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DOCKET NO. 50816

**APPLICATION OF VINTON HILLS §
ALEGRE, LLC AND VILLAGE OF §
VINTON FOR SALE, TRANSFER, §
OR MERGER OF FACILITIES AND §
CERTIFICATE RIGHTS IN EL PASO §
COUNTY §**

**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF THE SALE

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 Approval of the Sale. Staff recommends that the sale be approved to proceed. In support thereof, Staff shows the following:

I. BACKGROUND

On May 5, 2020, Vinton Hills Alegre, LLC (Vinton Hills) and the Village of Vinton (Village of Vinton) (collectively, Applicants) filed an application for sale, transfer, or merger of facilities and certificate rights in El Paso County. The Applicants request approval to sell and transfer all of the assets and facilities currently held under Vinton Hills' Certificate of Convenience and Necessity (CCN) No. 12563 to Village of Vinton's CCN No. 13269. The requested transfer area includes 310 acres and 299 connections. On June 11, 2020, the Applicants amended the application. On July 17, 2020, the Applicants filed proof of notice.

On August 18, 2020, Order No. 4 in this proceeding was issued, finding notice sufficient and requiring Staff to file a recommendation on the approval of the sale by September 16, 2020. Therefore, this pleading is timely filed.

II. RECOMMENDATION

Staff has reviewed the amended application and, as detailed in the attached memorandum from Jolie Mathis, Infrastructure Division, recommends that the 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 Village

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of Vinton 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).

III. 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: September 16, 2020

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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/s/Courtney Dean
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DOCKET NO. 50816
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 September 16, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/Courtney Dean

Courtney N. Dean

Public Utility Commission of Texas

Memorandum

To: Courtney Dean, Attorney
Legal Division

From: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

Date: September 16, 2020

Subject: **Docket No. 50816**, *Application of Vinton Hills Alegre LLC and Village of Vinton for Sale, Transfer, or Merger of Facilities and Certificate Rights in El Paso County*

On May 5, 2020, Village of Vinton (Village of Vinton or Purchaser) and the Vinton Hills Alegre, LLC (Vinton Hills or Seller) (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in El Paso County under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Specifically, the Applicants seek approval to transfer all facilities and service area under Vinton Hills' water Certificate of Convenience and Necessity (CCN) No. 12563 to Village of Vinton's water CCN No. 13269. The requested area includes approximately 310 acres and 299 current customers.

Background

The Applicants are seeking to transfer a water CCN for the service area containing approximately 310 acres and 299 existing customers.

Notice

The comment period ended August 12, 2020, and no protests or opt-out requests were received.

Criteria Considered

TWC § 13.246 and 16 TAC § 24.239 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.

Vinton Hills has TCEQ approved PWS Nos. TX0710169, TX0710172, and TX0710151. Vinton Hills 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.

The purpose of the transaction is to transfer Vinton Village Estates, Villa Alegre Estates, and Vinton Hills Subdivision to Village of Vinton. The customers are currently receiving water from the Vinton Hills' water system.

There are currently 299 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.

Vinton Hills has TCEQ approved PWS Nos. TX0710169, TX0710172, and TX0710151. Vinton Hills does not have any violations listed in the TCEQ database.

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.

This application, when approved, will enable Village of Vinton to reduce its reliance on groundwater wells and instead obtain a more reliable water supply for public drinking water from El Paso Water Utilities (EP Water). Vinton will receive its water supply from EP Water under a wholesale purchase agreement.

TWC § 13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.

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

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.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 Gibson, Ruddock, Patterson, LLC. which stated 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 the second test with a debt service coverage ratio greater than 1.25 calculated as follows: revenues less expenses of \$1,315,815³ less loan forgiveness revenues of \$797,103⁴ plus interest on long-term debt of \$114,055,⁵ plus depreciation and amortization expense of \$112,241,⁶ equals \$745,008, divided by long-term debt of \$391,950⁷ equals 1.90.

¹ See 16 TAC § 24.11(e)(2).

² *Id.*

³ Application at page 108 of 217 (5/5/2020).

⁴ *Id.*

⁵ Application at page 108 of 217 (5/5/2020).

⁶ *Id.* at page 143.

⁷ *Id.* at page 145.

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 did not submit projected financial statements in its application; however, the Purchaser provided a 2019-2020 budget which indicated no shortages.⁸ Furthermore, the Purchaser reported cash and cash equivalents of \$665,532⁹ in its audited financial statements ending September 30, 2018. I additionally reviewed the Seller's 2018¹⁰ and 2019¹¹ annual reports and identified no historical operating shortages. The purchaser has acquired a USDA loan to make improvements to the water system and any additional future improvements will be paid for through the Purchaser's budgeting process using project funds included in the budget. 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.

Initially, approval of the application will have no impact or disruption on the land where the facilities are located. Later, there will be construction and installation of a looped drinking water distribution system, water distribution lines, and residential meters. After final inspection and acceptance of these system improvements, EP Water will supply, operate, and maintain the Vinton water system. Although none of the proposed system improvements will impact undisturbed and/or undeveloped land, Vinton will restore said land to substantially the same condition that existed thereon prior to the start of construction.

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 service to the existing customers in the area.

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 the water service area of the water CCN No. 12563 to Village of Vinton and amending water CCN No. 13269 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. Staff notes that no deposits are held by Vinton Hills for the customers being served by Vinton Village Estates, Villa Alegre Estates, and Vinton Hills Subdivision. Staff further recommends that a public hearing is not necessary.

⁸ *Id.* at page 167 through 206.

⁹ *Id.* at page 113.

¹⁰ Docket 48918 2018 Annual Report Vinton Hills Alegre, LLC page 3 (05/31/2019).

¹¹ Docket 50316 2019 Annual Report Vinton Hills Alegre, LLC page 3 (06/03/2020).