



Control Number: 47027



Item Number: 20

Addendum StartPage: 0

RECEIVED

APPLICATION OF AQUA WATER §
SUPPLY CORPORATION AND §
FAYETTE WATER SUPPLY §
CORPORATION FOR SALE, TRANSFER, §
OR MERGER OF FACILITIES AND §
CERTIFICATE RIGHTS IN BASTROP §
COUNTY §

2017 NOV 15 PM 2:43
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Order No. 5, Staff's Recommendation on the Transaction. Staff recommends that the transaction be approved to proceed. In support thereof, Staff shows the following:

I. BACKGROUND

On April 4, 2017, Fayette Water Supply Corporation (Fayette WSC or Purchaser) and Aqua Water Supply Corporation (Aqua WSC or Seller) (collectively, Applicants) filed an application with the Public Utility Commission of Texas (Commission) for sale, transfer, or merger (STM) of facilities and certificate rights in Bastrop County, Texas. Fayette WSC seeks to purchase a portion of the certificated service area in water Certificate of Convenience and Necessity (CCN) No. 10294 from Aqua WSC and transfer that area to Fayette WSC's water CCN No. 10726.

On October 10, 2017, the Commission Administrative Law Judge (ALJ) issued Order No. 5, deeming the Applicants' notice sufficient. Order No. 5 also established a procedural schedule requiring Staff to request a hearing or file a recommendation regarding approval of the sale to proceed by November 16, 2017. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO APPROVE THE SALE TO PROCEED

As detailed in the attached memorandum of Jolie Mathis of the Commission's Water Utility Regulation Division, Staff recommends that the Applicants be approved to proceed with the sale and transfer of the certificated service area from water CCN No. 10294 to Fayette WSC's water CCN No. 10726. Staff has reviewed the criteria of TWC §§ 13.246 and 13.301 and 16 TAC §§ 24.109 and 24.112 and determined that the Applicants meet the requirements necessary for such transfer.

20

Pursuant to TWC § 13.301(e) and 16 TAC § 24.109(e), 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. No motions to intervene or public requests for a hearing were filed. Staff has determined that the application meets the pertinent requirements and is in the public interest; therefore, Staff does not request a hearing.

III. CONCLUSION

For the reasons stated above, Staff respectfully recommends that Fayette WSC and Aqua WSC be approved to proceed with and close the requested transaction.

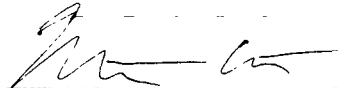
Dated: November 15, 2017

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney

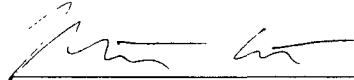


Matthew A. Arth
State Bar No. 24090806
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7021
(512) 936-7268 (facsimile)
Matthew.Arth@puc.texas.gov

P.U.C. DOCKET NO. 47027

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all parties of record on November 15, 2017, in accordance with the requirements of 16 Tex. Admin. Code § 22.74.


Matthew A. Arth

PUC Interoffice Memorandum

To: Matthew Arth, Attorney
Legal Division

Thru: Tammy Benter, Director
Heidi Graham, Manager
Water Utility Regulation Division

From: Jolie Mathis, Engineering Specialist
Water Utility Regulation Division

Date: 11/13/2017

Subject: **Docket No. 47027, *Application of Aqua Water Supply Corporation and Fayette Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bastrop County***

On April 4, 2017, Fayette Water Supply Corporation (Buyer) and Aqua Water Supply Corporation (Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Bastrop County, Texas, pursuant to Texas Water Code § 13.301 (TWC) and the 16 Tex. Admin. Code § 24.109 (TAC). Specifically, the Buyer seeks approval to transfer a portion of Aqua WSC's water service area under Certificate of Convenience and Necessity (CCN) No. 10294. The requested area includes approximately 2,035 acres and 0 connections.

Notice

The comment period ended October 16, 2017, and no protests or opt-out requests were received.

Criteria Considered

TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. Therefore, the following criteria were considered:

TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.

No existing service is being provided in the requested area.

TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.

This transaction will allow the Buyer to provide water service to residents who are currently without potable water service. In some instances residents are forced to haul potable water from another area to their homes.

TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient and on any other retail public utility servicing the proximate area.

There will be no effect on any retail public utility servicing the proximate area as there are no other retail public utilities in the area.

TWC § 13.246(c)(4) requires the Commission to consider the ability of the Applicant to provide adequate service.

The Buyer has a Texas Commission on Environmental Quality (TCEQ) approved Public Water System (PWS) Identification No. 0750022. The Buyer does not have any violations listed in the TCEQ database. No additional construction is necessary for the Buyer to serve the requested area. The Buyer has facilities near the proposed transfer service area capable of providing service.

TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.

There are no retail public utilities adjacent to the requested area.

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.

16 TAC § 24.11 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 the Buyer meets one out of the four leverage tests in which the applicant is only required to meet one.

- 1) 16 TAC § 24.11(e)(2) refers to the leverage test. 16 TAC § 24.11(e)(2)(B) states that 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, Fayette WSC has a debt service coverage ratio of more than 1.25, which does meet the debt service coverage ratio requirement.

- i. 2015 Fayette WSC, Annual Net Operating Income = \$23,696.00
- ii. 2015 Fayette WSC, Depreciation and Non-Cash Expenses = \$310,514
- iii. 2015 Fayette WSC Debt Service Payments = \$195,509
- iv. $\$23,696 + \$310,514 = \$334,210$
- v. $\$334,210 / \$195,509 = 1.71$

- 2) 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. Based on the unqualified opinion of the Buyer's audit firm, Medack & Oltmann, LLP, for the two fiscal years ending December 31, 2014 and December 31, 2015, this requirement is met pursuant to 16 TAC §§ 24.11(e)(3) and 24.11(e)(4)(B)(i).

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 will not be effected as no additional construction is needed to provide service to the requested area.

TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.

There are no current Aqua WSC customers in this area; therefore there will be no effect on rates and services to any consumers.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 regulations. Approving this application to transfer a portion of Aqua WSC's water CCN No. 10294 service area to Fayette WSC and amending Fayette WSC's water CCN No. 10726 to incorporate this transfer is necessary for the service, accommodation, convenience and safety of the public.

Recommendation

Staff has considered the Buyer's ability to provide continuous and adequate service and recommends the following:

1. The Applicants be notified that a public hearing is not necessary;
2. The Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction; and
3. The Applicants be ordered to file documentation as evidence that the transaction has closed. Staff notes there are no deposits held by Aqua WSC since there are no existing facilities or customers in the requested area.

Lastly, the approval of the sale expires six months 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 Applicants should be informed that the CCNs will remain in the name of Aqua Water Supply Corporation and Fayette Water Supply Corporation until the transfer is complete and approved in accordance with the Commission's rules and regulations.