

Control Number: 49442



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DOCKET NO. 49442

**APPLICATION OF LEGEND BANK, §
INC. DBA OREAL, INC. AND RAY §
HARLOW FOR SALE, TRANSFER, §
OR MERGER OF FACILITIES AND §
CERTIFICATE RIGHTS IN §
ANGELINA COUNTY §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

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COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Recommendation on Final Disposition in response to Order No. 4. In support thereof, Staff shows the following:

I. BACKGROUND

On April 12, 2019, Ray Harlow (Harlow) and the Legend Bank, Inc. d/b/a Oreal, Inc., (Oreal) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Angelina County. Specifically, Harlow seeks approval to acquire facilities and to transfer all of Oreal's sewer Certificate of Convenience and Necessity (CCN) area and obtain Oreal's CCN No. 20568. The requested area includes approximately 45 acres and 87 connections.

On July 30, 2019, Order No. 4 was issued, establishing a deadline of September 11, 2019, for Staff to request a hearing or file a recommendation on approval of the sale. This pleading is therefore timely filed.

II. RECOMMENDATION

As supported by the attached memorandum of Fred Bednarski III of the Rate Regulation Division, Staff recommends and respectfully requests the 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 Texas Administrative 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).

Staff notes that the approval of the sale expires 180 days from the date of the Commission's written approval of the sale. If the sale is not consummated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for the 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 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.

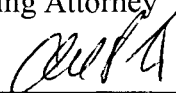
Dated: September 10, 2019

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Margaret Uhlig Pemberton
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DOCKET NO. 49442 CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on September 10, 2019, in accordance with 16 TAC § 22.74.



Alexander Petak

PUC Interoffice Memorandum

To: Alexander Petak, Attorney
Legal Division

Thru: Heidi Graham, Manager
Rate Regulation Division

From: Fred Bednarski III, Financial Analyst
Rate Regulation Division

Date: August 29, 2019

Subject: **Docket No. 49442**, *Application of Legend Bank, Inc. dba Oreal, Inc. and Ray Harlow for Sale, Transfer, or Merger of Facilities and Certificate Rights in Angelina County*

On April 12, 2019, Ray Harlow (Purchaser) and the Legend Bank, Inc. (Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Angelina County, Texas, pursuant to Texas Water Code Ann. (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Specifically, the Purchaser seeks approval to acquire facilities and to transfer sewer service area from the Seller's Certificate of Convenience and Necessity (CCN) No. 20568.

Background

The Purchaser is seeking to purchase and retain the Seller's sewer CCN No. 20568 for the service area containing approximately 45 acres and 87 existing customers.

Notice

The comment period ended August 12, 2019, and no protests or opt-out requests were received.

Criteria Considered

TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a 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.

The Seller was issued a wastewater discharge permit registered under Twin Oaks MHP Oak Haven Subdivision and permit number WQ0011588001 by the Texas Commission on Environmental Quality (TCEQ). The Purchaser stated in the application that they are working with the TCEQ to resolve any open violations.

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

The 87 existing customers are currently receiving sewer service from the Seller. Therefore, there is a need for service in the requested area.

TWC § 13.246(c)(3) requires the Commission to consider the effect of granting an amendment on the recipient 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.

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

The Purchaser is capable of meeting the TCEQ's design criteria for sewer treatment plants as the wastewater discharge permit currently held by the Seller, will be transferred to the Purchaser by the TCEQ, once the application is approved. No additional construction is necessary for the Purchaser to serve the requested 43 acre area.

TWC §§ 13.241(d), 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.

The Seller is currently serving customers and has sufficient capacity, therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.

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 following analysis is based on the Purchaser's projected financial statements and the sales contract provided with the application.

The Purchaser meets two out of the five leverage tests. The applicant is only required to meet one. The Purchaser has no long-term debt and \$149,631 of owner's equity.¹ Because the Purchaser does not have any debt, the Purchaser meets the debt to equity and debt service coverage tests.

The Purchaser meets the operations test. According to the sales contract provided with the application, the Seller will receive \$20,000 at closing of the sale from the Purchaser.² Additionally, the Purchaser submitted projected financial statements for the first five years of operations in the requested area and demonstrated there are no cash shortages to cover.³

TWC § 13.246(d)(6) 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 Purchaser be required to provide a bond or other financial assurance to ensure continuous and adequate service.

TWC §§ 13.246(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate.

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

The Purchaser will continue to provide sewer service to the existing customers in the requested area.

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 sewer facilities and to

¹ Item 15, Attachment 1-14, application page 18 of 20.

² Item 1, Sales Contract, page 2.

³ Item 15, Attachment 1-14, application page 19 of 20.

transfer sewer service area and retain the Seller's Certificate of Convenience and Necessity (CCN) No. 20568 is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

Staff recommends the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Staff notes there are no deposits held for the customers being served by Legend Bank, Inc.

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