



## Filing Receipt

**Received - 2021-08-16 01:50:26 PM**  
**Control Number - 51192**  
**ItemNumber - 29**

**DOCKET NO. 51192**

<b>APPLICATION OF WHISPERING</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>OAKS WATER WORKS AND</b>	<b>§</b>	
<b>MIBROMA 3 LLC FOR SALE,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TRANSFER, OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN GILLESPIE COUNTY</b>	<b>§</b>	

**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING  
THE SALE AND ALLOWING TRANSACTION TO PROCEED**

On August 19, 2020, MiBroMa 3 LLC (MiBroMa) and Whispering Oaks Water Works (Whispering Oaks) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Gillespie County. Specifically, Whispering Oaks seeks to sell and transfer all of its facilities and water service area under Certificate of Convenience and Necessity (CCN) number 12446 to MiBroMa; MiBroMa will retain CCN number 12446. The requested area includes approximately 51 acres and 69 connections.

On May 26, 2021, the administrative law judge filed Order No. 7, requiring the Applicants and the Staff (Staff) of the Public Utility Commission of Texas (Commission) (collectively, the Parties) to file a motion to admit evidence and propose order approving the sale and allowing the transaction to proceed. Therefore, this pleading is timely filed.

**I. MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following evidence into the record of this proceeding:

- a) The application for the sale, transfer, or merger and all attachments, filed on August 19, 2020 (Interchange Item No. 1);
- b) The Applicants' supplemental mapping information, filed on August 25, 2020 (Interchange Item No. 3);
- c) The Applicants' supplemental information regarding a MiBroMa's legal status, filed on November 19, 2020 (Interchange Item No. 7);
- d) The Applicants' supplemental information, filed on January 20, 2021 (Interchange Item No. 9);
- e) The Applicants' amended application, filed on January 25, 2021 (Interchange Item No. 10);

- f) Commission Staff's second supplemental recommendation on administrative completeness and proposed procedural schedule, filed on January 29, 2021 (Interchange Item No. 11);
- g) The Applicants' proof of notice and supplemental proof of notice, filed on February 10, March 4, March 22, April 18, April 28, April 29, May 19 and May 20, 2021 (Interchange Item Nos. 13, 14, 17, 18, 21, 22, 23, 24, and 25);
- h) Commission Staff's second supplemental recommendation on sufficiency of notice, filed on May 25, 2021(Interchange Item No. 26); and
- i) Commission Staff's recommendation on approval of the transaction, filed on July 19, 2021 (Interchange Item No. 28).

## **II. AGREED PROPOSED ORDER APPROVING THE SALE AND ALLOWING TRANSACTION TO PROCEED**

The attached Agreed Proposed Order Approving the Sale and Allowing the Transaction to Proceed would authorize the sale and transfer of all of Whispering Oak's water facilities service area held under CCN number 12446 to MiBroMa and MiBroMa would retain Whispering Oaks's CCN number. The Parties request that the Commission adopt the findings of fact, conclusions of law, and ordering paragraphs from the Proposed Order.

## **III. CONCLUSION**

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the attached Proposed Order be adopted.

Dated: August 16, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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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 16, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Daniel Moore  
Daniel Moore

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<b>RIGHTS IN GILLESPIE COUNTY</b>	<b>§</b>	

**PROPOSED ORDER APPROVING THE SALE AND ALLOWING THE  
TRANSACTION TO PROCEED**

This Order addresses the application of MiBroMa 3 LLC (MiBroMa) and Whispering Oaks Water Works (Whispering Oaks) for the sale, transfer, or merger of facilities and certificate rights in Gillespie County. The applicants seek approval to sell and transfer all of the facilities and water service area under Whispering Oaks's water Certificate of Convenience and Necessity (CCN) number 12446 to MiBroMa, which will retain Whispering Oaks's CCN number. The administrative law judge (ALJ) grants the transaction proposed in this application and the transfer may proceed and be consummated.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. MiBroMa is a Texas limited liability company registered with the Texas secretary of state under file number 0803458416.
2. Whispering Oaks operates, maintains, and controls facilities for providing retail water service in Gillespie County under Water CCN number 12446.
3. Whispering Oaks owns and operates a public water system that is registered with the Texas Commission on Environmental Quality (TCEQ) under identification number 0860006.

**Application**

4. On August 19, 2020 MiBroMa and Whispering Oaks filed the application at issue in this proceeding.
5. On August 25, 2020, November 19, 2020, January 20, 2021, January 25, 2021, the applicants supplemented the application.

6. In the application, the applicants seek approval of the following transaction: MiBroMa will acquire all of Whispering Oaks's facilities and water service area from Whispering Oaks under water CCN number 12446, and MiBroma will retain Whispering Oaks's CCN number.
7. The requested area is located approximately six miles south of downtown Fredericksburg, and is generally bounded on the north by the terminus of Whispering Oaks Drive; on the east by US 87; on the south by Paradise Ranch Road; and on the west by Paradise Ranch Road.
8. The area includes approximately 51 acres and 69 customers.
9. In Order No. 4 filed on February 2, 2021, the ALJ deemed the application, as supplemented, administratively complete.

