



Control Number: 48816



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RECEIVED

APPLICATION OF BHP WATER §
SUPPLY CORPORATION AND CITY §
OF ROYSE CITY FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITES AND CERTIFICATE §
RIGHTS IN HUNT AND COLLIN §
COUNTIES §

PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

COMMISSION STAFF’S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Recommendation on Final Disposition in response to Order No. 7. In support thereof, Staff shows the following:

I. BACKGROUND

On October 29, 2018, BHP Water Supply Corporation (BPH WSC) and City of Royse City (Royse City) (Collectively, Applicants) filed an application for Sale, Transfer, or Merger of Facilities and Certificate Rights in Collin, Hunt and Rockwall Counties, Texas. Specifically, Royse City, Certificate of Convenience and Necessity (CCN) No. 12827, seeks approval to transfer a portion of facilities and water service area from BHP’s CCN No. 10064. The requested area includes approximately 32.9 total acres and 52 current customers. Applicants filed supplemental information on November 6, 2018, November 20, 2018, November 29, 2018 and December 17, 2018.

On June 24, 2019, Order No. 7 was issued, establishing a deadline of July 25, 2019, for Staff to request a hearing or file a recommendation on approval of the sale. This pleading is therefore timely filed.

II. RECOMMENDATION

As supported by the attached memorandum of Debbie Reyes of the Water Utility Regulation Division, Staff recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Staff recommends that the proposed transaction be found to satisfy the criteria in Texas Water Code § 13.246(c) and Texas Administrative Code (TAC)

§§ 24.225-24.239. If the transaction is permitted to proceed, Staff further requests that Applicants be required to file evidence that all assets have been transferred to the acquiring entity.

Staff notes that the approval of the sale expires 180 days 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 CCN will remain in the name of the Seller until the transfer is completed and approved in accordance with the Commission rules and regulations as required by 16 TAC § 24.227(o).

III. CONCLUSION

Staff respectfully requests the entry of an order permitting the proposed transaction to proceed.

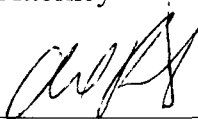
Dated: July 25, 2019

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 July 25, 2019, in accordance with 16 TAC § 22.74.



Alexander Petak

PUC Interoffice Memorandum

To: Alexander Petak
Legal Division

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

From: Debbie Reyes, Program Specialist
Water Utility Regulation Division

Date: July 10, 2019

Subject: **Docket 48816**, *Application of BHP Water Supply Corporation and the City of Royse City for sale, transfer, or merger (STM) of facilities and certificate rights in Hunt and Collin Counties.*

On October 29, 2018, the City of Royse City (Royse City or Purchaser) and BHP Water Supply Corporation (BHP WSC or Seller), (Collectively, Applicants), filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Hunt and Collin Counties, Texas, pursuant to Texas Water Code (TWC), § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Specifically, Royse City, Certificate of Convenience and Necessity (CCN) No. 12827, seeks approval to transfer a portion of facilities and water service area from BHP WSC's CCN No. 10064 and amend CCN No. 12827. The requested area includes approximately 32.9 total acres and 52 current customers.

Pursuant to TWC § 13.301(e), before the expiration of the 120-day notification period, the Commission is required to notify all known parties to the transaction whether the Commission will hold a hearing to determine if the transaction will serve the public interest. The deadline for intervention was June 25, 2019. The Commission did not receive any requests for a hearing during the 30 day comment period. The 120-day notification period concludes on September 23, 2019.

Staff reviewed the public interest factors and the financial, managerial, and technical capability of the Royse City pursuant to TWC § 13.246(c). Under this statute, the Commission shall consider the following nine criteria when amending a CCN:

TWC § 13.241(b) and 16 TAC § 24.227(a)(1) requires the Commission to ensure that the applicant has a Texas Commission on Environmental Quality (TCEQ) approved system that 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. Royse City has a public water system (PWS), registered with the TCEQ under PWS No. 1990002, that provides drinking water to its customers. Royse City's water supply is treated wholesale water from North Texas Municipal Water District (NTMWD), with which it has a wholesale agreement. Royse City is also the wholesale provider of water to BHP WSC. A copy of the wholesale water contract between the Royse City and BHP WSC was included with the application. Based on the information above, Royse City has an adequate supply of water to serve all its customers.

