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DOCKET NO. 49691

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

AGREED MOTION TO ADMIT EVIDENCE AND JOINT PROPOSED NOTICE OF APPROVAL

COMES NOW, Tri-County Special Utility District (“Tri-County SUD”) and Perry Water Supply Corporation (“Perry”) (collectively, “Applicants”), together with the Staff of the Public Utility Commission of Texas (“Commission Staff”) (collectively, the Parties), and file this Agreed Motion to Admit Evidence and Joint Proposed Notice of Approval. In support thereof, the Parties show the following:

I. BACKGROUND

On July 1, 2019, Applicants filed an application for sale, merger, or transfer of facilities and certificate rights in Falls, McLennan, Robertson, and Limestone Counties. Specifically, the Applicants seek approval to transfer all of Perry’s facilities and water service under Certificate of Convenience and Necessity (“CCN”) No. 11129 to Tri-County SUD’s CCN No. 10054.

On September 4, 2020, Order No. 12 in this proceeding was issued, requiring the Parties to file an agreed motion to admit evidence and joint proposed notice of approval by September 18, 2020. This pleading is therefore timely filed.

II. JOINT MOTION TO ADMIT EVIDENCE

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

- (a) Applicants’ Report on Completion of Transfer, filed June 10, 2020 (Interchange Item No. 26);

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- (b) Commission Staff's recommendation on sufficiency of the closing documents, filed June 25, 2020 (Interchange Item No. 28);
- (c) Applicants' Executed Consent Forms, filed September 16, 2020 (Interchange Item No. 36);
and
- (d) The final map and certificates attached to this pleading.

III. JOINT PROPOSED NOTICE OF APPROVAL

The attached Joint Proposed Notice of Approval would approve the transfer of all of Perry's facilities and water service under CCN No. 11129 to Tri-County SUD's CCN No. 10054. The Parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from the attached Joint Proposed Notice of Approval.

IV. CONCLUSION

The Parties respectfully request that the Commission grant the Motion to Admit Evidence and approve the attached Joint Proposed Notice of Approval.

Dated: September 18, 2020


Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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I certify that notice of the filing of this document was provided via electronic mail to courtney.dean@puc.texas.gov and centralrecords@puc.texas.gov on September 18, 2020.



Patricia Ferguson

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	§ § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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JOINT PROPOSED NOTICE OF APPROVAL

This Order addresses the Application of Tri-County Special Utility District (Tri-County SUD) and Perry Water Supply Corporation (Perry WSC) (collectively, applicants) for approval of a sale, transfer, or merger of facilities and certificate rights in Falls, McLennan, Robertson, and Limestone Counties. The Commission approves the transfer of all of Perry WSC's service area under water certificate of convenience and necessity (CCN) number 11129 to Tri-County WSC's water CCN number 10054.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

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

Application

5. On July 1, 2019, the applicants filed an application requesting approval for Perry WSC to sell and transfer all of its facilities and water service area under CCN number 11129 to Tri-County SUD.
6. The requested area affected by the transfer comprises 606 acres and 136 current customers.

7. The requested area subject to this transaction is located approximately three miles south of downtown Riesel 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 and County Road 116.
8. In Order No. 3 filed on September 27, 2019, the administrative law judge (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, 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 and October 16, 2019.
11. In Order No. 5 filed on November 1, 2019, the ALJ found the notice sufficient.

Evidentiary Record

12. On January 17, 2020, the parties filed a joint proposed motion to admit evidence.
13. In Order No. 8 filed on February 12, 2020, the ALJ admitted the following evidence into the record: (a) the application filed on July 1, 2019; (b) 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 Special Utility District's proof of notice filed on October 11, 2019; (e) Tri-County Special Utility District'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's response to Commission 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.
14. On September 4, 2020, the parties filed a joint proposed notice of approval and supplemental motion to admit evidence.
15. In Order No. _____ issued on _____, 2020, the ALJ admitted the following evidence into the record: (a) Applicants' Report on Completion of Transfer, filed

June 10, 2020 (Interchange Item No. 26); (b) Commission Staff's recommendation on sufficiency of the closing documents, filed June 25, 2020 (Interchange Item No. 28); (c) Applicants' Executed Consent Forms, filed September 16, 2020 (Interchange Item No. 36); and (d) The final map and certificates attached to this pleading.

Sale

16. In Order No. 9 issued on March 11, 2020, 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.
17. On June 10, 2020, the applicants filed a report of completion of transfer confirming that the sale had closed effective May 13, 2020 and that all deposit funds were transferred to Tri-County SUD as of May 21, 2020.
18. In Order No. 10 issued on July 2, 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(j)(3)(A), (j)(5)(A)

19. The TCEQ database shows unresolved violations for Tri-County SUD's PWS for maximum contamination levels (MCL) of arsenic.
20. 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.
21. The EPA has extended Tri-County SUD's deadline to come into compliance with arsenic MCL's to May 31, 2021.
22. Tri-County SUD has demonstrated that it is actively working with the EPA to resolve all arsenic violations.
23. The applicants have demonstrated a compliance status that is adequate for approval of the application.

