



Control Number: 50224



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DOCKET NO. 50224

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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

NOTICE OF APPROVAL

This Notice of Approval addresses the application of the City of Bruceville-Eddy and Elm Creek Water Supply Corporation for approval of a sale, transfer, or merger of facilities and certificate rights in McLennan County. The Commission approves the sale and transfer of a portion of Bruceville-Eddy's water service area under certificate of convenience and necessity (CCN) number 11285 to Elm Creek's water CCN number 10031 as well as the amendment of Elm Creek's water CCN number 10031 and Bruceville-Eddy's water CCN number 11285, to the extent provided in this Notice of Approval.

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.

Application

6. On November 12, 2019, Bruceville-Eddy and Elm Creek 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, Bruceville-Eddy and Elm Creek 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 Road 107, 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 23, 2020, the Bruceville-Eddy and Elm Creek, 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 May 28, 2020, the ALJ found notice sufficient.

Evidentiary Record

13. On August 10, 2020, the parties 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 November 12, 2019; (b) the applicants' supplemental information filed 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 May 21, 2020; and (d) Commission Staff's recommendation on the transaction filed July 13, 2020.
15. On January 20, 2021, the parties filed a joint motion to admit evidence and proposed notice of approval.

16. In Order No. 11 filed January 20, 2021, the ALJ admitted the following evidence into the record of this proceeding: (a) Bruceville-Eddy and Elm Creek's proof of closing documents filed September 17, and 20, 2020; (b) Commission Staff's recommendation on sufficiency of the closing documents filed October 2, 2020; (c) the applicants' consent forms filed November 6, 2020; and (d) the final map and certificates filed January 20, 2021.

Sale

17. In Order No. 7 filed September 4, 2020, the ALJ approved the transaction to proceed and required Bruceville-Eddy and Elm Creek to file proof that the transaction had closed and that customer deposits had been addressed.
18. On September 17, and 30, 2020, Bruceville-Eddy and Elm Creek filed proof of closing documents demonstrating that the sale had closed effective September 11, 2020.
19. There are no current customers in the requested area and no customer deposits to be addressed.
20. In Order No. 8 filed on October 6, 2020, the ALJ found the closing documents sufficient.

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)

21. Elm Creek and 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.
22. Elm Creek has 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)

23. 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)

24. The requested area is the site of a portion of proposed housing subdivision; therefore, there is a need for additional service.
25. 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)

26. Bruceville-Eddy and Elm Creek are the only utilities affected by this sale and transfer.
27. There will be no effect on any other retail public utility servicing the proximate area because this transaction does not include any uncertificated area.
28. There will be no effect on landowners because the area is already certificated.
29. Approving the transfer 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)

30. 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.
31. Elm Creek employs TCEQ-licensed water operators who operate the public water system.
32. Additional construction is necessary to serve the requested area. However, TCEQ approval is not necessary for the additional construction.
33. 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.
34. Elm Creek has the managerial and technical capability to provide continuous and adequate service to the requested area.

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

35. Utilities within a two-mile radius were noticed and no protests were received regarding the proposed transaction.
36. It is not feasible for an adjacent utility to provide 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)(F)

37. Elm Creek has a debt-to-equity ratio of less than one, satisfying the leverage test.

38. 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.
39. 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)

40. There is no need to require Elm Creek 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) and (c)(9); 16 TAC §§ 24.227(e)(7) and (e)(9), 24.239(h)(5)(G)

41. 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.
42. 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)

43. There are no existing customers in the requested area.
44. 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)

45. 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.

Map and Certificates

46. On November 2, 2020, Commission Staff emailed to Bruceville-Eddy and Elm Creek the proposed final map and certificates related to this docket.
47. On November 6, 2020, Bruceville-Eddy and Elm Creek filed their consent forms concurring with the map and evidence which were subsequently admitted into evidence on January 20, 2021.

