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DOCKET NO. 53660

APPLICATION OF CLEARWATER	§	PUBLIC UTILITY COMMISSION
INVESTMENTS LLC AND KNOB HILL	§	
WATER SYSTEM FOR SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN DENTON COUNTY	§	

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

On May 26, 2022, Clearwater Investments, LLC (Clearwater) and Knob Hill Water System (Knob Hill) (collectively, Applicants) filed an application for the sale and transfer of facilities and certificate rights in Denton County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

On August 12, 2022, the administrative law judge (ALJ) filed Order No. 3, establishing a deadline of October 3, 2022, for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on approval of the sale. Therefore, this pleading is timely filed.

I. RECOMMENDATION ALLOWING TRANSACTION TO PROCEED

Staff has reviewed the application and, as detailed in the attached memoranda of Jolie Mathis of the Commission’s Infrastructure Division and Ethan Blanchard of the Commission’s 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 16 Texas Administrative Code Chapter 24. Additionally, based upon its review, Staff recommends that Clearwater 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 the entry of an order permitting the proposed transaction to proceed.

II. CONCLUSION

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

Dated: October 3, 2022

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Forrest Smith
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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 October 3, 2022, 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: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: October 3, 2022

RE: Docket No. 53660 – *Application of Clearwater Investments LLC and Knob Hill Water System for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County*

1. Application

Clearwater Investments, LLC (Clearwater) and the Knob Hill Water System (Knob Hill) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Denton County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Clearwater, seeks approval to acquire facilities and to transfer and obtain all of the water service area and Certificate of Convenience and Necessity (CCN) number from Knob Hill under water CCN No. 11414.

Based on the mapping review by Hank Journeay, Infrastructure Division:

- The requested area includes 76 customer connections and approximately 78 acres of transferred area from Knob Hill Water System (CCN No. 11414) to Clearwater Investments LLC (CCN No. 11414).
- The application proposes the subtraction of approximately 78 acres from Knob Hill Water System (CCN No. 11414) and the addition of approximately 78 acres to Clearwater Investments LLC (CCN No. 11414).

2. Notice

Clearwater provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was September 3, 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)).*

Knob Hill has a Texas Commission on Environmental Quality (TCEQ) approved public water system(s) (PWS) registered as Knob Hill Water System, PWS ID No. 0610068. The last TCEQ compliance investigation of the Knob Hill Water System system was on December 18, 2019. Knob Hill has violations listed in the TCEQ database. The Commission's complaint records, which date back to 2017, show 1 complaint against Knob Hill.

- 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 76 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)).*

Clearwater 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. Clearwater 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.

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

- 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 Clearwater 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)).***

Knob Hill is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an 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 the Knob Hill subdivision. Reliability and quality of water service is expected to improve under Clearwater's management.

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 no deposits held by Knob Hill for the customers being served by Knob Hill. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Forrest Smith
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: October 3, 2022

RE: Docket No. 53660– *Application of Clearwater Investments LLC and Knob Hill Water System for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County*

On May 26, 2022, Clearwater Investments, LLC (Clearwater) and Knob Hill Water System, CCN No. 11414, filed an application for the sale and transfer of facilities and certificate rights in Denton 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. Clearwater 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 December 31, 2020. These internally produced financial statements contain five years of projections and three years of historical data, as required by 16 TAC § 24.11(e)(4).¹

Based upon my review of Clearwater’s financial statements, I calculate debt-to-equity ratio to be 0.00. The debt-to-equity ratio is long-term debt of \$0 divided by equity of \$109,300.² Because

¹ Application, at 18 (May 26, 2022).

² Id., at 15.

the ratio is less than one, I recommend a finding that Clearwater 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).

Clearwater's financial projections show that there are no projected shortages to cover³ and that there are no capital improvements to be made.⁴ Therefore, I recommend a finding that Clearwater meets the operations test specified in 16 TAC § 24.11(e)(3).

Recommendation

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

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

³ *Id.*, at 19.

⁴ *Id.*, at 9.