



Control Number: 49442



Item Number: 19

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

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PUBLIC UTILITY COMMISSION

2019 OCT 21 AM 10:42
PUBLIC UTILITY COMMISSION
OF TEXAS FILING CLERK

**AGREED MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING
SALE AND ALLOWING TRANSACTION TO PROCEED**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this motion to admit evidence and proposed order approving sale and allowing transaction to proceed, with the agreement of Ray Harlow and the Legend Bank, Inc. d/b/a Oreal, Inc., (collectively, Parties). 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., (Legend) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Angelina County. Specifically, Harlow seeks approval to purchase facilities and all of Legend's sewer Certificate of Convenience and Necessity (CCN) area and retain Legend's CCN No. 20568. The requested area subject to the transaction includes approximately 45 acres and 87 connections.

On July 30, 2019, Order No. 4 was issued, adopting a procedural schedule for the processing of this docket. On September 10, 2019, Staff filed its recommendation on the approval of sale in accordance with the schedule. The procedural schedule also established a deadline of October 21, 2019, for the parties to file a joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed. This pleading is therefore timely filed.

II. MOTION TO ADMIT EVIDENCE

The Parties move to admit the following into the record evidence of this proceeding:

- a) The Application, filed on February 15, 2019 (AIS item No. 1);
- b) The Applicants' supplement to the Application, filed on June 13, 2019 (AIS item No. 5);
- c) The Applicants' supplement to the Application, filed on June 14, 2019 (AIS item No. 6);

- d) Commission Staff's supplemental recommendation on administrative completeness, filed on July 3, 2019 (AIS item No. 8);
- e) The Applicants' proof of notice and supporting documentation, filed on July 17, 2019 (AIS item No. 11);
- f) Commission Staff's recommendation on notice, filed on July 26, 2019 (AIS item No. 12)
- g) The Applicants' response to Staff's request for information, filed on August 12, 2019 (AIS item No. 14);
- h) The Applicants' amended response to Staff's request for information, filed on August 19, 2019 (AIS item No. 15); and
- i) Commission Staff's recommendation requesting the entry of an order permitting the proposed transaction to proceed, and attachments thereto, filed on September 10, 2019 (AIS item No. 16).

III. PROPOSED ORDER APPROVING SALE AND ALLOWING PROPOSED TRANSACTION TO PROCEED

The attached Agreed Proposed Order Approving Sale and Allowing Proposed Transaction to Proceed would authorize the sale and transfer to Harlow all Legend's sewer facilities and all Legend's service area under sewer CCN No. 20568. The Parties request that the Commission approve the proposed Order.

IV. CONCLUSION

The Parties respectfully requests that the items listed above be admitted into the record of this proceeding as evidence and that the Order proposed by the Parties be adopted.

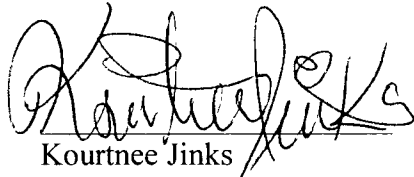
Dated: October 21, 2019

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

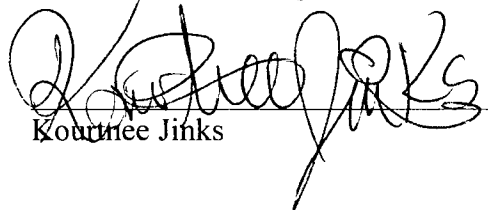
Karen S. Hubbard
Managing Attorney

A handwritten signature in black ink, appearing to read 'Kourtnee Jinks', written over a horizontal line.

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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 October 21, 2019, in accordance with 16 TAC § 22.74.

A handwritten signature in black ink, appearing to read 'Kourtnee Jinks', written over a horizontal line.

Kourtnee Jinks

DOCKET NO. 49442

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

**AGREED PROPOSED ORDER APPROVING SALE AND ALLOWING
TRANSACTION TO PROCEED**

This Order addresses the April 12, 2019 application of Legend Bank, Inc. d/b/a Oreal, Inc., (Legend) as Seller and Ray Harlow (Harlow) as Purchaser, for the sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Angelina County. Harlow seeks approval to acquire Oreal's facilities and to transfer and retain sewer Certificate of Convenience and Necessity (CCN) No. 20568. The requested area includes approximately 45 acres and 87 connections. On September 10, 2019, Commission Staff recommended that the transaction in this docket be allowed to proceed. This Order approves of the sale and authorizes the transaction proposed in this application to proceed.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Seller, Legend, is a Texas State Financial Institution registered with the Texas Secretary of State under file number 1131.
2. Legend controls facilities that provide sewer service under CCN No. 20568 in Angelina County.
3. Legend holds a Water Quality (WQ) Discharge Permit registered with the Texas Commission on Environmental Quality (TCEQ) under WQ identification number WQ11588-001.
4. Harlow is a Sole Proprietorship.

