



Control Number: 49691



Item Number: 19

Addendum StartPage: 0

2019 DEC 22 AM 9:51

APPLICATION OF PERRY WATER §
SUPPLY CORPORATION AND TRI- §
COUNTY SPECIAL UTILITY §
DISTRICT FOR SALE, TRANSFER, §
OR MERGER OF FACILITIES AND §
CERTIFICATE RIGHTS IN FALLS, §
MCLENNAN, ROBERTSON AND §
LIMESTONE COUNTIES §

PUBLIC UTILITY COMMISSION

OF TEXAS

COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

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

I. BACKGROUND

On July 1, 2019, Perry Water Supply Corporation (Perry WSC) and Tri-County Special Utility District (Tri-County SUD) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Falls County, Texas. Specifically, Perry WSC seeks to transfer its water service area and facilities under Certificate of Convenience and Necessity No. 11129 to Tri-County SUD. The service area to be transferred includes 606 acres and 136 current customers.

Order No. 5, issued September November 1, 2019, found Tri-County SUD's notice sufficient and adopted a procedural schedule establishing December 4, 2019, as the deadline for Staff to request a hearing or file a final recommendation on the approval of the proposed transaction. On November 20, 2019, Staff requested an extension of this deadline. Order No. 6, issued December 2, 2019, granted Staff's request and extended the deadline for Staff's hearing request or final recommendation to December 20, 2019. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

As detailed in the attached memorandum from Patricia Garcia in the Commission's Infrastructure Division and Maxine Gilford in the Commission's Rate Regulation Division, Staff has reviewed the proposed transaction and recommends that it satisfies the relevant statutes and rules, including those factors identified in Texas Water Code (TWC) §§ 13.246 and 13.301 and

19

Texas Administrative Code (TAC) §§ 24.11, 24.227, and 24.239. Staff further recommends that Tri-County SUD has demonstrated the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction. Therefore, Staff recommends the entry of an order permitting the proposed transaction to proceed.

Additionally, Staff recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated pursuant to 16 TAC § 24.239(n) and documentation that customer deposits, if any, have been addressed pursuant to 16 TAC § 24.239(m).

III. REQUEST FOR AMENDED PROCEDURAL SCHEDULE

Order No. 5 adopted a procedural schedule containing filing deadlines for Staff's hearing request or final recommendation on the approval of the proposed transaction; Applicants' response to Staff's recommendation; and the parties' joint motion to admit evidence and proposed order approving the transaction to proceed. Order No. 6 extended the deadline for Staff's hearing request or final recommendation on the approval of the proposed transaction to December 20, 2019, but was silent as to the modification of the remaining deadlines in the procedural schedule. Accordingly, Staff requests that the procedural schedule be amended as follows:

Event	Date
Deadline for parties to file a response to Staff's recommendation	January 3, 2020
Deadline for parties to file a joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed.	January 17, 2020
120-day deadline for the Commission to approve the sale or require a hearing	February 1, 2020 ¹

¹ Pursuant to 16 TAC § 24.239(a) and (j), the deadline for Commission action is 120 days after the mailing or publication of notice, if required, whichever occurs later. Because Staff did not recommend notice by publication, Staff is using October 4, 2019, as the date notice was completed. One hundred and twenty days after October 4, 2019 is February 1, 2020.

IV. CONCLUSION

Staff respectfully recommends that the proposed transaction be approved and respectfully requests that the amended procedural schedule proposed above be adopted.

Dated: December 20, 2019

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Thomas S. Hunter
Division Director


Heath D. Armstrong
Managing Attorney



Eleanor D'Ambrosio
State Bar No. 24097559
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7021
(512) 936-7268 (facsimile)
Eleanor.Dambrosio@puc.texas.gov

DOCKET NO. 49691 CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 20, 2019, in accordance with 16 TAC § 22.74.



