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DOCKET NO. 52628

**APPLICATION OF TRITON TEXAS § PUBLIC UTILITY COMMISSION
HOLDINGS LLC FOR APPROVAL OF §
CHANGES IN OWNERSHIP UNDER § OF TEXAS
TEXAS WATER CODE § 13.302 §**

COMMISSION STAFF'S FINAL RECOMMENDATION

On September 22, 2021, Triton Texas Holdings LLC (TTH), along with The Kauffman Family Living Trust, dated April 9, 2015, Disciple Asset Holdings, LP, and Malakoff Family Holdings, LP (the Interest Holders) (collectively, the Applicants), filed an application for a change in ownership of Horseshoe Bend Water Company LLC (Horseshoe Bend) and Lone Star Water Company (Lone Star) under Texas Water Code (TWC) § 13.302 and 16 Texas Administrative Code (TAC) § 24.243. The application originally sought approval for a “two-step” transaction, under which Triton Utilities, Inc. (TUI) would transfer ownership interests in Horseshoe Bend and Lone Star to the Interest Holders in one transaction, who would then transfer ownership interests to TTH in a second transaction immediately after the first. On October 20, 2021, TTH filed an amended application specifying that the Interest Holders will no longer be parties to the proposed application. Instead, under the amended application, TUI would transfer ownership interests in Horseshoe Bend and Lone Star in a “one-step” transaction directly to TTH.

The administrative law judge (ALJ) filed Order No. 4 on December 1, 2021, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a final recommendation on the application or request a hearing by December 6, 2021. Therefore, this pleading is timely filed.

I. ADMINISTRATIVE COMPLETENESS

As detailed in the attached memorandum by Leila Guerrero of the Commission's Rate Regulation Division, Staff has reviewed the application and recommends that it be approved. Staff's review indicates that TTH has demonstrated the financial, managerial, and technical capability to provide continuous and adequate service after the change in ownership is consummated.

V. CONCLUSION

For the reasons discussed above, Staff respectfully recommends that the application be approved and requests the entry of an order consistent with these recommendations.

Dated: December 6, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 December 6, 2021, in accordance with the Order Suspending Rules issued in Project No. 50664.

/s/ Forrest Smith
Forrest Smith

Public Utility Commission of Texas

Memorandum

TO: Forrest Smith, Attorney
Legal Division

FROM: Leila Guerrero, Regulatory Accountant
Rate Regulation Division

DATE: December 6, 2021

SUBJECT: **Docket No. 52628** – *Application of Triton Texas Holdings, LLC for Approval of Changes in Ownership Under Texas Water Code § 13.302*

On September 22, 2021, Triton Texas Holding LLC (TTH), The Kauffman Family Living Trust, dated April 9, 2015, Disciple Asset Holdings, LP, and Malakoff Family Holdings, LP, (the Interest Holders) (collectively, Applicants) filed a request for approval of changes in ownership of Horseshoe Bend Water Company LLC (Horseshoe Bend), which provides water utility service to customers in Hood and Parker Counties, under water Certificate of Convenience and Necessity Number (CCN) 10263, and Lone Star Water Company (Lone Star), which provides water utility service to customers in Denton County under water CCN No. 13279.¹ TTH ultimately seeks approval to acquire 100% of the issued and outstanding limited liability company interests of Horseshoe Bend and 100% of the issued and outstanding shares of Lone Star stock after an initial temporary transfer of the interests from Triton Utilities, Inc. to Kauffman Family Living Trust, Disciple Asset Holdings, and Malakoff Family Holdings. I have conducted an administrative review of the application according to Texas Water Code (TWC) § 13.302(a) through (c), 16 Texas Administrative Code (TAC) §§ 24.243(a) through (c) and 24.11(e).

The application originally sought approval for a "two-step" transaction, under which Triton Utilities, Inc. (TUI) would transfer ownership interests in Horseshoe Bend and Lone Star to the Interest Holders in one transaction, who would then transfer ownership interests to TTH in a second transaction immediately after the first. On October 20, 2021, TTH filed an amended application specifying that the Interest Holders will no longer be parties to the proposed application.² Instead, under the amended application, TUI would transfer ownership interests in Horseshoe Bend and Lone Star in a "one-step" transaction directly to TTH.

Based on my review, I recommend that the Applicants demonstrate the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by the Applicants before the date of this memorandum and may not reflect any changes in the Applicants' status after this review.

¹ *Application of Triton Texas Holdings LLC, The Kauffman Family Living Trust, Dated April 9, 2015, Disciple Asset Holdings, LP, and Malakoff Family Holdings, LP, for Approval of Changes in Ownership Under Texas Water Code § 13.302* (Sep. 22, 2021).

² *Amended Application for Approval of Changes in Ownership Under Texas Water Code § 13.302* (Oct. 20, 2021).

I applied the standard set forth in 16 TAC § 24.243(b) which states that a person acquiring a controlling interest in a utility is required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and to the person's certificated service area, if any. I also applied the standards set forth in 16 TAC §§ 24.11(e)(1), (e)(2)(B), and (e)(3).

Financial Assurance

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 TAC § 24.11. The Applicants must demonstrate that they meet one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage test

Based upon my review of the Applicants' financial statements and as shown below, I calculate debt service equal to 5.68 for Horseshoe Bend and 1.97 for Lone Star. The debt service coverage ratio is net operating income (before depreciation and non-cash expenses) divided by annual debt service. Because the ratio is greater than 1.25, the Applicants meet the leverage test specified in 16 TAC § 24.11(e)(2)(B).

	Horseshoe Bend Income Statement For the 12 months ending September 30, 2021 ³	Lone Star Income Statement For the 12 months ending December 31, 2020 ⁴
Net Operating Income	\$ [REDACTED]	\$ [REDACTED]
Add: Depreciation	[REDACTED]	[REDACTED]
Total	[REDACTED]	\$ [REDACTED]
Annual Loan Principal and Interest Payments	(\$ [REDACTED] ⁵)	(\$ [REDACTED] ⁶)
Debt Service Coverage Ratio	5.68 (Met)	1.97 (Met)

Operations test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations, as required by 16 TAC § 24.11(e)(3). No operating shortages are expected in the future based on the historical profits of Horseshoe Bend and Lone Star.

³ Horseshoe Bend Water Company LLC, (Filed Confidentially) *Statement of Income, 12 Months Ending September 30, 2021* (Nov. 22, 2021).

⁴ *2019 Annual Reports of Water and Wastewater Utilities*, Project No. 51720, 2020 Annual Report (May 20, 2021).

⁵ Supplemental Financial Information, Debt Schedule, Exhibit B (Nov. 29, 2021).

⁶ *Id.*

In addition, TTH provided a certification of deposit from Chase Bank⁷ and Mr. Paul Kauffman, the owner of TTH, also issued a Certificate of Assurance confirming the agreement and guarantee of Triton Texas Holdings LLC to cover any operations and/or maintenance shortages,⁸ if any, of Lone Star and Horseshoe Bend over the first five years of operations of each company.

I recommend that the Commission find that the change of ownership requested in this application is in the public interest and that the Commission approve the transaction.

⁷ *Id.*, at Exhibit C and D.

⁸ *Id.*, at Exhibit E.