



Control Number: 46300



Item Number: 31

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# OPEN MEETING COVER SHEET

**MEETING DATE:** March 9, 2017  
**DATE DELIVERED:** March 2, 2017  
**AGENDA ITEM NO.:** 3  
**CAPTION:** Docket No. 46300; SOAH Docket No. 473-17-2466  
Application of Dal-High Water Supply and  
L&T Water Works for Sale, Transfer, or  
Merger of Facilities and Certificate Rights in  
Henderson County  
**ACTION REQUESTED:** Discussion and possible action with respect  
to Draft Preliminary Order.

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## Public Utility Commission of Texas

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TO: Chairman Donna L. Nelson  
Commissioner Kenneth W. Anderson, Jr.  
Commissioner Brandy Marty Marquez

All Parties of Record

FROM: Hannah Turner, Commission Advising *HT*

RE: March 9, 2017 Open Meeting Agenda Item No. 3  
Draft Preliminary Order, Docket No. 46300, SOAH Docket No. 473-17-  
2466.WS - *Application of Dal-High Water Supply and L&T Water Works for  
Sale, Transfer, or Merger of Facilities and Certificate Rights in Henderson  
County*

DATE: March 2, 2017

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 March 9, 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 March 9, 2017 open meeting.

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**PUC DOCKET NO. 46300**  
**SOAH DOCKET NO. 473-17-2466.WS**

<b>APPLICATION OF DAL-HIGH WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SUPPLY AND L&amp;T WATER WORKS</b>	<b>§</b>	
<b>FOR SALE, TRANSFER, OR MERGER</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OF FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN HENDERSON COUNTY</b>	<b>§</b>	

**DRAFT PRELIMINARY ORDER**

On August 22, 2016, Dal-High Water Supply Company and L&T Water Works, LLC (collectively referred to as the applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in Henderson County, Texas. The applicants are seeking Commission approval for L&T Water Works to acquire all of the water assets held by Dal-High under water certificate of convenience and necessity (CCN) number 12830.<sup>1</sup> The application constitutes the applicants' written consent to revoke CCN number 12830 under Texas Water Code (TWC) § 13.254(a) and Texas Administrative Code (TAC) 16 § 24.113(a). The application states that Dal-High currently serves 46 customers and that rates will not change for those customers if the sale is approved.<sup>2</sup>

On September 27, 2016, based on Commission Staff's recommendation, the application was deemed sufficient.<sup>3</sup> Subsequently, on January 31, 2017, Commission Staff filed a supplemental recommendation recommending that the application be dismissed without prejudice under 16 TAC § 22.181(d)(7) because the applicants had repeatedly failed to amend the application to provide sufficient information.<sup>4</sup> On February 1, 2017, the Commission referred this proceeding to the State Office of Administrative Hearings (SOAH) for a hearing. Dal-High and L&T Water Works 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 to identify any issues not to be addressed and

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<sup>1</sup> Application at 2 (Aug. 22, 2016).

<sup>2</sup> *Id.* at 8.

<sup>3</sup> Order No. 2 at 1 (Sep. 27, 2016).

<sup>4</sup> Commission Staff's Supplemental Recommendation at 1 (Jan. 31, 2016).

any threshold legal or policy issues that should be addressed by February 15, 2017. Commission Staff timely filed a proposed list of issues. The applicants 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. Has L&T Water Works demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to it? Texas Water Code (TWC) § 13.301(b) and 16 Texas Administrative Code (TAC) § 24.109(g).
  - a. If L&T Water Works has not demonstrated adequate financial capability, should the Commission require that it provide a bond or other form of financial assurance? TWC § 13.301(c) and 16 TAC § 24.109(h).
  - b. If the Commission requires L&T Water Works 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 L&T Water Works provide notice to the public? TWC § 13.301(a)(2) and 16 TAC §§ 24.109(a)-(f).
  - b. Is L&T Water Works 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.

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<sup>5</sup> Tex. Gov't Code Ann. § 2003.049(e) (West 2008 & Supp. 2014).

- 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 L&T Water Works, 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, does L&T Water Works 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. Is L&T Water Works able to pay for facilities necessary to provide continuous and adequate service to the requested area? TWC § 13.246(c)(6).
  - vii. Is L&T Water Works financially stable considering, if applicable, the adequacy of its 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 L&T Water Works as a utility service provider? TWC § 13.301(b) and 16 TAC § 24.109(g).

- d. Does L&T Water Works 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. Has L&T Water Works failed to comply with any orders of the Commission? 16 TAC § 24.109(j)(5)(A).
  - g. Does L&T Water Works 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 Dal-High currently retain any customer deposits? 16 TAC § 24.109(m). If so, what is the total amount of customer deposits retained? Does Dal-High have proper records to allow deposits and any unpaid interest to be returned? Will customer deposits be returned to customers or transferred to L&T Water Works in accordance with 16 TAC § 24.109(m)(4)?
  5. Does the water system being purchased 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? Does L&T Water Works have access to adequate financial resources to timely correct those deficiencies and problems?
  6. What is the precise boundary of the service area that is the subject of the application?

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 March 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**