

Control Number: 49691



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RECEIVED

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

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PUBLIC UTILITY COMMISSION

2020 JAN 17 11:59 AM
PUBLIC UTILITY COMMISSION
OF TEXAS
CLERK

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

COMES NOW the Staff of the Public Utility Commission of Texas (Staff) and files this Motion to Admit Evidence and Proposed Order Approving the Transaction to Proceed with agreement from Perry Water Supply Corporation (Perry WSC) and Tri-County Special Utility District (Tri-County SUD) (collectively, the Parties). In support thereof, the Parties show the following:

I. BACKGROUND

On July 1, 2019, Perry WSC and 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. 7, issued January 8, 2020, directed the Parties to jointly file detailed, legally sufficient findings of fact and conclusions of law by January 17, 2020. Therefore, this pleading is timely filed.

II. MOTION TO ADMIT EVIDENCE

The Parties request the entry of the following items into the record of this proceeding: (a) the Applicants' application filed on July 1, 2019 (AIS Item No. 1); (b) the Applicants' supplement to the application filed on August 23, 2019 (AIS Item No. 5); (c) Staff's Supplemental

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Recommendation on Administrative Completeness and Proposed Notice filed on September 20, 2019 (AIS Item No. 6); (d) Tri-County SUD's proof of notice filed on October 11, 2019 (AIS Item No. 9); (e) Tri-County SUD's supplement to its proof of notice filed on October 29, 2019 (AIS Item No. 12); (f) Staff's Supplemental Recommendation on Sufficiency of Notice filed on October 31, 2019 (AIS Item No. 13); (g) Tri-County SUD's Response to Staff's First Request for Information filed on December 13, 2019 (AIS Item No. 18); and (h) Staff's Recommendation on the Transaction filed on December 20, 2019 (AIS Item No. 19).

III. JOINT PROPOSED NOTICE OF APPROVAL

The Parties have agreed on the attached Proposed Order, which would approve the transfer of Perry WSC's service area and facilities under water CCN No. 11129 to Tri-County SUD and allow the transaction to proceed. The Parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs proposed in the Order.

IV. CONCLUSION

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the attached Proposed Order Approving the Transaction to Proceed be adopted.

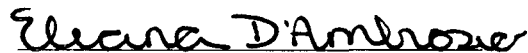
Dated: January 17, 2020

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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**DOCKET NO. 49691
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on January 17, 2020, in accordance with 16 Texas Administrative Code § 22.74.


Eleanor D'Ambrosio

DOCKET NO. 49691

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

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

PROPOSED ORDER APPROVING THE TRANSACTION TO PROCEED

This Order addresses the application of Perry Water Supply Corporation (Perry WSC) and Tri-County Special Utility District (Tri-County SUD) (collectively, Applicants) for approval of a sale, transfer, or merger of facilities and certificate rights in Falls County. The Applicants seek to transfer all of Perry WSC's facilities and service area under water Certificate of Convenience and Necessity (CCN) number 11129 to Tri-County SUD's water CCN number 10054. The administrative law judge (ALJ) grants that the transaction proposed in the application may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact

Applicant

1. Perry WSC is a non-profit water supply corporation organized under Texas Water Code (TWC) Chapter 67.
2. Perry WSC operates, maintains, and controls facilities that provide water service under CCN number 11129 in Falls County.
3. Tri-County SUD is a political subdivision of the State of Texas organized under TWC Chapters 49 and 65.
4. Tri-County SUD operates, maintains, and controls facilities that provide water service under CCN number 10054 in Falls, Limestone, McLennan, and Robertson Counties.

Application

5. On July 1, 2019, the Applicants filed an application transfer all of Perry WSC's facilities and service area under water CCN number 11129 to Tri-County SUD's water CCN number 10054.
6. The total area affected by the transaction comprises 606 acres and includes 136 customers.
7. The requested service area subject to the transaction is a facilities-plus-200 feet CCN that is located approximately 3 miles south of downtown Riesel, Texas and is generally bounded on the north by County Road 109; on the east by County Road 120; on the south by County Road 115; and on the west by County Road 110/County Road 116.
8. In Order No. 3 issued on September 27, 2019, the ALJ found the application administratively complete.

Notice

9. On October 11, 2019, Tri-County SUD filed the affidavit of Patricia Ferguson, Tri-County SUD's attorney and authorized representative, attesting that notice was mailed to neighboring utilities, county authorities, municipalities, and affected parties on October 4, 2019.
10. On October 29, 2019, Tri-County SUD filed a copy of the notice mailed to neighboring utilities, county authorities, municipalities, and affected parties and a publisher's affidavit attesting to publication of notice in the *Marlin Democrat*, a newspaper of general circulation in Falls County, on October 9, 2019 and October 16, 2019.
11. In Order No. 5 issued on November 1, 2019, the ALJ found the notice sufficient.

