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DOCKET NO. 48863

RECEIVED

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

PUBLIC UTILITY COMMISSION
OF TEXAS
2019 MAY 22 11:12 AM
CLERK

**COMMISSION STAFF'S RECOMMENDATION ON
SUFFICIENCY OF CLOSING DOCUMENTS**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and in response to Order No. 5, files this Recommendation on Sufficiency of Closing Documents. Staff recommends that the closing documents be found deficient at this time. In support thereof, Staff shows 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 March 25, 2019, the administrative law judge (ALJ) issued Order No. 5, authorizing the Applicants to proceed with the proposed transaction. The order required that Applicants file an update regarding the status of the efforts to conclude the transaction and submit documents evidencing the transaction was consummated, and demonstrate that customer deposits were properly addressed, beginning on April 12, 2019, and continuing monthly thereafter. On April 30, 2019, Applicants filed the first update regarding efforts to conclude the transaction. Subsequently, on May 13, 2019, Applicants' closing documents were filed with the Commission.

Order No. 5 also required Staff to file a recommendation on the sufficiency of Applicants' closing documents within fifteen (15) days of Applicants' filing. Since Applicants' closing

documents were filed on May 13, 2019, Staff's responsive sufficiency recommendation deadline was established as May 28, 2019. Therefore, this pleading is timely filed.

II. DEFICIENCY OF CLOSING DOCUMENTS

Staff has reviewed the closing documents filed by Applicants on May 13, 2019. Based on its review, Staff has determined that Applicants' filing does not meet the requirements of 16 Tex. Admin. Code (TAC) §§ 24.239(k)-(n). The sale and transfer was completed following the issuance of Order No. 5, wherein the transferee received notice from the Commission that a hearing would not be requested.¹ Additionally, although an update was not provided within thirty (30) days of the ALJ issuing Order No. 5 as required under Commission rules, Purchaser did submit a written update regarding the status of the transaction on April 30, 2019.² Further, the closing documents were filed within thirty (30) days after the effective date of the transaction.³ Nonetheless, the closing documents were not signed by both the transferor and the transferee.⁴ Rather, only one person signed the Bill of Sale and Assignment, presumably a representative of the seller.

The Applicants also failed to adequately address outstanding customer deposits as required under Commission rules. Specifically, within thirty (30) days of the actual effective date of the transaction, the Applicants were required to file, under oath, the following information: (1) the names and addresses of all customers who have a deposit on record with Seller; (2) the date such deposit was made; (3) the amount of the deposit; and (4) the unpaid interest on the deposit.⁵ The Applicants did not provide a list including any of the required information.

The lone customer deposit document provided by Applicants was the affidavit of Henry A. Brookshire, Jr., attesting that the customer deposits held by the seller were transferred to Buyer on the date the sale transaction closed. The affidavit did not indicate if the customer deposits were transferred with interest, as required by Commission rules.⁶

¹ See 16 TAC § 24.239(k)(2).

² See 16 TAC § 24.239(l).

³ See 16 TAC § 24.239(n).

⁴ *Id.*

⁵ See 16 TAC § 24.239(m).

⁶ See 16 TAC §§ 24.239(m)-(n).

Accordingly, based upon Applicant's failure to complete the requirements as stated in the Commission rules, Staff recommends a finding that the customer deposits have not been appropriately addressed and that the closing documents be found deficient.

Staff recommends that the Applicants be required to resubmit the Bill of Sale and Assignment, demonstrating that it has been signed by both the transferor and transferee, as required under 16 TAC § 24.239(n). In addition, Staff recommends that the Applicants be required to submit information related to outstanding customer deposits, as described herein, and as stated under 16 TAC §§ 24.239(m)-(n).

III. PROPOSED ADDITIONAL PROCEDURAL SCHEDULE

In accordance with Staff's recommendation that the Applicants' closing documents be found deficient, Staff proposes the following additional procedural schedule:

Event	Date
Deadline for Applicants to cure the deficiencies and submit additional closing documentation	June 27, 2019
Deadline for Staff to file supplemental recommendation on sufficiency of closing documents and to propose a procedural schedule for continued processing of this docket	July 11, 2019

IV. CONCLUSION

For the reasons detailed above, Staff respectfully requests that an order be issued finding that the closing documents filed by Applicants are deficient and that customer deposits have not been properly addressed. Staff further requests that the procedural schedule proposed above be adopted for continued processing of this docket.

Dated: May 22, 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 May 22, 2019, in accordance with 16 TAC § 22.74.



Richard Nemer