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DOCKET NO. 50122

APPLICATION OF MADERA	§	PUBLIC UTILITY COMMISSION
VALLEY WATER SUPPLY	§	
CORPORATION AND THE TOWN	§	OF TEXAS
OF PECOS CITY FOR SALE,	§	
TRANSFER, OR MERGER OF	§	
WATER FACILITIES AND	§	
CERTIFICATE RIGHTS IN REEVES	§	
COUNTY	§	

COMMISSION STAFF'S COMMENTS ON COMPLETION OF TRANSACTION

On October 23, 2019, Madera Valley Water Supply Corporation (Madera Valley WSC) and the Town of Pecos City (Pecos City) (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in Reeves County. Specifically, Madera Valley WSC seeks to sell a portion of its facilities and transfer a portion of its water service area held under certificate of convenience and necessity (CCN) No. 10240 to Pecos City. Pecos City's water CCN No. 10945 will be amended. The requested area includes 11,112.79 acres and 66 connections.

On April 14, 2020, the administrative law judge (ALJ) filed Order No. 7, approving the sale and transfer to proceed. Applicants were ordered to consummate the transaction within 180 days and file status reports every 30 days following the Order. On August 31, 2021, Applicants filed a letter stating that, while the full contract between Applicants transferring service area, facilities, and customers had not yet been completed, the transaction that had been approved to proceed, which constitutes a portion of the contract between Applicants, *had* been consummated with the payment of sums by Pecos City and the retirement of USDA debt by Madera Valley WSC.¹ Applicants also indicated that Pecos City is not yet able to assume responsibility for the connections and customers to be transferred.

On September 15, 2021, the ALJ filed Order No. 14, which required the Staff of the Public Utility Commission of Texas (Staff) to file comments on whether or not the sale and transfer transaction has been completed and a recommendation regarding the sufficiency of the closing documents by September 29, 2021. Therefore, this pleading is timely filed.

¹ Response to Order No. 13 regarding statutory or administrative grounds for extension of time to complete CCN customer transfers and waters system disconnections and connections at 2 (Aug. 31, 2021).

I. COMMENTS ON COMPLETION OF TRANSACTION

Under 16 Texas Administrative Code (TAC) § 24.239(e), an applicant is required to “demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and the transferee’s certificated service area.” Given Applicants’ recent filings, Staff is hesitant to recommend that the docket proceed. As indicated in Applicants’ September 2, 2021 filing, Applicants executed a one-year agreement for interim service whereby Madera WSC will continue to serve the area that is the subject of the transaction until the connections of the Pecos City water system have been completed. Although the expiration date of the initial term of the interim service agreement is not clear from the service area transfer agreement filed with the application, Applicants’ have had to extend this agreement to July 31, 2022.

Accordingly, even if Applicants’ assertion that the service area transfer agreement was approved is accurate, it does not appear that Pecos City has reached the point where the Commission can conclude that, after consideration of the factors in Texas Water Code (TWC) § 13.246(c) and 16 TAC §§ 24.227(e) and 24.239(h)(5), Pecos City has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area. This conclusion of law is central to final approval of the application. Staff acknowledges that circumstances beyond Applicant’s control have required the extension of the interim service agreement. However, this does not change the fact that Pecos City has not yet submitted the construction plans for the facilities needed to serve the area to be transferred to the Texas Commission on Environmental Quality for approval. Staff therefore recommends dismissal of this docket without prejudice for good cause shown because Pecos City is still several months away from being in a position to provide continuous and adequate service to the requested area.²

II. CONCLUSION

For the reasons discussed above, Staff respectfully requests the issuance of an order consistent with the foregoing recommendation.

² 16 TAC § 22.181(d)(11).

Dated: September 29, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on September 29, 2021 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Merritt Lander
Merritt Lander