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DOCKET NO. 51192

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

JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED NOTICE OF APPROVAL

MiBroMa 3 LLC (MiBroMa), Lula Mae Heiligmann d.b.a. Whispering Oaks Water Works (Whispering Oaks), and the Staff (Staff) of the Public Utility Commission of Texas (Commission), (collectively, the Parties), representing the public interest, file this Joint Supplemental Motion to Admit Evidence and Proposed Notice of Approval. In support thereof, the Parties would show the following:

I. BACKGROUND

On August 19, 2020, MiBroMa and 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) No. 12446 to MiBroMa. MiBroMa will retain CCN No. 12446. The requested area includes approximately 51 acres and 69 connections.

On October 5, 2021, the Applicants filed closing documents reflecting the consummation of the sale of Whispering Oaks water system to MiBroMa and the transfer of service area and customer. On January 10, 2022, the administrative law judge (ALJ) filed Order No. 11, finding the closing documents to be sufficient and requiring Staff and the Applicants to jointly file a Proposed Notice of Approval by March 14, 2022. Therefore, this pleading is timely filed.

II. JOINT MOTION TO ADMIT EVIDENCE

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

- a) MiBroMa's notice of completed transaction filed on October 5, 2021 (Interchange Item No. 32);

- b) Staff's recommendation on closing documents filed on January 7, 2022 (Interchange Item No. 34);
- c) MiBroMa's consent form filed on February 22, 2022 (Interchange Item No. 38);
- d) Whispering Oaks' consent form filed on February 24, 2022 (Interchange Item No. 39);
- e) The Applicants' amended application, filed on January 25, 2021 (Interchange Item No. 10); and
- f) The attached map and certificate.

III. PROPOSED NOTICE OF APPROVAL

The Parties move for the adoption of the Proposed Notice of Approval.

IV. CONCLUSION

The Parties respectfully request that the Commission grant the Joint Motion to Admit Evidence and issue a Notice of Approval consistent with the Joint Proposed Notice of Approval.

Dated: March 14, 2022

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 March 14, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Forrest Smith
Forrest Smith

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OAKS WATER WORKS AND	§	OF TEXAS
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JOINT PROPOSED NOTICE OF APPROVAL

This Notice of Approval addresses the application of MiBroMa 3 LLC (MiBroMa) and Lula Mae Heiligmann d.b.a. Whispering Oaks Water Works (Whispering Oaks) for the sale, transfer, or merger of facilities and certificate rights in Gillespie County. The Commission approves the transfer of facilities and water service area held by Whispering Oaks' water Certificate of Convenience and Necessity (CCN) No. 12446 to MiBroMa and to transfer CCN No. 12446 to MiBroMa, which will retain Whispering Oaks' 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

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 Water CCN No. 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, MiBroMa and Whispering Oaks filed the application at issue in this proceeding.
6. On August 25, 2020, November 19, 2020, January 20, 2021, January 25, 2021, the applicants supplemented the application.

7. On January 25, 2021, the applicants filed an amended application.
8. In the amended 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.
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 deemed the application, as supplemented, 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 mailed to current customers, neighboring utilities, county authorities, municipalities, ground water conservation districts, 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 19, 2021 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 of this proceeding: (a) the application for the sale, transfer, or merger 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, 2021 March 4, 2021, March 22, 2021, April 18, 2021, April 28, 2021, April 29, 2021, May 19, 2021, 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.

- 19) In Order No. _____, filed on _____, 2022, the ALJ admitted the following evidence into the record: (1) MiBroMa's notice of completed transaction filed on October 5, 2021; (2) Staff's recommendation on closing documents filed on January 7, 2022; (3) MiBroMa's consent form filed on February 22, 2022; (4) Whispering Oaks' consent form filed on February 24, 2022; (5) applicants' amended application, filed on January 25, 2021; and (6) the map and certificate attached to the joint motion to admit evidence and proposed notice of approval filed on March, 14, 2022.

System Compliance.

20. Whispering Oaks does not have any violations listed in the TCEQ database.
21. 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.
22. MiBroMa has demonstrated a compliance status that is adequate for approval of the sale to proceed.

Adequacy of Existing Service

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

Need for Additional Service

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

Effects of Approving the Transaction and Granting the Amendment

27. 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.
28. 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.
29. There will be no effect on landowners in the requested area because the requested area is currently certificated.
30. 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

31. MiBroMa will employ a TCEQ-licensed operator who will be responsible for the testing and operation of the public water system being transferred.
32. No additional construction is necessary for MiBroMa to provide service to the requested area.
33. MiBroMa has the technical and managerial capability to provide adequate and continuous service to the requested area.

Ability to Serve: Financial Ability and Stability

34. MiBroMa has a debt-to-equity ratio that is less than one, satisfying the leverage test.
35. 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.
36. MiBroMa demonstrated the financial ability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

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

Regionalization or Consolidation

38. 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

39. The requested area is currently being served by Whispering Oaks and there will be no changes to land uses or existing CCN boundaries.
40. Utilities within a two-mile radius were noticed and no protests or requests to intervene were filed in this docket.
41. 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.
42. It is not feasible to obtain service from an adjacent retail public utility.

Environmental Integrity and Effect on the Land

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

Improvement in Service or Lowering of Cost to Consumers

44. 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. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, 13.242, 13.244, 13.246, 13.251, 13.254, and 13.301.
2. MiBroMa and Whispering Oaks are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. MiBroMa and Whispering Oaks' application meets the requirements of TWC § 13.244 and 16 TAC § 24.233.
4. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 Texas Administrative Code (TAC) § 24.239.

5. The Commission processed this application as required by the TWC, the Administrative Procedures Act,¹ and the Commission rules.
6. MiBroMa and Whispering Oaks completed the sale and transfer within the time required by 16 TAC § 24.239(m).
7. The applicants complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.
8. After consideration of the factors in TWC § 13.246(c), MiBroMa demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area as required by TWC § 13.301(b) and 16 TAC § 24.239.
9. It is not necessary for MiBroMa to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
10. Whispering Oaks and MiBroMa demonstrated that the sale and transfer of the water facilities and service area held under CCN No. 12446 from Whispering Oaks to MiBroMa will serve the public interest and is necessary for the service, accommodation, convenience, and safety of the public as required by TWC § 13.301(d) and (e).
11. MiBroMa must record a certified copy of the certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Gillespie County within 31 days after 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.

¹ Tex. Gov't Code §§ 2001.001-.903.

III. Ordering Paragraphs

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

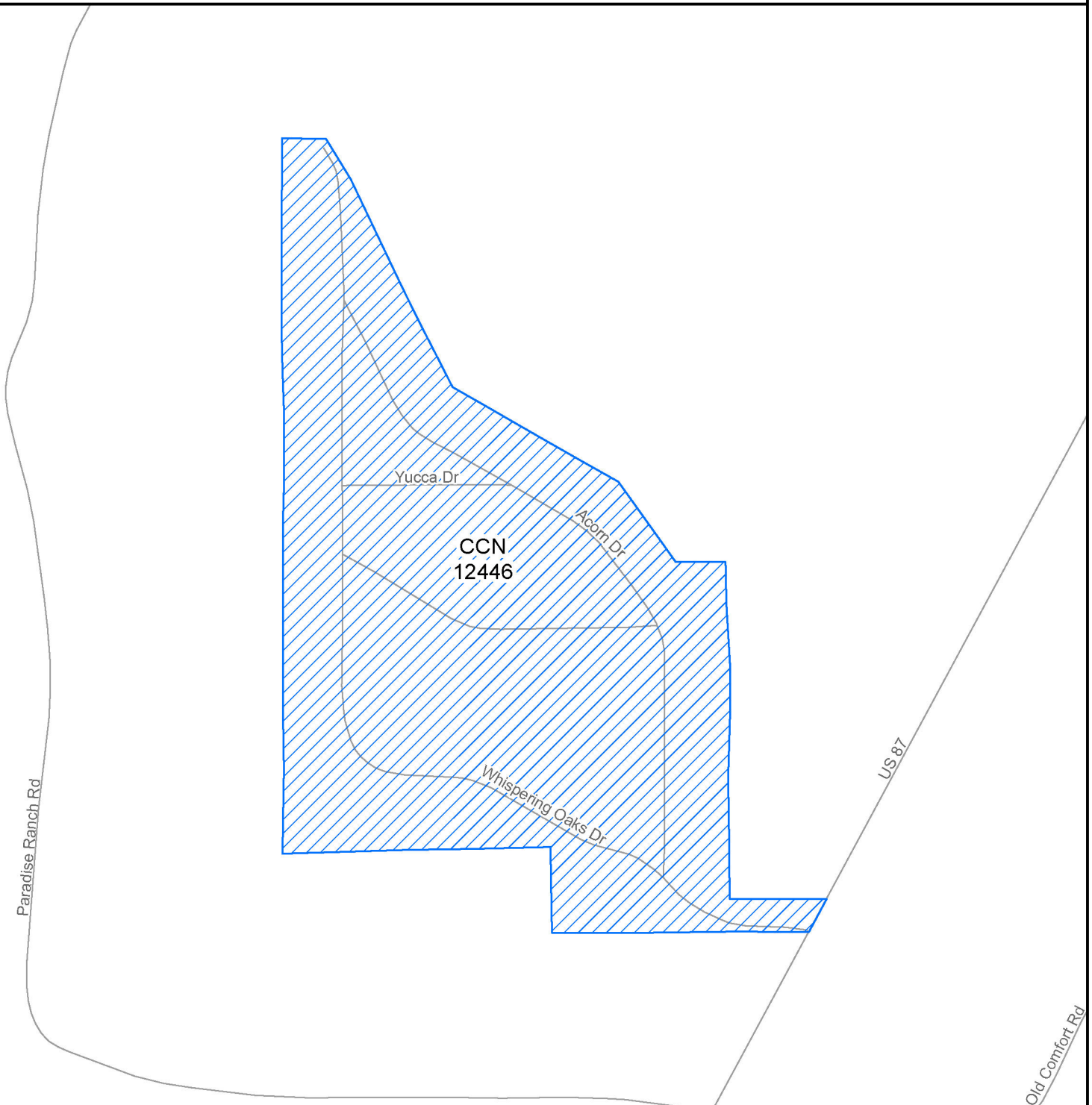
1. The Commission approves the sale and transfer of all of Whispering Oaks' facilities and certificate rights under CCN No. 12446 to MiBroMa may proceed and be consummated.
2. The Commission approves the map attached to this Notice of Approval.
3. The Commission issues the certificate attached to this Notice of Approval.
4. MiBroMa must provide service to every customer or qualified service applicant for service within the approved areas under CCN No. 12446 that requests service and meets the terms of MiBroMa's water service, and such service must be continuous and adequate.
5. MiBroMa must comply with the recording requirements of TWC § 13.257(r) and (s) for the area in Gillespie County affected by the application and file in this docket proof of the recording no later than 45 days after receipt of the 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, on the ____ day of ____ 2022

PUBLIC UTILITY COMMISSION OF TEXAS

**ISAAC TA
ADMINISTRATIVE LAW JUDGE**

MiBroMa 3, LLC
Water CCN No. 12446
PUC Docket No. 51192
Transferred all of Whispering Oaks Water Works, CCN No. 12446 in Gillespie County



Water CCN



12446 - MiBroMa 3 LLC

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Feet





Public Utility Commission of Texas

By These Presents Be It Known To All That

MiBroMa 3 LLC

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, MibroMa 3 LLC is entitled to this

Certificate of Convenience and Necessity No. 12446

to provide continuous and adequate water utility service to that service area or those service areas in Gillespie County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51192 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 MibroMa 3 LLC 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.