



Control Number: 51610



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**DOCKET NO. 51610**

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RECEIVED  
PUBLIC UTILITY COMMISSION

<b>APPLICATION OF MARKOUT</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>WATER SUPPLY CORPORATION AND</b>	<b>§</b>	
<b>THE CITY OF MESQUITE 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 KAUFMAN COUNTY</b>	<b>§</b>	

**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER**

On December 10, 2020, the City and Markout (collectively, Applicants) filed an application for the approval of the sale, transfer, or merger of facilities and certificate rights in Kaufman County. Specifically, Markout and the City seek approval of the transfer of all of Markout’s facilities and water service area held under water Certificate of Convenience and Necessity (CCN) number 10846 to the City’s water CCN number 10060. The requested transfer includes 6,279 acres and 1,081 customer connections.

On January 13, 2021, the administrative law judge (ALJ) filed Order No. 2 finding the application administratively complete. On January 27, 2021, the City mailed notice of the application to neighboring utilities and Markout customers. On February 25, 2021, the ALJ issued Order No. 3 finding the notices sufficient and set a procedural schedule.

The Staff of the Public Utility Commission (Commission) of Texas (Staff) filed its final recommendation on approval of sale on March 26, 2021. On May 6, 2021, the administrative law judge (ALJ) filed Order No. 4, requiring the Applicants and Staff (collectively, the Parties) to file a joint motion to admit evidence and proposed order approving sale and allowing the transaction to proceed.

**I. JOINT MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following evidence:

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- (a) The application, including all attachments, filed on December 10, 2020 (Interchange Item No. 1);
- (b) The Applicants' Supplemental Information to the STM Application, filed on December 17, 2021 (Interchange Item No. 3);
- (c) The Applicants' Updated Maps and Digital Data, filed on January 4, 2021 (Interchange Item No. 4);
- (d) The Applicants' proof of notice and supporting documentation, filed on January 29, 2021 (Interchange Item No. 8);
- (e) The City of Mesquite's Response to Staff's First RFI, filed on February 3, 2021 (Interchange Item No. 9);
- (f) The City of Mesquite's Response to Staff's First RFI to Markout, filed on February 3, 2021 (Interchange Item No. 10);
- (g) Staff's final recommendation on approval of the sale, filed on March 26, 2021 (Interchange Item No. 13).

**II. JOINT PROPOSED ORDER APPROVING SALE AND ALLOWING TRANSACTION TO PROCEED**

The attached Joint Proposed Order would authorize the sale and transfer of all of Markout's facilities and water service area held under water CCN number 10846 to the City's water service area under CCN number 10060.

**III. CONCLUSION**

Markout and the Staff have granted the City permission to file this motion on behalf of all of the Parties. The Parties respectfully request that the items listed above be admitted into the record in this proceeding and that the Order consistent proposed by the Parties be adopted.

Respectfully submitted,

**ATTORNEY FOR CITY OF MESQUITE**

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BY: *Emily W. Rogers*  
Emily W. Rogers

**CERTIFICATE OF SERVICE**

I certify that this Joint Motion was provided to all parties of record via electronic mail or regular mail on May 27, 2021, in accordance with the Order Suspending Rules, issued in Project No 50664.

*Emily W. Rogers*  
Emily W. Rogers

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<b>RIGHTS IN KAUFMAN COUNTY</b>	<b>§</b>	

**JOINT PROPOSED ORDER APPROVING SALE AND ALLOWING  
TRANSACTION TO PROCEED**

This Order addresses the application of the City of Mesquite (the City) and Markout Water Supply Corporation (Markout) (collectively, the Applicants) for the sale, transfer, or merger of facilities and certificate rights in Kaufman County. The applicants seek to transfer the facilities, customers, and water service area held by Markout under water Certificate of Convenience and Necessity (CCN) number 10846 to the City’s water CCN number 10060. On March 26, 2021, Staff of the Public Utility Commission (Commission) of Texas (Staff) recommended that the transaction proceed in this docket. The administrative law judge (ALJ) grants that the sale is approved and the transaction between Markout and the City may proceed and be consummated.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. The City is a municipally-owned utility that operates, maintains, and controls facilities for providing retail water service in Dallas and Kaufman counties under CCN number 10060.
2. The City controls facilities that are registered with the Texas Commission on Environmental Quality (TCEQ) under public water system identification number 0570014.

3. Markout is a non-profit water supply corporation operating under Chapter 67 of the Texas Water Code.
4. Markout operates, maintains, and controls facilities that provide water service in Kaufman County under CCN number 10846.
5. Markout controls facilities that are registered with the TCEQ under public water supply system identification number 1290019.

**Application**

6. On December 10, 2020, the City and Markout filed an application for sale, transfer, or merger of facilities and certificate rights in Kaufman County. The Applicants seek approval to sell and transfer all of Markout's facilities and water service area under CCN number 10846 to City under CCN number 10060.
7. The Applicants filed supplemental information on December 17, 2020, January 4, 2021, and February 3, 2021.
8. The requested area to be transferred is located approximately 1.5 miles south of downtown Forney, Texas, and is generally bounded on the north by the intersection of South Bois D'Arc Street and FM 741 (College Avenue), on the east by High Country Lane, on the south by U.S. Highway 175, and on the west by Lawson Road and the Dallas/Kaufman county line.
9. The total area affected subject to this transaction is comprised of approximately 6,279 total acres and 1,081 customer connections.
10. In Order No. 2 filed on January 13, 2021, the ALJ found the application administratively complete.

