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Filing Date - 2023-05-30 03:12:38 PM

Control Number - 52502

Item Number - 109

DOCKET NO. 52502

APPLICATION OF TEXAS WATER	§	PUBLIC UTILITY COMMISSION
SYSTEMS, INC. AND UNDINE TEXAS,	§	
LLC FOR SALE, TRANSFER, OR	§	OF TEXAS
MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS IN GREGG,	§	
HENDERSON, SMITH, AND UPSHUR	§	
COUNTIES	§	

ORDER NO. 24
MAKING A DETERMINATION TO HOLD A HEARING AND REQUIRING
SUPPLEMENTAL INFORMATION, RECOMMENDATION FROM COMMISSION
STAFF, AND MOTION TO ADMIT THE ADDITIONAL INFORMATION

This Order addresses the need for Texas Water Systems, Inc. and Undine Texas, LLC to supplement the application, for Commission Staff to file a supplemental recommendation, and for the parties to move to admit the additional information into the record. During the Commission's May 11, 2023 open meeting, the Commission discussed certain aspects of sale, transfer, or merger applications.¹ Specifically, Commissioner Jackson filed a memorandum in Docket No. 51646² stating that more evidence was needed regarding the capital improvements plan, notice, and mapping, among other issues. These issues were incorporated into the Commission's order remanding the proceeding to Docket Management.

Capital Improvements Plan

Under Texas Water Code (TWC) § 13.244(d)(3) and 16 Texas Administrative Code (TAC) § 24.233(a)(6), an applicant for a certificate of convenience and necessity (CCN) or amendment to a CCN must provide a capital improvement plan, which must include a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area and must be keyed to a map showing where the facilities will be located to provide

¹ Open Meeting at 1:22 (May 11, 2023), Item No. 2 (available at https://www.adminmonitor.com/tx/puct/open_meeting/202305112/).

² Application of Waters of Vista Ranch Water Supply Corporation and Aqua Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fayette County, Docket No. 51646 (pending).

service.³ A pro forma budget is not a capital improvement plan under the TWC or the Commission's rules.⁴

After review of the application, the administrative law judge (ALJ) has determined that the materials in the application do not constitute a capital improvements plan that meets the Commission's expectations or the requirements of TWC § 13.244(d)(3) or 16 TAC § 24.233(a)(6).

By June 16, 2023, the applicants must file a capital improvements plan conforming with the Commission's discussions in Docket Nos. 51646 and 52391⁵ and the requirements in TWC § 13.244(d)(3) and 16 TAC § 24.233(a)(6).

By June 30, 2023, Commission Staff must file a recommendation on whether the applicants' capital improvement plan satisfies the requirements of the Commission, TWC § 13.244(d)(3), and 16 TAC § 24.233(a)(6).

Loan Documentation

The requirements of 16 TAC § 24.11(e)(5) apply either when an applicant is proposing service to a new CCN area or a substantial addition to its current CCN area requiring capital improvements in excess of \$100,000. Under 16 TAC § 24.11(e)(5)(A), for a sale, transfer, or merger application, the owner must submit loan approval documents indicating funds are available for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers.

It is unclear in the materials provided by the applicants whether capital improvements in excess of \$100,000 are required for the systems at issue. If capital improvements in excess of \$100,000 are required, the applicants must provide, by June 16, 2023, loan documentation in accordance with 16 TAC § 24.11(e)(5)(A) or request a good cause exception under 16 TAC § 24.2(b).

By June 30, 2023, Commission Staff must file a recommendation on the loan documentation or the request for a good cause exception.

³ *Application of Liberty County Utilities, LLC for Water and Sewer Certificates of Convenience and Necessity in Liberty County*, Docket No. 52391, Order Remanding Proceeding to Docket Management at 2 (Oct. 20, 2023).

⁴ *Id.*

⁵ *Id.*, Corrected Order (Feb. 22, 2023).

Notice

Under 16 TAC § 24.239(e)(1), notice of a sale, transfer, or merger application must be provided to affected customers and other affected parties. Under TWC § 13.246(a-1) and 16 TAC § 24.235(b)(2), notice of an application for an amendment to a CCN must be mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified.

By June 16, 2023, applicants must file an affidavit that notice has been mailed by first-class mail to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified according to the most current tax appraisal rolls of the applicable central appraisal district at the time the Commission received the application for the sale, transfer, or merger application. Further, applicants must supplement their proof of notice by providing a copy of applicable appraisal district maps overlaid with the requested area, a list of the landowners with properties wholly or partially in the requested area, and the acreage owned by each listed owner. If there are no landowners with a tract of land that is at least 25 acres and is wholly or partially included in the requested area, applicants must file an affidavit confirming the same.

By June 30, 2023, Commission Staff must file a supplemental recommendation on the applicants' supplemented notice.

Notice of Hearing

The ALJ believes it is appropriate to present the issues associated with 16 TAC § 24.11(e)(5) in the sale, transfer, or merger context to the Commission for its consideration. Therefore, if it is appropriate to do so, the ALJ intends to file a proposed interim order approving sale for the Commission's consideration. To give the parties time to make the supplemental filings required by this Order and to give the Commission time to properly consider this matter, and in accordance with TWC § 13.301(e), this Order serves as notice to the parties and to the Office of Public Utility Counsel that the Commission has determined that it will hold a hearing to determine if the transaction will serve the public interest. The determination to hold a hearing may be withdrawn following the Commission's consideration of the proposed interim order approving sale.

Signed at Austin, Texas the 30th day of May 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read "J. Huhn", written over a horizontal line.

JEFFREY J. HUHN
ADMINISTRATIVE LAW JUDGE