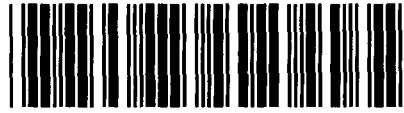




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**APPLICATION OF JENNIFER FULTZ, §
RECEIVER FOR THUNDERBIRD §
POINT WATER SYSTEM, AND BI- §
COUNTY WATER SUPPLY §
CORPORATION FOR SALE, §
TRANSFER OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN CAMP COUNTY §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

**ORDER NO. 8
APPROVING SALE/TRANSFER TO PROCEED**

This Order addresses the September 11, 2017 application of Thunderbird Point Water System, through its receiver Jennifer Fultz, and Bi-County Water Supply Corporation for the sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Camp County. Specifically, Bi-County seeks approval to acquire one of five water system assets owned by Thunderbird Point and the associated portion of service area held under certificate of convenience and necessity (CCN) number 11243.

On January 30, 2018, Commission Staff recommended that the transaction proceed in this docket. In Order No. 4 issued on February 6, 2018, the administrative law judge (ALJ) approved the transaction to proceed and advised the applicants they had 180 days to complete the transaction or the approval would be void without a granting of good cause for an extension of time by the Commission. An extension was granted in Order No. 5 issued on July, 9 2018, giving the applicants a new deadline of February 6, 2019 to complete the transaction. The sale was not completed by the deadline and in Order No. 6 issued on April 12, 2019, the ALJ found the original approval of the transaction void.

This Order issues a new approval of the sale and authorizes the transaction proposed in this application to proceed.

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I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Thunderbird Point is an inactive domestic for-profit corporation registered with the Texas secretary of state under file number 0046831400. Thunderbird Point is currently in receivership, with Jennifer Fultz as receiver.
2. Thunderbird Point is a retail public utility that provides water service in Texas under CCN number 11243 in Camp County.
3. Thunderbird Point owns a public water system (PWS) in Camp County registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification number 0320013.
4. Bi-County is a water supply corporation registered with the Texas secretary of state under file number 0029503701.
5. Bi-County owns and operates PWS number 0320002 and provides water service in Texas under CCN 10490 in Camp County.

Application

6. On September 11, 2017, Jennifer Fultz, receiver for Thunderbird Point, filed an application on behalf of Thunderbird Point and Bi-County for the approval of the sale of PWS number 0320013 and transfer of the corresponding portion of service area held under CCN number 11243 in Camp County from Thunderbird Point to Bi-County under CCN number 10490.
7. Thunderbird Point's CCN 11243 consists of five subdivisions: four in Brown County and one in Camp County. This transaction involves only the Thunderbird Point subdivision in Camp County.
8. The requested service area subject to this transaction is located approximately six miles northwest of downtown Pittsburg, Texas, and is generally bounded on the north by Lake Bob Sandlin, on the east by one mile west of Texas Utilities General Co. Railroad, on the south by CR 2601, and on the west by Lake Bob Sandlin.
9. The total area affected by the transfer comprises approximately 283.5 acres and 178 current customers.

10. In Order No. 2 issued on October 16, 2017, the administrative law judge (ALJ) deemed the application administratively complete.

Notice

11. Notice of the application appeared in the September 22, 2017 issue of the *Texas Register*.
12. On November 16, 2017, Ms. Fultz filed an affidavit on behalf of Bi-County, attesting that notice was provided to all current customers of Thunderbird Point, neighboring utilities, and affected parties on October 26, 2017.
13. In Order No. 3 issued on November 29, 2017, the ALJ deemed the notice sufficient.

Evidentiary Record

14. On April 26, 2019, the parties jointly moved to admit evidence.
15. In Order No. 7 issued on May 10, 2019, the ALJ admitted the following evidence into the record: (a) the application of Jennifer Fultz, Receiver for Thunderbird Point Water System and Bi-County Water Supply Corporation, filed on September 11, 2017; (b) the notice of application for placement in the *Texas Register*, filed on September 12, 2017; (c) the acknowledgement of receipt from the *Texas Register*, filed on September 20, 2017; (d) Ms. Fultz's affidavit and proof of notice, filed on November 16, 2017; (e) Ms. Fultz's response to Commission Staff's First Request for Information to Thunderbird Point Water System and Bi-County Water Supply Corporation Questions Nos. Staff 1-1 through 1-3, filed on December 11, 2017; (f) Ms. Fultz's response to Commission Staff's Second Request for Information to Thunderbird Point Water System and Bi-County Water Supply Corporation Questions Nos. Staff 2-1 through 2-2, filed on January 8, 2018; (g) Commission Staff's recommendation on sale, filed on January 30, 2018; (h) Ms. Fultz's response to Commission Staff's Third Request for Information to Thunderbird Point Water System and Bi-County Water Supply Corporation Question No. Staff 3-1, filed on February 9, 2018; and (i) Ms. Fultz's supplemental response to Commission Staff's third Request for Information to Thunderbird Point Water System and Bi-County Water Supply Corporation Question No. Staff 3-1, filed on March 15, 2018.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)