**Notice**

11. January 29, 2021, the City filed the affidavit of Mark Kerby, Special Projects Director of the City of Mesquite, attesting that notice was provided to customers, cities, districts, neighboring retail public utilities, county offices, and affected parties on January 27, 2021.
12. In Order No. 3 filed on February 25, 2021, the ALJ found the notice sufficient.

**Evidentiary Record**

13. In Order No. 4 filed on \_\_\_\_\_, 2021, the ALJ admitted the following evidence into the record: (1) the application, including all attachments, filed on December 10, 2020; (2) the Applicants Supplemental Information to the STM Application, filed on December 17, 2021; (3) the Applicants' Updated Maps and Digital Data, filed on January 4, 2021; (4) the Applicants' proof of notice and supporting documentation, filed on January 29, 2021; (5) the City of Mesquite's Response to Staff's First RFI, filed on February 3, 2021; (6) the City of Mesquite's Response to Staff's First RFI to Markout, filed on February 3, 2021; and (7) Staff's final recommendation on approval of the sale, filed on March 26, 2021.

**Adequacy of Existing Service and System Compliance – Texas Water Code (TWC) §§ 13.246(c)(1) and 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), (h)(5)(I)**

14. Markout has a TCEQ approved public water supply system (PWS) registered as PWS number 1290019.
15. The last TCEQ compliance investigation of the Markout water system was on October 28, 2020. No violations or concerns were noted as a result of that investigation.
16. The Commission's complaint records show no complaints against Markout since 2014.

17. No additional construction is necessary for the City to serve the requested area. However, the City will be installing an interconnection to fully integrate the requested area into the City's water system.

**Need for Additional Service – TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2), 24.239(h)(5)(B)**

18. There are currently 1,081 existing customers in the requested area that are receiving water service from the Markout's PWS number 1290019 and have an ongoing need for service.

19. No additional service is needed at this time.

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

20. The City and Markout are the only retail public utilities affected by this transfer.

21. Approving the transaction and granting the CCN amendment will obligate the City to provide continuous and adequate service to current and future customers in the 6,279-acre requested area.

22. There will be no effect on landowners as the area is currently certificated.

23. All retail public utilities in the proximate area were provided with notice of the transaction. None of the retail public utilities intervened.

24. 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(f), (h)(2), and (h)(5)(D)**

25. The City has a TCEQ approved PWS registered as the City of Mesquite, PWS identification number 0570014.

26. The City does not have any outstanding violations listed in the TCEQ database.

27. The City provides service to over 55,000 service connections.



28. The City has 19 water utility operators and maintains a staff of 11 customer service representatives to assist customers with any water service and billing issues.
29. The City receives treated water from the North Texas Municipal Water District pursuant to the City's wholesale water supply contract with the district.
30. The City owns and operates over 600 miles of water transmission and distribution lines, three pump stations, and 34 million gallons of ground and elevated storage.
31. The City has a superior water system rating and compliance history.
32. The City will be installing an interconnection to fully integrate the requested area into the City's water system.
33. The City has the managerial and technical ability to provide continuous and adequate service to the requested area.

**Ability to Service: 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), (f), (h)(5)(F)**

34. The City's debt-to-equity ratio is less than one, meeting the leverage test.
35. The City meets the operations test specified in 16 TAC § 24.11(e)(3).
36. Capital improvements needed to provide continuous and adequate service to the requested area will be paid for by the City's net income and ability to issue revenue bonds.
37. The City has sufficient cash and net operating income available to cover possible future shortages, which provides an indication of financial stability and financial and managerial capabilities, and thus meets the operations test.
38. The City 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 the City to provide a bond or other financial assurance to ensure continuous and adequate service.

**Regionalization and Consolidation – TWC § 13.241(b); 16 TAC §24.227(b)**

40. The construction of a physically separate system is not necessary for the City to serve the requested area. Therefore, concerns of regionalization or consolidation are not applicable.

**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)**

41. Markout is currently serving the existing customers in the requested area with existing facilities and has sufficient capacity.

42. The City will be installing an interconnection to fully integrate the requested area into the City's water system.

43. It is not feasible to obtain service from another neighboring retail public utility.

**Environmental Integrity and Effect on Land – TWC §§ 13.246(c)(7), (c)(9); 16 TAC §§ 24.227(e)(7), (e)(9), 24.239(h)(5)(G)**

44. The environmental integrity of the land will be minimally affected when the interconnect is installed to fully integrate the requested area into the City's water system.

**Improvement of Service or Lowering of Cost to Customers – TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)**

45. The City will continue to provide water service to the existing customers in the requested area.

46. There will be no change in the quality of service to the customers.

47. The City expects the Markout customers to be paying lower rates when the Markout customers are fully integrated into the City's water system.

**II. Conclusions of Law**

The Commission makes the following conclusions of law.

1. The Applicants provided notice of the application that complies 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), the City demonstrated adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area as required by TWC § 13.301(b).
3. The Applicants have demonstrated that the transfer of Markout's water facilities, and the transfer of water service area held under CCN number 10846 and customers from Markout to the City 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 transfer is approved and the transaction between Markout and the City 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. The applicants 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 the applicants will have to reapply for approval.

5. The Applicants are advised that the 6,279-acre requested area will remain under water CCN number 10846 and be held by Markout 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 \_\_\_\_\_ day of May 2021.

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**ISSAC TA  
ADMINISTRATIVE LAW JUDGE**