



Control Number: 48863



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DOCKET NO. 48863

**APPLICATION OF CAMP JOY
WATER AND TEXAS WATER
SYSTEMS, INC. FOR SALE,
TRANSFER, OR MERGER OF
FACILITIES AND CERTIFICATE
RIGHTS IN UPSHUR COUNTY**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 4, files this Recommendation on the Transaction, and would show the following:

I. BACKGROUND

On November 9, 2018, Camp Joy Water (Seller) and Texas Water Systems, Inc. (Purchaser) (collectively, Applicants), filed an application for approval of a sale, transfer or merger of facilities and certificate rights in Upshur County. Specifically, Applicants seek approval to transfer all of Seller's facilities and water service area under Certificate of Convenience and Necessity (CCN) No. 12960 to Purchaser (CCN No. 12473). As a product of the transaction, Applicants request the cancellation of Seller's water CCN and the amendment of Purchaser's CCN. The total requested area includes approximately 405 acres and 119 current customers.

On November 29, 2018, Applicants submitted supplemental information regarding their respective legal names and all assumed names, their respective form of business in Texas, and information related to their respective parent companies.

On February 12, 2019, Commission Staff filed a motion to amend the procedural schedule for Applicants to supplement their application with regulatory documentation.

On February 13, 2019, Order No. 4 was issued by the Commission administrative law judge (ALJ), granting Staff's motion to amend the procedural schedule and establishing a deadline for Staff to request a hearing or file a recommendation on approval of the sale by March 13, 2019. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

As detailed in the attached memorandum from Nabaraj Pokharel and Greg Charles in the Commission's Water Utility Regulation Division, Staff's review indicates that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors pursuant to Texas Water Code § 13.246(c).

According to Mr. Pokharel and Mr. Charles, the public water system (PWS) subject to this application does possess minor Texas Commission on Environmental Quality (TCEQ) violations, though Mr. Pokharel and Mr. Charles state that the violations do not affect the ability of the Purchaser to provide adequate service to the requested area. Additionally, four other PWS's owned by the Purchaser were cited for storage capacity violations. Mr. Pokharel and Mr. Charles note that the Purchaser has acted to resolve the violations, including submitting plans and specifications to the TCEQ on two of the PWS's and accepting bids for engineering drawings on the other two PWS's currently in violation. Mr. Pokharel and Mr. Charles also identify that the Purchaser has an existing compliance schedule with TCEQ for its violations. Based on the measures taken by the Purchaser, Mr. Pokharel and Mr. Charles recommend that the Purchaser has demonstrated the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction and in its currently certificated area.

Finally, Staff recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated pursuant to 16 TAC § 24.239(n). Staff notes that there are no customer deposits to be addressed as required under 16 TAC § 24.239(m).

III. CONCLUSION

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


Dated: March 13, 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 March 13, 2019, in accordance with 16 TAC § 22.74.



Richard Nemer

PUC Interoffice Memorandum

To: Richard Nemer, Attorney
Legal Division

Thru: Heidi Graham, Manager
Water Utility Regulation Division

From: Nabaraj Pokharel, Engineering Specialist
Greg Charles, Engineer
Water Utility Regulation Division

Date: March 13, 2019

Subject: **Docket 48863:** *Application of Camp Joy Water and Texas Water Systems Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Upshur County*

On November 9, 2018, Texas Water Systems, Inc. (TWS or Purchaser), and Camp Joy Water (Camp Joy or Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Upshur County, Texas, pursuant to Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Specifically, TWS seeks approval to acquire water facilities, transfer water service area, cancel Camp Joy's water Certificate of Convenience and Necessity (CCN) No. 12960, and amend TWS's water CCN No. 12473 in Upshur County, Texas pursuant to TWC §§ 13.242 to 13.250 and 16 TAC §§ 24.225 to 24.237.

Background

The water CCN service area to be transferred includes approximately 405 acres and 119 existing customers. Commission mapping staff analyzed the digital data submitted with the Purchaser's application and confirmed that the requested area is 405 acres. The requested area is rural and located approximately two miles north-northeast of downtown Ore City, Texas. TWS has been under contract to operate Camp Joy's public water system (PWS), Brookshires Camp Joy Water System, for the last seven years. The Brookshires Camp Joy Water System is registered with the Texas Commission on Environmental Quality (TCEQ) under PWS No. 2300015 and currently serves the requested area. The transfer of the CCN area and sale of the public water system to TWS will insure continued uninterrupted service to the requested area.

