

DOCKET NO. 49230

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PUBLIC UTILITY COMMISSION  
OF TEXAS

APPLICATION OF TIMBERLANE §  
WATER SYSTEM, INC. AND SIMPLY §  
AQUATICS, INC. FOR SALE, §  
TRANSFER, OR MERGER OF §  
FACILITIES AND CERTIFICATE §  
RIGHTS IN SABINE COUNTY §

**COMMISSION STAFF’S RECOMMENDATION ON APPROVAL OF THE SALE AND ON THE CERTIFICATE OF CONVENIENCE AND NECESSITY AMENDMENT**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files Recommendation on Approval of the Sale and on the Certificate of Convenience and Necessity Amendment. In support thereof, Staff shows the following:

**I. BACKGROUND**

On February 15, 2019, Simply Aquatics, Inc. and the Timberlane Water System, Inc. (collectively, Applicants) filed an application for sale, transfer, or merger of facilities and certificate rights in Sabine County, Texas. Specifically, the Applicants seek to transfer Timberlane’s facilities and service area under water Certificate of Convenience and Necessity (CCN) Number 12336 to Simply Aquatics.

On January 17, 2020, the Administrative Law Judge (ALJ) issued Order No. 8, establishing a deadline of February 10, 2020 for Staff to request a hearing or file a recommendation on the approval of the sale and on the certificate of convenience and necessity amendment. Therefore, this pleading is timely filed.

**II. RECOMMENDATION**

As supported by the attached memorandum of Patricia Garcia and Fred Bednarski III of the Commission’s Infrastructure and Rate Regulation Divisions, respectively, Staff recommends and respectfully requests an 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 Tex. Admin. 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, and that the disposition of any remaining deposits have been addressed as soon as possible, pursuant to 16 TAC §24.239(n).

The approval of the sale expires 180 days from the date of the Commission's written 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's rules and regulations as required by 16 TAC §24.227(o).

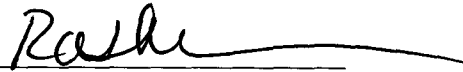
### **III. CONCLUSION**

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

**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 February 10, 2020 in accordance with 16 TAC § 22.74.



Rashmin J. Asher

# *Public Utility Commission of Texas*

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## **Memorandum**

**To:** Rashmin Asher, Attorney  
Legal Division

**From:** Patricia Garcia, Engineering Specialist  
Infrastructure Division

Fred Bednarski III, Financial Analyst  
Rate Regulation Division

**Date:** February 10, 2020

**Subject:** **Docket No. 49230**, *Application of Timberlane Water System, Inc. and Simply Aquatics, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Sabine County*

On February 15, 2019, Simply Aquatics, Inc. (Purchaser or Simply Aquatics) and the Timberlane Water System, Inc. (Seller or Timberlane) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Sabine County, Texas, pursuant to Texas Water Code (TWC) § 13.301 and 16 Tex. Admin. Code (TAC) § 24.239. Specifically, Simply Aquatics, water CCN No. 13259, seeks to purchase Timberlane's water facilities, transfer Timberlane's water service area held under CCN No. 12336 and cancel Timberlane's CCN No. 12336. The requested area includes approximately 20 acres and 46 connections.

### **Notice**

The comment period ended on January 6, 2020, and no protests or opt-out requests were received.

### **Criteria Considered**

TWC, Chapter 13, and TAC, Chapter 24, require the Commission to consider nine criteria when granting or amending a water or sewer 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.***

There are currently 46 existing customers in the requested area. The customers are currently receiving an adequate supply of water from Timberlane's public water system. Since the time the application was submitted Timberlane and Simply Aquatics have resolved several violations for their public water systems. This shows the Applicants are actively improving upon the adequacy of service provided to the requested area.

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

No additional service is needed in the requested area.

***TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area.***

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## **Memorandum**

There will be no effect on any retail public utility servicing the proximate area. Any landowners in the area that do not currently receive service from Timberlane will need to request service from Simply Aquatics after the transaction has been completed.

***TWC §§ 13.241(b), 13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service.***

Simply Aquatics has three public water systems registered with the Texas Commission on Environmental Quality (TCEQ). Since the time the application was submitted Simply Aquatics has resolved several violations for their public water systems. This shows they are actively improving upon the adequacy of service provided to their own systems and will continue to do so for the customers of Timberlane. The Timberlane customers will continue to receive an adequate supply of water from Timberlane's facilities which will be owned and operated by Simply Aquatics when the transaction is complete.

***TWC § 13.241(d) requires the applicant to demonstrate to the Commission that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area.***

Construction of a physically separate water system is not required to provide service to the requested area. As a result of the present application, the requested water service area will be consolidated with Simply Aquatics' existing water CCN service area.

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

The area is currently being served by Timberlane. There will be no changes to land uses or existing CCN boundaries. It is not feasible to obtain service from another utility.

***TWC § 13.246(c)(6) requires the Commission to consider the financial ability of an applicant to pay for facilities necessary to provide continuous and adequate service.***

16 TAC § 24.11 establishes the 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. The financial tests include a leverage test and operations test. The Commission rules identify five leverage tests.<sup>1</sup> The Purchaser must demonstrate that it meets one of the five tests.<sup>2</sup>

The following shows that the Purchaser meets one out of five leverage tests. This analysis is based on financial statements ending December 31, 2018.

Simply Aquatics meets the first test with a debt to equity ratio of less than one, or a debt to equity ratio calculated as follows: long term debt of \$489,131<sup>3</sup> divided by equity of \$1,148,392<sup>4</sup> equals 0.43 which is less than one.

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<sup>1</sup> See 16 TAC § 24.11(e)(2).

<sup>2</sup> *Id.*

<sup>3</sup> Application at 95 of 100 (08/16/2019).

<sup>4</sup> *Id.*

# *Public Utility Commission of Texas*

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## **Memorandum**

16 TAC § 24.11(e)(3) refers to the operations test which requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. Simply Aquatics submitted projected financial statements in its application, which shows there are no shortages to cover;<sup>5</sup> additionally, based on Simply Aquatics income statement ending December 31, 2018, Simply Aquatics had \$3 15,648<sup>6</sup> in net income. Simply Aquatics has made improvements to their systems and generates a sufficient amount of income to continue making improvements as needed to provide continuous and adequate service to the requested area. Therefore, the Purchaser meets the operations test.

*TWC § 13.246(d) allows the Commission to require an applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided.*

Staff does not recommend that the Applicants be required to provide a bond or other financial assurance to ensure continuous and adequate service.

*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 certificated area.*

The environmental integrity of the land will not be affected as 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.*

Simply Aquatics will continue to provide water service to the existing customers in the requested area. The customer's rates will not change as a result of this transaction.

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 all water facilities and water service area under CCN No. 12336 to Simply Aquatics and amending water CCN No. 13259 is necessary for the service, accommodation, convenience and safety of the public.

### **Recommendation on approval of sale**

Staff recommends that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. Staff notes that no deposits are held by customers being served by Timberlane. Staff further recommends that a public hearing is not necessary.

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<sup>5</sup> Declaration of Ownership at 6 of 6 (11/15/2019).

<sup>6</sup> Supplement to Application at 18 of 67 (6/26/2019).