



Control Number: 51353



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**DOCKET NO. 51353**

**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  
OF TEXAS**

2021 JAN 28 PM 12:23  
PUBLIC UTILITY COMMISSION  
FILING CLERK

**COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF THE SALE AND  
ON THE CERTIFICATE OF CONVENIENCE AND NECESSITY AMENDMENT**

**COMES NOW** the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Recommendation on Approval of the Sale and on the Certificate of Convenience and Necessity (CCN) Amendment. In support thereof, Staff shows the following:

**I. BACKGROUND**

On September 21, 2020, Kickapoo Fresh Water Supply District (Kickapoo) and G&W Water Supply Corporation (G&W) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Waller County. G&W seeks approval to acquire facilities and to transfer the entirety of Kickapoo's water service area under Kickapoo's current CCN No. 13204. G&W and Kickapoo currently have dual certification over the service area. As a result of the requested transaction, the service area will be under G&W's single certification (CCN No. 12391) and Kickapoo's CCN will be cancelled. The requested area includes approximately 495 acres and 50 connections.

On December 8, 2020, the administrative law judge (ALJ) filed Order No. 3, establishing a deadline of January 28, 2021 for Staff to request a hearing or file a recommendation on approval of the sale and on the CCN amendment. Therefore, this pleading is timely filed.

**II. RECOMMENDATION**

As supported by the attached memorandum of Patricia Garcia of the Infrastructure Division, Staff recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed.

Staff recommends that the proposed transaction be found to satisfy the relevant criteria, including those factors identified in Texas Water Code (TWC) Chapter 13 and under 16 Texas Administrative Code (TAC) Chapter 24. If the transaction is permitted to proceed, Staff further requests that the Applicants be required to file evidence, within 30 days of the effective date of the transaction, demonstrating that all assets have been transferred to G&W, and that the disposition of any customer deposits has been addressed as required by 16 TAC § 24.239(k) and (l).

The approval of the sale expires 180 days from the date of the Commission's written approval of the sale. In addition, the CCN will remain in Kickapoo's name until the transfer is completed and approved in accordance with the Commission's rules.

### **III. CONCLUSION**

Staff respectfully requests the entry of an order permitting the proposed transaction to proceed.

Dated: January 28, 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 January 28, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Alaina Zermeno  
Alaina Zermeno

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Alaina Zermeno, Attorney  
Legal Division

**FROM:** Patricia Garcia, Senior Engineering Specialist  
Infrastructure Division

**DATE:** January 28, 2021

**RE:** Docket No. 51353 – *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*

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### **1. Application**

G&W Water Supply Corporation (G&W) and Kickapoo Fresh Water Supply District (Kickapoo) (collectively, Applicants) filed an application for a sale, transfer, or merger (STM) of facilities and certificate rights in Waller County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, G&W, holding certificate of convenience and necessity (CCN) No. 12391, seeks approval to acquire facilities and to cancel the CCN service area from Kickapoo under water CCN No. 13204. Kickapoo and G&W currently have dual certification over the entirety of Kickapoo's CCN service area. G&W's CCN encompasses Kickapoo's CCN area and extends beyond it. The transfer and amendment of CCN No. 13204 will result in single certification for G&W's CCN No. 12391. The requested area includes approximately 495 acres and 50 connections, which serve approximately 147 current customers.

### **2. Notice**

G&W provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was November 29, 2020; there were no motions to intervene, protests, or opt-out requests received.

### **3. Factors Considered**

Under TWC §§ 13.241 and 13.246 and 16 TAC §§ 24.11(e), 24.227 and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

**3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(I)).***

Kickapoo has a Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) registered as Kickapoo Preserve Subdivision, PWS ID No. 2370096. Kickapoo has a violation for failure to maintain a service agreement and failure to maintain an up-to-date monitoring plan in the TCEQ database. Both of these violations are expected to be resolved after the transfer of the area from Kickapoo to G&W. Spring Preserve Water System, PWS ID No. 2370095 is the wholesale water supplier for Kickapoo Preserve Subdivision. G&W submitted a revised contract with Spring Preserve Water System, demonstrating that Spring Preserve Water System conveyed its interest to G&W. Therefore, G&W is the current wholesale service provider. The revised service contract is set to expire when the transfer is complete and G&W owns and operates the facilities providing service to Kickapoo Preserve Subdivision.

