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DOCKET NO. 49442



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

**SUPPLEMENTAL JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED
NOTICE OF APPROVAL**

COMES NOW, Legend Bank, Inc. d/b/a OREAL, Inc. (Legend) and Ray Harlow (Harlow) (collectively, Applicants), together with the staff of the Public Utility Commission of Texas (Commission Staff) (collectively, Parties), and file this Supplemental Joint Motion to Admit Evidence and Proposed Notice of Approval. In support thereof, the Parties show the following:

**I.
BACKGROUND**

On April 12, 2019, Applicants filed an application for the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Angelina County with the Public Utility Commission of Texas (Commission). Specifically, the Applicants seek to transfer Legend's wastewater facilities and all of its service area under wastewater CCN No. 20658 to Harlow. The requested transfer includes approximately 45 acres and 87 current connections.

On November 12, 2019, the administrative law judge (ALJ) issued Order No. 6 Ordering Sale and Transfer to Proceed. On January 8, 2020, the Applicants filed the Required Closing Documents and a statement regarding customer deposits. On January 24, 2020, the Commission Staff filed a recommendation that the Applicants' closing documents were consistent with applicable Commission rules. On January 30, 2020, the ALJ issued Order No. 8 Finding Closing Documentation Sufficient and Establishing Procedural Schedule.

On February 12, 2020, Commission Staff provided a final map and final tariff to the Applicants for review and consent. On February 25, 2020, the Applicants' filed consent forms concurring with the final map and tariff.

On January 30, 2020, Order No. 8 was issued establishing a deadline of March 18, 2020 for the Parties to jointly file a proposed Notice of Approval, including proposed findings of fact, conclusions of law, and ordering paragraphs. Therefore, this pleading has been filed in a timely manner.

II. SUPPLEMENTAL JOINT MOTION TO ADMIT EVIDENCE

The Parties request the entry of the following items into the records of this proceeding;

- (1) Applicants' proof of closing documents, filed on January 8, 2020 (AIS Item No. 24);
- (2) Commission Staff's supplemental recommendation on the sufficiency of the closing documents, filed January 24, 2020 (AIS Item No. 25);
- (3) Applicants' consent forms, filed on February 25, 2020 (AIS Item No. 27); and,
- (4) The attached final map, certificate, and tariff.

III. JOINT PROPOSED NOTICE OF APPROVAL

The Parties have agreed to the attached Joint Proposed Notice of Approval, which would approve the Applicants' application for the sale and transfer of all of Legend's wastewater facilities and service area under wastewater CCN No. 20658 along with CCN No. 20658 to Harlow. The Parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from the Notice of Approval.

**IV.
CONCLUSION**

The Parties respectfully request that all items requested above be admitted into the record of the proceeding as evidence and that the Commission approve the attached Joint Proposed Notice of Approval.

Respectfully submitted,

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CERTIFICATE OF SERVICE

“I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on March 18, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.”

s/ Kourtnee Jinks
Kourtnee Jinks

DOCKET NO. 49442

APPLICATION OF LEGEND BANK,	§	PUBLIC UTILITY COMMISSION
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HARLOW FOR SALE, TRANSFER, OR	§	OF TEXAS
MERGER OF SEWER FACILITIES	§	
AND CERTIFICATE RIGHTS IN	§	
ANGELINA COUNTY	§	

JOINT PROPOSED NOTICE OF APPROVAL

This Notice of Approval address the April 12, 2019 application of Legend Bank, Inc. (Legend), and Ray Harlow d/b/a Arch Utilities (Harlow) (collectively, Applicants) for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Angelina County. The Commission approves the sale and transfer of all of Legend's facilities and service area under wastewater CCN No. 20658 to Harlow.

I.

Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Legend is a Texas corporation registered with the Texas Secretary of State under file No. 1131.
2. Legend operates, maintains, and controls facilities for providing wastewater service in Angelina County, Texas under CCN No. 20658.
3. The wastewater system that is the subject of this application is the only one owned by Legend.
4. Harlow is an individual that operates under the d/b/a Arch Utilities.

Application

5. On April 12, 2019, the Applicants filed an application for approval to transfer all of Legend's facilities and service area under wastewater CCN No. 20658 to Harlow.
6. Wastewater CCN No. 20658 will be transferred to, and Harlow will accept, the transfer of the facilities and the requested service area.
7. The requested area is comprised of approximately 45 acres and includes 87 current customers.
8. In Order No. 3, issued July 8, 2019, the Administrative Law Judge (ALJ) deemed the application administratively complete.

Notice

9. On July 16, 2019, the Applicants filed the affidavit of Brett W. Fenner, Authorized Representative for the Applicants, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on July 12, 2019.
10. In Order No. 4, issued July 30, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

11. On October 21, 2019, the parties filed a joint motion to admit evidence and proposed order approving the sale, transfer to proceed.
12. In Order No. 5, issued on November 1, 2019, the ALJ admitted the following evidence into the record: (a) the application, filed on April 12, 2019; (b) the Applicants' supplement to the application, filed on June 13th and June 14th, 2019; (c) Commission Staff's supplemental

recommendation on administrative completeness, filed on July 3, 2019; (d) the Applicants' proof of notice and supporting documentation, filed on July 16, 2019; (e) Commission Staff's recommendation on notice, filed on July 26, 2019; (f) the Applicants' responses to Staff's request for information, filed on August 12, 2019; (g) the Applicant's supplemental response to Commission Staff's request for information, filed on August 19, 2019; and (h) Commission Staff's recommendation requesting the entry of an order permitting the proposed transaction to proceed and attachments thereto, filed on September 10, 2019.

