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DOCKET NO. 52890

APPLICATION OF FLAT FORK	§	PUBLIC UTILITY COMMISSION
WATER SUPPLY CORPORATION	§	
AND CITY OF CENTER FOR SALE,	§	
TRANSFER, OR MERGER OF	§	OF TEXAS
FACILITIES AND CERTIFICATE	§	
RIGHTS IN SHELBY COUNTY	§	

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

On November 29, 2021, Flat Fork Water Supply Corporation (Flat Fork) and City of Center (Center) (jointly, Applicants) filed an application for approval of the sale, transfer, or merger of facilities in Shelby County. Applicants seek to acquire facilities and customers from Flat Fork WSC under water Certificate and Convenience No. 11711.

On July 26, 2022, the administrative law judge filed Order No. 10, establishing a deadline of September 2, 2022, for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on the approval of the sale and on the CCN amendment. Therefore, this pleading is timely filed.

I. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

Staff has reviewed the application and supplemental information and, as detailed in the attached memoranda of Jolie Mathis of the Infrastructure Division and Ethan Blanchard of the Rate Regulation Division, recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in Texas Water Code Chapter 13 and under 16 Texas Administrative Code Chapter 24. Additionally, based upon its review, Staff recommends that Center has demonstrated that it possesses the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transaction. Therefore, Staff recommends that the transaction will serve the public interest and should be allowed to proceed without a public hearing.

II. CONCLUSION

For the reasons stated above, Staff respectfully requests that an order be issued allowing the proposed transaction to proceed.

Dated: September 2, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Keith Rogas
Division Director

John Harrison
Interim Managing Attorney

/s/ Ian Groetsch
Ian Groetsch
State Bar No. 24078599
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7265
(512) 936-7268 (facsimile)
Ian.Groetsch@puc.texas.gov

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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 September 2, 2022, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Ian Groetsch
Ian Groetsch

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: September 2, 2022

RE: Docket No. 52890 – *Application of Flat Fork Water Supply Corporation and City of Center for Sale, Transfer, or Merger of Facilities and Certificate Rights in Shelby County*

1. Application

City of Center (Center) and the Flat Fork Water Supply Corporation (Flat Fork WSC) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities in Shelby County, Texas, pursuant to Texas Water Code (TWC) and § 13.301 and 16 Texas Administrative Code (TAC) and § 24.239.

Specifically, Center, certificate of convenience and necessity (CCN) No. 10397, seeks approval to acquire and transfer facilities from Flat Fork WSC under water CCN No. 11711. Neither Center nor Flat Fork WSC is seeking to amend their CCN. Center provides service to 39 connections through the facilities which are owned by Flat Fork WSC through a provider agreement. This application will transfer the facilities to Center and remove the need for Flat Fork WSC to purchase water from Center.

2. Notice

Center provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was August 15, 2022; there were no motions to intervene, protests, or opt-out requests received.

3. Factors Considered

Under TWC §§ 13.241, 13.246, and 13.301 and 16 TAC §§ 24.11(e), 24.227, and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

- 3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(I)).*

Flat Fork WSC has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Flat Fork WSC, PWS ID No. TX2100007. The last TCEQ compliance investigation of the Flat Fork WSC system was on December 31, 2018. Flat Fork WSC does not have any violations listed in the TCEQ database. The Commission's complaint records, which date back to 2017, show no complaints against Flat Fork WSC.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).*

There are currently 39 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).*

Center will be the certificated entity for the requested area and be required to provide continuous and adequate service to the requested area.

There will be no effect on landowners as the area is currently certificated.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).*

TCEQ rule, 30 TAC § 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed operator of a public water system may be an employee, contractor, or volunteer. Center plans to use a contract operator for plant operations, which would include one or more appropriately qualified and licensed operator(s). The contract operator(s) would be responsible for day-to-day inspections, checks, sampling, reporting, meter reading, and any necessary system repairs.

Center will have licensed operators to run the system operations. A Class B operator will be the responsible operator for the system.

Center has the ability to provide adequate service in the requested area. Center has a TCEQ approved PWS registered as City of Center, PWS ID No. TX2100001. Center has violations listed in the TCEQ database. In addition, the Commission's complaint records, which date back to 2017, show one complaint against Center.

- 3.5. *The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).*

The construction of a physically separate system is not necessary for Center to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

- 3.6 *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).*

Center is currently serving customers through a purchase water agreement with Flat Fork WSC. This application contemplates the transfer of the facilities to Center who is an adjacent retail public utility and who will continue to provide service to the customers served by the requested facilities. Therefore, it is not feasible to obtain service from another adjacent retail public utility.

- 3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.8. *Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).*

The Rate Regulation Division will be addressing this criterion in a separate memo.

- 3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).*

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

- 3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).*

The customers' rates will not change from the current rates for Center. There will be no change to the reliability and quality of water service from Center, as Center already provides service through the requested facilities.

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Approving this application is in the public interest and necessary for the service, accommodation, convenience and safety of the public.

4. **Recommendation**

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are deposits held by Flat Fork WSC for the customers being served by through the facilities currently owned by Flat Fork WSC. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Ian Groetsch
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: September 2, 2022

RE: Docket No. 52890 – *Application of Flat Fork Water Supply Corporation and City of Center for Sale, Transfer, or Merger of Facilities and Certificate Rights in Shelby County*

On November 29, 2021, the City of Center (Center), CCN No. 10397, and Flat Fork Water Supply Corporation filed an application for the sale and transfer of facilities and certificate rights in Shelby County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

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 Texas Administrative Code (TAC) § 24.11. Center must demonstrate that it meets 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

My analysis is based on financial statements ending September 30, 2021. These financial statements contain an unqualified auditor's opinion from Axley & Rode LLP stating that the financial statements present fairly, in all material respects, the financial position of Center as of September 30, 2021.¹

Based upon my review of Center's financial statements, I calculate the debt-to-equity ratio equal to 0.45. The debt-to-equity ratio is long-term debt of \$14,630,409 divided by equity of

¹ Application, 2021 Audit Report, item no. 24, at 5 (Aug. 31, 2022).

\$31,813,558.² Because the ratio is greater than one, I recommend a finding that Center meets the leverage test specified in 16 TAC § 24.11(e)(2)(A).

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).

Center's application states that no new infrastructure is being built.³ Center's financial projections show projected gross losses in their water and sewer operations amounting to \$277,318 over the next five years,⁴ less than the City's available cash of \$1,473,800.⁵ Therefore, I recommend a finding that Center meets the operations test specified in 16 TAC § 24.11(e)(3).

Recommendation

Because Center meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that Center demonstrates 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 Center before the date of this memorandum and may not reflect any changes in Center's status after this review.

² *Id.*, at 13.

³ Application, at 3 (Nov. 29, 2021).

⁴ Application, *City of Center FY 2021-2022 Budget*, item no. 9, at page 46 (Feb. 17, 2022).

⁵ Application, *2021 Audit Report*, item no. 24, at 13 (Aug. 31, 2022).