



Control Number: 50224



Item Number: 19

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**DOCKET NO. 50224**

**APPLICATION OF CITY OF  
BRUCEVILLE-EDDY AND ELM  
CREEK WATER SUPPLY  
CORPORATION FOR SALE,  
TRANSFER, OR MERGER OF  
FACILITIES AND CERTIFICATE  
RIGHTS IN MCLENNAN COUNTY**

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**PUBLIC UTILITY COMMISSION  
OF TEXAS**

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**COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION**

**COMES NOW** the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Commission Staff's Recommendation on the Transaction. Staff recommends that transaction be approved to proceed. In support thereof, Staff shows the following:

**I. BACKGROUND**

On November 12, 2019, the City of Bruceville-Eddy (Bruceville-Eddy) and Elm Creek Water Supply Corporation (Elm Creek WSC) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in McLennan County. Bruceville-Eddy seeks to transfer a portion of its water service area held under CCN No. 11285 to Elm Creek WSC, to be held under Elm Creek WSC's water CCN No. 10031. The requested sale and transfer includes approximately 20 acres and 0 connections. The Applicants filed supplemental information on December 30, 2019, January 8, 2020, January 9, 2020, January 14, 2020 and February 26, 2020. The Applicants filed proof of notice on April 23, 2020.

On May 28, 2020, Order No. 5 in this proceeding was issued, finding notice sufficient and requiring Staff to file a recommendation on the approval of the sale and subsequent CCN amendments by July 13, 2020. Therefore, this pleading is timely filed.

**II. RECOMMENDATION ON THE TRANSACTION**

Staff has reviewed the supplemented application and, as detailed in the attached memorandum from Roshan Pokhrel, Infrastructure Division, recommends that proposed transaction be approved to proceed. Specifically, Staff recommends that the proposed transaction

satisfies the relevant statutory and regulatory criteria, including those factors identified under Texas Water Code (TWC) § 13.246(c) and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.239, and that Elm Creek WSC has demonstrated the financial, technical, and managerial capability necessary to provide continuous and adequate service to the requested area.

Additionally, Staff recommends that the Applicants be ordered to file documentation demonstrating that the transaction has been consummated as required under 16 TAC § 24.239(n). Staff recommends that there are no customer deposits to be addressed under 16 TAC § 24.239(m).

#### **IV. CONCLUSION**

Staff recommends that the proposed transaction be approved to proceed and that the Applicants be ordered to file documentation demonstrating that the transaction has been consummated as required under 16 TAC § 24.239(n). Staff respectfully requests that an order be issued consistent with the foregoing recommendations.

Dated: July 9, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 50224**

**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 via electronic mail on July 9, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Courtney Dean  
Courtney N. Dean

## PUC Interoffice Memorandum

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**To:** Courtney Dean, Attorney  
Legal Division

**From:** Roshan Pokhrel, Engineering Specialist  
Infrastructure Division

**Date:** July 13, 2020

**Subject:** **Docket No. 50224**, *Application of City of Bruceville-Eddy and Elm Creek Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in McLennan County*

On November 11, 2019, Elm Creek Water Supply Corporation (Elm Creek WSC) and the City of Bruceville-Eddy (the City) (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in McLennan County under Texas Water Code (TWC) § 13.301 and the 16 Texas Administrative Code (TAC) § 24.239.

### **Background**

The Applicants seek approval to transfer a portion of the water service area held under the City's water Certificate of Convenience and Necessity (CCN) No. 11285 to Elm Creek WSC's water CCN No. 10031. The entire requested area subject to this transaction includes approximately 20 acres and 0 connections.

### **Notice**

The comment period ended on June 11, 2020, and no protests or opt-out requests were received.

### **Criteria Considered**

TWC Chapter 13 and 16 TAC Chapter 24 require the Commission to consider certain 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.***

This criterion is not applicable because there is currently no water service provided to the requested area.

