



Control Number: 50480



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DOCKET NO. 50480

**APPLICATION OF CRYSTAL CLEAR
SPECIAL UTILITY DISTRICT AND
CITY OF SAN MARCOS FOR SALE,
TRANSFER, OR MERGER OF
FACILITIES AND CERTIFICATE
RIGHTS IN HAYS COUNTY**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF THE SALE

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Recommendation on Approval of the Sale. In support thereof, Staff shows the following:

I. BACKGROUND

On January 23, 2020, Crystal Clear Special Utility District (Crystal Clear SUD) and the City of San Marcos (San Marcos) (collectively, Applicants) filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Hays County. Crystal Clear SUD seeks to transfer its water service area held under CCN No. 10297 to San Marcos. The requested sale and transfer includes approximately 575 acres and 489 connections. Applicants filed supplemental information on March 20, 2020, June 3, 2020, and June 30, 2020.

On July 14, 2020, Order No. 7 was issued establishing a deadline of August 28, 2020, for Staff to file a recommendation on approval of the sale. Therefore, this pleading is timely filed.

II. RECOMMENDATION OF APPROVAL OF SALE

Staff has reviewed the supplemented application and, as supported by the attached memorandum of Heidi Graham, Infrastructure Division, and Fred Bednarski, Rate Regulation Division, recommends that the application be approved. Specifically, Staff recommends that San Marcos' application to acquire facilities and to transfer a portion of Crystal Clear SUD's water service area under water CCN No. 10297 to its water CCN No. 10298 be approved.

III. CONCLUSION

For the reasons discussed above, Staff respectfully recommends that the sale be approved to proceed.

Dated: August 28, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Robert Dakota Parish
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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 via electronic mail on August 28, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Robert Dakota Parish
Robert Dakota Parish

Public Utility Commission of Texas

Memorandum

To: Robert Dakota Parish, Attorney
Legal Division

From: Heidi Graham, Lead Engineering Specialist
Infrastructure Division

Fred Bednarski, Financial Analyst
Rate Regulation Division

Date: August 28, 2020

Subject: **Docket No. 50480**, Application of Crystal Clear Special Utility District and City of San Marcos for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hays County

On January 23, 2020, City of San Marcos. (Purchaser) and Crystal Clear Special Utility District (Seller, collectively Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Hays County, Texas, pursuant to Texas Water Code § 13.301 and the 16 Texas Administrative Code (TAC) § 24.239.

Specifically, the Purchaser, who holds Certificate of Convenience and Necessity (CCN) No. 10298, seeks approval to acquire facilities and to transfer a portion of Seller's water certificated area held under CCN No. 10297. The requested area includes approximately 575 acres and 489 connections.

Notice

The comment period ended July 27, 2020, and no protests or opt-out requests were received. One party, Guadalupe Carbajal, was granted intervention in this docket.

Criteria Considered

TWC Chapter 13 and 16 TAC Chapter 24, require the Commission to consider nine factors when granting or amending a water or sewer CCN. Therefore, the following factors were considered:

TWC § 13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.

The Seller has a public water system (PWS) registered with the Texas Commission on Environmental Quality (TCEQ) under PWS ID No. 0940015. The Seller does not have any violations listed in the TCEQ database.

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

There are currently 489 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

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.

There will be no effect on any retail public utility servicing the proximate area as there are no other water providers in the area. There will be no effect on landowners as the area is currently certificated.

TWC §§ 13.241(b), 13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service.

The Purchaser has a public water system registered with the TCEQ under PWS ID No. 1050001. The Purchaser does not have any violations listed in the TCEQ database. No additional construction is necessary for the Purchaser to serve the requested area.

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.

No additional construction is necessary for Purchaser to 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.

The Seller is currently serving customers and has sufficient capacity, therefore, the feasibility of obtaining service from another adjacent retail public utility was not considered.

Financial Test

TWC § 13.246(c)(6) requires the Commission to consider the financial ability of an 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.¹ The Purchaser must demonstrate that it meets one of the five tests.²

The following shows that the Purchaser meets one out of five leverage tests. This analysis is based on financial statements ending September 30, 2018. These financial statements contained an unqualified auditor's opinion from ABIP, PC which stated that the that the financial statements present fairly, in all material respects, the financial position of the Purchaser as of September 30, 2018. The audit and the related opinion indicate the transparency of the Purchaser and indicate sound management capabilities.

The Purchaser meets a debt service coverage ratio of 1.57 which is greater than 1.25. The debt service coverage ratio is calculated as follows: net income of \$24,428,389³ plus depreciation expense of \$26,050,087⁴ plus interest expense of \$5,338,567⁵ equals \$55,827,043 divided by annual debt service payments of \$35,509,058 consisting of \$640,849⁶ capital lease payments plus

¹ See 16 TAC § 24.11(e)(2).

² *Id.*

³ Application at page 86 (01/23/20).

⁴ *Id.* at page 125.

⁵ *Id.* at page 86.

⁶ *Id.* at page 126.

\$267,882⁷ bond refunding payments plus \$34,600,327⁸ general obligation, tax and revenue bond payments equals 1.57, which is greater than 1.25.

16 TAC § 24.11(e)(3) refers to the operations test which requires that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. The Purchaser submitted projected financial statements in its application, which shows there are no shortages to cover⁹. In addition to the projections the Purchaser submitted their capital improvement as well as cost to connect to provide service to the purchased area¹⁰ which can be paid for through the Purchaser's budgeting process and cash reserves. Should any shortages arise the Purchaser has taxing authority as well as the ability to issue debt. Therefore, the Purchaser 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.

The Applicant meets the financial tests. Staff does not recommend that the Commission require additional financial assurance.

TWC §§ 13.246(c)(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificated area.

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

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

The Purchaser will continue to provide water and sewer service to the existing customers in the area.

Staff notes that if there are deposits held by Seller for the customers in the Willow Creek Subdivision, the transfer or disposition of the deposits must be provided with the submittal of transaction documentation.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer water facilities in the requested area, and a portion of the water service area of the water CCN No. 10297 to Purchaser and amending water CCN No. 10298 of Purchaser is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

Staff recommends that the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction.

⁷ *Id.* at page 127.

⁸ *Id.* at page 128.

⁹ Response from the City of San Marcos at page 5 (03/20/2020).

¹⁰ *Id.* at page 3, 4, and 6.