

Control Number: 49386



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DOCKET NO. 49386

**APPLICATION OF LAS LOMAS
MUNICIPAL UTILITY DISTRICT NO.
4A OF KAUFMAN COUNTY,
FORMERLY KNOWN AS LAS
LOMAS MUNICIPAL UTILITY
DISTRICT NO 4 OF KAUFMAN
COUNTY AND LAS LOMAS
MUNICIPAL UTILITY DISTRICT NO.
4B OF KAUFMAN COUNTY FOR
SALE, TRANSFER, OR MERGER OF
SEWER FACILITIES AND
CERTIFICATE RIGHTS IN
KAUFMAN COUNTY**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Revised Recommendation on Sale and would show the following:

I. BACKGROUND

On March 28, 2019, Las Lomas Municipal Utility District No. 4B of Kaufman County (Las Lomas 4B) and Las Lomas Municipal Utility District No. 4A of Kaufman County, formerly known as Las Lomas Municipal Utility District No 4 of Kaufman County (Las Lomas 4A) (collectively, Applicants) filed an application for Sale, Transfer, or Merger of Facilities and Certificate Rights in Kaufman County, Texas. Specifically, Las Lomas 4B seeks approval to acquire facilities and to transfer all of the Las Lomas 4A's Sewer Certificate of Convenience and Necessity No. 21007. The requested area includes approximately 6,168 acres and zero connections. Applicants filed supplemental information on September 10, 2019.

On January 8, 2020, the Administrative Law Judge (ALJ) issued Order No. 7, finding notice sufficient and establishing January 23, 2020 as the deadline for Staff to request a hearing or file a recommendation on the approval of the sale and on the CCN amendment. Therefore, this pleading is timely filed.

II. RECOMMENDATION ON SALE

Staff has reviewed the application pursuant to TWC § 13.301 and 16 Texas Administrative Code (TAC) § 24.109, and, as explained in the attached memorandum of Roshan Pokhrel of the Infrastructure Division, Staff recommends that the sale be allowed to proceed. Additionally, Staff determined that the criteria in TWC § 13.246(c) weigh in favor of granting the request to amend CCN No. 21007

Pursuant to 16 TAC § 24.109(o), the Commission's approval of sale will expire after 180 days from the issuance date of an order permitting the transaction to proceed. Applicants must consummate the sale within the 180-day period or the Commission's approval would be void, unless Applicants receive an extension from the Commission. Staff therefore further recommends that Applicants be ordered to file documentation evincing the transfer of all assets from Las Lomas 4A to Las Lomas 4B and detailing the disposition of any remaining customer deposits pursuant to 16 TAC § 24.109(n) within 180 days of the order permitting the transaction to proceed.

III. CONCLUSION

Staff respectfully requests that the ALJ issue an order approving the transaction.

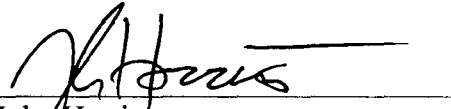
Dated: January 23, 2020.

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Thomas S. Hunter
Division Director

Rachelle Nicolette Robles
Managing Attorney

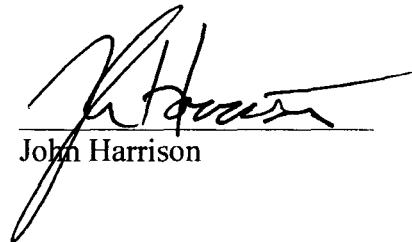


John Harrison
State Bar No. 24097806
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7277
(512) 936-7268 (facsimile)
John.Harrison@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 23, 2020 in accordance with 16 TAC § 22.74.



John Harrison

PUC Interoffice Memorandum

To: John Harrison, Attorney
Legal Division

From: Roshan Pokhrel, Engineering Specialist
Infrastructure Division

Date: January 23, 2020

Subject: **Docket No. 49386**, *Application of Las Lomas Municipal Utility District No. 4A of Kaufman County, Formerly Known as Las Lomas Municipal Utility District No. 4 of Kaufman County and Las Lomas Municipal Utility District No. 4B of Kaufman County for Sale, Transfer, or Merger of Facilities and Certificate Rights in Kaufman County*

On March 28, 2019, Las Lomas Municipal Utility District No. 4B of Kaufman County (Purchaser) and the Las Lomas Municipal Utility District No. 4A of Kaufman County (formerly Las Lomas Municipal Utility District No. 4 of Kaufman County) (Seller) (collectively, Applicants), filed with the Public Utility Commission of Texas an application for sale, transfer, or merger of certificate rights in Kaufman County, Texas, under Texas Water Code (TWC) § 13.301 and the 16 Texas Administrative Code (TAC) § 24.239.

