

Control Number: 48505



Item Number: 35

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DOCKET NO. 48505

APPLICATION OF SHELCON §  
SERVICES AND CREST WATER §  
COMPANY FOR SALE, TRANSFER, §  
OR MERGER OF FACILITIES AND §  
CERTIFICATE RIGHTS IN TARRANT §  
COUNTY §

2019 JUN 14 PM 1:32  
PUBLIC UTILITY COMMISSION  
OF TEXAS

NOTICE OF APPROVAL

This Notice of Approval approves the sale and transfer of Mustang Creek Estates public water system and water systems under certificate of convenience and necessity number (CCN) 13055 held by Shelcon Services to Crest Water Company's CCN number 12037.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Shelcon Services is a utility company that provided water service under CCN 13055, for the Mustang Creek Estates public water system.
2. James A. Dyche owns and operates a sole-proprietorship that provides water service under CCN number 12037.
3. James A. Dyche has an assumed name certificate to do business as Crest Water Company.

Application

4. On July 2, 2018, Shelcon and Crest filed an application for approval to sell and transfer 358 acres of service area in Tarrant County with 79 connections to Crest's CCN number 12037 from Shelcon's CCN number 13055.
5. Crest seeks approval for purchase of the Mustang Creek Estates public water system (. Texas Commission on Environmental Quality (TCEQ) PWS ID No. 2200353 from Shelcon.

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6. The requested area is located approximately 6 miles west of downtown Crowley, and is generally bounded on the north by Ben Day Murrin Road; on the east by Winscott Plover Road; on the south and west by Crowley Plover Road.
7. Crest filed supplements to the application on July 24, 2018, August 14, 2018, September 28, 2018, and October 8, 2018.
8. On October 2, 2018, Crest filed a motion for waiver of oath for transferor, stating that it has been unable to obtain Shelcon's signature despite multiple attempts and has been acting as owner and operator of Mustang Creek PWS since December 2016.
9. In Order No. 4 issued on October 15, 2018, the administrative law judge (ALJ) granted Crest's motion and found the application administratively complete.
10. On April 15, 2019, the parties filed a joint proposed Notice of Approval requesting approval of Crest's purchase of the Mustang Creek Estates PWS from Shelcon.

**Notice of Application**

11. Notice of the application appeared in the July 27, 2018 issue of the *Texas Register*.
12. On October 2, 2018, Crest filed a motion for waiver of oath for transferor, stating that it has been unable to obtain Shelcon's signature despite multiple attempts and has been acting as owner and operator of Mustang Creek PWS since December 2016.
13. In Order No. 4 issued on October 15, 2018, the ALJ granted Crest's motion and required Shelcon and Crest to give notice of the transaction to all persons, political subdivisions, and other entities in the affected current customers, districts, neighboring systems, counties, cities, and affected parties, with a deadline to file proof of such notice by November 22, 2018.
14. On November 16, 2018 and November 21, 2018, Crest filed the affidavit of James A Dyche, attesting that notice was provided to current customers, neighboring utilities, and affected parties on November 8, 2018.
15. In Order No. 5 issued on December 6, 2018, the ALJ found the notice sufficient.

**Sale**

16. In Order No. 6 issued on January 10, 2019, the ALJ approved the sale and transaction to proceed and required Crest to file proof that the transaction had closed and that customer deposits had been addressed.
17. On January 25, 2019, Crest filed as its proof of the transaction a copy of the contract for Crest's purchase of the Mustang Creeks PWS from Shelcon, signed by Crest and Shelcon on December 12, 2016. On February 22, 2019, Crest supplemented its proof of the transaction with the affidavit of James A. Dyche, which included an explanation of Crest's attempts to contact Shelcon, a statement that Crest has been acting as owner and operator of Mustang Creek PWS since December 2016, and a statement addressing customer deposits.
18. In Order No. 9 issued on February 28, 2019, the ALJ found the closing documents sufficient.

