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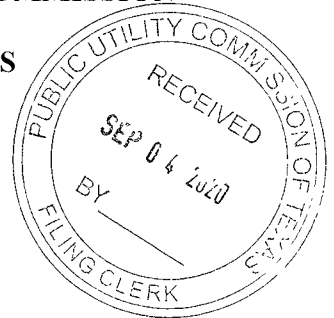
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DOCKET NO. 50224

**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**



**ORDER NO. 7
APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the November 12, 2019 application of the City of Bruceville-Eddy and Elm Creek Water Supply Corporation for a sale, transfer, or merger of certificate rights in McLennan County. The applicants seek approval to sell and transfer a portion of Bruceville-Eddy's service area under water certificate of convenience and necessity (CCN) number 11285 to Elm Creek, water CCN number 10031. 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. Bruceville-Eddy is a municipality that provides water service under CCN number 11285 in McLennan County.
2. Bruceville-Eddy owns a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 1550024.
3. Elm Creek is a domestic non-profit corporation registered with the Texas secretary of state under file number 22437001.
4. Elm Creek provides water service under CCN number 10031 in McLennan County.
5. Elm Creek owns and operates a public water system registered with the TCEQ under identification number 1550026.

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Application

6. On November 12, 2019, the applicants filed an application for approval to transfer a portion of Bruceville-Eddy's water service area held under CCN number 11285 to Elm Creek, CCN number 10031.
7. On December 30, 2019, January 8 and 9, 2020, and February 26, 2020, the applicants supplemented the application.
8. The requested area includes 20 acres and no current customer connections.
9. 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 Farm-to-Market Road107, and on the west by Doss Lane.
10. In Order No. 4 filed April 17, 2020, the ALJ found the application administratively complete.

Notice

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

Evidentiary Record.

13. On August 10, 2020, Commission Staff and applicants filed a joint motion to admit evidence and proposed order approving the sale and transfer to proceed.
14. In Order No. 6 filed on August 31, 2020, the ALJ admitted the following evidence into the record of this proceeding: (a) the application filed on November 12, 2019; (b) the applicants' supplemental information filed on December 30, 2019, January 8 and 9, 2020, and February 26, 2020; (c) Commission Staff's recommendation on sufficiency of notice and amended proposed procedural schedule filed on May 21, 2020; and (d) Commission Staff's recommendation on the transaction filed July 13, 2020.

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

15. Elm Creek and the Bruceville-Eddy have not been subject to any unresolved enforcement action by the Commission, TCEQ, the Texas Department of State Health Services, the Office of Attorney General, or the United States Environmental Protection Agency.
16. The applicants have demonstrated a compliance status that is adequate for approval of the sale to proceed.

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

17. There is no current water service in the requested area.

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

18. The requested area is the site of a portion of proposed housing subdivision; therefore, there is a need for additional service.
19. This application does not seek to certify any currently uncertificated area.

Effect of Approving the Transaction—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(C)

20. Bruceville-Eddy and Elm Creek are the only utilities affected by this sale and transfer.
21. There will be no effect on any other retail public utility servicing the proximate area because this transaction does not include any uncertificated area.
22. There will be no effect on landowners because the area is already certificated.
23. Approving the proposed transaction will obligate Elm Creek to provide water service to future customers in the requested area.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), (b), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (e)(4), and 24.239(e), (h)(5)(D)

24. Elm Creek is currently providing water service to 1,899 connections through public water system number 1550026 and does not have any unresolved violations listed in the TCEQ database.
25. Elm Creek employs TCEQ-licensed water operators who operate the public water system.

26. Additional construction is necessary to serve the requested area. However, TCEQ approval is not necessary for the additional construction.
27. Elm Creek has access to an adequate supply of water and is capable of providing water service that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the TCEQ's rules.
28. Elm Creek has the managerial and technical capability to provide continuous and adequate 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), and 24.239(e), (h)(5)(D)

29. Elm Creek has a debt-to-equity ratio of less than one, satisfying the leverage test.
30. Elm Creek has sufficient cash on hand to cover any projected operations and maintenance shortages during the first five years following the proposed transaction, satisfying the operations test.
31. Elm Creek has 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(f)

32. There is no need to require Elm Creek to provide a bond or other financial assurance to ensure continuous and adequate service.

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

33. Utilities within a two-mile radius were noticed and no protests were received regarding the proposed transaction.
34. It is not feasible for an adjacent utility to provide service to the requested area.

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

35. Although 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.

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

Improvement in Service or Lowering Cost to Consumer—TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8) 24.239(h)(5)(H)

37. There are no existing customers in the requested area.
38. Approval of the transaction will obligate Elm Creek to provide water service to future customers in the requested area.

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

39. Elm Creek will not need to construct a physically separate public water system to serve the requested area; therefore, concerns of regionalization or consolidation are not applicable.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 TAC § 24.239.
2. After consideration of the factors in TWC § 13.246(c), Elm Creek demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area as required by TWC § 13.301(b).
3. Bruceville-Eddy and Elm Creek demonstrated that the sale and transfer of the requested 20-acre area to Elm Creek is necessary for the service, accommodation convenience, and safety of the public. TWC § 13.301(d), (e).

III. Ordering Paragraphs

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

1. The sale is approved and the transaction between Bruceville-Eddy and Elm Creek 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 and customer deposits, if any, have been addressed.

3. The applicants have 180 days to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not consummated within this 180-day period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are notified that the corresponding service area will remain under water CCN number 11285 and be held by Bruceville-Eddy until the sale and transfer transaction is complete in accordance with Commission 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 customers deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a procedural schedule for continued processing of this docket.

Signed at Austin, Texas the 4th day of September 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'STEVEN LEARY', written over a horizontal line.

**STEVEN LEARY
ADMINISTRATIVE LAW JUDGE**