



## Filing Receipt

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**PUC DOCKET NO. 51488**

<b>APPLICATION OF MR. CHESTER</b>	<b>§</b>	
<b>MAPLES, JR. D/B/A OLD HIGHWAY 90</b>	<b>§</b>	<b>BEFORE THE</b>
<b>WATER SERVICE TO AMEND A</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE AND</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>NECESSITY IN MEDINA AND FRIO</b>	<b>§</b>	
<b>COUNTIES</b>	<b>§</b>	<b>OF TEXAS</b>
	<b>§</b>	

**PRE-DISCOVERY RESPONSE TO MR. CHESTER MAPLES, JR.’S  
(D/B/A OLD HIGHWAY 90 WATER SERVICE’S)  
APPLICATION PURSUANT TO ORDER NO. 11**

Pursuant to Order No. 11, Yancey Water Supply Corporation (“YWSC”), a Texas retail public utility and non-profit water supply corporation, files this supplemental response to the application submitted by Mr. Chester Maples, Jr., individually, doing business as Old Highway 90 Water Service (“Old Highway 90”).

**I. BACKGROUND**

Old Highway 90 filed an application with the Public Utility Commission of Texas (the “Commission”) to amend its water Certificate of Convenience and Necessity (“CCN”) number 12975 in Medina and Frio counties (the “Application”). The Application seeks to decertify 11 acres of Benton City Water Supply Corporation’s (“BCWSC’s”) water CCN number 12587, and to amend Old Highway 90’s CCN to add the 11 (eleven) acres plus 589 (five hundred eighty-nine) acres of uncertificated land. Old Highway 90 supplemented its application on December 9 and 10, 2020 and January 19, March 16, April 14, 2021, and June 22, 2021. On June, 21, 2021, YWSC filed a Motion to Intervene, Initial Comments, and a Request for Response Deadline. On June 30, 2021, the Honorable Administrative Law Judge issued Order No. 9, granting YWSC’s Motion to Intervene. Subsequently, Order No. 11 was issued setting a deadline of July 30, 2021 for YWSC to provide a response to the Application, and providing an opportunity to request a hearing. Therefore, this response is timely filed.

## II. ARGUMENTS AND AUTHORITIES

The Application should be denied because Old Highway 90 has failed to offer sufficient information in its Application to meet its burden<sup>1</sup> to demonstrate to the Commission that regionalization or consolidation with another retail public utility is not economically feasible.<sup>2</sup> Further, the Application should be denied because Old Highway 90 has failed to submit sufficient information demonstrating that it possesses the financial, managerial, and technical capabilities to provide continuous and adequate service to the service area requested in the Application (the “Proposed CCN”).<sup>3</sup>

### A. **Old Highway 90 has not demonstrated that regionalization or consolidation with another retail public utility is not economically feasible.**

The Application as submitted on November 5, 2020, by Old Highway 90 was deficient and lacked the requisite information to be deemed administratively complete,<sup>4</sup> prompting Commission Staff (“Staff”) to seek substantial supplementation through its First Request for Information.<sup>5</sup> After issuance of Order No. 3, which concluded that the Application was still insufficient, Old Highway 90 requested several extensions while it gathered the information required by the Honorable Administrative Law Judge and Staff. While the Application has recently been deemed *administratively* complete, the Application still fails on the merits, as indicated even by Staff’s Second Request for Information.<sup>6</sup>

When applying for a new CCN or a CCN amendment for an area that would require construction of a physically separate water system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible.<sup>7</sup> “Regionalization” is defined by Commission Rules as “a pooling of financial, managerial, or technical resources that achieve economies of scale or efficiencies of service.”<sup>8</sup> “Consolidation” is not defined by Commission Rules or the Texas Water Code, but generally

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<sup>1</sup> See 16 Tex. Admin. Code § 24.12 (“the burden is on the moving party”).

<sup>2</sup> Tex. Water Code § 13.241(d); 16 Tex. Admin. Code § 24.227(b).

