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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
HEARING CLERK

**ORDER NO. 13
ORDER APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the February 15, 2019 application of Timberlane Water System, Inc. and Simply Aquatics, Inc. (collectively, applicants) for a sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Sabine County. The applicants seek approval to sell and transfer all of Timberlane’s facilities and water service area under water CCN number 12336 to Simply Aquatics’ CCN number 13259 and to cancel Timberlane’s water CCN. On February 10, 2020, Commission Staff recommended that the transaction proceed in this docket. The administrative law judge (ALJ) grants that the transaction proposed in this application, as supplemented, may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Timberlane is a domestic for-profit corporation registered with the Texas secretary of state under file number 102401900.
2. Timberlane owns a public water system (PWS) in Sabine County registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification number 2020054.
3. Timberlane owns, operates, and controls water facilities for providing water service under CCN number 12336 in Sabine County.
4. Timberlane is a retail public utility.
5. Simply Aquatics is a domestic for-profit corporation registered with the Texas secretary of state under file number 800198192.

6. Simply Aquatics owns, operates, and controls water facilities for providing water service under CCN number 13259 in Montgomery County and San Augustine County.
7. Simply Aquatics is a retail public utility.

Application

8. On February 15, 2019, the applicants filed an application for sale, transfer, or merger of facilities and certificate rights in Sabine County. The applicants seek approval to sell and transfer all of Timberlane's facilities and water service area under water CCN number 12336 to Simply Aquatics' water CCN number 13259 and to cancel Timberlane's water CCN. The applicants filed supplements to the application on June 26, August 16, October 22, and November 15, 2019.
9. The requested service area subject to this transaction is located approximately 11 miles southeast of downtown Hemphill, Texas, and is generally bounded on the north by Toledo Bend Reservoir, on the east by Toledo Bend Reservoir, on the south by Timberlane Loop, and on the west by Timberlane Loop and Timberlane Drive.
10. The total requested area comprises approximately 20 acres and 46 connections.
11. In Order No. 6 filed on November 18, 2019, the administrative law judge (ALJ) found the application administratively complete.

Notice

12. On December 20, 2019, the applicants filed the affidavit of Kevin Hester, Simply Aquatics' owner, attesting that notice was provided to county authorities, current customers, neighboring utilities, and affected parties on December 5, 2019.
13. In Order No. 7 filed on January 3, 2020, the ALJ found notice sufficient.

Evidentiary Record

14. On April 9, 2020, Commission Staff and the applicants filed a joint motion to admit evidence.
15. In Order No. 12 filed on April 15, 2020, the ALJ admitted the following evidence into the record of this proceeding: (a) the applicants' application and attachments filed on February 15, 2019; (b) the applicants' supplements to the application filed on June 26, August 16, October 22, 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 on the sale to proceed and all attachments filed on 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)

16. Since the time the application was submitted, the applicants have resolved several violations cited by the TCEQ regarding their public water systems.
17. The applicants continue working to resolve the remaining outstanding violations cited by the TCEQ.

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

18. Customers are currently receiving an adequate supply of water from Timberlane's TCEQ-registered public water system.
19. The applicants' resolution of TCEQ violations demonstrate that the applicants are actively improving the adequacy of service provided to the requested area.

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

20. There are 46 connections in the requested area that will continue to need service.

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)

21. Timberlane and Simply Aquatics are the only entities affected by this sale and transfer.
22. There will be no change in daily customer service and operations will not be affected by granting the application.
23. There will be no effect on any retail public utility serving the proximate area.
24. Following completion of the transaction, any landowners in the area who do not currently receive service from Timberlane will need to request service from Simply Aquatics.

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

25. Simply Aquatics owns, operates, and controls three TCEQ-registered public water systems.
26. The PWS being transferred will be operated by an individual holding a TCEQ class C operator's license.

27. Since the application was submitted, Simply Aquatics has resolved several violations for its public water systems.
28. Simply aquatics will have access to an adequate supply of water and will be capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341, and TWC, Chapter 13.
29. Simply Aquatics has the necessary managerial and technical ability to provide continuous and adequate service to the requested area.

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)

30. Simply Aquatics has a debt-to-equity ratio of less than one, which satisfies the leverage test.
31. Simply Aquatics has demonstrated sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations, which satisfies the operations test. Specifically, Simply Aquatics' projected financial statements show there are no shortages to cover and that it generates a sufficient amount of income to continue making improvements as needed.
32. Simply Aquatics has demonstrated the financial capability and stability to provide continuous and adequate water service to the requested area.

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

33. There is no need to require Simply Aquatics to provide a bond or other financial assurance to ensure continuous and adequate service.

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)

34. Utilities within a two-mile radius were properly noticed and no comments or protests were filed in this docket regarding the proposed transaction.
35. It is not feasible for an adjacent retail public utility to provide service to the requested because existing facilities already provide sufficient capacity for continuous and adequate water service.

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

36. The proposed transaction will not adversely impact the environmental integrity of the land because no construction is necessary for Simply Aquatics to continue to provide continuous and adequate service to the requested area.

Effect on the Land—TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)

37. The effect on the land will be minimal as the requested area will continue to be served by existing systems and facilities and no additional construction is needed.

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

38. Following the transaction, customers in the requested area will continue to receive the same level of service as before the transaction.
39. Customers' rates will not change as a result of this transaction.

Regionalization or Consolidation—TWC § 13.241(d); 16 TAC § 24.227(b)

40. Because existing facilities will continue serving the requested area, it is not necessary to consider regionalization or consolidation.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.
2. After consideration of the factors in TWC § 13.246(c), Simply Aquatics has demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area, as required by TWC § 13.301(b).
3. The applicants have demonstrated that the sale and transfer of Timberlane's water facilities and certificated service area under CCN number 12336 to Simply Aquatics will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public, as required by TWC § 13.301(d) and (e).

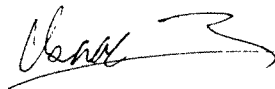
III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

1. The sale is approved and the transaction between Timberlane and Simply Aquatics 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 must file proof that the transaction has been consummated and customer deposits, if any, have been addressed.
3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(o), if the transaction is not consummated within this 180-day period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are notified that the corresponding service area will remain under water CCN number 12336 and be held by Timberlane until the sale and transfer transaction is complete in accordance with Commission rules.
6. In an effort to finalize this proceeding as soon as possible, the applicants must 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 must file a recommendation regarding the sufficiency of the documents and propose a procedural schedule for continued processing of this docket.

Signed at Austin, Texas the 19th day of April 2020.

PUBLIC UTILITY COMMISSION OF TEXAS



**ISAAC TA
ADMINISTRATIVE LAW JUDGE**