**3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).***

The purpose of the transaction is to transfer Kickapoo Preserve Subdivision to G&W. The customers are currently receiving water service from Kickapoo Preserve Subdivision's water system which receives water service from the Spring Preserve Water System. There are currently about 147 existing customers in the requested area; therefore, there is a need for service. No additional service is needed at this time

**3.3. *Consideration of 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 (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).***

G&W will be the certificated entity for the requested area and will be required to provide adequate and continuous service to the requested area.

There will be no effect on landowners as the area is currently certificated.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

**3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).***

G&W has three active TCEQ-approved public water systems registered as G&W WSC, PWS ID: 2370063, G&W WSC Woodland Lakes Water System, PWS ID: 23730085, and G&W WSC Field Store, PWS ID: 0930048. G&W does not have any violations listed in the TCEQ database for the water systems in Waller County. There are some violations for the system in Grimes County, but G&W submitted documentation in the

application showing how they are addressing these violations with the TCEQ. No additional construction is necessary for G&W to serve the requested area.

**3.5. *The applicants' demonstration 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. (TWC § 13.241(d); 16 TAC § 24.227(b)).***

The construction of a physically separate system is not necessary for G&W to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

**3.6 *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).***

Kickapoo is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

**3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).***

Fred Bednarski, III, Financial Analyst in the Rate Regulation Division, provides the following analysis and recommendation.

G&W demonstrates adequate financial and managerial capability to provide continuous and adequate service to the area subject to this application. An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 TAC § 24.11. G&W must demonstrate that it meets one of the five leverage tests under 16 TAC §24.11(e)(2) as well as an operations test.

**Leverage tests**

My analysis is based on financial statements ending December 31, 2019. These financial statements contain an unqualified auditor's opinion from McCall Gibson Swedlund Barfoot PLLC stating that the financial statements present fairly, in all material respects, the financial position of G&W as of December 31, 2019.

G&W's financial statements report a debt service coverage ratio of 1.57. The debt service coverage ratio is net operating income of \$700,417 before depreciation, amortization, and interest expenses divided by annual debt service of \$447,094. Because the ratio is greater than 1.25, G&W meets the test specified in 16 TAC § 24.11(e)(2)(B).

Operations test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations, as required by 16 TAC § 24.11(e)(3).

G&W's<sup>1</sup> and Kickapoo's<sup>2</sup> financial statements include operating income and cash flow information that indicate G&W will have sufficient cash to cover projected shortages. No capital improvements are needed to provide continuous and adequate service to the requested area. Sufficient cash and net operating income available to cover possible future shortages provide an indication of financial stability and financial and managerial capability. Therefore, G&W meets the operations test specified in 16 TAC § 24.11(e)(3).

- 3.8. *Requirement of the 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 (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).*

Based on the financial and managerial review of the application and the recommendation of Fred Bednarski, the Applicants meet the financial tests. Therefore, no additional financial assurance is needed.

- 3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).*

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

- 3.10. *Consideration of the probable 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)).*

G&W will continue to provide water service to the existing customers in the area. There will be an improvement of service as G&W 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. The customer costs will increase; however, I believe the benefits in the improvements of service to the customers as a result of the transfer outweigh the increase in costs to customers. I do not believe that the rate impact resulting from the transfer of these customers and facilities should be used as a basis for denying the application.

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 to G&W and cancelling water CCN No. 13204 of Kickapoo is necessary for the service, accommodation, convenience and safety of the public. After the

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<sup>1</sup> Application at bates 175 and 176 (Sept. 21, 2020).

<sup>2</sup> Cover letter with supplemental financial documents at bates 9 and 12 (Jan. 12, 2021).

processing of the application, G&W will be the only provider in the area as the requested area is currently dually certificated.

#### **4. Recommendation**

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are deposits held by Kickapoo for 34 customers, at the time the application was submitted, being served by Kickapoo Preserve Subdivision. I further recommend that a public hearing is not necessary.