Eleanor D'Ambrosio

PUC Interoffice Memorandum

To: Eleanor D'Ambrosio, Attorney
Legal Division

From: Patricia Garcia, Engineering Specialist
Infrastructure Division

Maxine Gilford, Financial Analyst
Rate Regulation Division

Date: December 19, 2019

Subject: **Docket No. 49691**, *Application of Perry Water Supply Corporation and Tri-County Special Utility District for Sale, Transfer, or Merger of Facilities and Certificate Rights in Falls, McLennan, Robertson, and Limestone Counties*

On July 1, 2019, Tri-County Special Utility District (Tri-County SUD or Purchaser) and the Perry Water Supply Corporation (Perry WSC or Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Falls County, Texas, pursuant to Texas Water Code (TWC) § 13.301 and the 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Tri-County SUD, water Certificate of Convenience and Necessity (CCN) No. 10054, seeks approval to acquire facilities and cancel Perry WSC's water CCN No. 11129. The CCN service area to be transferred is a facilities line plus the 200 feet on each side of the line, that includes 606 acres and 136 customers and is located only in Falls County, Texas.

Notice

The comment period ended November 4, 2019, and no protests or opt-out requests were received.

Criteria Considered

TWC Chapter 13, and 16 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 are currently 136 existing customers in the requested area. The customers are currently receiving water from Perry WSC's public water system. Perry WSC receives water from Tri-County SUD through an interconnect. Both Perry WSC and Tri-County SUD's public water systems have violations listed in the Texas Commission on Environmental Quality's (TECQ) database for arsenic. Tri-County SUD has been working with the Environmental Protection Agency (EPA) to try to resolve the arsenic violations. The EPA has extended Tri-County SUD's deadline to come into compliance with the maximum contaminant levels to May 31, 2020.

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

No additional service is needed in the requested area.

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. Any landowners in the area that do not currently receive service from Perry WSC and will require service after the transaction has been completed will need to request service from Tri-County SUD once the STM is approved.

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

Tri-County SUD has a public water system registered with the TCEQ under PWS ID No. 0730004 that is maintained by an individual with a Class C Water Operator's License issued by the TCEQ.

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.

Construction of a physically separate water system is not required to provide service to the requested area. As a result of the present application, the requested water service area will be consolidated with Tri-County SUD's existing water CCN service area.

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

As a result of the present application, the requested service area will be consolidated with Tri-County SUD's existing water CCN service area. The area is currently being served by Perry WSC through an interconnect with Tri-County SUD. There will be no changes to land uses or existing CCN boundaries. It is not feasible to obtain service from another utility.

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 used 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

Tri-County SUD meets two out of the five leverage tests. The first test is met with a debt to equity ratio calculated as follows: long-term debt of \$2,830,763³ divided by equity/net position of \$4,681,088⁴ equals 0.60 which is less than one. Tri-County SUD also has a debt service coverage ratio of more than 1.25 using annual net operating income before depreciation and non-cash expense divided by annual combined long-term debt payments. Annual net operating income before depreciation and non-cash expenses is \$891,151 derived by adding net operating income of

¹ See 16 TAC § 24.11(e)(2).

² *Id.*

³ Page 7 of the June 30, 2018 audited financial statements.

⁴ *Id.*

\$383,345⁵ and depreciation expense of \$507,806.⁶ Dividing \$891,151 by \$333,814⁷, 2019 long-term debt, results in a debt service coverage ratio of 2.67.

Tri-County SUD meets the operations test. The owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. Projections were not available in the application; however, Tri-County SUD had \$891,151 in operating income before depreciation. Therefore, there are no shortages to cover.

Staff's analysis is based on Tri-County SUD's audited financial statements, which contained an unqualified auditor's opinion from Alton D. Thiele, P.C. stating that the financial statements present fairly, in all material respects, the financial position of Tri-County SUD as of June 30, 2018.⁸ The audit and the related opinion indicate the transparency of Tri-County SUD and indicate sound management capabilities. Supporting documentation from the June 30, 2018 audited financial statements is attached to this memorandum.

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.

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(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.

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

Tri-County SUD will continue to provide water service to the existing customers in the requested area. Tri-County SUD will also make improvements to the system to reduce the maximum contaminant levels in the water. The customer's rates will not change as a result of this transaction.

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 the water facilities and service area under water CCN No. 11129 to Tri-County SUD, to amend water CCN No. 10054, and to cancel water CCN No. 11129 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 notes that no deposits are held by Perry WSC for the customers within the Perry WSC CCN area. Staff further recommends that a public hearing is not necessary.

⁵ Page 8 of the June 30, 2018 audited financial statements.

⁶ *Id.*

⁷ Page 37 of the June 30, 2018 audited financial statements.

⁸ Page 1 of the June 30, 2018 audited financial statements.

ALTON D. THIELE, P.C.

