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DOCKET NO. 46644

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PUBLIC UTILITY COMMISSION
OF TEXAS FILING CLERK

APPLICATION OF LANNIUS §
MUNICIPAL UTILITY DISTRICT §
A/K/A LANNIUS WATER SUPPLY §
CORPORATION AND BOIS D'ARC §
MUNICIPAL UTILITY DISTRICT §
FOR SALE, TRANSFER, OR §
MERGER OF FACILITIES AND §
CERTIFICATE RIGHTS IN FANNIN §
COUNTY §

PUBLIC UTILITY COMMISSION

COMMISSION STAFF'S RECOMMENDATION ON SALE

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Commission Staff's Recommendation on Sale in response to Order No. 3 and would show the following:

I. BACKGROUND

On December 7, 2016, Lannius Municipal Utility District a/k/a Lannius Water Supply Corporation (Lannius) and Bois D' Arc Municipal Utility District (Bois D' Arc) (collectively, Applicants) filed an application (Application) for sale, transfer, or merger of facilities in Fannin County, Texas. The Application proposes the sale of Lannius's water system under water certificate of convenience and necessity (CCN) No. 11163 to Bois D' Arc and the transfer of Lannius's certificated water service area under CCN No. 11163 to Bois D' Arc's water CCN No. 11753.

On January 9, 2017, Order No. 2 was issued, directing Applicants to file proof of notice by February 7, 2017. On January 25, 2017, Applicants timely filed proof of notice. On January 31, 2017, Order No. 3 was issued, establishing a deadline of March 15, 2017 for Staff to file a recommendation regarding approval of the sale. This pleading is therefore timely filed.

II. RECOMMENDATION ON SALE AND PROPOSED PROCEDURAL SCHEDULE

As detailed in the attached memorandum from Jonathan Ramirez in the Commission's Water Utility Regulation Division, Staff has reviewed the Application and recommends that the Applicants be allowed to proceed with the proposed transaction. Staff has reviewed the criteria of

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Texas Water Code (TWC) §§ 13.246 and 13.301 and 16 Texas Administrative Code (TAC) § 24.109 and determined that the proposed transaction meets the relevant statutory and regulatory requirements.

Specifically, Staff's analysis indicates that the proposed transaction satisfies the criteria contained in TWC § 13.246, including the financial criteria of TWC § 13.246(c)(6). Additionally, Staff believes that the proposed transaction will serve the public interest. Staff therefore recommends that an order be issued allowing the transaction to proceed¹ and establishing a deadline of seven days from the filing of sales documents and documents evidencing the disposition of any customer deposits for Staff to file a recommendation on the documentation and propose a procedural schedule for further processing of this application.

III. CONCLUSION

For the reasons detailed above, Staff respectfully recommends that the Applicants be allowed to proceed with the proposed transaction. Staff further recommends that a deadline of seven days from the filing of sales documents and documents evidencing the disposition of any customer deposits be established for Staff to file a recommendation on the documents filed and propose a procedural schedule for continued processing of this docket.

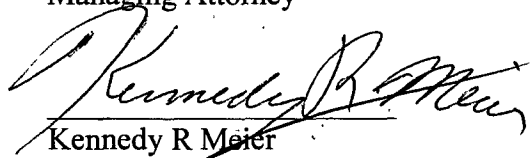
¹ 16 Tex. Admin. Code § 24.109(o) (TAC) provides that the parties to the sale of a water system or retail public utility have 180 days to complete the transaction after the issuance of an order allowing the transaction to proceed, unless extended by the Commission for good cause shown. This rule went into effect December 21, 2016. Prior to December 21, 2016, 16 TAC § 24.112(e) provided a one-year time period for the applicants to consummate a sale after receiving Commission approval. Staff notes that the present application was filed on December 7, 2016, when 16 TAC § 24.112(e) was still in effect.

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

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Managing Attorney

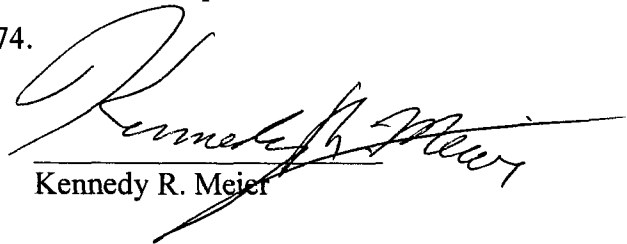


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 15th of March, 2017 in accordance with 16 TAC § 22.74.