<sup>3</sup> Tex. Water Code § 13.241(a); 16 Tex. Admin. Code § 24.227.

<sup>4</sup> Order No. 3 (Dec. 4, 2020).

<sup>5</sup> Commission Staff’s First Request for Information (Dec. 4, 2020).

<sup>6</sup> Commission Staff’s Second Request for Information (Jul. 16, 2021).

<sup>7</sup> Tex. Water Code § 13.241(d); 16 Tex. Admin. Code § 24.227(b).

<sup>8</sup> 16 Tex. Admin. Code § 24.41(d)(1)(C)(i).

means the “act or process of uniting.”<sup>9</sup> Therefore, within the sphere of water utilities and public water systems regulations, consolidation is the uniting of certain aspects of two or more such utilities or systems that achieve economies of scale or efficiencies of service.

The sole evidence offered by Old Highway 90 to show that regionalization or consolidation is not economically feasible is a vague statement addressing the economic feasibility for BCWSC to provide retail public water service to the Proposed CCN,<sup>10</sup> which was later supplemented with a letter from BCWSC’s engineer explaining the upgrades that would be required in order to serve retail public water to the Proposed CCN,<sup>11</sup> and a letter from BCWSC’s General Manager, agreeing to “allow PUC to decertify specific portion of [BCWSC’s] CCN #12587 as specified [in the Application].”<sup>12</sup>

Old Highway 90 altogether avoided addressing the economic feasibility of regionalization or consolidation with other neighboring retail public water service providers, including YWSC. YWSC contends that both regionalization and consolidation are economically feasible. YWSC’s nearest facilities are located within five (5) miles of the proposed Sand Hurst Subdivision, and its nearest CCN boundaries are located within two (2) miles of the Petitioner’s proposed CCN. YWSC’s proximity to the Proposed CCN enables it to build a stand-alone system now, which would be consolidated with its existing facilities at a future date. By pooling its financial, managerial, and technical resources from across its existing CCN and customer base, YWSC can achieve economies of scale and efficiencies of service that would benefit the retail customers within the Sand Hurst Subdivision now, and well into the future.

Conversely, Old Highway 90’s nearest certificated service area boundaries and facilities are located over 15 (fifteen) miles north of the Proposed CCN, on the other side of YWSC’s CCN (CCN No. 11463) and East Medina Special Utility District’s CCN (CCN No. 10217).

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<sup>9</sup> *Consolidation*, BLACK’S LAW DICTIONARY (4<sup>th</sup> ed.2011).

<sup>10</sup> See Application at 29 (Attachment 9) (Nov. 5, 2020).

<sup>11</sup> See Cover Letter, Letter Requesting Extension on Mapping Documentation, Responses to Request from PUC for Information, Letter Stating Availability of Funds, Hydraulic Study from Benton City WSC at 9 (Jan. 19, 2021).

<sup>12</sup> See Decertification Agreement from Benton City WSC at 2 (Mar. 16, 2021).

The concept of requiring CCN amendment applicants to demonstrate regionalization or consolidation is not economically feasible is rooted in the public's interest in having access to continuous and adequate retail public water service, at reasonable costs for current and future customers. Old Highway 90 has sidestepped this issue by not providing any relevant information to meet this requirement. However, the Texas Water Code and Commission Rules are clear that regionalization and consolidation are not just preferred, but required where economically feasible.

Old Highway 90 bears the burden to prove that regionalization and consolidation are not economically feasible. The fact that Old Highway 90 has failed to do so, is sufficient grounds for denying the Application.