Informal Disposition

48. More than 15 days have passed since the completion of notice provided in this docket.
49. No person filed a protest or motion to intervene.
50. Elm Creek, Bruceville-Eddy, and Commission Staff are the only parties to this proceeding.
51. No party requested a hearing and no hearing is needed.
52. Commission Staff recommends approval of the application.
53. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, 13.244, 13.246, 13.251, and 13.301.
2. Elm Creek and Bruceville-Eddy are retail public utilities as defined by TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Elm Creek is a water supply corporation as defined by TWC § 13.002(24) and 16 TAC § 24.3(40).
4. Public notice of the application was provided as required by TWC § 13.301(a)(2) and 16 TAC § 24.239(a) – (c).
5. The Commission processed the application as required by the TWC, the Administrative Procedure Act,¹ and Commission rules.
6. Bruceville-Eddy and Elm Creek complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.
7. After consideration of the factors in TWC § 13.246(c) and 16 TAC §§ 24.227(e) and 24.239(h)(5), Elm Creek demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested areas as required by TWC § 13.301(b) and 16 TAC § 24.239(f).

¹ Tex. Gov't Code §§ 2001.001-.903.

8. Elm Creek meets the requirements of TWC § 13.241(b) to provide water utility service.
9. It is not necessary for Elm Creek to provide a bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
10. Bruceville-Eddy and Elm Creek demonstrated that the sale of Bruceville-Eddy's public water system and water service area will serve the public interest and is necessary for the service accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b) and 13.301(d).
11. Elm Creek and Bruceville-Eddy must each record a certified copy of its certificate granted and map approved by this Notice of Approval, along with a boundary description of its service area, in the real property records of McLennan County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording, as required by TWC § 13.257(r) and (s).
12. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

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

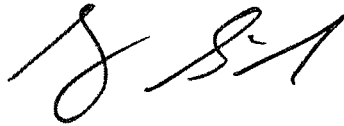
1. The Commission approves the sale and transfer of a portion of Bruceville-Eddy's water service area under CCN number 11285 to Elm Creek, as well as the amendment of Elm Creek's water CCN number 10031 and Bruceville-Eddy's water CCN number 11285, to the extent provided in this Notice of Approval.
2. The Commission approves the certificates attached to this Notice of Approval.
3. The Commission approves the map attached to this Notice of Approval.
4. Elm Creek must serve every customer and applicant for service within the approved area under water CCN number 10031 that requests water service and meets the terms of Elm Creek's water service, and such service must be continuous and adequate.
5. Elm Creek and Bruceville-Eddy must each comply with the recording requirements in TWC § 13.257(r) for the area in McLennan County affected by the application and must

submit to the Commission evidence of recording no later than 45 days after receipt of this Notice of Approval.

6. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

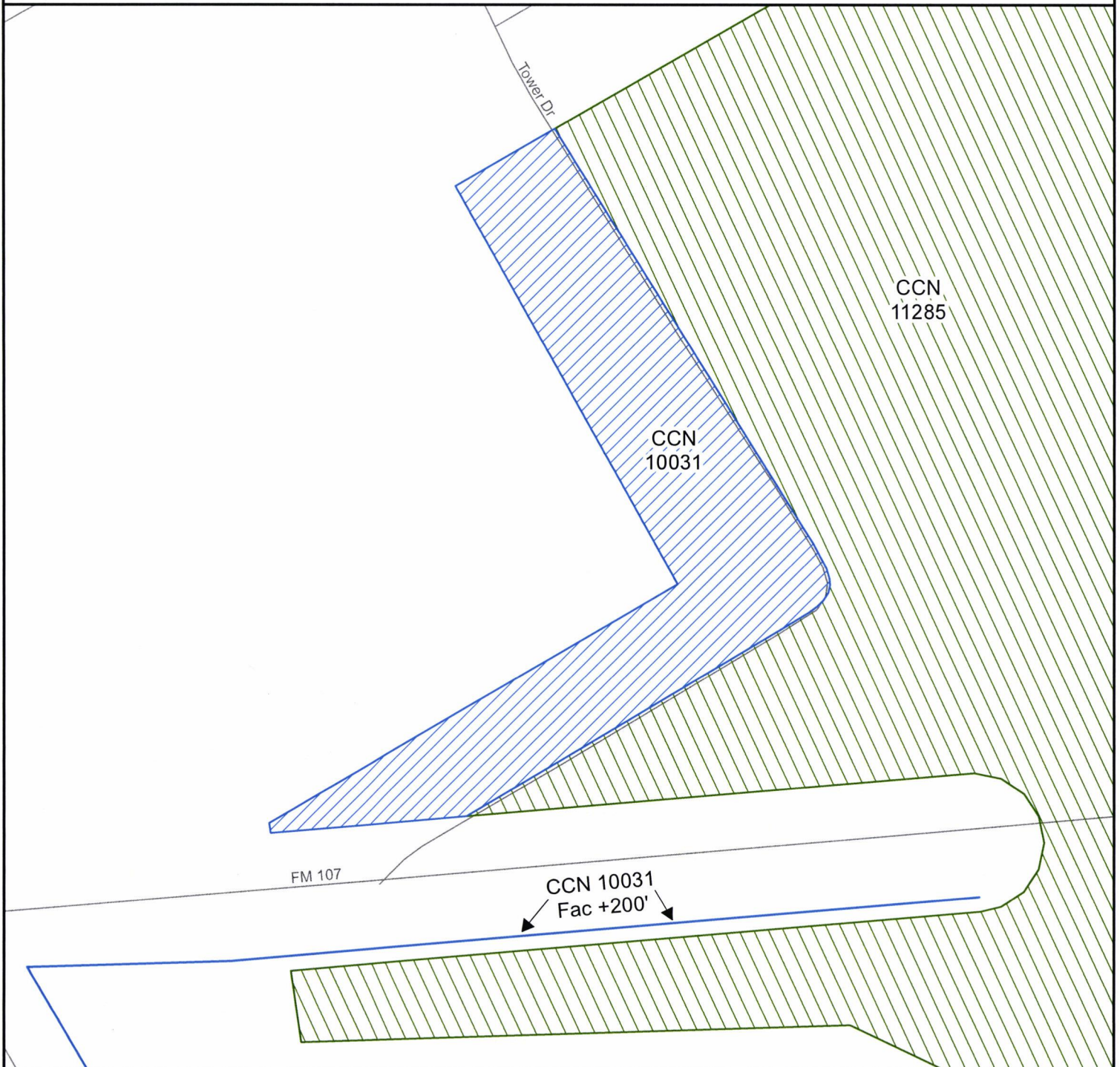
Signed at Austin, Texas the 27th day of January 2021.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read 'G. Siemankowski', is written over a horizontal line.



**GREGORY R. SIEMANKOWSKI
ADMINISTRATIVE LAW JUDGE**

Elm Creek Water Supply Corporation
Portion of Water CCN No. 10031
PUC Docket No. 50224
Transferred a Portion of City of Bruceville Eddy, CCN No. 11285 in McLennan County




Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Water CCN

-  10031 - Elm Creek WSC
-  11285 - City of Bruceville Eddy

Water CCN Facilities +200'

-  10031 - Elm Creek WSC

0 200 400
Feet



Map by: Komal Patel
Date created: October 26, 2020
Project Path: n:\finalmapping\
50224ElmCreekWSC.mxd



Public Utility Commission of Texas

By These Presents Be It Known To All That

Elm Creek Water Supply Corporation

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Elm Creek Water Supply Corporation is entitled to this

Certificate of Convenience and Necessity No. 10031

to provide continuous and adequate water utility service to that service area or those service areas in Bell, Coryell, Falls and McLennan Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50224 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Elm Creek Water Supply Corporation to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 27th day of January 2021.



Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Bruceville-Eddy

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, City of Bruceville-Eddy is entitled to this

Certificate of Convenience and Necessity No. 11285

to provide continuous and adequate water utility service to that service area or those service areas in Falls and McLennan Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 50224 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Bruceville-Eddy to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 27th day of January 2021.