**Evidentiary Record**

19. In Order No. 10 issued on May 29, 2019, the ALJ admitted the following evidence into the record: (a) the application of Shelcon and Crest filed on July 2, 2018 and supplements to the application filed on July 24, 2018, August 14, 2018, September 28, 2018, and October 8, 2018; (b) Crest's motion for waiver of oath for transferor filed on October 2, 2018; (c) Commission Staff's supplemental recommendation on administrative completeness filed on October 11, 2018; (d) Crest's proof of notice, filed on November 16, 2018 and November 21, 2018; (e) Commission Staff's recommendation on the sufficiency of notice filed on December 3, 2018; (f) Commission Staff's recommendation on the transaction filed on January 9, 2019; (g) Crest's proof of the transaction filed on January 25, 2019 and February 22, 2019; (h) Commission Staff's recommendation on the closing of transaction filed on February 27, 2019; (i) Crest's consent form filed on April 1, 2019; and (j) the final map, certificate, and tariff filed on April 15, 2019, attached to the proposed Notice of Approval.

**Compliance – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(A)**

20. The requested area has numerous compliance violations, and is under enforcement by the TCEQ. Crest has a plan to address the enforcement issues and make the necessary capital improvements to the PWS in order to provide adequate service to the requested area.

**Adequacy of Existing Service – TWC § 13.301(d), 16 TAC § 24.239(J)(5)(B); TWC § 13.246(c)(1), 16 TAC § 24.227(d)(1)**

21. Crest has been acting as owner and operator in the requested area and has been providing service through the Mustang Creek PWS since December 2016.

**Need for Additional Service – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(C); TWC § 13.246(c)(2), 16 TAC § 24.227(d)(2)**

22. The application is to transfer only existing facilities, customers and service areas.
23. Crest has not received any new requests for service, and Crest is not requesting to add additional uncertificated area.
24. Shelcon's existing customers in the requested areas have a need for service.

**Effect of Approving the Transaction – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(D); TWC § 13.46(c)(3), 16 TAC § 24.227(d)(3)**

25. There will be no effect on any retail public utility servicing the proximate area since the requested area has an existing water system.
26. Crest and Shelcon are the only utilities affected by this sale and transfer.

**Ability to Serve; Managerial and Technical - TWC § 13.301(b), 16 TAC § 24.239(g), (j)(5)(E); TWC §§ 13.241(a) and 13.246(c)(4), 16 TAC § 24.227(a)(4)**

27. Crest has 16 public water systems registered with the TCEQ, which serve approximately 1,184 water connections.
28. Crest currently has four licensed groundwater operators, two Class B operators, and two Class C operators.
29. Crest has demonstrated adequate managerial and technical expertise to provide adequate water service.

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

30. Crest'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.
31. Crest has a debt-to-equity ratio of 0.41.
32. Crest demonstrated that it has the available cash levels to serve the requested areas.
33. Crest submitted projections in its application, which show that net income from continuing operations is projected to be positive for the next five years. Thus, there are no projected shortages to cover.
34. Crest has demonstrated the financial capability to provide adequate water service.

**Financial Assurance – TWC § 13.246(d), 16 TAC § 24.227(e)**

35. There is no need to require Crest to provide a bond or other financial assurance to ensure continuous and adequate service.

**Service From Adjacent Retail Public Utility – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(F); TWC § 13.246(c)(5), 16 TAC § 24.227(d)(5)**

36. Crest has been serving the customers in the requested area since December 2016. Following the transfer, Crest will provide service using existing infrastructure; therefore, service from another adjacent retail public utility is not feasible.

**Environmental Integrity – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(H); TWC § 13.246(c)(7), 16 TAC § 24.227(d)(7)**

37. The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

**Effect on the Land – TWC § 13.246(c)(9), 16 TAC § 24.227(d)(9)**

38. The area will be served with existing infrastructure, and the transfer should have a minimal effect on the land.

**Improvement of Service – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(I); TWC § 13.246(c)(8), 16 TAC § 24.227(d)(8)**

39. Crest intends to improve customer service and communications with customers.
40. Crest intends to improve regulatory compliance issues.

Lowering of Costs – TWC § 13.301(d), 16 TAC § 24.239(j)(5)(I); TWC § 13.246(c)(8), 16 TAC § 24.227(d)(8)

41. Customers in the requested area will be charged the same rates they were charged before the sale of Shelcon's PWS.

Maps, Tariffs and Certificates

42. On March 25, 2019, Commission Staff emailed to Crest proposed maps, certificates, and tariffs related to this docket.

