



## Filing Receipt

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**DOCKET NO. 51192**

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

**ORDER NO. 9**  
**APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Lula Mae Heiligmann dba Whispering Oaks Water Works and MiBroMa 3 LLC for the sale, transfer, or merger of facilities and certificate rights in Gillespie County. The applicants seek approval to sell and transfer all of Whispering Oaks' facilities and service area under certificate of convenience and necessity (CCN) number 12446 to MiBroMa and to transfer CCN number 12446 to MiBroMa. The administrative law judge (ALJ) grants that the sale is approved and the transaction between Whispering Oaks and MiBroMa may proceed and be consummated.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Lula Mae Heiligmann is an individual doing business as Whispering Oaks Water Works.
2. Whispering Oaks operates, maintains, and controls facilities for providing retail water service in Gillespie County under 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.
4. MiBroMa is a Texas limited liability company registered with the Texas secretary of state under file number 0803458416.

**Application**

5. On August 19, 2020, Whispering Oaks and MiBroMa filed the application at issue in this proceeding.
6. The applicants filed supplemental information on August 25 and November 19, 2020, and January 20, 2021.
7. On January 25, 2021, the applicants filed an amended application
8. In the application, as amended, the applicants seek approval of the following transaction: (1) to sell and transfer all of Whispering Oaks' facilities and service area under CCN number 12446 to MiBroMa; and (2) to transfer CCN number 12446 to MiBroMa.
9. 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 Highway 87; on the south by Paradise Ranch Road; and on the west by Paradise Ranch Road.
10. The requested area includes approximately 51 acres and 69 customers.
11. In Order No. 4 filed on February 2, 2021, the ALJ found the application, as supplemented and amended, administratively complete.

**Notice**

12. On February 10, 2021, the applicants filed the affidavit of Bonifacio Arreola, Jr., manager of MiBroMa, attesting that notice of the application was provided to all current customers, neighboring utilities, and affected parties on February 4, 2021.
13. On March 4, 2021, the applicants filed a list of customers who were provided in person notices.
14. On March 22, 2021, the applicants filed the affidavit of Mr. Arreola attesting that revised notice of the application was provided to all current customers, neighboring utilities, and affected parties on March 19, 2021.
15. On May 20, 2021, the applicants filed the affidavit of Mr. Arreola attesting that revised notice of the application was mailed to current customers, neighboring utilities, county

authorities, municipalities, ground water conservation districts, and affected parties on April 29 and May 19, 2021.

16. In Order No. 7 filed on May 26, 2021, the ALJ found the notice sufficient.

**Evidentiary Record**

17. On August 16, 2021, the parties jointly moved to admit evidence.
18. In Order No. 8 filed on August 26, 2021, the ALJ admitted the following evidence into the record: (a) the application and all attachments filed on August 19, 2020; (b) applicants' supplemental mapping information filed on August 25, 2020; (c) MiBroMa's supplemental documentation filed on November 19, 2020; (d) applicants' supplemental information filed on January 20, 2021; (e) 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) applicants' proof of notice and supplemental proof of notice filed on February 10, March 4 and 22, April 19, 28, and 29, and May 19 and 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**

19. Whispering Oaks does not have any violations listed in the TCEQ database.
20. MiBroMa has not been subject to any enforcement action by the Commission, TCEQ, Texas Department of State Health Services, Office of the Attorney General of Texas, or United States Environmental Protection Agency in the past five years for non-compliance with rules, orders, or state statutes.
21. MiBroMa has demonstrated a compliance status that is adequate for approval of the sale to proceed.

**Adequacy of Existing Service**

22. Whispering Oaks currently provides retail water service to 69 existing customers in the requested area through its public water system, number 0860006, and such service has been continuous and adequate.

23. No additional construction is necessary for MiBroMa to serve the requested area.

**Need for Additional Service**

24. There are currently 69 existing water customers in the requested area that are receiving service and have an ongoing need for service.

25. There is no evidence of specific requests for additional service within the requested area.

**Effect of Approving the Transaction and Granting the Amendments**

26. Approving the transaction to proceed and granting the CCN amendment will obligate MiBroMa to provide continuous and adequate service to existing and future customers in the requested area.

27. 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.

28. There will be no effect on landowners in the requested area because the requested area is currently certificated.

29. Any landowners in the requested area that do not currently receive service from Whispering Oaks will need to request service from MiBroMa if they require service after the transaction has been completed.

**Ability to Serve: Managerial and Technical**

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

31. No additional construction is necessary for MiBroMa to provide service to the requested area.

32. MiBroMa has the technical and managerial capability to provide adequate and continuous service to the requested area.

**Ability to Serve: Financial Ability and Stability**

33. MiBroMa has a debt to equity ratio that is less than one, satisfying the leverage test.

34. 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.

35. MiBroMa demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

**Financial Assurance**

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

**Feasibility of Obtaining Service from Adjacent Retail Public Utility**

37. The requested area is currently being served by Whispering Oaks and there will be no changes to land uses or existing CCN boundaries.
38. Utilities within a two-mile radius were properly noticed and no protests or requests to intervene were filed in this docket.
39. 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.
40. It is not feasible to obtain service from an adjacent retail public utility.

**Regionalization or Consolidation**

41. Because the requested area will not require the construction of a physically separate water system, consideration of regionalization or consolidation with another retail public utility is not required.

**Environmental Integrity and Effect on the Land**

42. There will be no effect on the land or environmental integrity because the proposed transaction because customers will continue to be served using existing infrastructure and no additional construction is necessary.

**Improvement in Service or Lowering Cost to Consumers**

43. There will be no change in the quality of service or cost of service to consumers as a result of the transaction.

## **II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with Texas Water Code (TWC) §§ 13.246 and 13.301(a)(2), and 16 Texas Administrative Code (TAC) § 24.239(c).
2. After consideration of the factors in TWC § 13.246(c), MiBroMa demonstrated that it is capable of rendering continuous and adequate service to every customer within the requested area, as required by TWC § 13.251.
3. MiBroMa demonstrated adequate financial, managerial, and technical capability to provide adequate and continuous service to the requested area as required by TWC §§ 13.241(a) and 13.301(b).
4. Whispering Oaks and MiBroMa demonstrated that the sale and transfer of Whispering Oaks' facilities and service area under CCN number 12446 to MiBroMa will serve the public interest and 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. Whispering Oaks and MiBroMa have 180 days to complete the transaction.
4. Under 16 TAC § 29.239(m), if the transaction is not consummated within this period, or an extension has not been granted, this approval is void and Whispering Oaks and MiBroMa will have to reapply for approval.

5. Whispering Oaks and MiBroMa are advised that the requested area will be held by Whispering Oaks until the sale and transfer transaction is completed in accordance with the Commission's 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 customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

**Signed at Austin, Texas the 1st day of September 2021.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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

**ISAAC TA  
ADMINISTRATIVE LAW JUDGE**