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DOCKET NO. 53660

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

COMMISSION STAFF’S RECOMMENDATION ON THE APPROVAL OF THE SALE

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

On September 8, 2023, the administrative law judge (ALJ) filed Order No. 15, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on the approval of the sale by October 6, 2023. 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 Infrastructure Division and of Ethan Blanchard, of the Rate Regulation Division, recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in TWC Chapter 13 and under 16 TAC 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 that the transaction will serve the public interest and should be allowed to proceed without a public hearing.

If the transaction is permitted to proceed, Staff further requests that Clearwater be required to file evidence that all assets have been transferred to the acquiring entity, and that the disposition of any remaining deposits has been addressed as soon as possible, as required by 16 TAC § 24.239(*f*).

If the Commission enters an order permitting the transaction to proceed, such approval expires 180 days from the date of the Commission’s written approval of the sale. If the sale is not

effectuated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for approval of the sale.

II. CONCLUSION

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

Dated: October 6, 2023

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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/s/ David Berlin
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CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on October 6, 2023, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ David Berlin
David Berlin

Public Utility Commission of Texas

Memorandum

TO: David Berlin, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: October 6, 2023

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

1. Application

Clearwater Operating Services 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, to transfer and to 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 Journey, Infrastructure Division:

- The requested area includes 76 customer connections and approximately 78 acres of transferred area from Knob Hill (CCN No. 11414) to Clearwater to retain seller's CCN No. 11414.
- The application proposes the subtraction of approximately 78 acres from Knob Hill (CCN No. 11414) and the addition of approximately 78 acres to Clearwater to retain seller's CCN No. 11414.
- The application indicates that the total acreage being requested is approximately 200 acres, however, the mapping review determined the requested area is approximately 78 acres.

2. Notice

On December 2, 2022, a revised application was submitted indicating the purchasing utility was Clearwater Operating Services LLC. On December 8, 2022, the Administrative Law Judge (ALJ) rescinded order Nos. 2 and 3 due to the new application being submitted and required an administrative completeness review of the application. Staff found the revised application sufficient and required revised notice with the correct entity name. Clearwater provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was March 27, 2023; 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 (PWS) registered as Knob Hill Water System, PWS ID No. 0610068. The last TCEQ compliance investigation of the Knob Hill system was on January 15, 2020. Knob Hill has violations listed in the TCEQ database that have since been returned to compliance. The Commission's complaint records, which date back 5 years, show 1 complaint against Knob Hill. All the complaints have been reviewed and closed by the Commission's Customer Protection Division.

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 will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

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. *An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).*

No improvements are required to meet TCEQ or Commission standards.

- 3.8. *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.

- 3.9. *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.

- 3.10. *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.

- 3.11. *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, Carter addition. Reliability and quality of water service is expected to improve under CSWR-Texas's management.

4. Recommendation

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.

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, Carter Addition. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: David Berlin, Attorney
Legal Division

FROM: Ethan Blanchard
Rate Regulation Division

DATE: October 6, 2023

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

On May 26, 2022, Clearwater Operating Services, 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)(B)(iii)(I).¹

¹ Application, *Requested Information*, item no. 15 (Dec. 2, 2022).

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 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.

² *Id.*, at 16.

³ *Id.*, at 20.

⁴ *Id.*, at 7 and 8.