TWC § 13.246(c)(1) and 16 TAC § 24.227(d)(1) require the Commission to consider the adequacy of service currently provided to the requested area. As mentioned above, Royse City is indirectly providing service to the requested area. However, with this transaction, the Royse City plans to make improvements by installing a new distribution system to adequately serve the requested area.

TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area. The requested area's customers are being served by the Royse City through a wholesale water contract.

TWC § 13.246(c)(3) requires the Commission to consider the effect of granting of a certificate or of an amendment on the recipient and on any other retail water utility servicing the proximate area. The proposed transaction will allow Royse City to provide a more reliable water supply, such as improved water pressure through larger water lines.

TWC §13.246(c)(4) and 16 TAC § 24.227(d)(4) requires the Commission to consider the ability of the Buyer to provide adequate service, including meeting the standards of the Commission, taking into consideration the current and projected density and land use of the area. As stated above, Royse City's public water system has a Superior rating with the TCEQ, and has the capacity to provide adequate service to the requested area. According to the application, both parties agreed and acknowledged that Royse City was in a better position to serve higher density growth as it occurs in the requested area.

TWC §13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility. The facilities to be transferred are within the CCN boundary of Royse City, and since Royse City is the current service provider, no other retail public utility was considered to provide service to the requested area.

TWC §13.246(c)(6) requires the Commission to consider the financial ability of the Buyer 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 proposed utility service area, including leverage tests and the operations test.

The following analysis is based on the Royse City's audited financial statements which contained an unqualified auditor's opinion from Rutledge Crain & Company, PC which states that the financial statements present fairly, in all material respects, the financial position of Royse City as of September 30, 2017.¹ The audit and the related opinion indicate the transparency of Royse City, and indicate sound management capabilities.

Royse City meets two out of the five leverage tests, however only one is required. The first test is met using the Business-type Activities Fund with a debt to equity ratio calculated as follows: long term debt of \$13,091,797² divided by net position of \$14,194,321³ equals 0.92 which is less than one. Furthermore, Royse City has an investment grade bond rating issued from Standard and Poors of AA-.⁴

Royse City meets the operations test by maintaining sufficient cash balances to cover any projected operations and maintenance shortages in the first five years of operations. Royse City has not provided projections, however, the excess of revenues over expenditures of the Enterprise Fund for the year ended September 30, 2017 was \$1,488,782⁵ and unrestricted cash balance was \$4.6⁶ million.

¹ Application Attachment 7 at 116.

² *Id.* at 133, Due within one year of \$1,073,846 plus \$12,827,951.

³ *Id.*

⁴ The Municipal Advisory Council of Texas website: <https://www.mactexas.com>.

⁵ Application Attachment 7 at 145.

⁶ *Id.*

Staff believes that Royse City has enough liquid cash to offset any losses should they occur. Furthermore, BHP WSC has current facilities in place to serve the customers being transferred and Royse City has cash available to make any required improvements to those facilities. No new infrastructure is required to serve.

Based on the above discussion, Staff believes Royse City possesses adequate financial and managerial capability.

TWC §§ 13.246(c)(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 of the land will not be affected by this transaction, since this transaction only involves the transfer of an existing distribution system, which Royse City plans to upgrade.

TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers. The customers in the requested area will receive a 33% decrease in their base water billing rate as well as an improved level of service.

The Applicants meet 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 the BHP WSC's water CCN No. 10064 to Royse City and amend Royse City's water CCN No. 12827 is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

Pursuant to 16 TAC § 24.239(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 BHP WSC for the customers being transferred to Royse City.