



## Filing Receipt

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**DOCKET NO. 51530**

<b>APPLICATION OF ESPERANZA</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>WATER SERVICE COMPANY, INC.</b>	<b>§</b>	
<b>AND EL PASO WATER UTILITIES</b>	<b>§</b>	<b>OF TEXAS</b>
<b>PUBLIC SERVICE BOARD FOR SALE,</b>	<b>§</b>	
<b>TRANSFER, OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN HUDSPETH COUNTY</b>	<b>§</b>	

**NOTICE OF APPROVAL**

This Notice of Approval 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 Commission approves the transfer the facilities, customers, and service area held by Esperanza under certificate of convenience and necessity (CCN) number 12881 to EPWU; the cancellation of Esperanza's CCN number 12881; the amendment of EPWU's CCN number 10211 to include the area previously included in Esperanza's CCN number 12881; and the decertification of 508 acres of certificated area that overlaps the Fort Hancock Water Control & Improvement District's (Fort Hancock WCID) CCN boundaries.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants and Affected Parties**

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 CCN number 10211.
3. EPWU operates a public water system that is 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 for providing retail water service in Hudspeth County under CCN number 12881.
6. Esperanza owns and operates a public water system that is registered with the TCEQ under public water system identification number 1150010.
7. Fort Hancock WCID is a water control and improvement district formed under Texas Water Code (TWC) chapter 51.

**Application**

8. On November 17, 2020, EPWU and Esperanza filed the application at issue in this proceeding.
9. On December 4, 2020, the applicants supplemented their application with revised maps.
10. On March 8, 2021, the applicants amended the application.
11. In the application, as amended, the applicants seek approval of the following: (a) EPWU's acquisition of Esperanza's facilities, customers, and service area under CCN number 12881; (b) the cancellation of Esperanza's CCN number 12881; (c) the amendment of EPWU's CCN number 10211 to include the area previously included in Esperanza's CCN number 12881; and (d) the decertification of 508 acres of certificated area that overlaps the Fort Hancock WCID boundaries.
12. The requested area consists of the following: (a) the area transferred from Esperanza to EPWU, which includes approximately 17,594 acres and 292 customers (the transfer area); and (b) the area that overlaps Fort Hancock WCID's CCN boundaries requested for decertification, which includes approximately 508 acres and no customers (the decertification area).
13. The requested area 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.
14. In Order No. 2 filed on December 30, 2020, the administrative law judge (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.

**Intervenors**

18. On January 15 and 19, 2021, Fort Hancock WCID filed motions to intervene.
19. On January 26, 2021, Mark, Robert, and Dolores Kimpel filed a joint motion to intervene.
20. In Order No. 3 filed on February 1, 2021, the ALJ granted the motions to intervene.
21. On February 8, 2021, Mark, Robert, and Dolores Kimpel requested to withdraw as intervenors.
22. In Order No. 5 filed on February 9, 2021, the ALJ granted the request to withdraw as intervenors filed by Mark, Robert, and Dolores Kimpel.

**Evidentiary Record**

23. On April 19, 2021, EPWU, Esperanza, and Commission Staff jointly moved to admit evidence.
24. 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.
25. On May 19, 2021, EPWU, Esperanza, and Commission Staff filed an agreed supplemental motion to admit additional evidence.

26. In Order No. 11 filed on May 19, 2021, the ALJ admitted as evidence into the record the applicants' revised mapping filed on December 4, 2020.
27. On September 17, 2021, EPWU, Esperanza, and Commission Staff jointly moved to admit additional evidence.
28. In Order No. 13 filed on October 12, 2021, the ALJ admitted the following additional evidence into the record: (a) EPWU's notice of completed transaction filed on July 6, 2021; (b) Commission Staff's recommendation on closing documents filed on July 21, 2021; (c) EPWU's consent form filed on August 23, 2021; (d) Esperanza's consent form filed on August 23, 2021; and (e) the map and certificate attached to the joint supplemental motion to admit evidence and proposed notice of approval filed on September 17, 2021.

#### **Sale**

29. In Order No. 9 filed on May 5, 2021, the ALJ approved the sale and transaction to proceed and required the applicants to file proof that the transaction had closed.
30. On July 6, 2021, the applicants filed notice that the sale and transfer had been executed on June 30, 2021 and confirmed that there were no outstanding customer deposits that needed to be addressed.
31. In Order No. 12 filed on July 22, 2021, the ALJ found the closing documents sufficient.

#### **System Compliance**

32. 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.
33. EPWU does not have any outstanding violations listed in the TCEQ database.
34. EPWU demonstrated a compliance status that is adequate for approval of the transaction.

#### **Adequacy of Existing Service**

35. Esperanza's public water system is currently in compliance with the rules of the TCEQ.

36. There are currently 292 customers in the transfer 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**

37. There is a continuing need for service because Esperanza is currently serving 292 existing customers in the transfer area.
38. There have been no specific requests for additional water service within the transfer area.

**Effect of Approving the Transaction and Granting the Amendment**

39. Approving the transaction and granting the CCN amendment will obligate EPWU to provide continuous and adequate water service to current and future customers in the transfer area.
40. Any landowners in the transfer 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.
41. All retail public utilities in the proximate area were provided with notice of the transaction. Fort Hancock WCID intervened. In response, the applicants filed a revised application requesting decertification of the portion of Esperanza's certificated area that overlaps Fort Hancock WCID's boundaries.
42. On September 17, 2021, EPWU, Esperanza, and Commission Staff filed a joint supplemental motion to admit evidence and proposed notice of approval. The filing included a certificate of conference certifying that EPWU conferred with Fort Hancock WCID via email and telephone on September 16, 2021, and that Fort Hancock WCID did not object to the motion to admit evidence and proposed notice of approval.

**Ability to Serve: Managerial and Technical**

43. EPWU does not have any outstanding violations listed in the TCEQ database.
44. 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.

45. 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.
46. EPWU 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.
47. No additional construction is necessary for EPWU to continue providing service to the transfer area.
48. EPWU has the managerial and technical capability to provide continuous and adequate service to the transfer area.

**Ability to Serve: Financial Ability and Stability**

49. EPWU has a debt-to-equity ratio that is less than one, satisfying the leverage test.
50. 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 and CCN amendment, satisfying the operations test.
51. EPWU has demonstrated that it has the financial capability and stability to provide continuous and adequate service to the transfer area.

**Financial Assurance**

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

**Feasibility of Obtaining Service from Adjacent Retail Public Utility**

53. The transfer area is currently being served by Esperanza.
54. 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.
55. It is not feasible to obtain service from an adjacent retail public utility.

**Environmental Integrity and Effect on the Land**

56. The transfer 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 and CCN amendment.

**Improvement in Service or Lowering Cost to Consumers**

57. EPWU will continue to provide water service to the existing customers in the transfer area.
58. There will be no change in the quality or cost of service to the customers.

**Regionalization or Consolidation**

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

**Decertification**

60. EPWU filed a written request to amend its CCN by decertifying 508 acres.
61. EPWU's request specified the area requested to be removed from its CCN.
62. EPWU's request included the mapping information required by the Commission's rules.
63. EPWU does not have any current customers in the decertification area.
64. Landowners in the decertification area will not be adversely affected because they will still be able to request service from Fort Hancock WCID.

**Map and Certificate**

65. On August 20, 2021, Commission Staff emailed EPWU and Esperanza the final proposed map and certificate related to this docket.
66. On August 23, 2021, EPWU and Esperanza filed their consent forms concurring with the final proposed map and certificate.
67. On September 17, 2021, the final map and certificate were filed as attachments to the joint supplemental motion to admit evidence and proposed notice of approval.

**Informal Disposition**

68. More than 15 days have passed since the completion of the notice provided in this docket.



69. EPWU, Esperanza, Commission Staff, and Fort Hancock WCID are the only parties to this proceeding.
70. No party requested a hearing and no hearing is needed.
71. Commission Staff recommended approval of the application.
72. The decision is not adverse to any party.

