016, to customers, neighboring systems, and cities in Cameron County in accordance with TWC § 13.246(a) and 16 TAC § 24.112(c). The affidavit of notice were received by the Commission on September 30, 2016. The comment period ended on October 15, 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 the information in the application Staff recommends that Olmito 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 addition, Staff's recommendation is based on 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. Olmito currently provides service to the area.

Olmito seeks approval to acquire the wastewater system assets, customers and service area of Frias and to cancel CCN No. 20714. Olmito plans to merge the service area into CCN No. 20784. A Wastewater Treatment Plant Agreement was entered into between Olmito and Frias on August 9th, 2007. Olmito WSC is responsible for maintenance, operation and management of the wastewater lift station, force main and collection system in the St. Francis of Assisi Subdivision. Frias Waste Water Utility currently meets the requirements of 16 TAC § 24.105(a)(15)(A). Wastewater permit WQ0013041001 is on file with the Texas Commission of Environmental Quality for Sewage treatment facilities and sewerage system St. Francis of Assisi.

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 Olmito to acquire Frias' service area which is comprised of approximately 79 current customers and 50 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 wastewater utility servicing the proximate area. As result of the proposed transaction there is no effect since Olmito is already providing service to the area and operating the facilities serving the approximate 79 current customers and 50 acres.

TWC § 13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service. Olmito is an existing wastewater utility with a wastewater permit # WQ0013817001 that expires July 1, 2020. Olmito has been providing service to the requested area based on the wastewater treatment plant agreement that was entered into between Olmito and Frias on August 9, 2007.

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 Olmito. 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 Olmito 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, Olmito 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 Olmito prior to the date of this memorandum and may not reflect any changes in Olmito's status subsequent to this review. The application would allow Olmito to acquire the wastewater system assets and certificated area held by the Frias.

Financial Test

Texas Water Code § 13.246(c)(6) (TWC) requires the Public Utility Commission of Texas (PUC) to consider the financial ability of Olmito to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant. 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. Staff notes that the following discussion shows that Olmito meets three out of the four leverage tests in which Olmito is only required to meet one.

16 TAC § 24.11(e)(2) refers to the leverage test. Below is a summary of all four leverage test results:

- 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. Based on the calculations below the Applicant has a debt to equity ratio of 0.39 which meets the debt to equity ratio requirement.
 - i. FY2015 Equity = \$14,066,523
 - ii. FY 2015 Long-Term Notes Payable = \$5,434,661
 - iii. FY 2015 Debt to Equity Ratio = \$5,434,661 / \$14,066,523 = **0.39**
- 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. Based on the calculations below the applicant has a debt service coverage ratio of 2.37 which meets the debt service coverage requirement.
 - i. FY2015 Total Funds Annual Net Operating Income before depreciation and non-cash expenses = \$836,275
 - ii. FY2015 Annual Long-term Debt Payments = \$350,519
 - iii. FY2015 Debt Service Coverage Ratio = \$836,275 / \$350,519 = **2.39**
- c. 16 TAC § 24.11(e)(2)(C) states the owner or operator must have **sufficient unrestricted cash available as a cushion for two years of debt service**. Based on the calculations below there is sufficient cash and pooled investments, including restricted cash for debt service, available for two years of debt service which does meet this requirement.
 - i. FY2015 Total Pooled Investments and Cash Available = \$1,429,769
 - ii. Two Years Debt Service Payments = \$701,038
 - iii. > \$728,731
- d. 16 TAC § 24.11(e)(2)(D) states the owner or operator must have **an investment-grade credit rating** from Standard & Poor's Financial Services LLC, Moody's Investors Service, or Fitch Ratings Inc. Olmito does not have an investment grade credit rating therefore Olmito does not meet this requirement.

16 TAC § 24.11(e)(3) refers to the operations test. This states 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. Olmito currently operates a sewer system that serves approximately 1,400 connections in their sewer CCN area and does not have any operating income shortages. Additionally noted Olmito has no foreseen cash shortages and has the capacity and ability to serve their current and requested area. No improvements are needed to meet the Texas Commission on Environmental Quality standards. Thus, there are no cash shortages to cover. Based on the above discussion, Olmito 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 and remain the same. The transaction will allow for Olmito to continue to provide wastewater service to the area.

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' will be charged lower rates from Olmito as stated in the application.

TWC §13.241(c) & 16 TAC §24.102(a)(2) require the Commission to ensure that the applicant has a TCEQ approved system that it is capable of meeting the TCEQ's design criteria for sewer-treatment plants, TCEQ rules, and the TWC. Olmito is an existing wastewater utility with a wastewater permit # WQ0013817001 that expires July 1, 2020. A Wastewater Treatment Plant Agreement was entered into between Olmito Water Supply Corporation and John Frias Waste Water Utility on August 9th, 2007. Olmito WSC is responsible for maintenance, operation and management of the wastewater lift station, force main and collection system in the St. Francis of Assisi Subdivision. Additionally noted Frias Wastewater Utility currently meets the requirements of 16 TAC § 24.105(a)(15)(A). Wastewater permit WQ0013041001 is on file with the Texas Commission of Environmental Quality for Sewage treatment facilities and sewerage system St. Francis of Assisi.

As required by 16 TAC §§ 24.102(c), 24.109(d), and 24.112(c)(5), Olmito's experienced operators are knowledgeable about wastewater 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.

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 Frias 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).