16. Thunderbird Point's PWS number 0320013 is not currently in compliance with the drinking water rules of the TCEQ.
17. There are no reported violations with Bi-County's PWS number 0320002 and that system is reported to be in compliance with the drinking water rules of the TCEQ.
18. Bi-County has not been subject to any enforcement action by the Commission, TCEQ, the Texas Health and Human Services Commission, the Office of Attorney General, or the United States Environmental Protection Agency.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(d)(1), 24.239(j)(5)(B)

19. On August 1, 2018, Bi-County became the operator of Thunderbird Point's PWS number 0320013 pending the completion of the transaction to transfer the system to Bi-County.
20. On September 4, 2018, Bi-County found Thunderbird Point's PWS number 0320013 compromised and submitted a request to the TCEQ for an emergency interconnection with their PWS number 0320002. On September 6, 2018, the TCEQ approved the request and the emergency interconnection was completed around September 18, 2019. With the emergency interconnection, Bi-County is providing continuous and adequate service to the requested service area.

Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(d)(2), 24.239(j)(5)(C)

21. The application is to transfer only existing facilities, customers, and service area.
22. Bi-County has received no new requests for service and is not requesting to add additional uncertificated area.
23. Thunderbird Point's existing customers in the requested water service area have a need for service.

Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(d)(3), 24.239(j)(5)(D)

24. Thunderbird Point and Bi-County are the only utilities affected by this sale and transfer.
25. Bi-County anticipates that water rates will decrease because of the sale and transfer.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (d)(4), 24.239(g), (j)(5)(E)

26. Bi-County has a sufficient number of licensed water operators and the managerial and technical capability to provide adequate and continuous service to the requested water service area.
27. Bi-County's PWS number 0320002 has sufficient capacity to serve their current customers and the additional 178 customers in the requested water service area.

Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a), (d)(6), 24.239(g), (j)(5)(G)

28. Bi-County's projected net operating income for a year, plus the depreciation and non-cash expenses for the year, divided by the projected debt service payments for the year, results in a debt-service-coverage ratio of more than 1.25.
29. Bi-County demonstrated that it has the available cash levels to serve the requested service area.
30. Bi-County has demonstrated the financial capability and stability to provide continuous and adequate water service.

Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§, 24.227(e), 24.239(h)

31. Bi-County's projected operating revenues are sufficient to cover the projected operations and maintenance expense for the first five years after the completion of the proposed sale and transfer.
32. There is no need to require Bi-County to provide a bond or other financial assurance to ensure continuous and adequate service.

Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC §§ 13.246(c)(5); 16 TAC §§ 24.227(d)(5), 24.239(j)(5)(F)

33. In the proposed transaction, Bi-County is the adjacent retail public utility and it is already providing water service to the area in question by agreement with Thunderbird Point; therefore, it is not feasible to obtain service from another utility other than Bi-County.

Environmental Integrity—TWC § 13.246(c)(7); 16 TAC §§ 24.227(d)(7), 24.239(j)(5)(H)

34. The requested water service area will be served by interconnecting Bi-County's current PWS with Thunderbird Point; therefore the transfer should have a minimal effect on the environmental integrity of the requested area.

Effect on the Land—TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)

35. The requested water service area will be served by interconnecting Bi-County's current PWS with Thunderbird Point; therefore the transfer should have a minimal adverse effect on the land.
36. The transfer will improve the utility of the land through the positive impact of continuous and adequate water service.

Improvement of Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(j)(5)(I)

37. Bi-County intends to improve both the water service and customer service with the transfer of the requested water service area.
38. Bi-County intends to lower costs to consumers.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. After consideration of the factors in TWC § 13.246(c), Bi-County has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).
2. Ms. Fultz and Bi-County have demonstrated that transferring TCEQ PWS number 0320013 and the corresponding water service area held under CCN number 11243 from Thunderbird Point to Bi-County's CCN number 10490 will serve the public interest and are necessary for the service, accommodation, convenience, and safety of the public. TWC § 13.301(d), (e).

III. Ordering Paragraphs

In accordance with the preceding findings of fact and conclusions of law, the Commission issues the following orders.

1. The sale is approved and the transaction between applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants shall file proof that the transaction has been consummated and customer deposits have been addressed.
3. The applicants have 180 days to complete the transaction.
4. Under 16 Texas Administrative Code § 24.109(o), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are advised that PWS 0320013 and the corresponding service area will remain under certificate of convenience and necessity number 11243 and held by Thunderbird Point until the sale and transfer transaction is complete in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, the applicants shall continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
7. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff shall file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the 10th day of June 2019.

PUBLIC UTILITY COMMISSION OF TEXAS



CHRISTOPHER OAKLEY
ADMINISTRATIVE LAW JUDGE