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**DOCKET NO. 49532**

**COMMISSION STAFF'S PETITION §  
FOR A DECLARATORY ORDER §  
AGAINST WATERCO §  
§**

**PUBLIC UTILITY COMMISSION  
OF TEXAS**

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**Respondent's Answer to Commission Staff's May 10, 2019, Petition for a  
Declaratory Order**

Respondent, Waterco, (Waterco) by and through its attorney, Gregory M. Klipp, files this Answer to Commission Staff's May 10, 2019, Petition for a Declaratory Order requiring Waterco to file an application for a certificate of convenience and necessity (CCN) under Texas Water Code (TWC) §13.242 and 16 Texas Administrative Code (TAC) §24.225.

**ANSWER**

On May 10, 2019, in Docket 47411 Commission Staff filed Comments and a Request for Declaratory Order with the Commission in response to Order No. 14 , Docket 47411, dated April 19, 2019, denying the Parties' request for continued abatement. In Commission Staff's May 10, 2019, Comments, Staff requested that Waterco file with the Commission an application for a CCN for the purposes of bringing the Utility into compliance with Texas Water Code (TWC) §13.242 and 16 Texas Administrative Code (TAC) §24.225.<sup>1</sup> While Waterco does not dispute the Staff's findings that Waterco currently provides water service to 15 service connections, Waterco has indicated to Commission Staff that in order to resolve the Commission's concerns under Docket 49532 and 47411 Waterco desires to sell and convey one of the two wells associated with its water systems to another entity (Purchaser)<sup>2</sup> that has expressed an interest in acquiring well No. 2 and associated connections with said well from Waterco (each well, Nos. 1 and 2, and their associated connections are independent systems and are not interconnected in anyway). Sale of well No. 2 to Purchaser would diversify the systems creating two

<sup>1</sup> Waterco would be exempt from having to obtain a CCN if it had 14 or fewer connections; 16 TAC §24.103(e)(1)(A): A water utility or water supply corporation is exempt from the requirement to possess a CCN to provide retail water utility service if it: (A) has less than 15 potential service connections .

<sup>2</sup> Waterco has two potential purchasers for its well no. 2 and the connections associated therewith. The identity of said purchaser shall be disclosed at the time Waterco files with the Commission an STM Application.

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exempt water systems<sup>3</sup> each independently owned and operated by a separate entity. The water system being retained by Waterco, well No. 1, would retain 8 connections, and the water system being conveyed to Purchaser would retain the remaining 7 connections. Waterco has already communicated with TCEQ staff concerning the sale of one of its wells for the purposes of exempting both systems from the requirements of a Public Water System, and TCEQ staff have preliminarily approved said proposal on the condition that the Commission allow Waterco to sell its second well to a new operator.<sup>4</sup> Furthermore, Waterco's customers have expressed their approval of the proposed conveyance as the Purchaser of Well No. 2 is a resident of the community and would be a customer of water service from well No. 2.

Commission Staff's proposal that Waterco obtain a CCN at this time would be a waste of Commission resources and the time and the money of both Waterco and the Commission as the CCN being proposed by Commission staff would be moot upon Waterco's subsequent filing of an STM application conveying one of its two systems to a new operator. Rather than issuing a Declaratory Order requiring Waterco obtain a CCN, Waterco requests that it be granted the opportunity to file with the Commission a (Sale Transfer and Merger Application<sup>5</sup>) STM application conveying one of its two wells and associated connections to Purchaser. Should the STM application be approved by Commission Staff, both water systems would be below the 15 connection threshold and not subject to the requirements of a CCN.<sup>6</sup> Furthermore, upon approval of the STM Application, Waterco and the purchaser of the second system will file with the Commission all necessary documentation required to be filed with the Commission for an exempt water utility. Should Waterco's STM application fail to receive Commission approval, Waterco will then file with the Commission an application for a CCN.

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<sup>3</sup> CCN not required for utilities with less than 15 potential connections. 16 TAC 24.103(e)

<sup>4</sup> TCEQ staff are issuing to Waterco a proposed "Agreed Order" allowing Waterco to convey one of its two wells to Purchaser for the purposes of exempting both systems from PWS requirements; however, as of the date of this filing, Waterco has not yet received the proposed "Agreed Order" from the TCEQ but has been informed by TCEQ Attorney Jake Marx that said Agreed Order will be issued shortly. Waterco will supplement this filing with the TCEQ's Proposed Agreed Order when received.

<sup>5</sup> 16 TAC §24.239

<sup>6</sup> 16 TAC 24.103(e)

Finally, Waterco is aware of no rules or regulations requiring Waterco to obtain a CCN prior to its filing with the Commission of a STM Application<sup>7</sup> as the filing of the STM Application will negate the need for a CCN. Should the act of filing and receiving an approval of its STM application negate Waterco's requirement to obtain a CCN, then in the interest of expediting the diversification of the water systems, and conserving the resources of both the Commission and Waterco, Waterco respectfully requests the opportunity to file with the Commission an STM Application.

### PRAYER

For the reasons detailed above, Waterco respectfully requests that the Commission's requested May 10, 2019, Declaratory Order be denied and Waterco be granted the opportunity to file with the Commission a STM Application.

Date: May 14, 2019

Respectfully submitted,

**THE JONES LAW FIRM**

1703 West Avenue  
Austin, Texas 78701-1036  
gklipp@txcounselor.com  
Telephone: (512) 391-9292  
Fax: (886) 511-5961

By:



GREGORY M. KLIPP  
State Bar No.: 24070065

ATTORNEY FOR JAMES NELSON AND WATERCO

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<sup>7</sup> 16 TAC §24.239(a) states that "an entity required by law to possess a certificate of convenience and necessity shall, and a retail public utility that possess a CCN may, file a written application with the commission and give public notice of any sale, transfer, merger...." The language of 16 TAC §24.239(a) clearly states that entities with or without a CCN may file an STM application with the Commission.

**PUC DOCKET 47411**  
**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on May 14, 2019, in accordance with 16 TAC §22.74.

By:   
GREGORY M. KLIPP