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

There is a need for service as the developer plans to build a housing subdivision in the requested area<sup>1</sup>.

***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.***

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<sup>1</sup> Application at page 3.

Elm Creek WSC's CCN will be amended. The landowners will benefit because they will not have to drill individual wells. There will be no effect on any retail public utility servicing the proximate area.

***TWC § 13.246(c)(4) requires the Commission to consider the ability of the Applicant to provide adequate service.***

Elm Creek WSC has an existing public water system (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) under PWS ID No. 1550026. Elm Creek WSC is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and has access to an adequate supply of water. Elm Creek WSC does not have any violations listed in the TCEQ database. Additional construction is necessary to serve the requested area. However, TCEQ submittal and approval for an additional construction is not necessary under 30 TAC 290.39(j)(1)(D).

***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.***

Currently, there are no other water providers in the adjacent area that could 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.***

Currently, there are no water providers in the adjacent area that could serve the requested area.

***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. The Commission rules identify five leverage tests.<sup>2</sup> Elm Creek WSC must demonstrate that it meets one of the five tests.<sup>3</sup>

The following shows that Elm Creek WSC meets one out of five leverage tests. This analysis is based on the financial statements ending September 30, 2018. These financial statements contain an unqualified auditor's opinion from Ludwick, Montgomery & Staff, P.C. stating that the financial statements present fairly, in all material respects, the financial position of Elm Creek WSC as of September 30, 2018. The audit and the related opinion indicate the transparency of Elm Creek WSC and indicate sound management capabilities. Elm Creek WSC meets the first test with a debt to equity ratio less than one, as calculated as follows: long term liabilities of \$655,775<sup>4</sup> divided by total membership equity of \$2,813,003<sup>5</sup> equals 0.23 which is less than one.

16 TAC § 24.11(e)(3) refers to the operations test which requires that the owner or operator must demonstrate sufficient cash available to cover any projected operations and maintenance shortages

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<sup>2</sup> See 16 TAC § 24.11(e)(2).

<sup>3</sup> *Id.*

<sup>4</sup> Application at page 52 (11/12/2019).

<sup>5</sup> *Id.*

in the first five years of operations. Elm Creek WSC submitted their 2019/2020 Budget<sup>6</sup> indicating net loss of (\$9,470). Once depreciation expense of \$160,257 and interest expense \$29,152 are removed, the resulting cash increase due to operations is \$179,939. Therefore, there are no projected cash deficits to cover. Additionally, Elm Creek WSC reported invested funds of \$518,880 and \$216,588 in certificates of deposit as of September 30, 2018.<sup>7</sup> Elm Creek WSC also submitted an executed service agreement indicating any improvements needed to provide continuous and adequate service to the requested area will be paid for by the developer.<sup>8</sup> Therefore, Elm Creek WSC 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.***

Elm Creek WSC meets the financial tests. Staff does not recommend that Elm Creek WSC be required to provide a bond or other financial assurance to ensure continuous and adequate service.

***TWC §§ 13.246(7) and (9) require the commission to consider the environmental integrity and the effect on the land to be included in the certificate.***

Future expansions may have minimal effect. This transaction eliminates the need for landowners to use individual wells, thus protecting the environment.

***TWC § 13.246(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.***

No service exists today in the requested area therefore this criterion was not considered.

#### **Recommendation on Approval of Sale**

Staff recommends that Elm Creek WSC meets all of the statutory requirements under TWC Chapter 13 and the Commission's Chapter 24 rules and regulations and is capable of providing continuous and adequate service. Approving this application to transfer a portion of the area under water CCN No. 11285 to Elm Creek WSC and amending the Applicants' respective CCNs is necessary for the service, accommodation, convenience and safety of the public. Staff recommends that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. Staff further recommends that the public hearing is not necessary.

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<sup>6</sup> *Id.* page 119.

<sup>7</sup> *Id.* page 57.

<sup>8</sup> Notice of Submission pages 8 through 11 (1/9/2020).