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DOCKET NO. 52290

APPLICATION OF EVAN STANTON § PUBLIC UTILITY COMMISSION
FOR SALE, TRANSFER, OR MERGER §
OF EXEMPT UTILITY § OF TEXAS
REGISTRATION §

**COMMISSION STAFF’S COMMENTS ON THE APPLICATION AND APPLICABLE
LAW, RECOMMENDATION ON NOTICE, AND PROPOSED PROCEDURAL
SCHEDULE**

On January 15, 2021, Garth Duncan and Rhonda Hardin and Evan Stanton (collectively, Applicants) filed what appears to be an application for the Sale, Transfer, or Merger (STM) of an exempt utility and associated registration number N0059.

On July 9, 2021, the administrative law judge (ALJ) filed Order No. 1, requiring the Staff (Staff) of the Public Utility Commission of Texas (Commission), to file comments regarding this application, recommendations regarding notice and under what applicable law this proceeding was filed and would be processed, and to propose a procedural schedule, if appropriate, by July 30, 2021. Therefore, this pleading is timely filed.

**I. COMMENTS ON THE APPLICATION, APPLICABLE LAW, AND FURTHER
PROCESSING**

The limited situations in which a certificate of convenience and necessity (CCN) is not required are outlined in 16 Texas Administrative Code (TAC) § 24.229. Included therein are the steps for a utility to cancel a current CCN upon written request by a presently exempt utility. However, the rules are silent as to what steps must be taken for an exempt utility to cancel or transfer its registration. At most, 16 TAC § 24.229(e)(8) states, “Unless authorized in writing by the commission, an exempt water utility or water supply corporation may not cease operation.”¹

The Applicants appear to have filed this application under 16 TAC § 24.239. However, 16 TAC § 24.239 is not applicable to exempt utilities. Specifically, 16 TAC § 24.239(a) states “Any water supply or sewer service corporation, or water and sewer utility, owned by an entity *required to possess a certificate of convenience and necessity (CCN)* must, and a retail public utility that possesses a CCN may, file a written application with the commission and give public notice of any sale, transfer, merger, consolidation, acquisition, lease, or rental at least 120 days

¹ 16 TAC § 24.229(e)(8).

before the effective date of the transaction.”² Further, the focus in an STM application is on the purchaser’s ability to provide continuous and adequate water service and requires an analysis of the factors in TWC § 13.246(c). Neither of the Applicants hold or are required to hold a CCN. As, such Staff recommends that the STM process under the 16 TAC § 24.239 is not appropriate and unduly burdensome for this transaction.

This docket is very similar in nature to the transaction proposed in Docket No. 50501, *Application of Kenneth V. Land to Cancel an Exempt Utility Registration and of Greg Coburn to Obtain an Exempt Utility Registration*. In Docket No. 50501, the sale and transfer was processed as a relinquishment of an exempt utility registration by the transferor, and as a registration for an exempt utility registration by the transferee.³ In order to effectuate the transfer in this docket, Staff recommends that Garth Duncan and Rhonda Hardin file an affidavit expressing their intent to cancel exempt utility registration number N0059. Staff also recommends that Evan Stanton be directed to file a completed Public Utility Commission of Texas Application for Exempt Utility Registration form and provide notice.

In regard to the contents of Evan Stanton’s application, Staff has reviewed the application as filed and, recommends that Mr. Stanton be required to address the mapping deficiencies and provide the clarifying information described in the attached memorandum of Patricia Garcia, Infrastructure Division.

II. REQUEST TO RESTYLE

Staff requests that this docket be restyled as the *Petition of Garth Duncan and Rhonda Hardin to Cancel an Exempt Utility Registration and of Evan Stanton to Obtain an Exempt Utility Registration*.

III. PROCEDURAL SCHEDULE

Consistent with Staff’s above recommendation, Staff does not propose a procedural schedule at this time. Instead, Staff recommends that Evan Stanton be given a deadline of August 30, 2021 to file the exempt utility registration form, that Garth Duncan and Rhonda

² 16 TAC § 24.239(a) (emphasis added).

³ *Application of Kenneth V. Land to Cancel an Exempt Utility Registration and of Greg Coburn to Obtain an Exempt Utility Registration*, Docket No 50501, Order No. 7 (Sep. 24, 2020).

Hardin be given a deadline of August 30, 2021 to file an affidavit expressing their intent to relinquish exempt utility registration number N0059, and that Staff be given a deadline of September 30, 2021 to file a recommendation on sufficiency of the application. Staff will provide a recommendation on notice along with a subsequent recommendation that the application be found sufficient.

IV. CONCLUSION

For the reasons discussed above, Staff respectfully recommends that the application be processed as an application to cancel Garth Duncan and Rhonda Hardin's exempt utility registration N0058; and register the exempt utility in question in Evan Stanton's name under a new registration number. Staff further recommends that the procedural schedule proposed above be adopted for further processing of this docket.

Dated: July 30, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ John Harrison
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DOCKET NO. 52290

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 July 30, 2021 in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ John Harrison
John Harrison

Public Utility Commission of Texas

Memorandum

TO: John Harrison, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: July 30, 2021

RE: Docket No. 52290 – *Application of Evan Stanton for Sale, Transfer, or Merger of Exempt Utility Registration*

On January 15, 2021, Garth Duncan and Rhonda Hardin and Evan Stanton (Mr. Stanton) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities of an exempt utility in Erath County, Texas, under 16 Texas Administrative Code (TAC) § 24.229. Under 16 TAC § 24.229(e), a utility is exempt from the requirement to possess a certificate of convenience and necessity (CCN) in order to provide retail water service if it has less than 15 potential service connections.

Specifically, Mr. Stanton seeks approval to acquire facilities and to transfer all of the water service area from Lone Oak Water under exempt utility registration number N0059.

Based on the mapping review by Tracy Montes, Infrastructure Division, and my technical and managerial review of the information filed by Mr. Stanton, I recommend that the application be deemed administratively incomplete and not accepted for filing due to the deficiencies detailed below:

Mapping Content:

The mapping documentation submitted is deficient. The map provided only provided a general location of the public water well. Lone Oak Water must provide a detailed map and a shapefile that clearly identifies the outer boundary of the requested area.

Mr. Stanton must submit the following items to resolve the mapping deficiencies:

- A detailed map identifying only the requested area, in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads.
- Digital mapping data for the requested area, as a single polygon record, in shapefile (SHP) format, georeferenced in either NAD83 Texas Statewide Mapping System (Meters) or NAD83 Texas State Plane Coordinate System (US Feet).

Staff recommends Mr. Stanton obtain additional mapping guidance from the Commission's mapping staff, Ms. Tracy Montes by email at tracy.montes@puc.texas.gov to resolve the mapping deficiencies.

Additional Information:

The Applicants must confirm whether Lone Oak Water is the name of a subdivision or the name of a public or non-public water system registered with the Texas Commission on Environmental Quality. If it is a public water system, then Applicants must provide the TCEQ identification number.