Kennedy R. Meier

PUC Interoffice Memorandum

To: Kennedy Meier
Legal Division

Thru: Tammy Benter, Director
Lisa Fuentes, Manager

Water Utilities Division

From: Jonathan Ramirez, Financial Analyst

Water Utilities Division

Date: March 14, 2017

Subject: **Docket 46644**, *Application of Lannius Municipal Utility District A/K/A Lannius Water Supply Corporation and Bois D' Arc Municipal Utility District for Sale, Transfer, or Merger of Facilities and Certificate rights in Fannin County*

On December 7, 2016, Bois D'Arc Municipal Utility District (Buyer or Bois D' Arc) and Lannius Municipal Utility District (Seller or Lannius), (collectively, Applicants) filed an application with the Public Utility Commission of Texas (Commission) for sale, transfer, or merger of certificate rights in Fannin County. The application was reviewed pursuant to Texas Water Code §13.241, §13.246, and §13.301, and 16 Texas Administrative Code § 24.102 and § 24.109.

Specifically, Bois D'Arc, Certificate of Convenience and Necessity (CCN) No. 11753, seeks to purchase facilities, transfer service area and customers, and cancel Lannius' CCN No. 11163.

The application was accepted for filing on January 9, 2017. Proper notice was provided to customers, neighboring utilities and affected parties on January 13, 2017. The affidavit of notice was received by the Commission on January 25, 2017.

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. The deadline for intervention was February 13, 2017. The Commission did not receive any requests for a hearing during the 30 day comment period. The 120-day notification period concludes on May 15, 2017.

Staff reviewed the public interest factors, the financial, managerial, and technical capability of the Buyer pursuant to TWC § 13.246(c). Under this statute, the Commission shall consider the following nine criteria when amending a CCN:

- *TWC § 13.241(b) and 16 TAC § 24.102(a)(1) require the Commission to ensure that the applicant has a Texas Commission on Environmental Quality (TCEQ) approved system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and TCEQ rules, and has access to an adequate supply of water.* The Applicants have TCEQ approved public water systems, PWS ID Nos. 0740044 and 0740026 with adequate water supplies.

- ***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.*** The Applicants are currently providing adequate service to their respective areas. The Applicants plan to merge their water systems, which will give the systems adequate capacity to serve the requested area.
- ***TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.*** Lannius is currently providing service to the certificated area, therefore the need for service was not considered.
- ***TWC § 13.246(c)(3) requires the Commission to consider the effect of granting of a certificate or of an amendment on the recipient and on any other retail water utility servicing the proximate area.*** The effect of the proposed transaction is that it would transfer the water assets and CCN of Lannius to Bois D' Arc. Bois D' Arc's CCN service area will be amended, to include the area formerly served by Lannius.
- ***TWC §13.246(c)(4) and 16 TAC § 24.102(d)(4) require the Commission to consider the ability of the Buyer to provide adequate service.*** The Applicants intend to integrate their systems, which will marginally upgrade the reliability and capacity of Lannius' system.
- ***TWC §13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.*** This is not applicable. The Applicants agreed to merge their water systems.
- ***TWC §13.246(c)(6) requires the Commission to consider the financial ability of the Buyer to pay for facilities necessary to provide continuous and adequate service.***

Under 16 Tex. Admin. Code § 24.11 (TAC), criteria are established 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. The financial tests are listed in 16 TAC § 24.11(e). The following discussion based on the projected financial statements provided shows that the applicant met the criteria:

- 1) The leverage test is contained in 16 TAC § 24.11(e)(2), which requires that the applicant meet one or more of four criteria as applicable to this application:

Under 16 TAC § 24.11(e)(2)(B), 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.

- i. Annual Net Operating Income before depreciation and non-cash expenses = \$210,239; and
- ii. Annual Long-term debt payments = \$165,471.

Bois D'Arc meets the criterion because the debt service coverage ratio is greater than 1.25 (\$210,239 divided by \$165,471 equals 1.27), and therefore meets the leverage test, because one of the four criteria are met.

- 2) The operations test is detailed in 16 TAC § 24.11(e)(3). 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. Cash shortages were not reflected in the historical financial statements, which demonstrate there is sufficient cash available to cover any projected operations and maintenance shortages, therefore the applicant meets this criterion.

Therefore, Bois D'Arc meets the leverage and operations tests. Based on the review of the application and information provided, the Applicant has demonstrated adequate financial and managerial capabilities to provide service to the area being requested.

- ***TWC §§13.246(c)(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 should not be affected by this transaction since the area is currently receiving service.
- ***TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.*** The customers of Lannius should enjoy a stable water supply from a system that is professionally operated and maintained, and are to be charged the same rates as the customers of Bois D'Arc.

Staff has reviewed the above referenced application, and based on the information in the application and the applicable laws and rules, Staff has determined that Bois D'Arc is capable of providing continuous and adequate service to the requested area. Furthermore, Staff believes the transaction will serve the public interest. Therefore, Staff recommends that a public hearing is not necessary and the Applicants be allowed to proceed with the proposed transaction.

Staff further recommends that the Applicants be ordered to file documentation as evidence that all assets have been transferred to the acquiring entity, and that the disposition of any remaining deposits have been addressed as soon as possible.

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 the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for the approval of the sale. In addition, the CCN will remain in the name of the Seller until the transfer is completed and approved in accordance with the Commission rules and regulations as required by 16 TAC § 24.109(o).