



## Filing Receipt

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**DOCKET NO. 52616**

<b>APPLICATION OF AUS-TEX PARTS &amp; SERVICES, LTD. AND RAILYARD UTILITY COMPANY, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN HAYS COUNTY</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
	<b>§</b>	
	<b>§</b>	<b>OF TEXAS</b>
	<b>§</b>	
	<b>§</b>	
	<b>§</b>	

**SUPPLEMENTAL JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING SALE AND ALLOWING TRANSACTION TO PROCEED**

On September 17, 2021, Aus-Tex Parts & Services, Ltd. (Aus-Tex) and Railyard Utility Company, LLC (Railyard Utility) (collectively, the Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Hays County. Specifically, Railyard Utility seeks approval to acquire facilities and to transfer sewer service area held under Aus-Tex’s sewer certificate of convenience and necessity (CCN) No. 20875. Railyard Utility is seeking to retain Aus-Tex’s sewer CCN No. 20875. The requested sewer service area includes approximately 206 acres and 354 customer connections.

On April 8, 2022, the administrative law judge (ALJ) filed Order No. 7, establishing a deadline of April 18, 2022 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) and the Applicants (collectively, the Parties) to clarify whether the shape files should be admitted into evidence and if so, to file a motion to admit the additional evidence. Additionally, the Parties file this supplemental joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed to reflect Staff’s supplemental recommendation on the transaction which was filed on April 22, 2022. Therefore, this pleading is timely filed.

**I. MOTION TO ADMIT EVIDENCE**

The Parties move to admit the following evidence into the record of this proceeding:

- A. Applicants’ application for sale, transfer, or merger of facilities, filed on September 17, 2021 (Interchange Item No. 1);
- B. Applicants’ confidential asset purchase agreement and Railyard Utility’s projected financial information bate stamped 000001 to 000172, filed on September 17, 2021 (Interchange Item No. 2);

- C. Applicants' Digital Shape Files, filed on September 17, 2021 (Interchange Item No. 3);
- D. Staff's recommendation on administrative completeness and proposed notice, filed on October 15, 2021 (Interchange Item No. 5);
- E. Railyard Utility's Response to Order No. 2, filed on November 10, 2021 (Interchange Item No. 7);
- F. Staff's supplemental recommendation on administrative completeness and proposed notice, filed on November 22, 2021 (Interchange Item No. 8);
- G. Railyard Utility's confidential affiliate financial statement bates stamped 000194 to 000197, filed on November 23, 2021 (Interchange Item No. 10);
- H. Affiliate BVRT Utility Holding Company, LLC's affidavit on behalf of Railyard Utility, filed on December 15, 2021 (Interchange Item No. 11);
- I. Railyard Utility's affidavit of notice, filed on December 16, 2021 (Interchange Item No. 12);
- J. Staff's recommendation on sufficiency of notice, filed on January 4, 2022 (Interchange Item No. 13);
- K. Railyard Utility's response to Staff's First Requests for Information, including confidential operating agreement and additional affiliate financial statements bates stamped 0000198 to 000231, filed on February 23, 2022 (Interchange Item Nos. 16 and 17);
- L. Staff's recommendation on the transaction, including confidential Attachment FB-1, filed on March 4, 2022 (Interchange Item Nos. 20 and 21); and
- M. Staff's supplemental recommendation on the transaction, filed on April 22, 2022 (Interchange Item No. 29)

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

The Parties respectfully request the approval of the attached Supplemental Joint Proposed Order Approving Sale and Allowing Transaction to Proceed, which would: authorize the

transfer of all of the sewer service and facilities held under Aus-Tex's CCN No. 20875 to Railyard Utility and the transfer of CCN No. 20875 to Railyard Utility.

**III. CONCLUSION**

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the Order proposed by the Parties be adopted.

Dated: April 25, 2022

Respectfully Submitted,

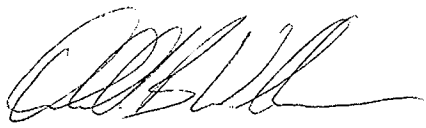
**PUBLIC UTILITY COMMISSION OF TEXAS  
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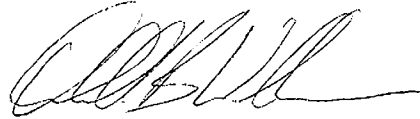
By:   
\_\_\_\_\_  
Randall B. Wilburn

**ATTORNEYS FOR RAILYARD UTILITY  
COMPANY, LLC**

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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 April 25, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

A handwritten signature in black ink, appearing to be 'C. B. M.', written over a horizontal line.