Certified Public Accountant
300 East Avenue C
P.O. Box 808
Belton, TX 76513-0808

INDEPENDENT AUDITORS' REPORT

To the Board of Directors
Tri-County Special Utility District
Marlin, Texas 76661

We have audited the accompanying financial statements of the business-type activities of Tri-County Special Utility District which comprise the statement of net position as of June 30, 2018, and the related statements of revenues, expenses and changes in net position and cash flows for the year then ended and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities of Tri-County Special Utility District as of June 30, 2018 and the respective changes in financial position and cash flows thereof for the years then ended in accordance with accounting principles generally accepted in the United States of America

Report on Summarized Comparative Information

We have previously audited the Tri-County Special Utility District's 2017 financial statements, and we expressed an unmodified audit opinion on those audited financial statements in our report dated October 5, 2017. In our opinion the summarized comparative information presented herein as of and for the year ended June 30, 2017, is consistent, in all material respects, with the audited financial statements from which it has been derived.

TRI-COUNTY SPECIAL UTILITY DISTRICT
STATEMENT OF NET POSITION
JUNE 30, 2018

(With comparative totals for 2017)

	Business-type Activities Enterprise Fund Water Treatment and Distribution Fund - 2018	Business-type Activities Enterprise Fund Water Treatment and Distribution Fund - 2017
ASSETS		
CURRENT ASSETS		
Cash in bank and on hand	\$ 427,500	\$ 182,952
Invested funds	146,168	145,155
Trade accounts receivable	166,679	139,882
Inventory	64,876	72,404
Prepaid insurance	14,346	21,345
Total Current Assets	<u>819,570</u>	<u>561,737</u>
PROPERTY AND EQUIPMENT (net of accumulated depreciation)	6,701,484	6,844,676
OTHER ASSETS		
Deferred interest	6,064	-
Net pension asset	31,877	-
Invested funds - Reserve	385,451	381,944
Investment in CoBank, ACB	12,340	8,865
Total Other Assets	<u>435,731</u>	<u>390,809</u>
TOTAL ASSETS	<u>7,956,786</u>	<u>7,797,223</u>
DEFERRED OUTFLOWS OF RESOURCES		
Difference between expected and actual experience		
GASB 68 - Pensions	3,751	50,125
GASB 75 - Other post employment benefits	2,933	-
LIABILITIES AND FUND NET POSITION		
CURRENT LIABILITIES		
Trade accounts payable	24,403	36,713
Regulatory assessment fee payable	3,818	3,615
Accrued interest payable	36,055	38,081
Accrued compensated absences	16,443	16,443
Current portion long-term debt	204,109	148,725
Total Current Liabilities	<u>284,828</u>	<u>243,577</u>
LONG-TERM LIABILITIES		
Net OPEB / pension liability	10,695	9,807
Accrued compensated absences	42,696	45,014
Consumer deposits	113,400	109,100
Long-term debt (net of current portion)	2,830,763	3,029,846
Total Long-Term Liabilities	<u>2,997,554</u>	<u>3,193,767</u>
NET POSITION (DEFICIT):		
Contributed capital - USDA-RDS	2,938,000	2,938,000
Restricted for debt reserve fund	385,451	381,944
Invested in capital assets net of related debt	3,666,612	3,666,106
Unrestricted	(2,308,975)	(2,576,046)
Total Net Position	<u>\$ 4,681,088</u>	<u>\$ 4,410,004</u>

The accompanying notes are an integral part of these financial statements.
See Independent Auditors' Report

TRI-COUNTY SPECIAL UTILITY DISTRICT
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
FOR THE YEAR ENDED JUNE 30, 2018
(With comparative totals for 2017)