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

24. There are approximately 136 existing customers in the requested area that currently receive water service from Perry WSC's public water system.
25. 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(e)(2), 24.239(j)(5)(C)

- 26. The transaction will transfer only existing customers, facilities, and service area.
- 27. No additional water service is needed in the requested area.

Effect of Approving the Transaction and Granting the Amendment — TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(j)(5)(D)

- 28. There is no effect on any retail public utility, other than the applicants, servicing the proximate area.
- 29. 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.
- 30. Landowners in the area will 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), (e)(4), 24.239(g), (j)(5)(E)

- 31. Tri-County SUD's PWS is operated and maintained by an individual with a Class C Water Operator's License issued by the TCEQ.
- 32. 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.
- 33. Tri-County SUD has the managerial and technical capability to provide continuous and adequate service to the requested area.

Feasibility of Obtaining Service from Adjacent Retail Public Utility — TWC §§ 13.246(c)(5); 16 TAC §§ 24.227(e)(5), 24.239(j)(5)(F)

- 34. Tri-County SUD is already providing all of the water used to serve the area that is the subject of the transaction.
- 35. It is not feasible for an adjacent utility to provide service to the requested area.

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), (e)(6), 24.239(g), (j)(5)(G)

- 36. Tri-County SUD has a debt to equity ratio of 0.60, which is less than one, and has a debt service-coverage ratio of 2.67, which is greater than 1.25, satisfying the leverage tests.

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

Informal Disposition

46. On September __, 2020, the applicants filed consent forms concurring with the proposed final map and certificates.
45. On July 15, 2020, Commission Staff emailed to the applicants its proposed final map and certificates related to this docket.

Map, Certificate, and Tariff

44. Since Tri-County SUD does not anticipate building any new facilities to continue serving the requested area, regionalization or consolidation is not applicable.

Regionalization or Consolidation—TWC § 13.241(e); 16 TAC § 24.227(b)

43. Existing customers will benefit from planned improvements to Tri-County SUD's water system.
42. There will be no change in the rates charged to the existing customers in the requested area.

§§24.227(e)(8), 24.239(i)(5)(I)

- Improvement in Service or Lowering Cost to Consumers — TWC § 13.246(c)(8); 16 TAC § 24.227(e)(8)**
41. The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

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

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

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

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

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

38. Tri-County SUD has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.
37. Tri-County SUD has sufficient cash available to cover any projected operations and maintenance shortages during the first five years of operations following the transaction, satisfying the operations test.

49. Tri-County SUD, Perry WSC, and Commission Staff are the only parties to this proceeding.
50. No party requested a hearing and no hearing is needed.
51. Commission Staff recommend approval of the application.
52. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, 13.244, 13.246, 13.251, 13.254, and 13.301.
2. Tri-County SUD and Perry WSC are retail public utilities as defined in TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. Public notice of the application was provided as required by TWC § 13.301(a)(2) and 16 TAC § 24.239.
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act,¹ and Commission rules.
5. Tri-County SUD and Perry WSC completed the sale within the time required by 16 TAC § 24.239(o).
6. Tri-County SUD and Perry WSC have complied with the requirements of 16 TAC § 24.239(m) with respect to customer deposits.
7. 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, as required by TWC §§ 13.301(b).
8. Tri-County SUD and Perry WSC demonstrated that the sale of Perry WSC's water system and the transfer of Perry WSC's water service area will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public as required by TWC §§ 13.301(d) and 13.246(b).
9. Tri-County SUD must record a certified copy of the approved map for the certificate amendment, along with a boundary description of the service area, in the real property

¹ Tex. Gov't Code §§ 2001.001—.902.

records of Falls County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording, as required by TWC § 13.257(r) and (s).

10. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

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

1. The Commission approves the application, as supplemented.
2. Perry WSC's CCN number 11129 is cancelled. PWS number _____ and service area under Perry WSC's CCN number 11129 are transferred to the Tri-County SUD to be held under water CCN number 10054.
3. The Commission approves the map and certificates attached to the Joint Proposed Notice of Approval, filed September 4, 2020, and attached to this Notice of Approval.
4. Tri-County SUD must serve every customer and applicant for service within the approved area under CCN number 10054 who requests water service and meets the terms of Tri-County SUD's water service, and such service must be continuous and adequate.
5. Tri-County SUD must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Falls County affected by this application and must submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice of Approval.
6. 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 *Approved* and filed in the Commission's tariff books.
7. The Commission denies all other motions and any other requests for general or specific relief that have not been expressly granted.

SIGNED AT AUSTIN, TEXAS on the _____ day of _____, 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE

[ATTACH CERTIFICATES AND MAP]

