



Control Number: 47178



Item Number: 26

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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
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PUBLIC UTILITY COMMISSION
FILING CLERK

**JOINT MOTION TO ADMIT EVIDENCE AND
PROPOSED NOTICE OF APPROVAL**

COMES NOW Applicants, Richard Sullivan (Seller) and Michael & Heidi Fensterbush (Purchaser), the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), collectively the "Parties", and in accordance with this Commission's Order No. 6, jointly file this Motion to Admit Evidence and Proposed Notice of Approval, including proposed findings of fact, conclusions of law, and ordering paragraphs, and attached hereto and incorporated fully herein. In support thereof, the Parties show the following:

I. Background

On May 17, 2017, Seller and Purchaser, collectively the "Applicants", filed an application for sale, transfer, or merger (STM) of facilities in Lubbock County, Texas. The application proposes the transfer of water certificate of convenience and necessity (CCN) No. 12490 and associated facilities from Seller to Purchaser. The application has been processed pursuant to Tex. Water Code §§ 13.242 and 13.301 (TWC), and 16 Tex. Admin. Code §§ 24.101 and 24.109 (TAC). Accordingly, this Joint Motion to Admit Evidence is submitted, and pursuant to Order No. 6, this Proposed Notice of Approval, including proposed findings of fact, conclusions of law, and ordering paragraphs, is timely filed on or before January 12, 2018.

II. Joint Motion to Admit Evidence

The Parties jointly request to admit the following evidence into the record of this

proceeding:

- 1) Application of Richard Sullivan and Michael & Heidi Fensterbush for Sale, Transfer, or Merger of Facilities and Certificate Rights in Lubbock County, including all attachments, filed May 17, 2017.
- 2) Supplement to the Application, filed on July 19, 2017;
- 3) Proof of Notice, filed on September 13, 2017;
- 4) Staff's Recommendation on the Transaction, including the attached Staff memorandum, filed on October 17, 2017;
- 5) Closing Documents, filed on November 7, 2017;
- 6) Applicants' Letter Regarding Sale, filed on November 21, 2017;
- 7) Staff's Closing Documents Sufficiency Recommendation, and the attached Staff memorandum, filed on November 22, 2017;
- 8) Purchaser's Consent Form, filed on December 29, 2017; and
- 9) Seller's Consent Form, filed on January 3, 2018.

III. Proposed Notice of Approval

The attached Proposed Notice of Approval would approve the STM application of Purchasers and Seller and thus would effectuate the transfer of facilities and certificate rights in Lubbock County, Texas currently held under Seller's CCN No. 12490 to the Purchaser. Staff and the Applicants have reviewed and agree to the Proposed Notice of Approval as filed.

IV. Conclusion

This docket was processed in accordance with applicable statutes and Commission rules. Notice of the application was provided to interested parties. No party filed a request to intervene, protest of this filing, or a request for a hearing in this proceeding. Seller, Purchaser, and Staff are the only parties to this proceeding.

Staff has reviewed the application and the supplements and amendments thereto and recommends that it be approved.

The Parties respectfully request that the ALJ approve the application, grant the admittance of the specified evidence, and adopt the attached proposed Notice of Approval.

The undersigned has consulted with the Parties who concur with this Joint Motion to Admit Evidence and Proposed Notice of Approval and agree to its filing. The Parties respectfully request that the ALJ approve the application and adopt the attached proposed Notice of Approval.

DATED: January 10, 2018

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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PUC DOCKET NO. 47178

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 10th, 2017 in accordance with the requirements of 16 Tex. Admin. Code § 22.74.



Joshua Adam Barron

PUC DOCKET NO. 47178

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

PROPOSED NOTICE OF APPROVAL

This Proposed Notice of Approval addresses the application for the sale, transfer, or merger of facilities and certificate rights in Lubbock County, Texas currently held by Richard Sullivan (Sullivan or Seller) to Michael & Heidi Fensterbush (Fensterbush or Purchaser), collectively, "Applicants." Through this application, Fensterbush seeks approval to acquire Sullivan's water Certificate of Convenience (CCN) No. 12490¹ and associated facilities. On October 17, 2017, Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) recommended that the application be approved. The application is approved.

Consistent with the above discussion, the administrative law judge (ALJ) makes the following findings of fact, conclusions of law, and orders:

I. Findings of Fact

Procedural History, Description, and Background

1. On May 17, 2017, Richard Sullivan and Michael & Heidi Fensterbush filed an application for approval of the transfer of facilities and certificate rights in Lubbock County, Texas.
2. Sullivan holds water CCN No. 12490 in Lubbock County, Texas.
3. Approval of the application would transfer the service area and facilities of CCN No. 12490 held by Sullivan to Michael & Heidi Fensterbush.
4. On May 25, 2017, the administrative law judge (ALJ) issued Order No. 1 requiring Staff to file a recommendation regarding the administrative completeness of the application.
5. On June 21, 2017, the ALJ issued Order No. 2: Finding Application Incomplete and Deficient; Establishing Deadline and Opportunity to Cure.
6. On July 19, 2017, Sullivan filed financial information to satisfy the deficiencies in the application.

