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DOCKET NO. 50224

APPLICATION OF CITY OF	§	PUBLIC UTILITY COMMISSION
BRUCEVILLE-EDDY AND	§	
ELM CREEK WATER SUPPLY	§	OF TEXAS
CORPORATION FOR SALE,	§	
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN McLENNAN COUNTY	§	

JOINT PROPOSED MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER

NOW COME ELM CREEK WATER SUPPLY CORPORATION and the CITY OF BRUCEVILLE-EDDY (collectively “Applicants”), together with the Staff of the PUBLIC UTILITY COMMISSION OF TEXAS (“Commission Staff”) (collectively “Parties”), and file this Joint Proposed Motion to Admit Evidence and Proposed Order. In support thereof, the Parties show the following:

I.

BACKGROUND

On November 12, 2019, Applicants filed an application for the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in McLennan County. Specifically, Bruceville-Eddy seeks to transfer a portion of its water service area held under CCN number 11285 to Elm Creek WSC’s CCN number 10031. The requested sale and transfer includes approximately 20 acres and serves 0 connections. The Applicants supplemented the application on December 30, 2019, January 8, 2020, January 9, 2020, and February 26, 2020.

On April 13, 2020, Commission Staff filed a recommendation that the application be found administratively complete and that the Applicants be directed to proceed with providing notice.

On April 17, 2020, Order No. 4 was issued, finding the application administrative complete and

directing Applicants to provide notice and proof of notice in the manner and form described Commission Staff's memorandum dated April 13, 2020.

On April 23, 2020, Applicants filed an affidavit attesting to the provision of the required Notice to Current Customers, Neighboring Utilities and Affected Parties. On May 21, 2020, Commission Staff filed its Recommendation on Sufficiency of Notice and Amended Proposed Procedural Schedule. On May 26, 2020, Applicants filed their Concurrence with Staff's Recommendation Regarding Amended Proposed Procedural Schedule and request that an order consistent with such recommendation be entered by the Commission.

On May 28, 2020, Order No. 5 Finding Notice Sufficient and Establishing Procedural Schedule was issued, requiring the Parties to file a joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed by August 10, 2020. Therefore, this pleading is timely filed.

II.

JOINT MOTION TO ADMIT EVIDENCE

The Parties request the entry of the following items into the record of this proceeding: (a) the application, filed on November 12, 2019 (AIS Item No. 1); (b) Applicant's submission of Information Confirming TCEQ Approval Not Required filed on December 30, 2019 (AIS Item No. 6); (c) Notice of Filing of Supplemental Mapping Information and Other Information Requested by Commission Staff filed on January 8, 2020 (AIS Item No. 7); (d) Notice of Submission of Service Application and Agreement, Service Agreement for Non-Standard Water Service and Agreement to Reimburse filed on January 9, 2020 (AIS Item No. 8); (e) Notice of Filing of Supplemental Information confirming financial ability to pay for the required improvements filed February 26, 2020 (AIS Item No. 12); (f) Commission Staff's

Recommendation on Sufficiency of Notice and Amended Proposed Procedural Schedule filed on May 21, 2020 (AIS Item No. 16) and (g) Staff's Recommendation on the Transaction filed July 14, 2020 (AIS Item No. 19).

III.

JOINT PROPOSED NOTICE OF APPROVAL

The parties have agreed to the attached Joint Proposed Notice of Approval, which would authorize the sale and transfer of a portion of Bruceville-Eddy's water service area held under CCN number 11285 to Elm Creek WSC's CCN number 10031.

IV.

CONCLUSION

The Parties respectfully request that all items requested above be admitted into the record of this proceeding as evidence and that the Commission authorize the proposed transaction to proceed.

Respectfully submitted,

By: /s/ Charles D. Olson

CHARLES D. OLSON
State Bar No. 15273200
Email: colson@haleyolson.com

HALEY & OLSON, P.C.

100 N. Ritchie Road, Suite 200
Waco, Texas 76712

Telephone: (254) 776-3336

Telecopier: (254) 776-6823

ATTORNEYS FOR APPLICANT,
ELM CREEK WATER SUPPLY CORPORATION

Respectfully submitted,

**PUBLIC UTILITY COMMISSION
OF TEXAS
LEGAL DIVISION**

Rachelle Nicolette Robles
Division Director

Heath D. Armstrong
Managing Attorney

By: /s/ Courtney Dean
COURTNEY N. DEAN
State Bar No. 24116269
Email: Courtney.dean@puc.texas.gov

1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326
Telephone: (512) 936-7235
Telecopier: (512) 936-7268

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PROPOSED ORDER

This Order addresses the November 12, 2019 application of Elm Creek Water Supply Corporation (Elm Creek WSC) and the City of Bruceville-Eddy (the City) (collectively, Applicants) for approval of the sale, transfer, or merger of facilities and certificate rights in McLennan County. The application seeks approval for the sale and transfer of a portion of the City's water service area held under certificate of convenience and necessity (CCN) number 11285 to Elm Creek WSC's CCN number 10031. On May 21, 2020, Commission Staff recommended that the transaction proceed in this docket. The administrative law judge (ALJ) grants that the transaction proposed in this application may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Elm Creek WSC is a domestic non-profit corporation registered with the Texas secretary of state under file number 224370.
2. Elm Creek WSC owns a public water system (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) under PWS number 1550026.
3. Elm Creek WSC is a retail public utility that provides water service under CCN number 10031 in McLennan County.

