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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 §
§

PUBLIC UTILITY COMMISSION
OF TEXAS

**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING
SALE/TRANSFER TO PROCEED**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, together with Timberlane Water System, Inc. (Timberlane) and Simply Aquatics, Inc. (Simply Aquatics) (collectively, Applicants), files this Joint Motion to Admit Evidence and Proposed Order Approving Sale/Transfer to Proceed. In support thereof, the parties show the following:

I. BACKGROUND

On February 15, 2019, Applicants filed an application for Sale, Transfer, or Merger of Facilities and Certificate Rights in Sabine County, Texas. Specifically, Applicants seek to transfer Timberlane’s facilities and service area under water Certificate of Convenience and Necessity (CCN) number 12336 to Simply Aquatics.

On June 26, 2019; August 16, 2019; October 22, 2019; Novmber 15, 2019; and December 20, 2019 the Applicants supplemented their application to include further information.

On February 10, 2020, Commission Staff filed its Final Recommendation, recommending that the transaction be allowed to proceed.

On March 20, 2020, the Commission administrative law judge (ALJ) issued Order No. 11, soliciting the filing of this joint motion to admit evidence and proposed order on or before April 9, 2020. Therefore, this pleading is timely filed.

II. JOINT MOTION TO ADMIT EVIDENCE

Staff and Applicants respectfully request the ALJ issue an order admitting the following into evidence:

- a) The Applicants' application, filed on February 15, 2019 (AIS Item No. 1);
- b) The Applicants' supplements to the application filed on June 26, 2019; August 16, 2019; October 22, 2019; and November 15, 2019 (AIS Item Nos. 7, 10, 13, 14)
- c) The Applicants' proof of notice and supporting documentation, filed on December 20, 2019 (AIS Item No. 17);
- d) Commission Staff's Final Recommendation and all attachments filed February 10, 2020 (AIS Item No. 22).

III. JOINT PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED

Commission Staff and Applicants have agreed to the attached Joint Proposed Order Approving Sale/Transfer to Proceed, which would authorize Simply Acquatics to acquire Timerlane's water facilities, transfer to Simply Acquatics water service area held by Timberlane, and cancel Timberlane's CCN No. 12336.

IV. CONCLUSION

The parties respectfully request that the ALJ admit the above evidence and approve the attached Proposed Order.

Dated: April 9, 2020

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record April 9, 2020
in accordance with 16 TAC § 22.74.

/s/ Rashmin J. Asher
Rashmin J. Asher

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APPLICATION OF TIMBERLANE	§	PUBLIC UTILITY COMMISSION
WATER SYSTEM, INC. AND SIMPLY	§	
AQUATICS, INC. FOR SALE,	§	OF TEXAS
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FACILITIES AND CERTIFICATE	§	
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	§	

JOINT PROPOSED ORDER APPROVING SALE/TRANSFER TO PROCEED

This Order addresses the February 15, 2019, application of Timberlane Water System, Inc. (Timberlane or Seller) and Simply Aquatics, Inc. (Simply Aquatics) (collectively, Applicants) for approval of a sale, transfer, or merger of facilities and certificate rights in Sabine County, Texas. The applicants seek to transfer all of Seller's facilities and water service area under water certificate of convenience and necessity (CCN) number 12336 to Purchaser's CCN number 13259. The applicants also seek to cancel Seller's CCN number 12336. On May 22, 2019, Commission Staff recommended that the transaction in this docket be allowed to proceed. The administrative law judge grants that the transaction proposed in this application may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact:

Applicants

1. Purchaser is a for-profit corporation registered with the Texas secretary of state under file number 800198192.
2. Seller is a for-profit corporation registered with the Texas secretary of state under file number 30010183934.
3. Seller owns a public water system (PWS) in Sabine County registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification number 2020054.
4. Seller is a retail public utility that provides water service in Texas under CCN number 12336 in Sabine County.

5. Purchaser is a retail public utility that provides water service in Texas under CCN number 13259 in Sabine County.

Application

6. On February 15, 2019, the applicants filed an application for Sale, Transfer, or Merger of Facilities and Certificate Rights in Sabine County, Texas. Specifically, Purchaser seeks approval to acquire facilities, transfer water service area, and cancel CCN No. 12336 currently held by Seller.
7. On August 16, 2019, the applicants supplemented the application to include additional information.
8. The requested service area subject to this transaction is located approximately nine miles southeast of downtown Hemphill, Texas, and is generally bounded on the north, east, and south by Sabine National Forest, on the west by Toledo Bend Reservoir.
9. The total area affected by the transfer comprises approximately 20 acres and 46 connections.
10. In Order No. 6 issued on November 18, 2019, the administrative law judge (ALJ) deemed the application administratively complete.

Notice

11. On December 20, 2019, the applicants filed the affidavit of Kevin Hester, Purchaser's owner, attesting that notice was provided to current customers, neighboring utilities, and affected parties on December 5, 2019.
12. In Order No. 7 issued on April 25, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

13. On April __, 2020, the parties jointly moved to admit evidence.
14. In Order No. 12 issued on _____, 2020, the ALJ admitted the following evidence into the record: (a) the applicants' application, filed on February 15, 2019; (b) the applicants' supplement to the application filed on June 26, 2019; August 16, 2019; October 22, 2019; and November 15, 2019; (c) the applicants' proof of notice and supporting documentation, filed on December 20, 2019; and (d) Commission Staff's Final

Recommendation and all attachments, including the memorandum of Leila Guerrero from the Water Utility Regulation Division, filed February 10, 2020.

System Compliance – Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)

15. Since the time the application was submitted Purchaser and Seller have resolved several violations for their public water systems.

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

16. The requested area is currently served by Seller with a PWS registered with the TCEQ under Timberlane Water System, PWS No. 2020054.
17. Customers are currently receiving an adequate supply of water from Seller's public water system.

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

18. No additional service is needed in the requested area.

Effect of Approving the Transaction and Granting the Amendment – TWC § 13.246(c)(3); 16 TAC §§ 24.227(d)(3), 24.239(j)(5)(D)

19. There will be no change in daily customer service, and operations will not be affected by granting the application.
20. There will be no effect on any retail public utility serving the proximate area.
21. Any landowners in the area who do not currently receive service from Seller will need to request service from Purchaser after the transaction has been completed.

Ability to Serve: Managerial and Technical – TWC §§ 13.241(a), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (d)(4), 24.239(g), (j)(5)(E)

22. Purchaser has three public water systems registered with TCEQ.
23. Since the application was submitted Purchaser has resolved several violations for their public water systems.
24. Purchaser has the necessary financial, managerial, and technical resources to continue providing quality utility service to the additional customers.

**Ability to Serve: Financial Ability and Stability – TWC §§ 13.241(a), 13.246(c)(6), 13.301(b);
16 TAC §§ 24.11(e), 24.227(a), (d)(6), 24.239(g), (j)(5)(G)**

25. Purchaser meets one out of the five leverage tests. The Purchaser is required to meet only one.
26. Purchaser has a debt to equity ratio of less than one, using long term debt and equity.
27. Purchaser's financial projections for five years were not provided at the time of Staff's recommendation to proceed with the transaction.
28. Purchaser has no operations and maintenance shortages to cover.
29. Purchaser has demonstrated the financial capability and stability to provide continuous and adequate sewer service.

**The Feasibility of Obtaining Service from Adjacent Retail Public Utility – TWC §§ 13.246(c)(5);
16 TAC §§ 24.227(d)(5), 24.239(j)(5)(F)**

30. Seller is currently serving the customers in the requested area and has demonstrated sufficient capacity.
31. It is not feasible to obtain service from another utility.

Financial Assurance – TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(e), 24.239(h)

32. Purchaser's projected operating revenues are sufficient to cover projected operations and maintenance expense for the first five years after the completion of the proposed sale and transfer.
33. There is no need to require Purchaser to provide a bond or other financial assurance to ensure continuous and adequate service.

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

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

Improvement in Service or Lowering Cost to Consumers –TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8,) 24.239(j)(5)(I)

35. Water utility service will be the same as provided to the existing customers surrounding the requested area.
36. Purchaser will provide water to the existing customers in the requested area and charge the same rates.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. After consideration of the factors in TWC § 13.246(c), Purchaser has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).
2. Seller and Purchaser have demonstrated that transferring the water service area held under Seller's CCN number 12336 to Purchaser's CCN number 13259 will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public. TWC § 13.301(d), (e).

III. Ordering Paragraphs

In accordance with the preceding findings of fact and conclusions of law, the Commission issues the following orders.

1. The sale is approved and the transaction between applicants may proceed and be consummated.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants shall file proof that the transaction has been consummated and customer deposits have been addressed.
3. The applicants have 180 days to complete the transaction.
4. Under 16 Texas Administrative Code § 24.109(o), if the transaction is not consummated within this period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.

5. The applicants are advised that certificate of convenience and necessity number 12336 will be held by Seller until the sale and transfer transaction is complete in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, the applicants shall continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was consummated.
7. Within 15 days following the filing of the applicants' proof that the transaction has been consummated and customer deposits, if any, have been addressed, Commission Staff shall file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

SIGNED AT AUSTIN, TEXAS on the ____ day of _____, 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE