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DOCKET NO. 47741

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PUBLIC UTILITY COMMISSION
OF TEXAS

**APPLICATION OF KEMPNER §
WATER SUPPLY CORPORATION §
AND THE CITY OF COPPERAS §
COVE FOR SALE, TRANSFER, OR §
MERGER OF CERTIFICATE §
RIGHTS IN CORYELL COUNTY §**

**COMMISSION STAFF'S RECOMMENDATION
ON APPROVAL OF SALE**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this response to Order No. 3, Staff's Recommendation on Approval of Sale. Staff recommends that the Applicants be allowed to proceed with the proposed transaction. In support thereof, Staff shows the following:

I. BACKGROUND

On October 30, 2017, Kempner Water Supply Corporation ("Kempner WSC") and the City of Copperas Cove ("Copperas Cove") (collectively "Applicants") filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Coryell County. On January 23, 2018, the Administrative Law Judge (ALJ) issued Order No. 3 requiring Staff to file a recommendation on approval of the sale and on issuance of a certificate by March 5, 2018. Therefore, this pleading is timely filed

II. RECOMMENDATION ON APPROVAL OF SALE

Staff has reviewed Kempner WSC's application and, as detailed in the attached memorandum of Elisabeth English of the Water Utilities Regulation Division, Staff recommends that Kempner WSC's application be approved, that the Applicants be notified that a public hearing is not necessary, and that the Applicants be ordered to file documentation as evidence that the transaction has closed and that the disposition of any remaining deposits have been addressed as soon as possible pursuant to 16 TAC §§ 24.109(m)-(n). Lastly, as detailed in the attached memorandum, Staff recommends that the approval of the sale expires six months from the date of the Commission's written approval of the transaction. If the transaction is not completed within that period, and unless the Applicants request and receive an extension from the Commission, the

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approval is void and they must reapply for the approval of the transaction. In addition, the CCN will remain in the name of the Kempner WSC until the transfer is completed and approved in accordance with the Commission rules and regulations as required by 16 TAC § 24.109(o).

III. CONCLUSION

For the reasons stated above and as detailed in Staff's attached memorandum, Staff respectfully recommends that the Applicants be authorized to proceed with the proposed transaction.

Date: March 5, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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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 5th of March, 2018 in accordance with 16 TAC § 22.74.



Kevin R. Bartz

PUC Interoffice Memorandum

To: Kevin Bartz,
Legal Division

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

From: Elisabeth English, Engineering Specialist
Water Utilities Regulation Division

Date: March 5, 2018

Subject: **Docket 47741**, *Application of Kempner Water Supply Corporation and the City of Copperas Cove for Sale, Transfer, or Merger (STM) of Certificate Rights in Coryell County.*

On October 30, 2017, Kempner Water Supply Corporation (“Kempner WSC”) and the City of Copperas Cove (“Copperas Cove”) (collectively “Applicants”) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Coryell County. This application is being reviewed under 16 Tex. Admin. Code §§ 24.102 and 24.109 (TAC) and Texas Water Code Ann. §§ 13.241, 13.246, and 13.301 (TWC).

Background

Kempner WSC seeks approval to sell and transfer a portion of water certificate of convenience and necessity (CCN) No. 10456 to Copperas Cove's CCN No. 10449. The requested area includes approximately 16 acres and does not have any customer connections at this time. The purpose of the transfer is to make utility service available to the Foothill Ranch Estates subdivision. Kempner WSC does not have facilities within or adjacent to this area, whereas Copperas Cove has a transmission line directly adjacent to the subdivision. Consequently, Copperas Cove has better capabilities to provide water service to the requested area.

Proper notice of application was on provided on January 2, 2018 to cities, districts, groundwater conservation districts, county judges, and neighboring retail public utilities located within two miles from the outer boundary of the requested area. The intervention period concluded on February 1, 2018. The Commission did not receive any comments on the application or requests to intervene.

Criteria Considered

Applicants that request to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system (transferee) must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee’s certificated service area. As required by TWC § 13.246(c) and §24.102(a), the Commission considers the prescribed nine criteria when granting or amending any 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.

Staff recommends that the Applicants meet the requirements of 16 TAC § 24.102(a)(1). Copperas Cove has an approved Texas Commission on Environmental Quality (TCEQ) public water system (PWS) ID No. 0500001. The PWS 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.

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

The owner, and developer, of the requested area (MV Developers, LLC) has sought utility service from both applicants in order to develop the land into a residential subdivision.

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.

No retail public utilities serving the proximate area will be affected.

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

Copperas Cove has a TCEQ approved water system in compliance with applicable regulations with adequate water supply. Furthermore, Copperas Cove has water facilities in close proximity to the requested area.

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

Copperas Cove has a transmission line directly adjacent to the requested area and therefore has the capability to provide water service in a reasonable timeframe and with less financial hardship on the landowner.

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.

Copperas Cove meets two out of 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. Below is a summary of two out of four leverage tests that were met.
 - a. 16 TAC § 24.11(e)(2)(C) states the owner or operator must have sufficient unrestricted cash available as a cushion for two years of debt service. Sufficient unrestricted cash as a cushion for two years of debt service has been demonstrated by the applicant. The 2016 balance sheet reflects cash balances of \$18,072,404 and two years' debt service of \$16,506,290. Therefore, the City meets this requirement
 - b. 16 TAC § 24.11(e)(2)(D) states the owner or operator must have an investment-grade credit rating from Standard & Poor's Financial Services, LLC, Moody's Investors Service, or Fitch Ratings, Inc. The City has an AA rating from Standard & Poor's Financial Services, LLC and an Aa3 rating from Moody's Investors Service. Both are investment grade ratings.
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 next three years of operations for existing utilities. No projected operations and maintenance shortages are projected for the City.

TWC §§ 13.246(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 and effect on the land will be minimal. Copperas Cove already has a water transmission line adjacent to the property, which will ultimately be connected to the distribution system constructed to serve the requested area.

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

There is not currently service in the requested area.

The Applicants have met all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer a portion of Kempner WSC's water CCN No. 10456 to Coppers Cove is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

Staff recommends the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction.

Staff further recommends:

1. The Applicants be notified that a public hearing is not necessary; and
2. The Applicants be ordered to file documentation as evidence that the transaction has closed and that the disposition of any remaining deposits has been addressed as soon as possible pursuant to 16 TAC §§ 24.109(m)-(n).

Lastly, the approval of the sale expires six months from the date of the Commission's written approval of the transaction. If the transaction is not completed within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and they must reapply for the approval of the transaction. In addition, the CCN will remain in the name of the Kempner WSC until the transfer is completed and approved in accordance with the Commission rules and regulations as required by 16 TAC § 24.109(o).