



Control Number: 48005



Item Number: 19

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APPLICATION OF NORTHSIDE §
 WATER SUPPLY CORPORATION §
 AND RED RIVER AUTHORITY OF §
 TEXAS FOR SALE, TRANSFER, OR §
 MERGER OF FACILITIES AND §
 CERTIFICATE RIGHTS IN §
 WILBARGER COUNTY §

PUBLIC UTILITY COMMISSION

2018 MAY 29 PM 1:53
 PUBLIC UTILITY COMMISSION
 OF TEXAS
 ASST. CLERK

COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Recommendation on the Transaction. In support thereof, Staff shows the following:

I. BACKGROUND

On January 31, 2018, Northside Water Supply Corporation (Northside WSC) and Red River Authority of Texas (Red River) (collectively, Applicants), filed an application for sale, transfer, or merger of facilities and certificate rights in Wilbarger County. Specifically, Northside WSC seeks approval to transfer all of its water service area under certificate of convenience and necessity (CCN) No. 10631 to Red River.

On April 16, 2018, the Administrative Law Judge (ALJ) issued Order No. 3, deeming the Applicants' notice sufficient and requiring Staff to request a hearing or file a recommendation on approval of the proposed transaction by May 28, 2018.¹ Therefore, this pleading is timely filed. Additionally, Order No. 3 established an intervention deadline of April 26, 2018.

On April 28, 2018, Wilbarger County filed an Objection to the Recommendation on Administrative Completeness stating that Red River was required to obtain the Wilbarger County Commissioners Court approval for the proposed transaction since it involved property and water rights in Wilbarger County, Texas. Specifically, pursuant to Tex. Rev. Civ. Stat. Ann. art. 8280-

¹ Pursuant to 16 Texas Administrative Code §§ 22.4 (TAC), in computing any period of time, the period shall conclude on the last day of the designated period unless that day is a day the commission is not open for business, in which event the designated period runs until the end of the next day on which the commission is open for business. Monday, May 28, 2018 is a state observed holiday. Therefore, the deadline advances to the next day on which the commission is open for business, Tuesday, May 29, 2018.

228, Section 19a, Wilbarger County stated that Red River's obligation for approval applied to any purchase of groundwater rights within the county.

On May 10, 2018, Red River filed its Response to Objection of Wilbarger County, Texas. Red River stated that the proposed transaction did not constitute the purchase of groundwater rights under Tex. Rev. Civ. Stat. Ann. art. 8280-228, Section 19a. Therefore, Red River concluded that it was not required to obtain the consent of the Wilbarger County Commissioners Court as it relates to the proposed transaction. Red River also stated that Wilbarger County's objection was not timely filed.

On May 14, 2018, Red River filed a response to Staff's Second Request for Information (RFI). In response to Staff RFI 2-2, Red River stated that the acquisition of Northside WSC assets would not constitute the purchase of groundwater rights.

On May 24, 2018, Red River filed a supplemental response to Staff's Second Request for Information. The supplemental request provided a letter that was sent to the TCEQ submitting proposed plans to address current TCEQ violations.

II. WILBARGER COUNTY'S OBJECTION

In response to Staff's RFI request, Red River states that Applicants' application does not involve the purchase of groundwater rights in Wilbarger County as was alleged in the county's objection. Staff recommends that, because the proposed transaction does not involve the purchase of groundwater rights, Wilbarger County is not a proper party to this proceeding as it does not possess either a right to participate that is expressly conferred by statute or a justiciable interest which may be adversely affected by the outcome of the proceeding.²

The intervention deadline in this matter was April 26, 2018. Wilbarger County's filing was on April 28, 2018, but it did not request intervention and none was granted. Therefore, it does not have intervenor status.

² 16 TAC § 103(b).

III. RECOMMENDATION TO CONDITIONALLY ALLOW THE TRANSACTION TO PROCEED

Staff recommends that, a minimum of ten days prior to submission of closing documents, that Red River be required to submit copies of the TCEQ approval letters associated with the public water system improvements identified in Red River's supplemental response to Staff's Second Request for Information.

As detailed in the attached memorandum of Kathryn Eiland, Water Utility Regulation Division, Staff's review indicates that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified pursuant to Texas Water Code § 13.246(c).

Additionally, Staff recommends that Red River has demonstrated the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction.

Finally, Staff recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated pursuant to 16 TAC § 24.109(n). Staff notes that there are no remaining deposits to be addressed as required under 16 TAC § 24.109(m).