**DOCKET NO. 52616**

<b>APPLICATION OF AUS-TEX PARTS &amp; SERVICES, LTD. AND RAILYARD UTILITY COMPANY, LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN HAYS COUNTY</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
	<b>§</b>	
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	<b>§</b>	
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**SUPPLEMENTAL PROPOSED ORDER APPROVING SALE AND ALLOWING TRANSACTION TO PROCEED**

This Order addresses the September 17, 2021 application of Aus-Tex Parts & Services, Ltd. (Aus-Tex) and Railyard Utility Company, LLC (Railyard Utility) (collectively, the Applicants) for approval of the sale, transfer, or merger of facilities and certificate rights in Hays County. The Applicants seek the sale and transfer of all facilities and service area held under Aus-Tex’s sewer certificate of convenience and necessity (CCN) No. 20875 to Railyard Utility, and to transfer Aus-Tex’s sewer CCN No. 20875 to Railyard Utility. The administrative law judge (ALJ) grants that the sale is approved and the transaction between Aus-Tex and Railyard Utility may proceed and be consummated.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicants**

1. Aus-Tex is a Texas limited partnership registered with the Texas secretary of state under file number 12969910.
2. Aus-Tex is an investor-owned utility that owns, operates, and controls facilities for providing sewer service under CCN No. 20875 in Hays County.
3. Aus-Tex owns and operates the Railyard Wastewater Treatment Facility authorized under Texas Pollutant Discharge Elimination System (TPDES) permit number WQ0014060001.
4. Railyard Utility is a limited liability company registered with the Texas secretary of state under file number 0804194436.

5. Railyard Utility is an investor-owned utility that will own, operate, and control facilities for providing sewer service in Hays County upon the consummation of the transaction between Aus-Tex and Railyard Utility.

### **Application**

7. On September 17, 2021, Aus-Tex and Railyard Utility filed the application at issue in this proceeding.
8. In the application, Aus-Tex and Railyard Utility seek approval of the following transaction: (a) Railyard Utility will acquire all of Aus-Tex's facilities and service area under sewer CCN No. 20875; (b) Aus-Tex's sewer CCN No. 20875 will be transferred to Railyard Utility.
9. On November 10, 2021, November 23, 2021, and December 15, 2021, the Applicants supplemented the application.
10. The requested area includes 354 customers and is comprised of a sewer service area of approximately 206 acres.
11. The area subject to this transaction is located approximately 3 miles north of the City of Umland, Texas, and is generally bounded on the north by Coronado Lane; on the east by Lonie Lane; on the south by and High Road; and on the west by Lilac Way.
12. In Order No. 3 filed on November 22, 2021, the ALJ deemed the supplemented application administratively complete.

### **Notice**

13. On December 16, 2021, the Applicants filed the affidavit of Mia Natalino, P.E., general manager for Railyard Utility, attesting that notice was provided to all current customers, neighboring utilities, and affected parties on December 10, 2021.
14. In Order No. 4 filed on January 5, 2022, the ALJ deemed the notice sufficient.

### **Evidentiary Record**

15. On March 31, 2022, the parties filed a joint motion to admit evidence.
16. On April 25, 2022, the parties filed a supplemental joint motion to admit evidence.



17. In Order No. 6 filed on \_\_\_\_\_, 2022, the ALJ admitted the following evidence into the record: (a) Applicants' application for sale, transfer, or merger of facilities, filed on September 17, 2021 (Interchange Item No. 1); (b) Applicants' confidential asset purchase agreement and Railyard Utility's projected financial information bate stamped 000001 to 000172, filed on September 17, 2021 (Interchange Item No. 2); (c) Applicants' Digital Shape Files, filed on September 17, 2021 (Interchange Item No. 3); (d) Staff's recommendation on administrative completeness and proposed notice, filed on October 15, 2021 (Interchange Item No. 5); (e) Railyard Utility's Response to Order No. 2, filed on November 10, 2021 (Interchange Item No. 7); (f) Staff's supplemental recommendation on administrative completeness and proposed notice, filed on November 22, 2021 (Interchange Item No. 8); (g) Railyard Utility's confidential affiliate financial statement bate stamped 000194 to 000197, filed on November 23, 2021 (Interchange Item No. 10); (h) Affiliate BVRT Utility Holding Company, LLC's affidavit on behalf of Railyard Utility, filed on December 15, 2021 (Interchange Item No. 11); (i) Railyard Utility's affidavit of notice, filed on December 16, 2021 (Interchange Item No. 12); (j) Staff's recommendation on sufficiency of notice, filed on January 4, 2022 (Interchange Item No. 13); (k) Railyard Utility's response to Staff's First Requests for Information, including confidential operating agreement and additional affiliate financial statements bate stamped 0000198 to 000231, filed on February 23, 2022 (Interchange Item Nos. 16 and 17); (l) Staff's recommendation on the transaction, including confidential Attachment FB-1, filed on March 4, 2022 (Interchange Item Nos. 20 and 21); and (m) Staff's supplemental recommendation on the transaction, filed on April 22, 2022 (Interchange Item No. 29).