5. Harlow owns a Water Quality (WQ) Discharge Permit registered with the Texas Commission on Environmental Quality (TCEQ) under WQ identification number WWO036665.

Application

6. On April 12, 2019, Legend and Harlow, filed an application for the approval of the sale of WQ11588-001 and the transfer of sewer CCN No. 20568.
7. The requested service area subject to this transaction includes the Moffet Twin Oaks Mobile Home Park subdivision.
8. The requested service area subject to this transaction is located approximately four miles northeast of downtown Lufkin, Texas, and is generally bounded on the north by Wilkerson Road, on the east by Willis Creek, on the south by Terry Street, and on the west by County Road 122.
9. The total area affected by the transfer is comprised of approximately 45 acres and 87 current customers.
10. In Order No. 4 issued on July 30, 2019, the administrative law judge (ALJ) deemed the application administratively complete.

Notice

11. On July 16, 2019, Harlow filed an affidavit, attesting that notice was provided to all current customers of Twin Oaks Mobile Home Park, neighboring utilities, and affected parties on July 12, 2019.
12. In Order No. 4 issued on July 30, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

13. On October 21, 2019, the parties filed an agreed motion to admit evidence.
14. In Oder No. 5 issued on [date], the ALJ admitted the following evidence into the record: (a) The Application, filed on February 15, 2019 (AIS item No. 1); (b) The Applicants' supplement to the Application, filed on June 13, 2019 (AIS item No. 5); (c) The Applicants' supplement to the Application, filed on June 14, 2019 (AIS item No. 6); (d) Commission Staff's supplemental recommendation on administrative completeness, filed on July 3,

2019 (AIS item No. 8); (e) The Applicants' proof of notice and supporting documentation, filed on July 17, 2019 (AIS item No. 11); (f) Commission Staff's recommendation on notice, filed on July 26, 2019 (AIS item No. 12); (g) The Applicants' response to Staff's request for information, filed on August 12, 2019 (AIS item No. 14); (h) The Applicants' amended response to Staff's request for information, filed on August 19, 2019 (AIS item No. 15); and (j) Commission Staff's recommendation requesting the entry of an order permitting the proposed transaction to proceed, and attachments thereto, filed on September 10, 2019 (AIS item No. 16).

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. Legend stated it is working with the Texas Commission on Environmental Quality (TCEQ) to resolve any open violations.

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

16. Legend was issued a wastewater discharge permit registered as Twin Oaks MHP Oak Haven Subdivision and permit number WQ11588-001 by the TCEQ.

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

17. The 87 existing customers are currently receiving sewer service from Legend. Therefore, there is a need for service in the requested area.
18. This is an application to transfer only existing facilities, customers, and service 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. Legend and Harlow are the only entities affected by this sale and transfer.
20. Harlow is already operating the facilities serving the customers within CCN No. 20568; therefore, approving the transaction will result in a single entity operating, maintaining, and controlling the facilities that provide service under CCN No. 20568.
21. All customers will be charged the same rates as they were charged before the transaction.

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. The requested area is served by existing facilities, and the wastewater discharge permit for those facilities will be transferred to Harlow.
23. Harlow holds Class C operator's license WWO036665 and has the managerial and technical capability to provide adequate and continuous service to the requested service area.
24. Oreal's existing facilities have sufficient capacity to serve the customers, and no additional construction is necessary.

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. Harlow has no long-term debt and \$149,631 of owner's equity. Harlow meets the debt to equity and debt service coverage tests because Harlow does not have any debt.
26. Harlow meets the operations test. Harlow submitted projected financial statements for the first five years of operations in the requested area showing there are no cash shortages to cover.
27. Harlow has the financial ability and financial stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

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

28. Harlow's projected operating revenues are sufficient to cover the projected operations and maintenance expense for the first five years after the completion of the proposed sale and transfer.
29. There is no need to require Harlow 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)

30. Legend is currently serving customers in the requested area and has sufficient capacity; therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.

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

31. The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.
32. Transferring CCN No. 20568 to Harlow will allow for the continued provision of sewer service to the requested area and eliminate the need for each customer to install a septic system, which protects the environmental integrity of the land.

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

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

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

34. Harlow is currently the operator of the facilities to be transferred and will continue to provide sewer service to the existing customers in the requested area once the transaction is completed.
35. All customers will be charged the same rates as they were charged before the transaction.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. After consideration of the factors in TWC § 13.246(c), Harlow has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).
2. Legend and Harlow have demonstrated that transferring the sewer service area held under CCN number 20568 from Legend to Harlow 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 must 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 TAC § 24.239(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 CCN No. 20568 will be held by Oreal until the sale and transfer transaction is complete in accordance with the Commission's rules.
6. In an effort to finalize this case as soon as possible, the applicants must 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 must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the _____ day of October, 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

STEVEN LEARY
ADMINISTRATIVE LAW JUDGE