IV. CONCLUSION

Staff respectfully requests that the ALJ issue an order consistent with this recommendation.

DATED: May 29, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 48005

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on May 29, 2018, in accordance with. 16 TAC § 22.74.



Richard Nemer

PUC Interoffice Memorandum

To: Richard Nemer, Attorney
Legal Division

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

From: Kathryn Eiland, Financial Analyst
Water Utility Regulation Division

Date: May 29, 2018

Subject: **Docket No. 48005**, *Application of Northside Water Supply Corporation and Red River Authority of Texas for Sale, Transfer, or Merger of Facilities and Certificate Rights in Wilbarger County*

On January 31, 2018, Red River Authority of Texas (Purchaser or Red River) and the Northside Water Supply Corporation (Seller or Northside WSC) (collectively, Applicants) filed an application for the sale, transfer, or merger (STM) of facilities and certificate rights in Wilbarger County, Texas, pursuant to Texas Water Code Ann. (TWC) § 13.301 and the 16 Tex. Admin. Code (TAC) § 24.109. Specifically, Red River seeks approval to acquire facilities and to transfer water service area from Northside WSC under water Certificate of Convenience and Necessity (CCN) No. 10631. The requested area includes facility lines and eighty-one (81) connections.

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.

The facilities to be acquired by Red River are registered under approved TCEQ public water system (PWS), No. 2440003. The public water system is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and TCEQ rules. The PWS also provides an adequate supply of water.

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

There are currently eighty-one (81) existing connections. Therefore, there is a need for service in the requested area.

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 of the same kind already servicing the proximate area.

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

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

Red River has several approved TCEQ public water systems and 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.

While the PWS does have outstanding violations, Red River has indicated that it plans to resolve the violations upon completion of the proposed transaction. One of the resolutions involves purchasing treated water from the City of Vernon. Red River currently purchases raw water from the City of Vernon. Upon completion of the proposed transaction, Red River will renegotiate the water purchase contract with the City of Vernon in order to purchase treated water. Red River will also install transmission lines to improve the quality of water in the requested area. Staff requests that Red River submit copies of the TCEQ approval letters for the transmission line installation and any other improvements to the public water system meant to address current violations.

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

There are no neighboring water utilities, cities, or political subdivisions providing the same service within two miles of area affected by this proposed transaction.

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 requested utility service area. 16 TAC § 24.11(e) lists the financial tests.

Red River must meet the leverage test, which requires it meet one or more of the five criteria listed under 16 TAC § 24.11(e)(2). The first criteria requires that Red River have a debt to equity ratio of less than one using long-term debt and equity. It meets this criteria based on a debt to equity ratio of 0.04. Under the second criteria, Red River must have a debt service coverage ratio of more than 1.25. It meets this coverage requirement with a debt service coverage ratio of 20:1. The third criteria requires that Red River must have sufficient unrestricted cash available as a cushion for two years of debt service. It satisfies this requirement with \$6,873,070 of cash available and two years of debt service payments of \$104,644. The fourth criteria requires that Red River must have an investment-grade credit rating from Standard & Poor's Financial Services LLC, Moody's Investors Service, or Fitch Ratings Inc. It satisfies this requirement with an A- credit rating from Standard & Poor's Financial Services LLC, effective May 11, 2017. Therefore, Red River meets four of the five criteria identified under the leverage test.

Red River must also meet the operations test under 16 TAC § 24.11(e)(3), which requires that the owner or operator demonstrate that sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. It has \$6,873,070 in cash available to cover operations and maintenance shortages. Therefore, Red River meets the operations test.

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 land will be affected during the installation of a water line to serve the existing customers.

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

Red River plans to install a new transmission line to bring treated water from the City of Vernon to the acquired PWS. Additionally, the quality of service should increase since Red River has TCEQ licensed operators. Comparatively, Northside WSC is staffed by volunteers and the occasional contractor.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application, which proposes to (1) transfer all of the water service area under CCN No. 10631 to Red River, and (2) amend water CCN No. 10202 of Red River, is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

Pursuant to 16 TAC § 24.109(i), Staff recommends the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Staff notes there are no deposits held by Northside WSC for the customers being served by Northside WSC. Staff further recommends that a public hearing is not necessary.

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 CCN will remain in the name Northside WSC until the transfer is complete and approved in accordance with the Commission's rules and regulations.