



Filing Receipt

Received - 2022-08-11 09:08:03 AM
Control Number - 52616
ItemNumber - 37

DOCKET NO. 52616

| | | |
|---|--|--|
| APPLICATION OF AUS-TEX PARTS & SERVICES, LTD. AND RAILYARD UTILITY COMPANY, LLC FOR SALE, TRANSFER, MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN HAYS COUNTY | § § § § § § | BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS |
|---|--|--|

RESPONSE TO ORDER NO. 13

COME NOW, Aus-Tex Parts & Services, Ltd. and Railyard Utility Company, LLC (“Applicants”) and submit this Response to Order No. 13 and in support thereof, would respectfully show the following:

I. BACKGROUND

On September 17, 2021, Applicants filed their Application for Sale, Transfer, Merger of Facilities and Certificate Rights in Hays County (“STM”) with the Public Utility Commission of Texas (“Commission”). On April 26, 2022, the Commission Administrative Law Judge (“ALJ”) issued Order No. 11 ordering that the sale and transaction may be proceed. Thereafter in Order No. 12, the Commission ALJ required Applicants to file proof of the consummation of the sale, transfer, merger transaction. After Applicants filed proof of consummation of the transaction, Commission Staff filed its Recommendation on Sufficiency of Closing Documents on August 8, 2022 that the closing documents be found sufficient. However, later on August 8, the Commission ALJ issued Order No. 13 finding that Applicants’ closing documents were insufficient and establishing a deadline of August 22, 2022 to file a supplement addressing identified deficiencies. Therefore, this pleading is timely filed.

II. NO CUSTOMER DEPOSITS TO RETURN

Title 16 Texas Administrative Code (“TAC”) § 24.239(l) states the following:

Within 30 days after the actual effective date of the transaction, the transferee and the transferor must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed. The signed contract, bill of sale, or other documents, must be signed by both the transferor and

the transferee. ***If there were outstanding customer deposits***, the transferor and the transferee must also file documentation that customer deposits have been transferred or refunded to the customers with interest as required by this section.¹

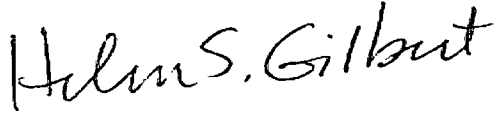
Pursuant to the plain meaning of Commission rules, documentation must be filed only if there were customers deposits. As sworn to by both transferor and transferee, none of the 354 customers had deposited any funds with transferor. As shown in the record under Part B, Question No. 5 of the STM Application, the 354 customers will transfer to transferee, and transferor has **no** customer deposits.² No deposits exist to transfer or refund; therefore, there is nothing further to document. Accordingly, Applicants addressed the issue of customer deposits in the record.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Applicants respectfully pray that the Commission ALJ find the closing documents sufficient and continue processing this docket to issuance of the STM and for any further relief to which they are entitled.

Respectfully submitted,

Randall B. Wilburn
State Bar No. 24033342
Helen S. Gilbert
State Bar No. 00786263
BARTON BENSON JONES PLLC
7000 N. MoPac Expwy, Suite 200
Austin, Texas 78731
Telephone: (210) 640-9174
Telecopier: (210) 600-9796

By: 

Helen S. Gilbert

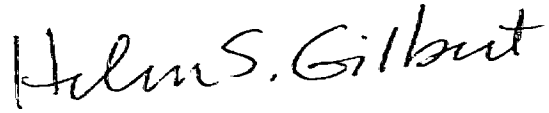
**ATTORNEYS FOR RAILYARD
UTILITY COMPANY, LLC**

¹ 16 TAC § 24.239(l) (emphasis added).

² See Attachment A, Application for STM at 4 (Sept. 17, 2021) (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that I have or will serve a true and correct copy of the foregoing document via hand delivery, facsimile, electronic mail, overnight mail, U.S. mail, or Certified Mail Return Receipt Requested on all parties on the 11th of August 2022.