Relatedly, on February 25, 2019, the Commission received an application from Undine Texas, LLC, to transfer TWS's CCN service area and cancel CCN No. 12473 (Docket No. 49260). Therefore, the present docket could impact the application in Docket No. 49260.

Notice

The comment period ended December 21, 2018, and no protests or opt-out requests were received.

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 Seller is currently providing water service to the requested area through the Brookshires Camp Joy Water System. The public water system has minor TCEQ violations that Staff recommends do not impact the adequacy of service provided to the requested area.

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

The application seeks to transfer 119 existing customers in the Seller's CCN service area, which demonstrates a need for service.

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.

The Purchaser's CCN will be amended to include the Seller's CCN service area. No other retail public utilities are affected by this application.

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

In addition to currently operating Camp Joy's PWS, the Purchaser owns and operates nine other public water systems. The TCEQ has issued violations for four of the Purchaser's public water systems for inadequate capacity of storage tanks. The violations are associated with the following public water systems: Mount Sylvan Water System, Rosewood Water System, Friendship Water System, and Stallion Lake Ranch. No TCEQ enforcement action has been initiated for the storage capacity violations. To resolve the violations, the TCEQ database shows the Purchaser has submitted plans and specifications to the TCEQ for two of the public water systems, Mount Sylvan and Friendship Water Systems. For the other systems, Rosewood and Stallion Water Systems, the Purchaser has communicated to Staff that bids are currently being accepted for the engineering drawings. In addition, the Purchaser has an existing compliance schedule for its violations with the TCEQ. Further, the Brookshires Camp Joy Water System has unresolved minor TCEQ violations, though the violations do not affect the ability of the Purchaser to provide adequate service to the requested area. Upon approval of the sale transaction, the Brookshires Camp Joy Water System will continue to provide adequate service to the requested area.

Staff previously filed a request to amend the procedural schedule to allow the Purchaser additional time to resolve the TCEQ capacity violations by filing TCEQ construction approval letters. As stated above, the Purchaser began the compliance process by submitting plans and specifications for two of the systems. Staff cannot be certain when plans and specifications for all systems will be submitted to TCEQ, plus the 60-day review for approval or disapproval. The Commission does not regulate public water systems and has no control over the TCEQ's public water system construction review process. In addition, the Commission does not determine a public water system's compliance with TCEQ rules or have any oversight of the resolution of violations cited by the TCEQ. Public water systems are regulated by the TCEQ, who has the authority and responsibility to enforce its own rules and require resolution of the violations cited against public water systems.

The Purchaser has seven-years worth of knowledge of the Brookshires Camp Joy Water System, as its operator over that timeframe, and has the industry experience to provide continuous and adequate service to the requested area. In addition, the Purchaser has shown good faith in moving

towards compliance with TCEQ's rules for the storage capacity violations. Therefore, Staff does not feel that it is necessary to require additional delay, and, instead, recommends that the transaction be allowed to proceed without requiring the Purchaser to file the construction approval letters in this docket.

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

Since this is a STM application, this requirement was not considered. Additionally, there are no other water providers in the area.

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.

Financial Tests

The criteria and test are listed in 16 TAC § 24.11 including leverage tests and the operations test.

The Purchaser is required to meet at least one out of five leverage tests. One of the leverage tests requires that the owner or operator have a debt to equity ratio of less than one. The Purchaser meets the requirement with a debt to equity ratio of 0.65.

The Purchaser also meets the operations test. In 2017, with the Brookshires Camp Joy Water System already included as part of the Purchaser's operations, the Purchaser posted a net income of \$123,561. Based on past performance, the Purchaser is capable of covering any shortages that may arise. Therefore, the operations test is met.

Based on the above discussion, Staff believes the Purchaser 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.

There will be no effect on the environmental integrity of the land since no additional construction is needed to provide service to the requested area.

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

The Purchaser will continue to provide the same level of water service to the existing customers in the requested area.

Staff recommends that the Purchaser meets all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations and is capable of providing continuous and adequate service. Approving the transaction recited in this application to proceed for the sale of water facilities, transfer of water service area, cancellation of Camp Joy's water CCN No. 12960 and amendment of TWS's water CCN No. 12473 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 that there are no deposits held by the Seller for the customers being served by the Seller.

Staff further recommends that a public hearing is not necessary. Additionally, 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 effectuated 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. Lastly, the CCN will remain in the name of the Seller until the transfer is complete and approved in accordance with the Commission's rules and regulations.