



## Filing Receipt

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<b>APPLICATION OF G&amp;W WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SUPPLY CORPORATION AND THE</b>	<b>§</b>	
<b>CITY OF HEMPSTEAD 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 WALLER COUNTY</b>	<b>§</b>	

**COMMISSION STAFF’S RECOMMENDATION ON FURTHER PROCESSING OF  
THE APPLICATION AND MOTION TO RESTYLE**

On September 23, 2020, G&W Water Supply Corporation (G&W WSC) and the City of Hempstead (Hempstead) (collectively, Applicants) filed an application for approval of the sale of certificate of convenience and necessity (CCN) rights in Waller County. Hempstead seeks approval to decertify a portion of water service area from G&W WSC under water CCN No. 12391; Hempstead does not hold a CCN, so no service area will be transferred. The requested area includes approximately 120 acres and 0 connections. The Applicants filed supplemental information on October 28, 2020; December 15, 16, and 21, 2020; and January 15, 2021.

On July 29, 2021, the administrative law judge (ALJ) filed Order No. 10 requiring the Staff of the Public Utility Commission of Texas (Staff) to file a final recommendation on approval of the sale and on the CCN amendment on or before August 13, 2021. Therefore, this pleading is timely filed.

**I. STAFF’S RECOMMENDATION**

Upon further review and consideration of the application and subsequent filings, including the response to Staff’s requests for information (RFIs), Staff has determined that processing this application as a Sale, Transfer, or Merger (STM) is not necessary as prescribed under 16 Texas Administrative Code (TAC) § 24.239. The rules for STM applications address situations in which a sale, transfer, merger, consolidation, acquisition, lease, or rental of CCN rights are being undertaken.<sup>1</sup> Although a financial transaction is being considered and pursued between the parties, Staff’s position is that the transaction merely involves a decertification of service area in exchange for compensation, and not a STM as intended for the provisions required under 16 TAC § 24.239. As explained in more detail below, there are no customers or facilities in the area affected by the

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<sup>1</sup> 16 TAC § 24.239(a).

application, and the area will not become certificated service area under a CCN held by Hempstead because Hempstead has no CCN.

Staff recommends that this application would be more appropriately reviewed and considered under 16 TAC § 24.249, which addresses the cessation of operations by a retail public utility. This section provides that “[a]ny retail public utility that possesses or is required to possess a [CCN] and seeks to discontinue, reduce, or impair retail water or sewer utility retail water service or sewer service[...] must file a petition with the commission[.]”<sup>2</sup> Additionally, this section requires that the petition filed with the Commission must set out the action proposed by the retail public utility, the proposed effective date of the actions, a concise statement of the reasons for the action, and the part of the petitioner’s service area affected by the action, including maps; the petitioner must also provide notice to customers and any other affected parties, and must publish notice for two consecutive weeks in a newspaper of general circulation in the relevant county of operation.<sup>3</sup> The determination as to whether to allow such an application under 16 TAC § 24.249 must consider, but is not limited to, the following:

(1) the effect on the customers and landowners; (2) the costs associated with bringing a utility into compliance; (3) the applicants diligence in locating alternative sources of service; (4) the applicant’s efforts to sell the utility; (5) the asking price for purchase of the utility as it relates to undepreciated original costs of the system for ratemaking purposes; (6) the relationship between the applicant and the original developer of the service area; (7) the availability of alternative sources of service, such as adjacent retail public utilities; and (8) the feasibility of customers and landowners obtaining service from alternative sources.

Here, the City of Hempstead does not currently hold a CCN and is not requesting to obtain a CCN in this matter.<sup>4</sup> The area to be decertified is located within Hempstead’s city limits.<sup>5</sup> The transaction described in the application does not include any transfer of facilities,<sup>6</sup> or current

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<sup>2</sup> 16 TAC § 24.249(a).

<sup>3</sup> 16 TAC § 23.249(b)-(d).

<sup>4</sup> G&W and City of Hempstead Response to Question Nos. Staff 1-1 through Staff 1-4 at Staff 1-2 (Jan. 22, 2021) (RFI Response).

<sup>5</sup> *Id.* at Staff 1-1.

<sup>6</sup> *Id.* at Staff 1-3; Application of G&W Water Supply Corporation and the City of Hempstead for Sale, Transfer, and Merger of Facilities and Certificate Rights in Waller County at 8 (Sep. 23, 2020) (Application).

customers,<sup>7</sup> and involves zero connections.<sup>8</sup> Since there are no customers or active connections in the requested area, the applicant has diligently sought and already has secured an alternative source of service for the requested area through the City of Hempstead, and because the asking price has been determined between the parties to the transaction appears reasonable. Further, the notice sent by Applicants and deemed sufficient in Order No. a filed on June 1, 2021, complies with the requirements of 16 TAC § 24.249(b) through (d). Therefore, Staff has not identified any failure to comply with the requirements set out under 16 TAC § 24.249.

Finally, should the ALJ disagree with Staff's assessment that 16 TAC § 24.249 is the more appropriate regulatory framework under which to consider the immediate application and proposed decertification of a portion of G&W WSC's CCN area, Staff respectfully requests that it be granted an extension until August 27, 2021 to finalize its final recommendation under the STM framework, including an analysis of the factors in Texas Water Code § 13.246(c).

## **II. PROCEDURAL SCHEDULE**

Staff proposes the following procedural schedule for further processing of this application under 16 TAC § 24.249.

<b>Event</b>	<b>Date</b>
Deadline for parties to file a response to Staff's recommendation on further processing of the application	<i>August 20, 2021</i>
Deadline for Staff to provide a final map and certificate to the Applicants for review and consent	<i>September 20, 2021</i>
Deadline for the Applicants to file signed consent forms with the Commission	<i>October 4, 2021</i>
Deadline for Staff to file a final recommendation on the application	<i>October 11, 2021</i>
Deadline for parties to file a proposed notice of approval, including findings of fact, conclusions of law, and ordering paragraphs	<i>October 18, 2021</i>

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

### **III. MOTION TO RESTYLE**

In the event that the ALJ agrees with Staff's recommendation regarding the processing of this application under 16 TAC § 24.249, Staff respectfully requests that this matter be restyled as follows: *Application of G&W Water Supply Corporation and the City of Hempstead to Discontinue Water Service and Decertify a Portion of G&W Water Supply Corporation's Certificate of Convenience and Necessity in Waller County.*

### **IV. CONCLUSION**

Staff respectfully requests the entry of an order allowing for continued processing of the application under 16 TAC § 24.249 and adopting the proposed procedural schedule

Dated: August 13, 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 13, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kevin R. Bartz  
Kevin R. Bartz