43. On April 1, 2019, Crest filed consent forms concurring with the maps and certificates as prepared by Commission Staff.

44. The proposed tariffs, certificates, and maps were filed as an attachment to the proposed Notice of Approval filed jointly by Crest and Commission Staff on April 15, 2019.

Informal Disposition

45. More than 15 days have passed since the completion of the notice provided in this docket.

46. No person filed a protest or motion to intervene.

47. Shelcon, Crest and Commission Staff are the only parties to this proceeding.

48. No party requested a hearing and no hearing is needed.

49. Commission Staff recommended that the ALJ find closing documents sufficient.

50. The decision is not adverse to any party.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this application under Texas Water Code (TWC) §§ 13.041, 13.241, 13.246, 13.244, 13.251, and 13.301.
2. Shelcon and Crest are retail public utilities as defined in TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59).
3. Public notice of the application was provided as required by TWC § 13.301(a)(2) and 16 TAC § 24.239(a), (b), and (c).

4. The Commission processed the application as required by the TWC, the Administrative Procedure Act<sup>1</sup>, and Commission rules.
5. Shelcon and Crest completed the sale within the time required by 16 TAC § 24.239(o).
6. After consideration of the factors in TWC § 13.246(c), Crest has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).
7. A sale not completed in accordance with TWC § 13.301 is void. TWC 13.301(h).
8. Crest complied with the requirements of 16 TAC § 24.239(m) with respect to customer deposits.
9. Crest completed the sale within the time authorized by the Commission in accordance with 16 TAC § 24.239(o).
10. Crest has demonstrated that it is necessary for the service, accommodation, convenience, and safety of the public to transfer the public water system area under CCN number 13055 from Shelcon to Crest's CCN number 12037.
11. Crest must record a certified copy of the certificate transferred and maps approved by the Order, along with a boundary description of the service areas, in the real property records of Tarrant County within 31 days of receiving the Order and submit to the Commission evidence of the recording. TWC § 13.257(r), (s).
12. The requirements for informal disposition under 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 Commission approves Crest's purchase of Shelcon's PWS and the transfer of the service area covered by Shelcon's water CCN number 13055 to Crest, to the extent provided in the Notice of Approval.

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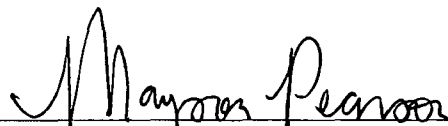
<sup>1</sup> Tex. Gov't Code §§ 2001.001-.902.



2. The Commission cancels CCN number 13055.
3. The Commission approves the tariffs attached to the joint motion for adoption of Notice of Approval filed on April 15, 2019.
4. Within ten days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by the Notice of Approval to central records to be marked *Approved* and filed in the Commission's tariff books.
5. Crest must provide continuous and adequate water service to every customer and applicant for service within the service area for water CCN number 12037 in accordance with Crest's water tariff.
6. Crest must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Tarrant County affected by the application.
7. Crest must submit to the Commission evidence of the recording no later than 45 days after receipt of the signed Order.
8. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 14 day of June 2019

**PUBLIC UTILITY COMMISSION OF TEXAS**






**MAYSON PEARSON**  
**ADMINISTRATIVE LAW JUDGE**

James A. Dyche dba Crest Water Company  
 Portion of Water CCN No. 12037  
 PUC Docket No. 48505  
 Transferred all of Shelcon Services, CCN No. 13055 in Tarrant County



Public Utility Commission of Texas  
 1701 N. Congress Ave  
 Austin, TX 78701

**Water CCN**

-  12037 - James A Dyche
-  12190 - Chuck Bell Water Systems
-  12983 - Monarch Utilities I LP



Map by: Komal Patel  
 Date created: March 15, 2019  
 Project Path: n:\finalmapping\  
 48505JamesDyche.mxd



# Public Utility Commission Of Texas

By These Presents Be It Known To All That

**James A. Dyche**

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, James A. Dyche is entitled to this

## **Certificate of Convenience and Necessity No. 12037**

to provide continuous and adequate water utility service to that service area or those service areas in Johnson County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48505 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the James A. Dyche to provide such utility service in accordance with the laws of this State and Rules of this Commission. subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 14<sup>th</sup> day of June 2019.