



Control Number: 51530



Item Number: 24

Addendum StartPage: 0

DOCKET NO. 51530

2021 MAY -5 AM 11:25

APPLICATION OF ESPERANZA §
WATER SERVICE COMPANY, INC. §
AND EL PASO WATER UTILITIES §
PUBLIC SERVICE BOARD FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN HUDSPETH COUNTY §

PUBLIC UTILITY COMMISSION
OF TEXAS

**ORDER NO. 9
APPROVING SALE AND TRANSFER TO PROCEED**

This Order addresses the application of Esperanza Water Service Company, Inc. and El Paso Water Utilities Public Service Board (EPWU) for the sale, transfer, or merger of facilities and certificate rights in Hudspeth County. The applicants seek to transfer the facilities, customers, and water service area held by Esperanza under water certificate of convenience and necessity (CCN) number 12881 to EPWU's water CCN number 10211; the cancellation of Esperanza's water CCN number 12881; and the amendment of EPWU's water CCN number 10211 to include the area previously included in Esperanza's water CCN number 12881 and to decertify 508 acres of certificated area that overlaps the Fort Hancock Water Control & Improvement District's boundaries. The administrative law judge (ALJ) grants that the sale is approved and the transaction between Esperanza and EPWU may proceed and be consummated.¹

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. EPWU is a municipally-owned utility established by the City of El Paso.
2. EPWU operates, maintains, and controls facilities for providing retail water service in El Paso County under water CCN number 10211.

¹ This Order only addresses the proposed sale and transfer of facilities and certificate rights from Esperanza to EPWU. At this time, the Commission takes no action on EPWU's request to decertify the 508 acres of certificated area that overlaps the Fort Hancock Water Control & Improvement District's boundaries.

3. EPWU controls facilities that are registered with the Texas Commission on Environmental Quality (TCEQ) under public water system identification number 0710002.
4. Esperanza is Texas corporation registered with the Texas secretary of state under filing number 133181800.
5. Esperanza operates, maintains, and controls facilities that provide water service in Hudspeth County under water CCN number 12881.
6. Esperanza controls facilities that are registered with the TCEQ under public water system identification number 1150010.

Application

7. On November 17, 2020, EPWU and Esperanza filed the application at issue in this proceeding.
8. On December 4, 2020, the applicants supplemented their application with revised maps.
9. On March 8, 2021, the applicants amended the application.
10. In the application, as amended, the applicants seek approval of the following transaction:
(a) EPWU will acquire all of Esperanza's facilities, customers, and water service area under water CCN number 12881; (b) Esperanza's water CCN number 12881 will be cancelled; and (c) EPWU's water CCN number 10211 will be amended to include the area previously included in Esperanza's water CCN number 12881 and to decertify 508 acres of certificated area that overlaps the Fort Hancock Water Control & Improvement District's boundaries.
11. The requested area to be transferred is located approximately 20 miles west of downtown Sierra Blanca, Texas, and is generally bounded on the north by Union Pacific Railroad Company and Interstate 10, on the east by Fort Quitman Lake Dam No. 1, and on the south and west by the United States and Mexico border.
12. The requested area includes approximately 18,102 acres and 292 customers.
13. The area requested for decertification includes approximately 508 acres and no customers.
14. In Order No. 2 filed on December 30, 2020, the ALJ found the application administratively complete.

Notice

15. On January 6, 2021, the applicants filed the affidavit of Allen Odom, office administrator for Bickerstaff Heath Delgado Acosta LLP, attorney for EPWU, attesting that notice was provided to affected parties and county officials on January 6, 2021. Representative copies of the notice and maps were attached to the affidavit.
16. On January 11, 2021, the applicants filed the affidavit of Irene Epperson, vice president of Esperanza, attesting that notice was provided to current customers on January 6, 2021.
17. In Order No. 4 filed on February 2, 2021, the ALJ found the notice sufficient.

Evidentiary Record

18. On April 19, 2021, the parties jointly moved to admit evidence.
19. In Order No. 8 filed on May 4, 2021, the ALJ admitted the following evidence into the record: (a) the application, including all attachments, filed on November 17, 2020; (b) the applicants' proofs of notice and supporting documentation, filed on January 4, 6, and 11, 2021; (c) the applicants' amendment to the application, and all supporting documentation, filed on March 8, 2021; and (d) Commission Staff's final recommendation on approval of the sale filed on March 19, 2021.