**B. Old Highway 90 has failed to offer information that it possesses the financial, managerial, and technical capabilities to provide continuous and adequate service to Proposed CCN.**

In determining whether to grant or amend a CCN, the Commission must ensure the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.<sup>13</sup> Old Highway 90 bears the burden to demonstrate financial assurance by either (1) obtaining an irrevocable stand-by letter of credit issued by a financial institution that is supervised or examined by the Board of Governors of the Federal Reserve System, the Office of the Controller of Currency, or a state banking department, and where accounts are insured by the Federal Deposit Insurance Corporation as more precisely detailed under Texas Administrative Code (“TAC”) § 24.11(d); or (2) by satisfying the leverage and operations tests under TAC § 24.11(e).<sup>14</sup>

YWSC believes good cause exists for the Commission to require Old Highway 90 to comply with both Tex. Admin Code §§ 24.11(d) and (e) in order to demonstrate financial assurance. Old Highway 90 is not a Texas company, corporation, or partnership, but rather is merely the “d/b/a,” or name of its individual owner, Mr. Chester Maples, Jr.. Based on information provided in the Application, Old Highway 90 shows only \$209.85 cash available at the end of 2019—the most recent year reported. The remaining assets reported are accounts

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<sup>13</sup> Tex. Water Code § 13.241(a); 16 Tex. Admin. Code § 24.227.

<sup>14</sup> Tex. Water Code § 24.11(c)-(e).

receivable (\$17,923.32), and fixed assets (\$3,291,400.00), the bulk of which is the purported value of Old Highway 90's existing system facilities.<sup>15</sup> At this stage in the proceeding, it does not appear that Old Highway 90 can satisfy both the leverage test and the operations test to demonstrate financial assurance under TAC § 24.11(e).

Old Highway 90 bears the burden to demonstrate financial assurance. That Old Highway 90 has failed to include information that could demonstrate financial assurance is sufficient grounds for denying the Application.

Additionally, Old Highway 90 bears the burden of demonstrating the proposed public water system has been approved by the Texas Commission on Environmental Quality ("TCEQ") as having the capability of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the Texas Water Code.<sup>16</sup> Old Highway 90 has not offered any evidence in the Application that the proposed public water system or distribution system has been approved by TCEQ.<sup>17</sup> Old Highway 90 has not met its burden to demonstrate the proposed public water system has been approved by TCEQ as having the capability of providing drinking water that meets the requirements of Texas Health and Safety Code, chapter 341, TCEQ rules, and the Texas Water Code. These are sufficient grounds for denial.

### **III. PROCEDURAL STATUS AND OPPORTUNITY FOR A HEARING**

As of the date of this supplemental response, Staff has submitted two requests for information. Most recently, Staff submitted its Second Request for Information, seeking to discover substantial material information about the Application, including TCEQ approval of Old Highway 90's proposed water system and distribution system, estimates of the cost to provide service to the Proposed CCN from YWSC, and additional information concerning Old Highway 90's equity amounts and liabilities, the response of which must be filed through the Interchange on the Commission's website with notice provided to all parties.<sup>18</sup>

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<sup>15</sup> Application at 15 (Appendix A: Historical Financial Information) (Nov. 5, 2021).

<sup>16</sup> 16 Tex. Admin. Code § 24.227(a)(1)(a).

<sup>17</sup> See Commission Staff's Second Request for Information (Jul. 16, 2021).

<sup>18</sup> *Id.*

YWSC has significant concerns with the Application and intends to continue its participation in this proceeding and file a request for a hearing by the deadline indicated by Order No. 11. Future discovery and a hearing.

#### **IV. CONCLUSION**

YWSC appreciates the opportunity to explain its position on the Application. YWSC will comply with the procedural deadlines established by Order No. 11, and intends to submit a hearing request by the deadline of August 13, 2021, and subsequently conduct discovery and participate in the hearing.

Respectfully submitted,

/s/ C. Cole Ruiz  
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**DOCKET NO. 51488**  
**CERTIFICATE OF SERVICE**

I certify that notice of the filing of this document was provided to all parties of record via electronic mail and through the Interchange on the Commission's website on July 30, 2021, in accordance with Order No. 9 in this proceeding and the Order Suspending Rules issued in PUC Project No. 50664.

/s/ C. Cole Ruiz  
C. Cole Ruiz