## II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this proceeding under TWC §§ 13.041, 13.241, 13.242, 13.244, 13.246, 13.251, 13.254, and 13.301.
2. EPWU and Esperanza are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(31).
3. EPWU and Esperanza's application meets the requirements of TWC § 13.244 and 16 TAC § 24.233.
4. The applicants provided notice of the application that complies with TWC §§ 13.245(d)(2), 13.246, and 13.301(a)(2), and 16 TAC § 24.239(a) through (c).
5. The Commission processed this application as required by the TWC, the Administrative Procedures Act,<sup>1</sup> and Commission rules.
6. EPWU and Esperanza completed the sale and transfer within the time required by 16 TAC § 24.239(m).
7. The applicants complied with the requirements of 16 TAC § 24.239(k) with respect to customer deposits.
8. After consideration of the factors in TWC § 13.246(c), EPWU demonstrated it is capable of rendering continuous and adequate service to every customer within the transfer area, as required by TWC § 13.251.

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<sup>1</sup> Tex. Gov't Code §§ 2001.001–.903.

9. EPWU demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the transfer area as addressed in TWC § §13.241(a) and 13.301(b).
10. It is not necessary for EPWU to provide bond or other financial assurance under TWC §§ 13.246(d) and 13.301(c).
11. Esperanza and EPWU demonstrated that the transfer of Esperanza's water facilities and service area under CCN number 12881 to EPWU, the cancellation of Esperanza's CCN number 12881 and the amendment of EPWU's water CCN number 10211 will serve the public interest and is necessary for the continued service, accommodation, convenience, and safety of the public, as required by TWC §§ 13.246(b) and 13.301(d) and (e).
12. EPWU met the requirements of TWC § 13.254 and 16 TAC § 24.245 for decertification of a portion of its CCN number 10211.
13. EPWU consented in writing to decertification of a portion of its CCN number 10211 in accordance with TWC § 13.254(a) and 16 TAC § 24.245(d)(1)(E).
14. EPWU must record a certified copy of the certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Hudspeth County within 31 days after receiving this Notice of Approval and submit to the Commission evidence of the recording as required by TWC § 13.257(r) and (s).
15. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

### **III. Ordering Paragraphs**

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

1. The Commission approves the sale and the transfer of all of Esperanza's facilities, customers, and service area under CCN number 12881 to EPWU, the cancellation of Esperanza's water CCN number 12881, and the amendment of EPWU's CCN number 10211 to include the area previously included in Esperanza's CCN number 12881.

2. The Commission approves the decertification of 508 acres of service area that overlaps Fort Hancock WCID's boundaries from EPWU's CCN number 10211, to the extent provided in this Notice of Approval.
3. The Commission approves the map attached to this Notice of Approval.
4. The Commission issues the certificate attached to this Notice of Approval.
5. EPWU must provide service to every customer or qualified applicant for service within the approved areas under CCN number 10211 that requests service and meets the terms of EPWU's water service, and such service must be continuous and adequate.
6. EPWU must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Hudspeth County affected by the application and file in this docket proof of the recording no later than 45 days after receipt of the Notice of Approval.
7. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

**Signed at Austin, Texas the 12th day of October 2021.**

**PUBLIC UTILITY COMMISSION OF TEXAS**



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**ISAAC TA  
ADMINISTRATIVE LAW JUDGE**

El Paso Water Utilities Public Service Board  
Portion of Water CCN No. 10211  
PUC Docket No. 51530

Transferred all of Esperanza Water Service Co. Inc., CCN No. 12881 and  
Decertified a Portion of El Paso Water Utilities Public Service Board, CCN No. 10211 in Hudspeth County



**Water CCN**



10211 - El Paso Water Utilities Public Service Board

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Miles





# **Public Utility Commission of Texas**

**By These Presents Be It Known To All That**

## **El Paso Water Utilities Public Service Board**

having obtained certification to provide water utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, El Paso Water Utilities Public Service Board is entitled to this

### **Certificate of Convenience and Necessity No. 10211**

to provide continuous and adequate water utility service to that service area or those service areas in El Paso and Hudspeth Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 51530 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the El Paso Water Utilities Public Service Board to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.