4. The City is a municipal corporation of the State of Texas that provides water service under CCN No. 11285 in McLennan County, Texas.
5. The City owns a PWS registered with the TCEQ under PWS number 1550024.

Application

6. On November 12, 2019, the Applicants filed an application for approval to transfer a portion of the City's water service area held under CCN number 11285 to Elm Creek WSC's CCN number 10031.
7. The requested sale and transfer includes approximately 20 acres and serves 0 connections.
8. The requested area is located approximately 2.9 miles west of downtown Bruceville-Eddy, Texas, and is generally bounded on the north by Hodge Road, on the east by Tower Drive, on the south by FM 107, and on the west by Doss Lane.
9. In Order No. 4, issued April 17, 2020, the administrative law judge (ALJ) deemed the application administratively complete.

Notice

10. On April 13, 2020, the Applicants filed the affidavit of Charles D. Olson, attorney for Elm Creek Water Supply Corporation, attesting that notice was provided to all current customers, neighboring utilities and affected parties on April 22, 2020.
11. In Order No. 5, issued May 28, 2020, the ALJ deemed the notice sufficient.

Evidentiary Record

12. On August 10, 2020, the parties filed a joint motion to admit evidence and proposed order approving the sale/transfer to proceed.

13. In Order No. _____, issued on _____, 2020, the ALJ admitted the following evidence into the record: (a) the application, filed on November 12, 2019; (b) Applicant's submission of Information Confirming TCEQ Approval Not Required filed on December 18, 2019; (c) Notice of Filing of Supplemental Mapping Information and Other Information Requested by Commission Staff filed on January 8, 2020; (d) Notice of Submission of Service Application and Agreement, Service Agreement for Non-Standard Water Service and Agreement to Reimburse filed on January 9, 2020; (e) Notice of Filing of Supplemental Information confirming financial ability to pay for the required improvements filed February 26, 2020; (f) Commission Staff's Recommendation on Sufficiency of Notice and Amended Proposed Procedural Schedule filed on May 21, 2020 and (g) Staff's Recommendation on the Transaction filed July 14, 2020.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (i)(5)(A)

14. Elm Creek WSC and the City have not been subject to any unresolved enforcement action by the Commission, TCEQ, the Texas Department of Health, the Office of Attorney General, or the United States Environmental Protection Agency.

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

15. The City currently has no customers or facilities in the requested area and provides no service in the requested area; therefore, this criterion is not applicable.

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

16. There are 0 existing customers in the requested area to be transferred. However, a local developer is seeking to create a housing subdivision and a small portion of that lies within the City's service area; therefore, there is a need for service.

17. Elm Creek WSC has received no new requests for service and is not requesting to add additional uncertificated area.

18. This application is to transfer only existing facilities, customers, and service 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)

19. The City and Elm Creek WSC are the only utilities affected by this sale and transfer.

20. There are no existing customers within the requested area to be affected by the transaction.

21. The proposed transaction will allow water service will become available in the requested area.

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), and 24.239(g), (j)(5)(E)

22. Elm Creek WSC has an existing public water system (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) under PWS ID No. 1550026.

23. Elm Creek WSC has been a fully operating retail water supply corporation since its incorporation in 1966 and presently serves water to 1,899 meters. An adequate supply of water is available by virtue of a wholesale water contract with Bluebonnet Water Supply Corporation and three operating water wells.

24. 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).

25. Elm Creek WSC 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(e)(5), 24.239(j)(5)(F)

26. Elm Creek WSC is an adjacent retail public utility with facilities nearby that can serve the requested area and has an adjacent part of the planned subdivision within its existing service area.
27. It is not feasible for an adjacent utility to provide service to the requested area.
28. Utilities within a two-mile radius were noticed and no protests were received regarding the proposed transaction.

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), and 24.239(g), (j)(5)(G)

29. Elm Creek WSC meets the leverage test with an effective debt-to-equity ratio of 0.23, which is less than one.
30. Elm Creek WSC has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

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

31. Elm Creek WSC's projected operating revenues are sufficient to cover projected operations and maintenance expenses for the first five years after the completion of the sale and transfer.
32. There is no need to require Elm Creek WSC to provide a bond or other financial assurance to ensure continuous and adequate service.

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

33. While some construction is needed in order to provide service to the requested area, the proposed transaction will not adversely impact the environmental integrity of the land and have minimal effect on the land.

34. The proposed transaction would eliminate the need for landowners to use individual wells, thus protecting the environment.

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

35. As there are no existing customers in the requested area, this criterion is not applicable.
36. Improvements to and ensure continuous and adequate service to the requested area will be funded by the developer of the requested area and will be completed within 180 days after Elm Creek WSC receives authority to serve the requested area.

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

37. Elm Creek WSC does not anticipate building a physically separate water system to serve the requested area; therefore, this criterion is not applicable

II. Conclusions of Law

The Commission makes the following conclusions of law:

38. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.
39. After consideration of the factors in TWC § 13.246(c), Elm Creek WSC has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).
40. The City and Elm Creek WSC have demonstrated that the sale of the City's water system, PWS number 1550024, and transfer of a portion of the water service area under CCN number 11285 to Elm Creek WSC is necessary for the service, accommodation, convenience, and safety of the public. TWC § 13.301(d), (e).

III. Ordering Paragraphs

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

1. The sale is approved and the transaction between 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.
3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.109(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 the requested area under water CCN number 11285 will be held by the City 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 on the ____ day of _____, 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE