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APPLICATION OF KICKAPOO FRESH §
WATER SUPPLY DISTRICT AND G&W §
WATER SUPPLY CORPORATION FOR §
SALE, TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN WALLER COUNTY §

PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER NO. 7
CORRECTED ORDER APPROVING SALE AND TRANSFER TO PROCEED¹

This Order addresses the application of Kickapoo Fresh Water Supply District and G&W Water Supply Corporation for the sale, transfer, or merger of facilities and certificate rights in a dually certificated area of Waller County. Kickapoo and G&W Water seek approval of the sale and transfer of all of Kickapoo's facilities and service area under water certificate of convenience and necessity (CCN) number 13204 to G&W Water and to cancel Kickapoo's water CCN number 13204. The administrative law judge (ALJ) grants that the transaction proposed in this application may proceed and be consummated.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicant

1. Kickapoo is a water conservation and reclamation district created and organized under Article XVI, Section 59 of the Texas Constitution.
2. Kickapoo operates, maintains, and controls facilities for providing retail water service to the Kickapoo Preserve subdivision in Waller County under water CCN number 13204.
3. Kickapoo owns a public water system registered with the Texas Commission on Environmental Quality (TCEQ) under public water system identification number 2370096.
4. G&W Water is a Texas non-profit water supply corporation registered with the Texas secretary of state under file number 106049001.

¹ This Order grants G & W Water Supply Corporation's April 5, 2021 request for modification to correct an incorrect reference to a sewer certificate of convenience and necessity in ordering paragraph number five of Order No. 6.

5. G&W Water operates, maintains, and controls facilities for providing retail water utility service in Waller and Grimes counties under CCN number 12391.
6. G&W Water currently provides wholesale water service to Kickapoo's certificated water service area through its assigned interest in the Spring Preserve Water Company, LLC wholesale water plant.

Application

7. On September 21, 2020, G&W Water and Kickapoo filed the application at issue in this proceeding.
8. In the application, the applicants seek approval of the following transaction: (a) G&W Water will acquire all of Kickapoo's facilities and water service area under CCN number 13204; and (b) Kickapoo's water CCN number 13204 will be cancelled.
9. The requested area consists of Kickapoo's entire water service area under CCN number 13204.
10. G&W Water's water CCN number 12391 encompasses Kickapoo's certificated area under CCN number 13204 and beyond.
11. The proposed transaction will result in the requested area being singly certificated under G&W Water's water CCN number 12391.
12. The requested area includes approximately 495 acres and 50 connections, which serve approximately 147 current customers.
13. The requested area is located approximately five miles northeast of downtown Waller, Texas, and is generally bounded on the north by Hegar Road, on the east by Kickapoo Road, on the south by Spring Creek, and on the west by Fields Store Road.
14. In Order No. 2 filed on October 22, 2020, the ALJ found the application sufficient.
15. The applicants filed supplemental financial information on January 12, 2021.

Notice

16. On November 4, 2020, G&W Water filed the affidavit of Jake Marcisz, president of G&W Water, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on October 29, 2020.

17. In Order No. 3 filed on December 8, 2020, the ALJ found the notice sufficient.

Evidentiary Record

18. On February 23, 2021, the applicants and Commission Staff filed a joint motion to admit evidence.
19. In Order No. 5 filed on February 25, 2021, the ALJ admitted the following evidence into the record of this proceeding: (a) applicants' application and all attachments filed on September 21, 2020; (b) Commission Staff's comments on administrative completeness and proposed notice filed on October 21, 2020; (c) applicants' proof of notice and supporting documentation filed on November 4, 2020; (d) Commission Staff's recommendation on notice filed on December 7, 2020; (e) applicants' supplemental financial documentation filed on January 12, 2021; and (f) Commission Staff's recommendation on approval of the sale and transfer to proceed, CCN amendment and all attachments filed on January 28, 2021.

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)

20. Kickapoo's public water system is registered with the TCEQ under public water system identification number 2370096.
21. Kickapoo's public water system has violations for failure to maintain a service agreement and failure to maintain an up-to-date monitoring plan in the TCEQ database. These violations are expected to be resolved by G&W Water after approval of the transaction.
22. G&W Water has violations associated with one of its public water systems and included documentation in its application demonstrating that the violations are being addressed.
23. There is no evidence that G&W Water has a history of continuing mismanagement or misuse of revenues as a utility service provider.
24. G&W Water demonstrated a compliance status that is adequate for approval of the application.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(e)(1), 24.239(h)(5)(A)

25. Kickapoo is current providing water service to 147 existing customers in the requested area through public water system number 2370096, and such service has been continuous and adequate.

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

26. There are currently about 147 existing customers in the requested area that are receiving water from Kickapoo's public water system number 2370096 and have an ongoing need for service.
27. This application is to transfer only existing facilities, customers, and service area.
28. There is no evidence in the record indicating a need for additional service.

Effect of Approving the Transaction—TWC § 13.246(c)(3); 16 TAC §§ 24.227(e)(3); 24.239(h)(5)(C)

29. Approving the proposed transaction will result in G&W Water being the sole certificated entity for the requested area and will obligate G&W Water to provide adequate and continuous service to existing and future customers in the requested area.
30. There will be no effect on landowners as the area is currently dually certificated and does not contain any uncertificated area.
31. Retail public utilities in the proximate area were provided notice of the transaction. No protests, adverse, comments, or motions to intervene were filed by any adjacent retail public utility in this docket.
32. There will be no effect on any retail public utility servicing the proximate area.

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

33. G&W Water has three active public water systems registered with the TCEQ under identification numbers 2370063, 2370085, and 0930048.
34. G&W Water employs TCEQ-licensed operators who will be responsible for the operation of the public water system being transferred.
35. The Spring Preserve Water System, TCEQ public water system identification number 2370095, is the wholesale water supplier for the Kickapoo Preserve subdivision.

36. G&W Water filed a revised contract with the Spring Preserve Water System, in which the Spring Preserve Water System conveyed its interest to G&W Water; therefore, G&W Water is the current wholesale water service provider of Kickapoo's public water system number 2370096. The revised service contract is set to expire when the proposed transaction has been completed and G&W Water takes ownership and assumes operation of Kickapoo's public water system number 2370096.
37. G&W Water is the wholesale water provider for the requested area through its interest in the Spring Preserve Water System; therefore, G&W Water has access to an adequate supply of water and is capable of providing water that meets the requirements of chapter 341 of the Texas Health and Safety Code, chapter 13 of the TWC, and the TCEQ's rules.
38. G&W Water has the managerial and technical capability to provide continuous and adequate 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)

39. G&W Water has a debt service coverage ratio greater than 1.25, satisfying the leverage test.
40. G&W Water 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.
41. G&W Water demonstrated the financial capability and stability to provide continuous and adequate water service to the requested area.

Financial Assurance—TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)

42. There is no need to require G&W Water 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)

43. 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 Additional Retail Public Utility—TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5); 24.239(h)(5)(E)

44. The requested area is currently being served by Kickapoo and there will be no changes to land uses or existing CCN boundaries.
45. 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 utility.
46. 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)

47. There will be minimal effects on environmental integrity and on the land as no additional construction is needed to provide service to the requested area.

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)

48. G&W Water will continue to provide water service to the existing customers in the area. There will be an improvement of service as G&W Water already owns the facilities that provide wholesale water service to the area, meaning the Kickapoo Preserve Subdivision will not have to rely on service from a wholesale provider.
49. No lowering of costs to consumers will occur as a result of the proposed transaction. Current and future customers in the requested area will pay the rates under G&W Water's existing Commission-approved tariff.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance 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), G&W Water demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous retail wastewater services to the requested area as required by TWC § 13.301(b) and 16 TAC § 24.239(e).

3. G&W Water and Kickapoo have demonstrated that the sale and transfer of Kickapoo's water facilities and certificated water service area under CCN number 13204 to G&W Water 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).

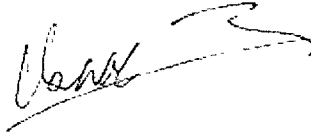
III. Ordering Paragraphs

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 G&W Water and Kickapoo 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 water CCN number 13204 will be held by Kickapoo until the sale and transfer transaction is complete 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 customers 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 the 6th day of April 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**