Background

Las Lomas Municipal Utility District No. 4 (MUD 4) was the original holder of Certificate of Convenience and Necessity (CCN) No. 21007. MUD 4 was divided into MUD Nos. 4A, 4B, and 4C under an order to divide the district. In conjunction with the division, MUD No. 4A retained all contracts, agreements, assets, obligations, and liabilities of MUD No. 4, including the CCN. Now, MUD No. 4B is the master district and MUD No. 4A would like to transfer all of their CCN to MUD No. 4B. The requested area includes approximately 6,168 acres and 0 existing customers.

Restyling the Docket

The Commission records show that the CCN was granted to Las Lomas Municipal Utility District No. 4 of Kaufman County, not Las Lomas Municipal Utility District No. 4A of Kaufman County. Therefore, Staff recommends changing the style of the docket to “*Application of Las Lomas Municipal Utility District No. 4B of Kaufman County and Las Lomas Municipal Utility District No. 4 of Kaufman County for Sale, Transfer, or Merger of Facilities and Certificate Rights in Kaufman County*”.

Notice

The comment period ended on December 31, 2019 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 is currently no sewer service provided to the requested area. Therefore, this criteria was not considered.

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

The requested area is already certificated therefore this criteria was not considered.

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.

There will be no effect on any retail public utility servicing the proximate area as there are no other sewer providers in the area. Future customers will benefit because they won't have to build individual septic tanks.

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

The Purchaser has a Texas Commission on Environmental Quality (TCEQ) approved Las Lomas Wastewater Treatment Facility, registered under water quality discharge Permit No. WQ0014803001.

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.

Currently, there are no other sewer service providers in the adjacent area.

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

Currently, there are no other sewer service providers in the adjacent 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.

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.¹ The Purchaser must demonstrate that it meets one of the five tests.²

The following analysis is taken from the Purchaser's projected financial statements for calendar years 2020 – 2024.³

The Purchaser meets one out of the five leverage tests. The Applicant has a debt service coverage ratio of 1.69 which is greater than 1.25 for year 2020. This is derived by adding the projected net income of (\$12,915) plus annual depreciation of \$340,384 equals \$327,469, divided by \$193,473, which is the sum of the annual long-term debt payment and annual interest payment of \$193,473.

The Purchaser meets the operations test. The owner or operator must demonstrate sufficient cash

¹ See 16 TAC § 24.11(e)(2).

² *Id.*

³ Purchaser's Projected Financial Statements for calendar years 2020 – 2024, Item No. 9, dated June 21, 2019.

is available to cover any projected operations and maintenance shortages in the first five years of operations. Based on the projected income statement for five years, the first year shows a net loss of (\$12,915); however, net operating income before non-cash depreciation is positive \$327,469. The years 2 to 5 show positive net income. In order to serve the requested area facilities are needed costing approximately \$120,715,483.⁴ The Purchaser plans to construct an infrastructure system for sewer service that will be financed by the developer. In return, the Purchaser will reimburse the developer out of bond proceeds. Additionally, the Purchaser has submitted a letter from its financial advisor indicating that Purchaser is able to issue debt (bonds) to fully reimburse the costs of the sewer infrastructure to service the CCN area.⁵ Thus, there are no shortages to cover.

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.

The Purchaser plans to construct an infrastructure system for sewer service that will be financed by the developer. In return, the Purchaser will reimburse the developer out of bond proceeds. Additionally, the Purchaser has submitted a letter from its financial advisor indicating that Purchaser is able to issue debt (bonds) to fully reimburse the costs of the sewer infrastructure to service the CCN area.

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.

This criteria was not considered because this transaction is only for the transfer of certified area from seller to purchaser. Future construction may minimally affect the environmental integrity and the land.

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

No service currently exists therefore this criteria was not considered.

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 of the sewer service area of the sewer CCN No. 21007 from Seller to Purchaser 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 that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. Staff further recommends that a public hearing is not necessary.

⁴ *Id.* at 19 of 53.

⁵ *Id.* at 49 of 53.