System 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. Esperanza's public water system is registered with the TCEQ under identification number 1150010 and has been subject to an enforcement action by the TCEQ for non-compliance with TCEQ rules identified during a TCEQ investigation of Esperanza's water system on February 4, 2019. All violations from that investigation have been resolved.
21. EPWU does not have any outstanding violations listed in the TCEQ database.
22. EPWU demonstrated a compliance status that is adequate for approval of the transaction to proceed.

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

23. Esperanza's is currently in compliance with the rules of the TCEQ.

24. There are currently 292 customers in the requested area that are being served by Esperanza through public water system number 1150010, 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)

25. There is a continuing need for service because Esperanza is currently serving 292 customers in the requested area.
26. There have been no specific requests for additional water service within the requested area.

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

27. Approving the transaction and granting the CCN amendments will obligate EPWU to provide continuous and adequate water service to current and future customers in the requested area.
28. Any landowners in the requested area that do not currently receive service from Esperanza will need to request service from EPWU if they require service after the transaction has been completed.
29. This application is to transfer only existing facilities, customers, and service area.
30. All retail public utilities in the proximate area were provided with notice of the transaction. Fort Hancock Water Control & Improvement District intervened. In response, the applicants filed a revised application requesting decertification of the portion of Esperanza's certificated area that overlaps the boundaries of Fort Hancock Water Control & Improvement District.
31. There will be no effect on any retail public utility serving in 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)

32. EPWU does not have any outstanding violations listed in the TCEQ database.
33. EPWU owns and operates three water treatment plants that provide 130 million gallons of water per day to over 214,000 service connections, and a desalination plant that produces 27.5 million gallons of water per day.

34. EPWU employs 25 TCEQ-licensed water utility operators and maintains a staff of 33 customer service representatives to assist customers with any water service and billing issues.
35. EPWU has the managerial and technical ability 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)

36. EPWU has a debt-to-equity ratio that is less than one, satisfying the leverage test.
37. EPWU has sufficient cash and net operating income 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.
38. EPWU has demonstrated that it has the financial ability and stability to provide continuous and adequate service to the requested area.

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

39. There is no need to require EWPU to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5), 24.239(h)(5)(E)

40. The requested area is currently being served by Esperanza and there will be no changes to land uses.
41. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At a minimum, an interconnection would need to be installed with an adjacent retail public utility.
42. 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)

43. The requested area will continue to be served with existing infrastructure and no additional construction is needed to provide service to the requested area; therefore, there will be no effect on environmental integrity or on the land as a result of the transaction.

Improvement in Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)

44. EPWU will continue to provide water service to the existing customers in the requested area.
45. There will be no change in the quality or cost of service to the customers.

Regionalization or Consolidation—TWC § 13.241(d); 16 TAC § 24.227(b)

46. EPWU will not need to construct a physically separate public water system to continue serving the requested area; therefore, concerns of regionalization or consolidation do not apply.

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), EPWU demonstrated adequate financial, managerial, and technical capability to provide adequate and continuous service to the requested area as required by TWC § 13.301(b).
3. Esperanza and EPWU demonstrated that the sale of Esperanza's water facilities and the transfer of water service area held under water CCN number 12881 to EPWU 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

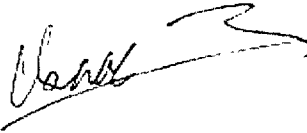
In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The sale is approved and the transaction between Esperanza and EPWU 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. Esperanza and EPWU have 180 days to complete the transaction.
4. Under 16 TAC § 29.239(m), if the transaction is not consummated within this period, or an extension has not been granted, this approval is void and Esperanza and EPWU will have to reapply for approval.
5. Esperanza and EPWU are advised that the requested area will remain under water CCN number 12881 and be held by Esperanza until the sale and transfer transaction is completed 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 customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the 5th day of May 2021.

PUBLIC UTILITY COMMISSION OF TEXAS



**ISAAC TA
ADMINISTRATIVE LAW JUDGE**