Evidentiary Record

12. On January 17, 2020, Commission Staff filed an agreed motion to admit evidence and proposed notice approving the transaction to proceed.
13. In Order No. 8 issued on _____, 2020, the ALJ admitted the following into evidence: (a) the Applicants' application filed on July 1, 2019; (b) the Applicants' supplement to the application filed on August 23, 2019; (c) Commission Staff's Supplemental Recommendation on Administrative Completeness and Proposed Notice filed on September 20, 2019; (d) Tri-County SUD's proof of notice filed on October 11, 2019; (e) Tri-County SUD's supplement to its proof of notice filed on October 29, 2019; (f) Commission Staff's

Supplemental Recommendation on Sufficiency of Notice filed on October 31, 2019; (g) Tri-County SUD's Response to Staff's First Request for Information filed on December 13, 2019; and (h) Commission Staff's Recommendation on the Transaction filed on December 20, 2019.

System Compliance—TWC § 13.246(c)(1); 16 Texas Administrative Code (TAC) §§ 24.227(d)(1), 24.239(j)(5)(B)

14. The Texas Commission on Environmental Quality's (TECQ) database shows unresolved violations for Tri-County SUD's public water system (PWS) for Maximum Contamination Levels (MCL) of arsenic.
15. Tri-County SUD has been working with the Environmental Protection Agency (EPA) to try to resolve the arsenic violations and submits quarterly status reports to the agency.
16. The EPA has extended Tri-County SUD's deadline to come into compliance with arsenic MCLs to May 31, 2020.
17. Tri-County SUD has demonstrated that it is actively working with the EPA to resolve all arsenic violations.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(d)(1), 24.239(j)(5)(B)

18. There are 126 existing customers in the area that is the subject of the transaction who currently receive water service from Perry WSC's public water system.
19. Tri-County SUD currently provides all water used to serve Perry WSC's existing customers through an interconnect.

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

20. The transaction will transfer only existing customers, facilities, and service area.
21. No additional water service is needed in the area that is the subject of the transaction

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)

22. Approving the transaction will not affect any retail public utility servicing the proximate area.
23. Any landowner in the area that is the subject of the transaction that does not currently receive water service from Perry WSC, and will require service after the transaction has been completed, will need to request water service from Tri-County SUD.

24. Landowners in the area will likely benefit from the transaction because they will receive an improved level of water service.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (d)(4), 24.239(g), (j)(5)(E)

25. Tri-County SUD has Public Water System (PWS) number 0730004 approved by the TCEQ.

26. Tri-County SUD's PWS is operated and maintained by an individual with a Class C Water Operator's License issued by the TCEQ.

27. Perry WSC currently purchases all of its water from Tri-County SUD; therefore Tri-County SUD has sufficient capacity to serve Perry WSC's existing customers.

28. Tri-County SUD has the managerial and technical capability to provide continuous and adequate service to the area that is the subject of the transaction

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)

29. Tri-County SUD is already providing all of the water used to serve the area that is the subject of the transaction.

30. It is not feasible to obtain service from another utility.

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)

31. Tri-County SUD has a debt to equity ratio of 0.60, which meets the leverage test of less than one.

32. Tri-County SUD has a debt service coverage ratio of 2.67, which is greater than 1.25.

33. Tri-County SUD has been providing water service for more than 5 years and its audited financial statements as of June 30, 2018, showed \$891,151 in operating income before depreciation; therefore, Tri-County SUD does not have an operations and maintenance shortage.

34. Tri-County SUD has the financial ability and financial stability necessary to provide continuous and adequate service to the area that is the subject of the transaction.

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

35. There is no need to require Tri-County SUD to provide a bond or other financial assurance to ensure continuous and adequate service.

Environmental Integrity—TWC § 13.246(c)(7); 16 TAC §§ 24.227(d)(7), 24.239(j)(5)(H); and Effect on the Land—TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)

36. No additional construction is needed to serve the area that is the subject of the transaction, and the environmental integrity of the land will not be affected.

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

37. There will be no change in the rates charged to the existing customers in the area that is the subject of the transaction.

38. There will be no change in service because Tri-County SUD will continue to provide water to the area that is the subject of 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), Tri-County SUD has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).
2. Applicants have demonstrated that transferring the facilities and water service area held under CCN number 11129 from Perry WSC to Tri-County SUD 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 these findings of fact and conclusions of law, the Commission issues the following orders.

1. The sale is approved, and the transaction between the 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 water CCN number 11129 will be held by Perry WSC 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 _____ 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

STEVEN LEARY
ADMINISTRATIVE LAW JUDGE