Helen S. Gilbert

ATTACHMENT A



Filing Receipt

Received - 2021-09-17 01:49:06 PM
Control Number - 52616
ItemNumber - 1



Application for Sale, Transfer, or Merger of a Retail Public Utility

Pursuant to Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239

Sale, Transfer, or Merger (STM) Application Instructions

- I. **COMPLETE:** In order for the Commission to find the application sufficient for filing, the Applicant should:
 - i. Provide an answer to every question and submit any required attachment applicable to the STM request (i.e., agreements or contracts).
 - ii. Use attachments or additional pages to answer questions as necessary. If you use attachments or additional pages, reference their inclusion in the form.
 - iii. Provide all mapping information as detailed in Part G: Mapping & Affidavits.
- II. **FILE:** Seven (7) copies of the completed application with numbered attachments. One copy should be filed with no permanent binding, staples, tabs, or separators; and 7 copies of the portable electronic storage medium containing the digital mapping data.
 - i. **SEND TO:** Public Utility Commission of Texas, Attention: Filing Clerk, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 (NOTE: Electronic documents may be sent in advance of the paper copy, however they will not be processed and added to the Commission's on-line Interchange until the paper copy is received and file-stamped in Central Records).
- III. The application will be assigned a docket number, and an administrative law judge (ALJ) will issue an order requiring Commission Staff to file a recommendation on whether the application is sufficient. The ALJ will issue an order after Staff's recommendation has been filed:
 - i. **DEFICIENT (Administratively Incomplete):** Applicants will be ordered to provide information to cure the deficiencies by a certain date, usually 30 days from ALJ's order. *Application is not accepted for filing.*
 - ii. **SUFFICIENT (Administratively Complete):** Applicants will be ordered by the ALJ to give appropriate notice of the application using the notice prepared by Commission Staff. *Application is accepted for filing.*
- IV. Once the Applicants issue notice, a copy of the actual notice sent and an affidavit attesting to notice should be filed in the docket assigned to the application. Recipients of notice may request a hearing on the merits.

HEARING ON THE MERITS: An affected party may request a hearing within 30 days of notice. In this event, the application may be referred to the State Office of Administrative Hearings (SOAH) to complete this request.
- V. **TRANSACTION TO PROCEED:** at any time following the provision of notice, or prior to 120 days from the last date that proper notice was given, Commission Staff will file a recommendation for the transaction to proceed as proposed or recommend that the STM be referred to SOAH for further investigation. The Applicants will be required to file an update in the docket to the ALJ every 30 days following the approval of the transaction. The transaction must be completed within six (6) months from the ALJ's order (Note: The Applicants may request an extension to the 6 month provision for good cause).
- VI. **FILE:** Seven (7) copies of completed transaction documents and documentation addressing the transfer or disposition of any outstanding deposits. After receiving all required documents from the Applicants, the application will be granted a procedural schedule for final processing. The Applicants are requested to consent in writing to the proposed maps and certificates, or tariff if applicable.
- VII. **FINAL ORDER:** The ALJ will issue a final order issuing or amending the applicable CCNs.

FAQ:

Who can use this form?

Any retail public utility that provides water or wastewater service in Texas.

Who is required to use this form?

A retail public utility that is an investor owned utility (IOU) or a water supply corporation (WSC) prior to any STM of a water or sewer system, or utility, or prior to the transfer of a portion of a certificated service area.

Terms

Transferor: Seller

Transferee: Purchaser

CCN: Certificate of Convenience and Necessity

STM: Sale, Transfer, or Merger

IOU: Investor Owned Utility

ATTACHMENT A

5. For the customers that will be transferred following the approval of the proposed transaction, check all that apply:

- ☐ There are no customers that will be transferred
- ☒ # of customers without deposits held by the transferor 354
- ☐ # of customers with deposits held by the transferor*

*Attach a list of all customers affected by the proposed transaction that have deposits held, and include a customer indicator (name or account number), date of each deposit, amount of each deposit, and any unpaid interest on each deposit.

Part C: Transferee Information

Questions 6 through 10 apply only to the transferee (purchaser or proposed service provider)

6. A. Name: Railyard Utility Company LLC
(individual, corporation, or other legal entity)
- ☐ Individual ☐ Corporation ☐ WSC ☒ Other: Limited Liability Company SOS 0804194436

B. Mailing Address: P.O. Box 701201 San Antonio, TX 78270

Phone: (210) 209-8029 Email: mian@bvrwater.com

- C. **Contact Person.** Provide information about the person to be contacted regarding this application. Indicate if this person is the owner, operator, engineer, attorney, accountant, or other title.

Name: Mia Natalino Title: General Manager

Address: P.O. Box 701201 San Antonio, TX 78270

Phone: (210) 209-8029 Email: mian@bvrwater.com

- D. If the transferee is someone other than a municipality, is the transferee current on the Regulatory Assessment Fees (RAF) with the Texas Commission on Environmental Quality (TCEQ)?

☐ No ☒ Yes ☐ N/A

- E. If the transferee is an IOU, is the transferee current on the Annual Report filings with the Commission?

☐ No ☒ Yes ☐ N/A

7. The legal status of the transferee is:

- ☐ Individual or sole proprietorship
- ☐ Partnership or limited partnership (*attach* Partnership agreement)
- ☐ Corporation |

Charter number (as recorded with the Texas Secretary of State):

- ☐ Non-profit, member-owned, member controlled Cooperative Corporation [Article 1434(a) Water Supply or Sewer Service Corporation, incorporated under TWC Chapter 67]

Charter number (as recorded with the Texas Secretary of State):

☐ Articles of Incorporation and By-Laws established (*attach*)

- ☐ Municipally-owned utility

- ☐ District (MUD, SUD, WCID, FWSD, etc.)