¹ Purchaser requested a new CCN number from the Commission. The new CCN number will be 13262.

7. On August 11, 2017, Staff filed its Second Administrative Completeness Recommendation, recommending that the application be found sufficient and administratively complete.
8. On August 14, 2017, the ALJ issued Order No. 3: Finding Application Sufficient and Complete; Finding Proposed Notice Sufficient and Requiring Notice; and Establishing Procedural Schedule.
9. On September 13, 2017, Fensterbush, filed proof of notice.
10. On September 21, 2017, Staff filed its Notice Sufficiency Recommendation which recommended that the Applicants' notice be found sufficient.
11. On September 22, 2017, the ALJ issued Order No. 4: Deeming Notice Sufficient and Complete; Establishing Deadlines for Remainder of Proceeding.
12. On October 17, 2017, Staff filed its Staff's Recommendation on the Transaction, which recommended approval of the transaction.
13. On October 18, 2017, the Commission ALJ issued Order No. 5: Approving Sale and Transfer Transaction to Proceed.
14. On November 7, 2017, the Applicants filed signed closing documents.
15. On November 11, 2017, Applicants filed a letter deeming the sale consummated on October 22, 2017.
16. On November 22, 2017, Staff filed its Closing Documents Sufficiency Recommendation, recommending that the closing documents filed by the Applicants be found sufficient.
17. On November 28, 2017, the ALJ issued Order No. 6: Finding Documentation Sufficient and Establishing Deadlines for Remainder of Proceeding.
18. On December 29, 2017, Fensterbush filed a signed consent form agreeing to the final map and certificate, as prepared by Staff.
19. On January 3, 2018, Sullivan filed a signed consent form agreeing to the final map and certificate, as prepared by Staff.
20. On January 11, 2018, Sullivan, Fensterbush, and Staff jointly filed a Proposed Notice of Approval.

Notice

21. As indicated by the Acknowledgement of Receipt filed on May 26, 2017, notice of the application was published in the *Texas Register* on June 9, 2017.

22. Notice of the application was mailed to certain neighboring utilities, cities, and customers on August 17, 2017.

Evidentiary Record

23. On January 11, 2018, Staff, Sullivan, and Fensterbush filed a Joint Motion to Admit Evidence.
24. On _____, the ALJ issued Order No. ____ admitting the following requested evidence into the record: (1) Application of Richard Sullivan and Michael & Heidi Fensterbush for Sale, Transfer, or Merger of Facilities and Certificate Rights in Lubbock County, including all attachments, filed May 17, 2017; (2) Supplement to the Application, filed on July 19, 2017; (3) Proof of Notice, filed on September 13, 2017; (4) Staff's Recommendation on the Transaction, including the attached Staff memorandum, filed on October 17, 2017; (5) Closing Documents, filed on November 7 and 11, 2017; (6) Staff's Closing Documents Sufficiency Recommendation, and the attached Staff memorandum, filed on November 22, 2017; (7) Fensterbush's Consent Form, filed on December 29, 2017; and (8) Sullivan's Consent Form, filed on January 3, 2018.

Informal Disposition

25. More than 15 days have passed since completion of the notice provided in this docket.
26. Sullivan, Fensterbush, and Commission Staff are the only parties to this proceeding.
27. No protests or requests for hearing were filed in this docket.

II. Conclusions of Law

1. The Commission has jurisdiction over these matters pursuant to Tex. Water Code § 13.041 (TWC).
2. Sullivan and Fensterbush are retail public utilities as defined in TWC § 13.002(19) and 16 Tex. Admin. Code § 24.3(59) (TAC).
3. Public notice of the application was provided as required by TWC § 13.301(a)(2).
4. The application was processed in accordance with the requirements of, TWC § 13.301 and 16 TAC § 24.109.

5. Sullivan and Fensterbush have demonstrated that the sale and transfer of service area and facilities for water CCN No. 12490 requested in this application are necessary for the service, accommodation, convenience, and safety of the public.
6. Sullivan and Fensterbush completed the sale within 180 days from the date of the Commission's approval of the sale, consistent with 16 TAC § 24.109(o).
7. The application does not constitute a major rate proceeding, as defined by 16 TAC § 22.2(27).
8. The requirements for informal disposition pursuant to 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following Order:

1. The application of Sullivan and Fensterbush for sale, transfer, or merger, as supplemented and amended, is approved.
2. The service area and facilities in Lubbock County associated with water CCN No. 12490 are transferred to Purchaser.
3. Purchaser shall comply with the recording requirements of TWC §§ 13.257(r) and (s) for the area in Lubbock County affected by the transfer and submit to the Commission evidence of the recording no later than 31 days after receipt of this Order.
4. All other motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

SIGNED AT AUSTIN, TEXAS the _____ day of _____, 2018.

PUBLIC UTILITY COMMISSION OF TEXAS

IRENE MONTELONGO
DIRECTOR, DOCKET MANAGEMENT