13. On March 18, 2020, the parties filed a Supplemental Joint Motion to Admit Evidence.

14. In Order No. ____ 9, issued on _____, 2020, the ALJ admitted the following into the record: (a) Applicant's proof of closing documents, filed on January 8, 2020; (b) Commission Staff's supplemental recommendation on the sufficiency of the closing documents, filed January 24, 2020; (c) Applicants' consent forms, filed on February 25, 2020; and (d) the attached map, tariff, and certificate.

Sale

15. In Order No. 6, issued November 12, 2019, the ALJ approved the transaction to proceed and required the Applicants to file proof that the transaction had closed and that customer deposits had been addressed.

16. On January 24, 2020, the Applicants filed notice that the sale had closed effective as of December 17, 2019 and that Legend held no customer deposits to transfer as part of the transaction.

17. In Order No. 8, issued January 30, 2020, the ALJ found the closing documents sufficient.

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

18. 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), (i)(5)(B)

19. 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(i)(5)(C)

20. The 87 existing customers are currently receiving sewer service from Legend. Therefore, there is a need for service in the requested area.
21. 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(i)(5)(D)

22. Legend and Harlow are the only entities affected by this sale and transfer.
23. 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.
24. 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), (i)(5)(E)

25. The requested area is served by existing facilities, and the wastewater discharge permit for those facilities will be transferred to Harlow.
26. 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.
27. Legend'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), (i)(5)(G)

28. 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.
29. 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.
30. 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)

31. 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.
32. 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)

33. 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)

34. The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.
35. 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.
36. Most of the customers in the requested area have lots that are too small to accommodate an on-site sewer system such as an aerobic or septic system.

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

37. 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)

38. 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.

39. All customers will be charged the same rates as they were charged before the transaction.

Tariff, Certificate, and Map

40. On February 12, 2020, Commission Staff emailed to the Applicants the final proposed map, tariff, and certificate related to this docket.
41. On February 29, 2019, the Applicants filed their consent forms concurring with the final map, tariff, and certificate.
42. The final map, certificate, and tariff were filed as an attachment to the proposed Notice of Approval.
43. Legend has sold and transferred all of its facilities and service area under wastewater CCN No. 20658 to Harlow.

Informal Disposition

44. More than 15 days have passed since the completion of the notice provided in this docket.
45. No person filed a protest or motion to intervene.

46. Legend, Harlow, and Commission Staff are the only parties to this proceeding
47. No party requested a hearing and no hearing is needed.
48. Commission Staff recommended approval of the application.
49. The decision to approve is not adverse to any party.

II.

CONCLUSIONS OF LAW

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this proceeding pursuant to Texas Water Code (TWC) §§ 13.041, 13.241, 13.244, 13.246, 13.251, 13.254 and, 13.301.
2. Legend and Harlow are currently retail public utilities, as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59).
3. Upon issuance of the Notice of Approval Legend will no longer be a retail public utility as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59).
4. Public notice of the application was provided as required by TWC § 13.301(a)(2) and 16 TAC § 24.239(a) through (c).
5. The Commission has processed the application as required by the TWC, the Texas Administrative Procedure Act and Commission Rules.
6. Legend and Harlow completed the sale within the time required by 16 TAC § 24.239(o).
7. 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 in the requested area as required by TWC § 13.301(b).

8. Legend and Harlow have demonstrated that the sale of Legend's wastewater system will serve the public interest and is necessary for the continued service, accommodation, convenience, and safety of the public as required by TWC §§ 13.301(d), (e) and 13.246(b).
9. Harlow must record a certified copy of the certificate granted along with map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Angelina County within 31 days of this Notice of Approval and submit to the Commission, evidence of the recording as required by TWC § 13.257 (r) and (s).
10. The requirement for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III.

ORDERING PROVISIONS

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

1. The Commission approves Harlow's purchase of Legend's wastewater treatment plant and collection system service the Twin Oaks subdivision in Angelina County, Texas to the extent provided in this Notice of Approval.
2. The Commission approves the map, certificate and, tariff attached to the Joint Proposed Notice of Approval filed on March ___, 2020.
3. Harlow must serve every customer and applicant for service within the approved area under wastewater CCN No. 20658 that requests wastewater service and otherwise meets the terms for Harlow's wastewater service, and such service must be adequate and continuous.

4. Harlow must comply with the recording requirements as provided in TWC § 13.257 (r) and (s) for the areas in Angelina County affected by the application and submit to the Commission evidence of the recording no later than 30 days after the receipt of this Notice of Approval.
5. Within ten days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked as *Approved* and filed in the Commission's tariff books.
6. The Commission denies all other motions and any other requests for general or specific relief, in not expressly granted herein.

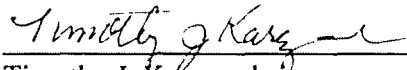
Signed at Austin, Texas the _____ day of _____ 20__.

ADMINISTRATIVE LAW JUDGE

**IV.
CONCLUSION**

The Parties respectfully request that all items requested above be admitted into the record of the proceeding as evidence and that the Commission approve the attached Joint Proposed Notice of Approval.

Respectfully submitted,



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