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DOCKET NO. 50057

**APPLICATION OF RJR WATER §
COMPANY, INC. AND MOUNTAIN §
RIVER WATER FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN PARKER AND PALO §
PINTO COUNTIES §**

**2020 JAN 17 PM 1:11
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS**

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and in response to Order No. 4, files this Recommendation on the Transaction. In support thereof, Staff shows the following:

I. BACKGROUND

On September 27, 2019, RJR Water Company, Inc. (RJR Water, Purchaser) and the Mountain River Water (Mountain River, Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger of facilities and certificate rights in Parker and Palo Pinto Counties, Texas, pursuant to Tex. Water Code (TWC) Ann. § 13.301 and the 16 Tex. Admin. Code (TAC) § 24.239. Specifically, Applicants seek to transfer all of Mountain River’s water service area and associated Certificate of Convenience and Necessity (CCN) number 12139 to RJR Water. The requested transfer includes approximately 345 acres with 132 current customers.

On October 31, 2019, the Commission administrative law judge (ALJ) issued Order No. 2, finding the application administratively complete and requiring Staff to file a recommendation on sufficiency of notice within ten days of Applicants’ filing proof of completed notice

On November 11, 2019, Estes filed documentation of delivery of notice to neighboring utilities and affected parties.

On December 4, 2019 the ALJ issued Order No. 3 finding the notice sufficient establishing a deadline for Staff to request a hearing or file a recommendation on approval of the sale by January 16, 2020.

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

As detailed in the attached memoranda from Gregory Charles in the Infrastructure Division and Spencer English in the Commission’s Rate Regulation Division, Staff’s review indicates that

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the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified pursuant to TWC, Chapter 13, and under TAC, Chapter 24. Additionally, based upon its review, Staff recommends that RJR Water 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. Staff further recommends that Applicants be ordered to file documentation demonstrating that the transaction has been consummated pursuant to 16 TAC § 24.239(n). Staff notes that there are no customer deposits to be addressed as required under 16 TAC § 24.239(m).

III. CONCLUSION

For the reasons discussed above, Staff respectfully recommends that the Commission ALJ issue an order approving the transaction.

Dated: January 17, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Thomas S. Hunter
Division Director

Rachelle Nicolette Robles
Managing Attorney



Rustin Tawater
State Bar No. 24110430
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7230
(512) 936-7268 (facsimile)
rustin.tawater@puc.texas.gov

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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 TAC § 22.74.



Rustin Tawater

PUC Interoffice Memorandum

To: Rustin Tawater, Attorney
Legal Division

From: Greg Charles, Engineer
Infrastructure Division

Spencer English, Financial Analyst
Rate Regulation Division

Date: January 16, 2020

Subject: **Docket No. 50057**, *Application of RJR Water Company, Inc. and Mountain River Water for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker and Palo Pinto Counties*

On September 27, 2019, RJR Water Company, Inc. (RJR Water, Purchaser) and the Mountain River Water (Mountain River, Seller) (collectively, Applicants) filed an application for Sale, Transfer, or Merger of facilities and certificate rights in Parker and Palo Pinto Counties, Texas, pursuant to Texas Water Code Ann. (TWC) § 13.301 and the 16 Tex. Admin. Code § 24.239.

Background

RJR Water is seeking to acquire water service area containing approximately 345 acres and 132 existing customers.

Notice

The comment period ended December 16, 2019, and no protests or opt-out requests were received.

Criteria Considered

TWC, Chapter 13, and 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.

Mountain River Water has a Texas Commission on Environmental Quality (TCEQ) approved PWS No. 1840077. The residential composition of the requested area consists of permanent homes, doublewides, and campers. Mountain River Water has 132 connections and is in violation of 30 TAC Chapter 290, Subchapter D, which pertains to the minimum production capacity of the system of 0.6 gallons per minute per connection. Considering the residential composition (some permanent and some seasonal) and the varied demand for water during the year, RJR Water has applied to the TCEQ for an Alternative Capacity Requirement exception to bring the system into compliance.

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

There are currently 132 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

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 as there are no other water providers in the area. There will be no effect on landowners as the area is currently certificated.

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

RJR Water will acquire the TCEQ approved Mountain River Water, PWS ID No.1840077. RJR Water does not have any violations listed in the TCEQ database. No additional construction is necessary for RJR Water to serve the requested area.

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.

No additional construction is necessary for RJR Water to serve the requested area.

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

Given the unsteady and unique demand on the Mountain River Water system, as stated earlier, RJR Water is working with TCEQ to provide 36 months of data in order to complete their exception request for an Alternative Capacity Requirement. Additionally, in response to Order No. 2, Mountain River Water stated that it has another water well that can be put into production by January 31, 2020 to increase the water capacity. Since TCEQ is working with Mountain River Water and RJR Water to resolve the production issue, the feasibility of obtaining service from another adjacent retail public utility was not considered.

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 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. This analysis is based on internally produced financial statements and projections provided by RJR Water as of March 2018.

The Commission identifies five leverage tests. The applicant must demonstrate that it meets one of the five tests. RJR Water meets the first test with a debt to equity ratio less than one, as the Purchaser had zero long-term debt¹ at the time the application was filed. RJR Water also meets the debt service coverage test because the projected income statement reflects net operating income of \$8,200 for the six-month period ending in 2019, and after dividing the net income by annual debt service of \$1,500, the resulting coverage ratio is 5.46, which is greater than 1.25.

16 TAC § 24.11(e)(3) refers to the operations test which requires that 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. RJR Water did submit projected financial statements in its application and shows sufficient cash to cover any shortages in income. No improvements

¹ Application at 15.

are needed to provide continuous and adequate service to the requested area. Therefore, RJR Water meets the operations test.

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 RJR Water 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.

RJR Water will continue to provide water service to the existing customers in the requested area.

The Applicants meet all the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer water facilities in the requested area, the water service area of the water CCN No. 12139, and the CCN No. 12139 to RJR Water is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

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 Mountain River Water for the customers being served in the Mountain River Estates subdivision. Staff further recommends that a public hearing is not necessary.