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DOCKET NO. 51610

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**APPLICATION OF MARKOUT §
WATER SUPPLY CORPORATION AND §
THE CITY OF MESQUITE FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN KAUFMAN COUNTY §**

**2021 MAR 26 PM 2:22
PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF THE SALE

On December 10, 2020, Markout Water Supply Corporation (Markout WSC) and the City of Mesquite (collectively, the Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Kaufman County. Specifically, the City of Mesquite, certificate of convenience and necessity (CCN) number 10060, seeks approval to acquire facilities and to transfer all the water service area from Markout WSC under water CCN number 10846. The requested area includes approximately 6,279 acres and 1,081 connections. Applicants filed supplemental information on December 17, 2020, January 4, 2021, and February 3, 2021.

On February 25, 2021, the administrative law judge (ALJ) filed Order No. 3, establishing a deadline of March 26, 2021 for Staff to file recommendation on the approval of the sale. Therefore, this pleading is timely filed.

I. RECOMMENDATION ON APPROVAL OF SALE

Staff has reviewed the application, as supported by the memoranda of Fred Bednarski of the Commission's Rate Regulation Division and Patricia Garcia of the Commission's Infrastructure Division, and recommends that the applicants be allowed to proceed with the proposed transaction. Under 16 Texas Administrative Code § 24.239(i) and Texas Water Code §§ 13.246 and 13.301, Staff recommends that this transaction will serve the public interest and should be allowed to proceed without a public hearing.

II. CONCLUSION

Staff respectfully requests that the ALJ issue an order approving the sale and allowing the transaction to proceed.

Date: March 26, 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 March 26, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ M. Justin Ackley
M. Justin Ackley

Public Utility Commission of Texas

Memorandum

TO: M. Justin Ackley, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: March 26, 2021

RE: Docket No. 51610 - *Application of Markout Water Supply Corporation and the City of Mesquite for Sale, Transfer, or Merger of Facilities and Certificate Rights in Kaufman County*

On December 12, 2020, the City of Mesquite (Mesquite) and Markout Water Supply Corporation filed an application for the Sale-Transfer-Merger of facilities and certificate rights.

I recommend that Mesquite demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by Mesquite before the date of this memorandum and may not reflect any changes in Mesquite's status after this review.

Ability to serve: financial ability and stability (TWC §§ 13.241(a) and 13.246(c)(6))

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. Mesquite must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage test

My analysis is based on financial statements ending September 30, 2019. These financial statements contain an unqualified auditor's opinion from BKD, LLP stating that the financial statements present fairly, in all material respects, the financial position of Mesquite as of September 30, 2019.

Mesquite's 2019 proprietary funds financial statements report long-term debt of \$106,852,507 and equity of \$185,840.805. The debt-to-equity ratio is 0.58. Because the ratio is less than 1.0, Mesquite meets the leverage test specified in 16 TAC § 24.11(e)(2)(A).

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).

Mesquite's financial budget shows that there are no projected shortages to cover. Capital improvements needed to provide continuous and adequate service to the requested area will be paid for by Mesquite's net income and ability to issue revenue bonds. Sufficient cash and net operating income available to cover possible future shortages provide an indication of financial stability and financial and managerial capability. Therefore, Mesquite meets the operations test specified in 16 TAC § 24.11(e)(3).

Financial assurance (TWC § 13.246(d))

Because Mesquite meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Public Utility Commission of Texas

Memorandum

TO: M. Justin Ackley, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: March 22, 2021

RE: **Docket No. 51610** – *Application of Markout Water Supply Corporation and the City of Mesquite for Sale, Transfer, or Merger of Facilities and Certificate Rights in Kaufman County*

1. Application

The City of Mesquite (Mesquite) and Markout Water Supply Corporation (Markout WSC) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Kaufman County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Mesquite, certificate of convenience and necessity (CCN) No. 10060, seeks approval to acquire facilities and to transfer all of the water service area from Markout WSC under water CCN No. 10846. The requested area includes approximately 6,279 acres and 1,081 connections.

2. Notice

The Applicants provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was February 26, 2021; 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)).

Markout WSC has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered under PWS ID number 1290019. The last TCEQ compliance investigation of the Markout WSC public water system was on October 28,

2020. No violations or concerns were noted as a result of that investigation. In addition, the Commission's complaint records show no complaints against Markout WSC.

Mesquite will be installing an interconnect to fully integrate the requested area into their water system.

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 Markout WSC to Mesquite. The customers are currently receiving water service from Markout WSC's water system.

There are currently 1,081 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)).*

Mesquite will be the certificated entity for the requested area and 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)).*

Mesquite has the ability to provide adequate service in the requested area. Mesquite has a TCEQ approved public water system registered under PWS ID number 0570014. Mesquite does not have any violations listed in the TCEQ database. The Commission's complaint records show 10 complaints against Markout WSC since 2014.

Mesquite will be installing an interconnect to fully integrate the requested area into their water system. The customers will continue to receive water service through the Markout WSC public water system until the interconnect is installed.

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 Mesquite to serve the requested area. Mesquite will be installing an interconnect to fully integrate the requested area into their water system. Therefore, concerns of regionalization or consolidation with another retail public utility in the area 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)).*

Markout WSC is currently serving customers and has sufficient capacity. Mesquite will be installing an interconnect to fully integrate the requested area into their water system. 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)).*

The Rate Regulation Division will be addressing this factor in a separate memo.

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)).*

The Rate Regulation Division will be addressing this factor in a separate memo.

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 be minimally affected when the interconnect is installed to fully integrate the requested area into Mesquite's water system.

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)).*

Mesquite will continue to provide water service to the existing customers in the area. There will be no change in the quality of service to customers. Mesquite expects the customers to be paying lower rates when the Markout WSC customers are fully integrated into Mesquite's water system.

4. Recommendation

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, and the water service area of the water CCN No. 10846 to Mesquite and amending water CCN No. 10060 of Mesquite is necessary for the service, accommodation, convenience and safety of the public.

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. The application indicates there are no deposits held by Markout WSC for the customers being served by Markout WSC's water system, however there is a list of customer deposits provided in the application on pages 74 through 99. I recommend the applicants address this in the sale documents they provide to the Commission. I further recommend that a public hearing is not necessary.