

Control Number: 46472



Item Number: 16

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APPLICATION OF MJ WOOTAN §
 (ESTATE) AND DEER COUNTRY §
 WATER SUPPLY CORPORATION §
 FOR SALE, TRANSFER, OR MERGER §
 OF FACILITIES AND CERTIFICATE §
 RIGHTS IN LLANO COUNTY §

PUBLIC UTILITY §
 COMMISSION OF TEXAS §
 PUBLIC UTILITY COMMISSION §
 CLERK

COMMISSION STAFF'S RECOMMENDATION

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its Recommendation.¹ In support of its Recommendation, Staff states the following:

I. Background

On October 25, 2016, the Estate of MJ Wootan and Deer Country Water Supply Corporation (Deer Country WSC) filed their application with the Commission. The Estate of MJ Wootan and Deer Country WSC request that the Commission approve the sale and transfer of a water system and a corresponding water certificate of convenience and necessity (CCN No. 12465) for a certificated service area in Llano County, Texas. The Estate of MJ Wootan is the seller, and Deer Country WSC is the purchaser.

On November 22, 2016, the Commission Administrative Law Judge issued Order No. 3, which deemed the Estate of MJ Wootan and Deer Country WSC's application administratively complete.

On January 24, 2017, the Commission Administrative Law Judge issued Order No. 4, which deemed the Estate of MJ Wootan and Deer Country WSC's notice of their application sufficient.

II. Applicable Statutes and Rules

A. Sale of a water system

The Texas Water Code details the requirements for the sale of a water system. The relevant portion of the Texas Water Code states:

¹ Order No. 4 requires Staff to either request a hearing or file a recommendation on the application by February 21, 2017. Staff's Recommendation is timely filed.

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.²

The Commission's substantive rules detail similar requirements for the sale of a water system.³ The Commission's substantive require that the purchaser of the water system "must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the [purchaser's] certificated service area"⁴

With regard to financial capability to provide continuous and adequate service, a purchaser may establish such capability through the leverage test or the operation test.⁵ One method to meet the leverage test is to show "a debt to equity ratio of less than one, using long term debt and equity or assets"⁶ In order to meet the operations test, the purchaser "must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations."⁷

B. Sale of a certificate of convenience and necessity

With regard 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 [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]."⁸ The factors to be considered by the Commission are:

- (1) the adequacy of service currently provided to the requested area;

² Tex. Water Code (TWC) § 13.301(b).

³ See generally 16 Tex. Admin. Code (TAC) § 24.109.

⁴ 16 TAC § 24.109(g).

⁵ See 16 TAC § 24.11(e)(2)-(3).

⁶ 16 TAC § 24.11(e)(2)(A).

⁷ 16 TAC § 24.11(e)(3).

⁸ TWC § 13.251.

(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;

(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.⁹

The Commission's approval of the sale and transfer of a certificate of convenience and necessity expires one year after the date of approval.¹⁰

III. Recommendation

Staff recommends that the Commission approve the Estate of MJ Wootan and Deer Country WSC's application and approve their sale and transfer transaction.¹¹ Deer Country WSC has the financial, managerial, and technical capability to provide continuous and adequate service to the certificated area under water CCN No. 12465. Thus, Deer Country WSC meets the requirements of the Texas Water Code and the Commission's substantive rules.

⁹ TWC § 13.246(c).

¹⁰ 16 TAC § 24.112(e).

¹¹ Staff's recommendation on the application is based on the attached memorandum of Debbie Reyes Tamayo in the Water Utilities Division.

A. Deer Country WSC has adequate financial, managerial, and technical capability to provide continuous and adequate service

Staff has determined that Deer Country WSC has adequate financial, managerial, and technical capability to provide continuous and adequate service to the certificated area under water CCN No. 12465 and its other certificated areas. With regard to financial ability, Deer Country WSC passes both the leverage test and the operations test. Deer Country WSC has zero long term debt and equity of \$23,470, thus making the debt to equity ratio zero (0). Additionally, there are no cash shortages in either Deer Country WSC's projected financial statements or projected cash flows for the next five (5) years.

With regard to managerial and technical capability, Deer Country WSC has assisted in the maintenance and operation of the Estate of MJ Wootan's public water system (PWS No. 1500121) since 2009. Additionally, Deer Country WSC employs a Class D-licensed operator.

