



Control Number: 47178



Item Number: 18

Addendum StartPage: 0

APPLICATION OF RICHARD
SULLIVAN AND MICHAEL & HEIDI
FENSTERBUSH FOR SALE,
TRANSFER, OR MERGER OF
FACILITIES AND CERTIFICATE
RIGHTS IN LUBBOCK COUNTY
(VALLEY ESTATES)

§
§
§
§
§
§
§

PUBLIC UTILITY COMMISSION

OF TEXAS

COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas, representing the public interest, and files this response to Order No. 4, Commission Staff's Recommendation on the Transaction. Staff recommends that the transaction be approved to proceed. In support thereof, Staff would show the following:

I. BACKGROUND

On May 17, 2017, Richard Sullivan (Seller) and Michael & Heidi Fensterbush (Purchasers) (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 Lubbock County. Purchasers seek approval to acquire all water system assets and the associated service area currently held by Seller under water certificate of convenience and necessity (CCN) No. 12490. The total area being requested is approximately 15 acres with 35 affected customers.

On August 14, 2017, the Commission administrative law judge (ALJ) issued Order No. 3, deeming the application sufficient. On September 22, 2017, the ALJ issued Order No. 4, finding the notice to be sufficient. Order No. 4 also established a procedural schedule requiring Staff to request a hearing or file a recommendation regarding approval of the sale to proceed by October 18, 2017. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO APPROVE THE SALE TO PROCEED

As detailed in the attached memorandum of Greg Charles of the Commission's Water Utility Regulation Division, Staff recommends that the Applicants be approved to proceed with the sale and transfer of facilities and certificate rights for water CCN No. 12490 from Richard Sullivan to Michael & Heidi Fensterbush. Staff has reviewed the criteria of Tex. Water Code

§§ 13.246 and 13.301 (TWC) and 16 Tex. Admin. Code §§ 24.109 and 24.112 (TAC) and determined that the Applicants meet the requirements necessary to transfer the water CCN.

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. Staff has determined that the application meets the pertinent requirements and is in the public interest; therefore, Staff does not request a hearing.

After the Commission ALJ issues an order affirming or denying Staff's recommendation that the Applicants should be approved to move forward with the STM transaction, Staff will then coordinate with the Applicants and propose additional dates for the processing of this docket. Such dates will include deadlines for signed sales documents to be submitted by the Applicants, submittal of Staff's recommendation on final disposition, and submittal of a joint proposed notice of approval addressing the water CNN sale and transfer.

III. CONCLUSION

For the reasons stated above, Staff respectfully recommends that the STM transaction between Richard Sullivan and Michael & Heidi Fensterbush be approved to proceed.

Dated: October 17, 2017

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Margaret Uhlig Pemberton
Division Director

Katherine Lengieza Gross
Managing Attorney



Joshua Adam Barron
State Bar No. 24087146
Matthew A. Arth
State Bar No. 24090806
1701 N. Congress Avenue

P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7235
(512) 936-7268 (facsimile)
Joshua.barron@puc.texas.gov

PUC DOCKET NO. 47178

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on October 17, 2017 in accordance with 16 TAC § 22.74.


Joshua Adam Barron

PUC Interoffice Memorandum

To: Matt Arth, Attorney
Joshua Barron, Attorney
Legal Division

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

From: Greg Charles, Engineer
Water Utility Regulation Division

Date: October 17, 2017

Subject: **Docket 47178**, *Application of Richard Sullivan and Michael & Heidi Fensterbush for Sale, Transfer, or Merger of Facilities and Certificate Rights in Lubbock County (Valley Estates)*

On May 17, 2017, Richard Sullivan (Seller) and Michael & Heidi Fensterbush (Purchasers), (Collectively, Applicants), filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Lubbock County, Texas, pursuant to Texas Water Code Ann. § 13.301 (TWC) and the 16 Tex. Admin. Code § 24.109 (TAC). Specifically, the Purchasers seeks approval to acquire facilities and to transfer all of the water service area under water Certificate of Convenience and Necessity (CCN) No. 12490 from the Seller. The requested area includes approximately 15 acres and 35 connections.

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 September 18, 2017. The Commission did not receive any requests for a hearing during the 30 day comment period. The 120-day notification period concludes on December 15, 2017.

Staff reviewed the public interest factors, the financial, managerial, and technical capability of the Purchaser 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) requires 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 water systems, Valley Estates, PWS #1520198, and Country View MHP, PWS #1520247 are approved by TCEQ and have an adequate water supply.

- ***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 water systems have violations which are attributed to the Seller, and they are being addressed with the TCEQ and the Office of the Attorney General (OAG). Some of the violations have been resolved, and the Applicant has a plan to resolve the remainder of the issues with the OAG.
- ***TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.*** The Valley Estates water system and Country View MHP water system are currently providing service to the requested 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 would be minimal, because it would transfer the water facilities and CCN area to the Purchasers, who would continue to serve the requested area.
- ***TWC §13.246(c)(4) and 16 TAC § 24.102(d)(4) requires the Commission to consider the ability of the Buyer 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.*** The sale of the water systems will allow the Purchasers to bring the water systems into compliance with TCEQ rules.
- ***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 plan to continue to provide service to all the current customers.
- ***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.***
16 TAC § 24.11(e) lists the financial tests. 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 confidential information filed by the Applicants, the Purchaser has a debt service coverage ratio of 1.40, which meets the debt service coverage requirement.

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. Five year projections were provided for operating the Valley Estates System and Country View MHP and no foreseen cash shortages were noted. No improvements are needed to meet the TCEQ standards were noted as well. Thus, there are no cash shortages to cover.
- ***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 this transaction only involves the transfer of existing water system facilities.

- ***TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.*** The customers of both water systems should continue to receive the same level of service or better.

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 Michael and Heidi Fensterbush have the capability 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 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 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).