



Filing Receipt

Received - 2023-02-22 11:53:46 AM

Control Number - 53920

ItemNumber - 37

DOCKET NO. 53920

APPLICATION OF TEXAS WATER UTILITIES, L.P. AND CREEK WATER UTILITY LLC FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS MARION COUNTY	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
--	--	---

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

I. INTRODUCTION

On August 1, 2022, Monarch Utilities I L.P. (Monarch) and the Creek Water Utility, LLC (Creek Water) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Marion County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. On November 28, 2022, the administrative law judge (ALJ) issued Order No. 6, recognizing that Monarch has changed its name to Texas Water Utilities, L.P. (Texas Water) on November 15, 2022, and restyling the application accordingly.

On February 21, 2023, the administrative law judge filed Order No. 11, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a hearing or file a recommendation on approval of the sale and the CCN amendment by February 24, 2023. Therefore, this pleading is timely filed.

II. RECOMMENDATION ON THE TRANSACTION

Staff has reviewed the application and as supported by the attached memoranda of Patricia Garcia 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 (TAC) Chapter 24. Additionally, based upon its review, Staff recommends that Texas Water 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.

In addition, Staff recommends that the Applicants be ordered to file documentation demonstrating that the transaction has been consummated and that the disposition of any remaining deposits have been addressed as required under 16 TAC §§ 24.109(m)-(n).

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

III. CONCLUSION

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

Dated: February 22, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Keith Rogas
Division Director

John Harrison
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

DOCKET NO. 53920

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 February 22, 2023, in accordance with the Second 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: Patricia Garcia, Infrastructure Analysis Section Director
Infrastructure Division

DATE: February 22, 2023

RE: Docket No. 53920 – *Application of Texas Water Utilities, LP and Creek Water Utility LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Marion County*

1. Application

Texas Water Utilities, LP (Texas Water) and the Creek Water Utility LLC (Creek Water) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Marion County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Texas Water, Certificate of Convenience and Necessity (CCN) No. 12983, seeks approval to acquire facilities and to transfer all of the water service area from Creek Water under water CCN No. 11028.

Based on the mapping review by Tracy Montes, Infrastructure Division:

- The requested area includes 94 customer connections and approximately 289.5 acres, comprised of:
 - 289.5 acres of transferred area from CCN No. 11028;
 - 16.6 acres of dual certificated area with Harleton WSC (CCN No. 11887).
- The application proposes the subtraction of approximately 289.5 acres from CCN No. 11028 and the addition of approximately 289.5 acres to CCN No. 12983.
- 272.9 acres will be single certification and 16.6 acres will be dual certification with CCN No. 11887.
- The application indicates that the total acreage being requested is approximately 239.5 acres, however, the mapping review determined the requested area is approximately 289.5 acres.

2. Notice

Texas Water provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was December 19, 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)).*

Creek Water has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Creek Water Utility, PWS ID No. 1580020. The last TCEQ compliance investigation of the Creek Water system was on March 28, 2022. Creek Water does not have any active violations listed in the TCEQ database. The Commission's complaint records, which date back to 2017, show nine complaints against Creek Water which have been addressed 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)).*

The purpose of the transaction is to transfer Creek Water to Texas Water. The customers are currently receiving water service from Creek Water's water system.

There are currently 94 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time. However, Texas Water has provided a list of improvements expected to be made at the water system.

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)).*

Texas Water 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. Texas Water will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems. Texas Water will have licensed operators to run the system operations.

Texas Water has the ability to provide adequate service in the requested area. Texas Water has several TCEQ approved public water systems. In addition, the Commission's complaint records, which date back to 2017, show one complaint against Texas Water which has been addressed by the Commission's Customer Protection Division.

- 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 Texas Water 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)).***

Creek Water 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 be minimally affected as facilities are constructed in compliance with TCEQ standards 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 be higher than the current rates for the Creek Water customers. Texas Water provided a list of improvements expected to be made at the water system. Therefore, reliability and quality of water service is expected to improve under Texas Water's management and improvements to the quality of service provided.

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 Creek Water for the customers being served by the water system. 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: February 22, 2023

RE: Docket No. 53920 – *Application of Texas Water Utilities, LP and Creek Water Utility LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Marion County*

On August 1, 2022, Texas Water Utilities, LP (TWU), CCN No. 12983, and Creek Water Utility, LLC filed an application for the sale and transfer of facilities and certificate rights in Marion 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. TWU 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, 2021. These financial statements contain an unqualified auditor's opinion from PricewaterhouseCoopers LLP stating that the financial statements present fairly, in all material respects, the financial position of TWU as of December 31, 2021.¹

I have reviewed TWU's financial statements, and I calculate debt service equal to 11.97.²

¹ Application, *Confidential Attachments to the Application*, at bates 18 (Aug. 1, 2022).

² The calculations for which can be found in confidential Attachment EB-1.

Because the ratio is greater than 1.25, I recommend a finding that TWU meets the leverage test specified in 16 TAC § 24.11(e)(2)(B).

Operations Test and Capital Improvement Plan

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).

TWU filed financial projections which show operating losses in the first five years of operating; however, these losses amount to less than 2% of their available cash.³ Therefore, I recommend a finding that TWU meets the operations test specified in 16 TAC § 24.11(e)(3).

Planned Capital Improvements and Purchase Price

An applicant proposing service to a new CCN area must provide documentation of adequate funding for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers per 16 TAC § 24.11(e)(5)(A).

The applicant has filed documentation demonstrating adequate cash funding of the purchase price and planned system improvements for the Creek Water Utility water system.⁴ Therefore, I recommend a finding that CSWR-TUOC satisfies the requirements of 16 TAC § 24.11(e)(5)(A).

Recommendation

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

Consequently, I recommend a finding that TWU demonstrates the financial and managerial capability needed to provide adequate service to the area subject to this application. My conclusions are based on information provided by TWU before the date of this memorandum and may not reflect any changes in TWU's status after this review.

³ The calculations for which can be found in confidential Attachment EB-1.

⁴ The calculations for which can be found in confidential Attachment EB-1.