B. Deer Country WSC is capable of providing adequate and continuous service to the service area certificated under water CCN No. 12465

Staff has determined that Deer Country WSC is capable of providing continuous and adequate service to the certificated area under water CCN No. 12465. Staff's determination is based on the following factors listed in TWC § 13.246(c) and 16 TAC § 24.102(d):

1. The adequacy of service currently provided to the service area certificated under water CCN No. 12465 (TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1)): The Estate of MJ Wootan uses PWS No. 1500121 to provide service to its customers. PWS No. 1500121 has access to an adequate supply of water, and its facilities have excess capacity. A review of records from the Texas Commission on Environmental Quality indicates that there are no unresolved violations or complaints associated with PWS No. 1500121.

2. The need for service in the service area certificated under water CCN No. 12465 (TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2)): There is a need for service because of twenty-three (23) existing customers in the service area.

3. The effect amending water CCN No. 12465 (TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3)): As a result of the transaction, the Estate of MJ Wootan's water facilities and corresponding water CCN No. 12465 will be transferred to Deer Country WSC, with water CCN No. 12465 being amended to reflect such transfer.

4. The ability of Deer Country WSC to provide continuous and adequate service to the service area certificated under water CCN No. 12465 (TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4)): Deer Country WSC has assisted in the maintenance and operation of PWS 1500121 since 2009, employs a Class D-licensed operator, and passes both the leverage test and operations test.

5. The feasibility of obtaining water service from an adjacent retail public utility (TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5)): Staff did not analyze this factor.

6. The financial ability for Deer Country WSC to pay for facilities necessary to provide continuous and adequate service (TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6)): Deer Country WSC passes both the leverage test and operations test regarding financial capability.

7. The impact on environmental integrity (TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7)): There will be no impact on environmental integrity as a result of the transaction because PWS No. 1500121 does not need any repairs or improvements at this time.

8. The improvement of service or lower of cost to customers (TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8)): Customers' rates will not be affected by the transaction.

9. Effect on land (TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9)): There will be no impact on environmental integrity as a result of the transaction because PWS No. 1500121 does not need any repairs or improvements at this time.

IV. Conclusion

Staff recommends that the Commission approve the Estate of MJ Wootan and Deer Country WSC's application and their sale and transfer transaction. Deer Country WSC has demonstrated that it has the financial, managerial, and technical capability to provide continuous and adequate service to the area certificated under water CCN No. 12465.

Date: February 16, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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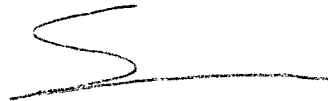


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DOCKET NO. 46472

CERTIFICATE OF SERVICE

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



Sam Chang

PUC Interoffice Memorandum

To: Sam Chang, Attorney
Legal Division

Thru: Tammy Benter, Director,
Lisa Fuentes, Manager
Water Utilities Division

From: Debbie Reyes Tamayo, Program Specialist
Water Utilities Division

Date: February 15, 2017

Subject: **Docket 46472**, *Application of Deer Country Water Supply Corporation (WSC) and MJ Wootan (Estate) for Sale, Transfer, and Merger of Facilities and Certificate of Convenience and Necessity (CCN) Rights in Llano County*

On October 25, 2016, Deer Country Water Supply Corporation (Deer Country or Buyer), and MJ Wootan (Estate) (Wootan or Seller), (collectively, Applicants) filed an application for approval of the Sale, Transfer, or Merger (STM) of facilities and certificate rights in Llano County, Texas, pursuant to Texas Water Code (TWC) §§ 13.241, 13.246, 13.301 and 16 Tex. Admin. Code §§ 24.102, 24.109 and 24.112. Specifically, Deer Country seeks approval to acquire all of the water system assets and service area and to retain Wootan's CCN No. 12465.

The application was accepted for filing by the Commission on November 22, 2016. Proper notice was provided on December 5, 2016, to current customers, neighboring systems, and cities in Llano County in accordance with 16 TAC § 24.112(c). The affidavit of notice was received by the Commission on December 8, 2016. The comment period ended January 4, 2017, and no protests or requests to opt out were received.

