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Received - 2023-01-13 12:13:03 PM
Control Number - 53936
ItemNumber - 25

DOCKET NO. 53936

APPLICATION OF STONETOWN	§	PUBLIC UTILITY COMMISSION
SPRING OAKS UTILITIES, LLC AND	§	
TRINITY SO PTN LLC FOR SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN HARRIS COUNTY	§	

COMMISSION STAFF’S RECOMMENDATON ON APPROVAL OF THE SALE

I. INTRODUCTION

On August 5, 2022, Stonetown Spring Oaks Utilities, LLC (Stonetown Spring Oaks) and Trinity SO LLC (Trinity SO) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Harris County. Specifically, Stonetown Spring Oaks seeks approval to acquire facilities and to transfer all of the water and sewer service area from Trinity SO under water Certificate of Convenience and Necessity (CCN) No. 13240 and sewer CCN No. 21089. Stonetown Spring Oaks also seeks to obtain CCN numbers for sewer and water utility service. The Applicants filed supplemental information on August 30, 2022, August 31, 2022, September 22, 2022, September 26, 2022, and January 11, 2023.

On January 9, 2023, the administrative law judge (ALJ) filed Order No. 6, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on the approval of sale or request a hearing by January 13, 2023. Therefore, this pleading is timely filed.

II. RECOMMENDATION ON THE TRANSACTION

Staff has reviewed the application and supplemental information and, as supported by the attached memoranda of James Harville of the Infrastructure Division, and Fred Bednarski 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 Stonetown Spring Oaks 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. Staff notes that there are no deposits held by Trinity SO for the customers being served by Trinity SO.

III. CONCLUSION

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

Dated: January 13, 2023

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

Keith Rogas
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/s/ Bradley Reynolds
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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 January 13, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Bradley Reynolds
Bradley Reynolds

Public Utility Commission of Texas

Memorandum

TO: Bradley Reynolds, Attorney
Legal Division

FROM: James Harville, Infrastructure Analyst
Infrastructure Division

DATE: January 13, 2023

RE: Docket No. 53936 – *Application of Stonetown Spring Oaks Utilities, LLC and Trinity SO PTN LP for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

1. Application

Stonetown Spring Oaks Utilities, LLC (Stonetown Spring Oaks) and the Trinity SO PTN LP (Trinity SO) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Harris County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Stonetown Spring Oaks seeks approval to acquire facilities and to transfer all of the water and sewer service area from Trinity SO under water Certificate of Convenience and Necessity (CCN) No. 13240 and sewer CCN No. 21089. Stonetown Spring Oaks also seeks to obtain CCN No. 21134 for sewer utility service and CCN No. 13306 for water utility service.

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

- The requested area includes 137 customer connections and approximately 21 acres, comprised of transferred area from Trinity SP PTN LP (CCN Nos. 13240 & 21089) to Stonetown Spring Oaks (CCN Nos. 13306 and 21134).
- The application proposes the subtraction of approximately 21 acres from CCN Nos. 13240 & 21089 and the addition of approximately 21 acres to Stonetown Spring Oaks (CCN Nos. 13306 and 21134).
- The application indicates that the total acreage being requested is approximately 22 acres, however, the mapping review determined the requested area is approximately 21 acres.

2. Notice

Stonetown Spring Oaks provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was November 21, 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)(D)).*

Trinity SO has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Trinity Spring Oaks Mobile Home Park, PWS ID No. 1012090, and a wastewater treatment plant (WWTP) registered as Spring Oaks MHP WW Treatment Facility, Wastewater Discharge Permit No. WQ0012650001. The last TCEQ compliance investigation of the water and wastewater systems were on March 5, 2019, and December 18, 2018, respectively. Trinity SO has 3 violations listed in the TCEQ database, which have been addressed. The Commission's complaint records, which date back to 2017, show no complaints against Trinity SO.

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 Trinity Spring Oaks RV and Mobile Home Park to Stonetown Spring Oaks. The customers are currently receiving water and sewer service from Trinity SO's water and sewer 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)).*

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

TCEQ rule, 30 TAC §30.331(b), Wastewater Operators and Operations Companies, requires the operators of a domestic wastewater treatment facility to have a valid license issued by the TCEQ executive director. Stonetown Spring Oaks will have qualified TCEQ licensed operators licensed in wastewater treatment to run the acquired systems.

Stonetown Spring Oaks will have licensed operators to run the system operations. A Class C operator will be the responsible operator for the systems.

Stonetown Spring Oaks has the ability to provide adequate service in the requested area. Stonetown Spring Oaks has requested a water and sewer CCN to serve the requested area.

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 Stonetown Spring Oaks 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)).*

Trinity SO 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 Trinity SO. Reliability and quality of water service is expected to improve under Stonetown Spring Oak'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 Trinity SO for the customers being served by Trinity SO. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Brad Reynolds
Legal Division

FROM: Fred Bednarski III
Rate Regulation Division

DATE: January 13, 2023

RE: Docket No. 53936 – *Application of Stonetown Spring Oaks Utilities, LLC and Trinity SO PTN, LP for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

On August 5, 2022, Stonetown Spring Oaks Utilities, LLC (Spring Oaks) and Trinity SO PTN LP (Trinity SO) filed an application for the sale and transfer of facilities and certificate rights in Harris 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. Spring Oaks 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

Spring Oaks filed an affidavit stating that Stonetown MRE Texas, LLC (MRE Texas), Spring Oaks' affiliate, is capable, available, and willing to cover any temporary cash shortages and operating expense shortfalls.¹

My analysis is based on MRE Texas' financial statements ending September 30, 2022. Based on my review of MRE Texas' financial statements, I calculate a debt service coverage ratio of 2.60 as provide in confidential attachment FB-1. Because the ratio is greater than 1.25, I

¹ Confidential Attachments to Third Supplement at pfd 38 and 39 (Jan. 11, 2023).

recommend a finding that MRE Texas meets the leverage test specified in 16 TAC § 24.11(e)(2)(B). Therefore, I recommend a finding that—through its affiliate—Spring Oaks meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

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; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

The affidavit provided by MRE Texas demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest.² MRE Texas also provided documentation demonstrating adequate cash funding of the purchase price for this application as well as affiliate applications 53935 and 53937.³ Spring Oaks projects no operating income shortages.⁴ Therefore, I recommend a finding that—through its affiliate—Spring Oaks meets the operations test specified in 16 TAC § 24.11(e)(3). No capital improvements are required to provide continuous and adequate service to existing customers.

Recommendation

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

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

² *Id.*

³ Confidential Attachment FB-1 (Jan. 13, 2023).

⁴ *Id.*