	Business-type Activities Enterprise Fund Water Treatment and Distribution Fund - 2018	Business-type Activities Enterprise Fund Water Treatment and Distribution Fund - 2017
Operating Revenues		
Metered water sales	\$ 1,857,275	\$ 1,752,813
Connection fees	31,000	50,000
Penalty and reconnect fees	45,575	42,665
Road bores and meter study	9,500	8,900
Miscellaneous income	1,980	2,645
Total Operating Revenues	<u>1,945,330</u>	<u>1,857,023</u>
Operating Expenses		
Water production and quality fees	19,649	18,344
Depreciation expense	507,806	484,822
Dues and subscriptions	12,731	8,981
Advertising	3,663	1,299
Insurance	41,110	32,138
Service vehicle costs	43,911	42,200
Miscellaneous expenses	2,696	2,807
Office expense	12,684	13,454
Accounting, auditing and legal expenses	16,117	8,747
Compensation and benefits	434,512	460,118
Power purchased for pumping	138,565	156,410
System maintenance and repairs	303,782	210,739
Utilities and communications	9,336	7,334
Bad debts	1,419	2,023
Other operating expenses	14,004	10,741
Total Operating Expenses	<u>1,561,984</u>	<u>1,460,158</u>
Operating Income	383,345	396,865
Other Income / (Expense)		
Gain (loss) on sale of assets	-	-
Interest and dividend income	21,515	21,157
Interest expense	(127,093)	(128,099)
Total Other Income / (Expense)	<u>(105,578)</u>	<u>(106,941)</u>
Income Before Adjustments	277,768	289,924
Total Net Position (Deficit) - Beginning	4,410,004	4,100,109
Prior period adjustment - Pension assets and OPEB liabilities	(6,684)	19,971
Reclassify funds to capital assets, net of debt	(6,081)	3,470
Reclassify funds to restricted	6,081	(3,470)
Total Net Position (Deficit) - Ending	<u>\$ 4,681,088</u>	<u>\$ 4,410,004</u>

The accompanying notes are an integral part of these financial statements.
See Independent Auditors' Report

**TRI-COUNTY SPECIAL UTILITY DISTRICT
LONG-TERM DEBT SERVICE REQUIREMENTS BY YEARS
JUNE 30, 2018**

The District is indebted to USDA-RDS for improvements to the system. Deeds of Trust on the entire water system assets and revenues are used as collateral. Detail of the debts are listed below:

Note Number	Interest Rate	Maturity Date	Monthly Payment	Note Balance Due	
				Current	Non-Current
Notes at CoBank					
R11309T01	2.460%	7/20/2025	\$ 10,156	\$ 88,200	\$ 642,725
R11309T02	3.980%	9/20/2024	\$ 7,493	70,210	424,899

Revenue Bonds at USDA-RDS

WSRB- 2005	4.500%	1/16/2047	N/A	20,000	1,032,000
WSRB- 2006	4.375%	5/18/2047	N/A	13,000	693,000

Commercial debt at Kubota Leasing

149652	9/27/2022	1,058	12,699	38,140
			<u>\$ 204,109</u>	<u>\$ 2,830,764</u>

Annual maturities of long term debt for the life of the note, as of June 30, 2018 are detailed below:

<u>YEAR ENDING JUNE 30,</u>	<u>USDA-RDS</u>		<u>COBANK</u>		<u>Kubota Leasing</u>	
	<u>S2005 and S2006</u>		<u>R11309 T01 and T02</u>		<u>149652</u>	
	<u>Principal</u>	<u>Interest</u>	<u>Principal</u>	<u>Interest</u>	<u>Principal</u>	<u>Interest</u>
2019	33,000	82,491	158,410	\$ 45,815	\$ 12,699	\$ 1,399
2020	34,000	80,246	165,243	43,027	11,498	1,399
2021	36,000	78,778	172,002	38,732	10,376	1,399
2022	37,000	77,266	179,452	34,281	9,659	1,399
2023	39,000	76,125	187,227	29,669	6,607	646
2024	41,000	74,021	195,200	24,888		
2025	42,000	72,287	168,500	19,934		
2026	45,000	70,464				
2027	47,000	68,596				
2028	49,000	66,595				
2029	50,000	64,505				
2030	53,000	62,326				
2031	55,000	60,101				
2032	58,000	57,744				
2033	60,000	55,297				
2034	63,000	52,717				
2035	65,000	50,048				
2036	69,000	47,245				
2037	72,000	44,354				
2038	75,000	41,285				
2039	78,000	38,082				
2040	82,000	34,746				
2041	85,000	31,275				
2042	90,000	27,628				
2043	93,000	23,846				
2044	98,000	19,842				
2045	102,000	15,704				
2046	107,000	11,344				
2047	<u>\$ 1,758,000</u>	<u>\$ 1,484,958</u>	<u>\$ 1,226,034</u>	<u>\$ 236,346</u>	<u>\$ 50,839</u>	<u>\$ 6,242</u>
Average	\$ 62,786	\$ 53,034	\$ 175,148	\$ 33,764	\$ 12,710	\$ 1,561