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 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 based on the review of the information in the application and the criteria listed below. Deer Country demonstrates adequate financial, managerial and technical (FMT) capability to provide service to its existing service area plus the area subject to this application. Based on the review of the public interest factors and the FMT capability of Deer Country, pursuant to TWC §13.246(c) Statute, the Commission shall consider the following nine criteria when amending a CCN:

TWC §13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area. No additional construction is necessary for Deer Country to serve the proposed area. Upon the Commission's approval of the transaction, the Seller's public water system (PWS), Deer Country Water System, PWS No. 1500121 and CCN area will transfer to Deer Country. The area is approximately 310 acres and serves 23 current customers. The impact of this transaction will allow the system to provide quality service providing a safe, continuous uninterrupted service to the customers. Deer Country meets the requirements of 16 TAC § 24.105(a)(14)(B). The existing water system, has access to an adequate supply of water and the water system facilities have excess capacity to serve the existing certificated area. Reviews of TCEQ records indicate that the PWS has no unresolved violations or complaints. In addition, the

WSC has assisted with maintenance of the PWS since 2011 and has a licensed operator for the water system who holds a Class D operator license (WO0036632) as required by TCEQ. Therefore, Staff believes adequate service is currently provided in the requested area.

TWC §13.246(c)(2) requires the Commission to consider the need for service in the requested area. Deer Country Public Water System has been providing water utility services to the current twenty-one (23) customers since 2009. The transfer of the system to Deer Country WSC will ensure continuous and adequate service and compliance. The WSC is owned by its members/customers of the utility there is a keen interest and benefit in ensuring a high quality of service.

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 Sellers current customers will be affected by this transaction. There will not be any significant impact on the quality of utility service.

TWC §13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service. The Deer County Public Water System has been providing potable water to area since 2009. The transition of the PWS from MJ Wootan to Deer County WSC will allow the applicant to continue providing adequate service in the area pending the approval of this application.

TWC §13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility. In this case, the area is ready to serve and no additional service is needed. Therefore, it is not necessary to consider the feasibility of obtaining service from another entity.

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. A review by financial staff indicates Deer Country 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 Deer Country prior to this date and may not reflect any changes in Deer Country's status subsequent to this review.

Deer Country provided projected financial statements for the first five years it intends to serve the area subject to this application upon approval and completion of the proposed transaction.

Financial Test

Texas Water Code § 13.246(c)(6) (TWC) requires the Commission to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant. 16 Tex. 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. The following discussion based on the projected financial statements provided shows that Deer Country met the criteria:

- 1) **16 TAC § 24.11(e)(2) refers to the leverage test in which the Purchaser must meet one or more of four criteria as applicable to this application.**
 - 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.**
 - i. Equity of \$23,470.00
 - ii. Long-term Liabilities of \$0.00

Deer Country meets the criterion because there is no long term debt, and therefore, the leverage test is met.

2) 16 TAC § 24.11(e)(3) refers to the operations test. This states that the owner or operator must demonstrate that sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations.

- a. Cash shortages were not reflected in the projected financial statements and there are no negative projected cash flows for the next five years, therefore the applicant meets this criterion.

Therefore, Deer Country meets the leverage and operations tests.

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 and does not need any repairs or improvements at this time.

TWC § 13.246(8) required the Commission to consider the probable improvement in service or lowering of cost to consumers. The customers' rates will not be affected by this transaction as they will remain the same. The applicant will maintain this utility in compliance with the rules and regulations of the TCEQ, the PUC, as well as federal and local laws, rules and regulations.

As required by 16 TAC §§ 24.102(c), 24.109(d), and 24.112(c)(5), Deer Country's experienced operator is knowledgeable about water 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.

Staff recommends the Commission find that the transaction will serve the public interest and allow Deer Country Water Supply Corporation and MJ Wootan (Estate) to proceed with the proposed transaction. Staff also recommends that Deer Country and Wootan be ordered to file documentation as evidence that all assets have been transferred from Wootan to Deer Country and that the disposition of any remaining deposits have been addressed as soon as possible pursuant to 16 TAC § 24.109(g).

Lastly, the approval of the sale expires one year from the date of the Commission's written approval of the sale. If the sale is not consummated within that period, and unless Deer Country and Wootan request and receive an extension from the Commission, the approval is void and Deer Country and Wootan must re-apply for the approval of the sale. In addition, Deer Country and Wootan should be informed that the CCN will remain in the name of MJ Wootan (Estate) until the transfer is complete and approved in accordance with the Commission rules and regulations as required by 16 TAC § 24.112(e).