#### **Notice**

10. On May 20, 2021, the applicants filed the affidavit of Bonifacio Arreola, Jr., Manager of MiBroMa, attesting that notice of the application was mailed to current customers, neighboring utilities, county authorities, municipalities, ground water conservation districts, and affected parties on April 29, 2021 and May 19, 2021.
11. In Order No. 7 filed on May 26, 2021, the ALJ found the supplemental notice sufficient.

#### **Evidentiary Record**

12. On August 16, 2021, the parties filed an agreed motion to admit evidence.
13. In Order No. \_\_ filed on August \_\_ 2021, the ALJ admitted the following evidence into the record of this proceeding: (a) The application for the sale, transfer, or merger and all attachments filed on August 19, 2020; (b) the applicants' supplemental mapping information filed on August 25, 2020; (c) the applicants' supplemental information regarding MiBroMa's legal status filed on November 19, 2020; (d) the applicants' supplemental information filed on January 20, 2021; (e) the applicants' amended application filed on January 25, 2021; (f) Commission Staff's second supplemental recommendation on administrative completeness and proposed procedural schedule filed on January 29, 2021; (g) the applicants' proof of notice and supplemental proof of notice filed on February 10, March 4, March 22, April 18, April 28, April 29, May 19 and May 20, 2021; (h) Commission Staff's second supplemental recommendation on sufficiency of

notice filed on May 25, 2021; and (i) Commission Staff's recommendation on approval of the transaction filed on July 19, 2021.

**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).**

14. Whispering Oaks does not have any violations listed in the TCEQ database.
15. MiBroMa 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)**

16. Whispering Oaks is currently providing water service to 69 existing customers through its public water system, identification number 0860006, and such service has been continuous and adequate.
17. No additional construction is necessary for MiBroMa to serve the requested area.

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

18. There is a continuing need for service because Whispering Oaks is currently serving 69 existing water customers in the requested area.
19. There is no evidence of specific requests for additional service within the requested area.

**Effects of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(C)**

20. Approving the transaction to proceed and granting the CCN amendment will obligate MiBroMa to continue serving Whispering Oaks's existing water customers and will obligate MiBroMa to provide continuous and adequate service to current and future customers in the requested area.
21. Because this application is to transfer only existing facilities, customers, and service area, there will be no effect on any other retail public utility serving the proximate area.
22. There will be no effect on landowners in the requested area because the requested area are currently certificated.

**Ability to Serve: Managerial and Technical—TWC §§ 13.241(a)–(c), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (e)(4), 24.239(3), (h)(5)(D)**

23. MiBroMa will employ a TCEQ-licensed operator who will be responsible for the testing and operation of the public water system being transferred.

24. No additional construction is necessary for MiBroMa to provide service to the requested area.
25. MiBroMa has the technical and managerial capability to provide adequate and continuous 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), 24.239(e), (h)(5)(F)**

26. MiBroMa has a debt-to-equity ratio that is less than one, satisfying the leverage test.
27. MiBroMa demonstrated that it has sufficient cash available to cover any projected operations and maintenance shortages in the first five years of operations after completion of the transaction, satisfying the operations test.
28. MiBroMa demonstrated the financial ability 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)**

29. There is no need to require MiBroMa to provide a bond or other financial assurance to ensure continuous and adequate service.

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

30. Because the requested area will not require construction of a physically separate water system, consideration of regionalization or consolidation is not required.

**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)**

31. The requested area is currently being served by Whispering Oaks and there will be no changes to land uses or existing CCN boundaries.
32. Utilities within a two-mile radius were noticed and no protests or requests to intervene were filed in this docket.
33. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed. At a minimum, an interconnect would need to be installed in order to connect to a neighboring retail public water utility.
34. It is not feasible to obtain service from an adjacent retail public utility.



**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. The proposed transaction and CCN amendment will not affect environmental integrity for the land because customers will continue to be served using existing infrastructure and no additional construction is necessary.

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

36. There will be no change in the quality of service or cost of service to consumers as a result of the transaction and CCN amendment.

**II. Conclusions of law**

The Commission makes the following conclusions of law.

1. The applicants provided notice of the application that complies 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) and 16 TAC §§ 24.227(e) and 24.239(h)(5), MiBroMa demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous retail water service to the requested area as required by TWC § 13.301(b) and 16 TAC § 24.239(e).
3. MiBroMa and Whispering Oaks demonstrated that the sale and transfer of the facilities and service area held under water CCN number 12446 from Whispering Oaks to MiBroMa is necessary for the service, accommodation, convenience, and safety of the public as required by TWC §§ 13.246(b) and 13.301(d) and (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 Whispering Oaks and MiBroMa 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 advised that the requested area and associated facilities will remain under water CCN number 12446 and be held by Whispering Oaks until the merger and transfer transaction is complete, in accordance with Commission rules.
6. Following final Commission approval of the transaction, Whispering Oaks's water CCN number 12446 will be transferred to MiBroMa.
7. 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.
8. 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 procedural schedule for continued processing of this docket.

**Signed at Austin, Texas, on the \_\_\_\_ day of \_\_\_\_ 2021**

**PUBLIC UTILITY COMMISSION OF TEXAS**