### **System Compliance**

18. TCEQ transferred Aus-Tex's TPDES permit WQ0014060001 to Railyard Utility.
19. The last TCEQ compliance investigation of the Railyard Wastewater Treatment Facility was on June 19, 2018. Several violations or concerns were noted as a result of that investigation that have since been resolved.
20. The Commission's complaint records, which date back to 2017, show no complaints against Aus-Tex.

**Adequacy of Existing Service**

21. There are currently 354 sewer connections in the requested areas that are being served by Aus-Tex through its sewer system, TPDES permit number WQ0014060001, and such service has been continuous and adequate.
22. No additional construction is necessary for Railyard Utility to serve the requested areas.

**Need for Additional Service**

23. There are currently 354 existing customer connections in the requested area, which are currently served by Aus-Tex, and there is a need for those customers to continue receiving sewer service.
24. No additional service has been requested or is needed at this time.

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

25. Railyard Utility will become the certificated entity for the requested area and will be required to provide adequate and continuous sewer service to the requested areas.
26. There will be no effect on landowners as the area is currently certificated.
27. Because this application is to transfer only existing facilities, customers, and service areas, there will be no effect on any other retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction proposed in this application and did not request to intervene.

**Ability to Serve; Managerial and Technical**

28. BVRT Utility Holding Company, LLC (BVRT) is the parent company of Railyard Utility and owns several sewer CCNs currently in operation through which BVRT has experience in providing continuous and adequate service<sup>1</sup>.
29. BVRT will provide assistance to Railyard Utility in the operations of the utility.
30. The Railyard WWTP has Wastewater Discharge Permit No. WQ-0014060001.
31. The date of the last TCEQ compliance inspection was June 19, 2018.
32. Railyard Utility will have two licensed operators to run the system operations.

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<sup>1</sup> Mustang Plaza (CCN 20953), Windy Hill Utility Co. (CCN 21101), Forest Glen Utility (CCN 21070), and Zip Road Utility Company LLC (CCN 21098).

33. A Class B operator (License No. WW0019983) and Class D operator (License No. WW0045585) will be the responsible operators.

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

34. Aus-Tex is currently serving customers in the requested area, and there will be no changes to land uses or existing CCN boundaries.
35. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities would need to be constructed; at a minimum, an interconnect would need to be installed.
36. Retail public utilities in the proximate area received notice of the application and none intervened, protested, or requested a hearing.
37. It is not feasible to obtain service from an adjacent retail public utility.

**Ability to Serve; Financial Ability and Stability**

38. Railyard Utility's parent company, BVRT, has a debt-to-equity ratio of less than one, satisfying the leverage test.
39. BVRT submitted historical financial statements with the application and is capable, available, and willing to cover temporary cash shortages to cover any operations and maintenance shortages in the next five years of operations and to pay for any future improvements needed to provide continuous and adequate service to the requested area satisfying the operations test.
40. Railyard Utility, through its affiliate, has demonstrated the financial ability and financial stability to provide continuous and adequate service to the requested area.

**Financial Assurance**

41. There is no need to require Railyard Utility to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

**Environmental Integrity and Effect on the Land**

42. The environmental integrity of the land will not be affected as no additional construction is needed to provide water or sewer service to the requested areas.

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

43. Railyard Utility will continue to provide sewer service to existing customers at the same rates charged by Aus-Tex immediately following the transfer.
44. The quality of service for transferred Aus-Tex customers will remain high.
45. There will be no change in the quality or cost of service to Aus-Tex's sewer system customers as a result of the transaction.

**Regionalization or Consolidation**

46. The construction of physically separate wastewater system is not needed to serve the requested area; therefore, concerns about regionalization or consolidation do not apply.

**II. Conclusions of Law**

The Commission makes the following conclusions of law:

1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2) and 16 Texas Administrative Code (TAC) § 24.239.
2. After consideration of the factors in TWC § 13.246(c), Railyard Utility has demonstrated adequate financial, managerial, and technical capability to provide adequate and continuous service to the requested area. TWC § 13.301(b).
3. Aus-Tex and Railyard Utility demonstrated that the sale of Aus-Tex's sewer facilities and the service area under sewer CCN No. 20875 to Railyard Utility 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 sale and transfers proposed in the application are approved and the transaction between Aus-Tex and Railyard Utility 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 § 24.239(m), if the transaction is not consummated within this 180-day period, or an extension is not granted, this approval is void and the applicants will have to reapply for approval.
5. The applicants are advised that the requested sewer service area and associated facilities will remain under CCN No. 20875 and be held by Aus-Tex until the sale and transfer transactions are complete in accordance with Commission rules.
6. In an effort to finalize this case as soon as possible, the applicants must 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, on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.**

**PUBLIC UTILITY COMMISSION OF TEXAS**

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**CHRISTINA DENMARK  
ADMINISTRATIVE LAW JUDGE**