



Control Number: 46452



Item Number: 24

Addendum StartPage: 0

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OPEN MEETING COVER SHEET

MEETING DATE: February 9, 2017

DATE DELIVERED: February 2, 2017

AGENDA ITEM NO.: 31

CAPTION: Docket No. 46452; SOAH Docket No. 473-17-2085
Application of Altoga Water Supply
Corporation and North Collin Special Utility
District for Sale, Transfer, Merger of
Facilities and Certificate Rights in Collin
County

ACTION REQUESTED: Discussion and possible action with respect
to Draft Preliminary Order

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Public Utility Commission of Texas

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: February 9, 2017 Open Meeting Agenda Item No. 31
Docket No. 46452, SOAH Docket No. 473-17-2085.WS – Draft Preliminary
Order
*Application of Altoga Water Supply Corporation and North Collin Special Utility
District for Sale, Transfer, or Merger of Facilities and Certificate Rights in
Collin County*

DATE: February 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 February 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 February 9, 2017 open meeting.

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PUC DOCKET NO. 46452
SOAH DOCKET NO. 473-17-2085.WS

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|--|----------|----------------------------------|
| APPLICATION OF ALTOGA WATER | § | PUBLIC UTILITY COMMISSION |
| SUPPLY CORPORATION AND NORTH | § | |
| COLLIN COUNTY SPECIAL UTILITY | § | |
| DISTRICT FOR SALE, TRANSFER, OR | § | OF TEXAS |
| MERGER OF FACILITIES AND | § | |
| CERTIFICATE RIGHTS IN COLLIN | § | |
| COUNTY | § | |

DRAFT PRELIMINARY ORDER

On October 18, 2016, Altoga Water Supply Corporation and North Collin Special Utility District (collectively referred to as the applicants) filed an application for the sale, transfer or merger of facilities and certificate rights in Collin County, Texas. The applicants are seeking Commission approval for North Collin Special Utility District to acquire all of the water assets held by Altoga under water certificate of convenience and necessity (CCN) number 12580.¹ In addition, the applicants seek to amend North Collin Special Utility District's existing water CCN number 11035 to add the service area currently held under Altoga's CCN number 12580.² Finally, the application constitutes the applicants' written consent to revoke CCN number 12580 under Texas Water Code (TWC) § 13.254(a) and Texas Administrative Code 16 § 24.113(a).³ The application states that Altoga currently serves 338 customers.⁴

On January 5, 2017, Commission Staff filed a request that this proceeding be referred to the State Office of Administrative Hearings (SOAH). On January 11, 2017, this proceeding was referred to SOAH. Altoga and North Collin Special Utility District 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 any threshold legal or policy

¹ Application at 1 (Oct. 18, 2016).

² *Id.* at 2.

³ Tex. Water Code § 13.254(a), 16 Tex. Admin. Code § 24.113(a). The Commission's sale, transfer or merger (STM) application form uses the word cancel. However, the relevant statute and the rule use the word revoke. These terms are synonymous.

⁴ Application at 20.

issues that should be addressed by January 25, 2017. Commission Staff and the applicants timely filed proposed lists of issues. The City of Princeton filed a motion to intervene and a proposed 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.⁵ 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 North Collin Special Utility District (North Collin SUD) 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).⁶
 - a. If North Collin SUD 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 North Collin SUD 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 North Collin SUD provide notice to the public? TWC § 13.301(a)(2) and 16 TAC §§ 24.109(a)-(f).

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

⁶ Citations in this preliminary order are to the new 16 TAC § 24.109, relating to a proposed sale, transfer, merger, consolidation, acquisition, lease, or rental under Texas Water Code § 13.301, which became effective December 21, 2016.

- b. Is North Collin SUD 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.
- 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 North Collin SUD, 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 North Collin SUD 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 North Collin SUD able to pay for facilities necessary to provide continuous and adequate service to the requested area? TWC § 13.246(c)(6).
 - vii. Is North Collin SUD 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 North Collin SUD as a utility service provider? TWC § 13.301(b) and 16 TAC § 24.109(g).
- d. Does North Collin SUD 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 North Collin SUD failed to comply with any orders of the Commission? 16 TAC § 24.109(j)(5)(A).
- g. Does North Collin SUD 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 Altoga currently retain any customer deposits? 16 TAC § 24.109(m). If so, what is the total amount of customer deposits retained? Does Altoga have proper records to allow deposits and any unpaid interest to be returned? Will customer deposits be returned to customers or transferred to North Collin SUD 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 North Collin SUD 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 February 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON, CHAIRMAN

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER

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