



## Filing Receipt

**Received - 2023-02-14 02:38:20 PM**

**Control Number - 54159**

**ItemNumber - 24**

**DOCKET NO. 54159**

<b>APPLICATION OF ROSEHILL</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>UTILITIES, INC. AND UTILITIES</b>	<b>§</b>	
<b>INVESTMENT CO., INC. FOR SALE,</b>	<b>§</b>	<b>OF TEXAS</b>
<b>TRANSFER OR MERGER OF</b>	<b>§</b>	
<b>FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS IN WALLER COUNTY</b>	<b>§</b>	

**COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION**

On September 28, 2022, Rosehill Utilities, Inc. (Rosehill Utilities) and Utilities Investment Co. (Utilities Investment) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Waller County. Specifically, Utilities Investment seeks approval to acquire facilities and to transfer service area held under water Certificate of Convenience and Necessity (CCN) No. 12671 and sewer CCN No. 20765 to Rosehill Utilities. The Applicants filed supplemental information on October 3, 2022, October 4, 2022, October 19, 2022, and February 10, 2023.

On January 30, 2023, the administrative law judge (ALJ) filed Order No. 5, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a file a recommendation on the approval of the sale along with a proposed procedural schedule for further processing of the application. Therefore, this pleading is timely filed.

**I. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED**

Staff has reviewed the application and, as detailed in the attached memoranda of James Harville Garcia of the Commission’s Infrastructure Division and Fred Bednarski 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 Utilities Investment 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. PROPOSED PROCEDURAL SCHEDULE

Deadline for Parties to file a response to Commission Staff's Recommendation on approval of the sale	February 21, 2023
Deadline for Parties to file a joint motion to admit evidence and proposed order approving sale and allowing transaction to proceed	February 27, 2023
120-day deadline to approve the sale or require a hearing <sup>1</sup>	February 28, 2023

## III. CONCLUSION

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

---

<sup>1</sup> Under 16 TAC § 24.239(a) and (i), the deadline for Commission action is 120 days after the mailing or publication of notice, whichever occurs later. One hundred and twenty days after October 31, 2022 is February 28, 2023.

Dated: February 14, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Keith Rogas  
Division Director

Sneha Patel  
Managing Attorney

/s/ Forrest Smith  
Forrest Smith  
State Bar No. 24093643  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7388  
(512) 936-7268 (facsimile)  
Forrest.Smith@puc.texas.gov

**DOCKET NO. 54159**

**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 14, 2023, in accordance with the Second 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:** James Harville, Infrastructure Analyst  
Infrastructure Division

**DATE:** February 14, 2023

**RE:** Docket No. 54159 – *Application of Rosehill Utilities, Inc. and Utilities Investment Co., Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Waller County*

---

### **1. Application**

Utilities Investment Company, Inc (Utilities Investment) and Rosehill Utilities, Inc. (Rosehill Utilities) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Waller County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, Utilities Investment, water Certificate of Convenience and Necessity (CCN) No. 12671 and sewer CCN No. 20765, seeks approval to acquire facilities and to transfer all of the water and sewer service area from Rosehill Utilities under water CCN No. 12663 and sewer CCN No. 20886.

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

- The requested water area 1 includes 32 customer connections and approximately 95 acres of transferred area from CCN No. 12663 to CCN No. 12671.
- The requested water area 2 includes 82 customer connections and approximately 177 acres of transferred area from CCN No. 12663 to CCN No. 12671.
- The requested water area 3 includes 55 customer connections and approximately 162 acres of transferred area from CCN No. 12663 to CCN No. 12671.
- **The total requested water area includes 169 customer connections and approximately 434 acres of transferred area from CCN No. 12663 to CCN No. 12671.**
- The requested sewer area 1 includes 55 customer connections and approximately 162 acres of transferred area from CCN No. 20886 to CCN No. 20765.

- **The total requested sewer area includes 55 customer connections and approximately 162 acres of transferred area from CCN No. 20886 to CCN No. 20765.**
- The application proposes the subtraction of approximately 434 acres from CCN No. 12663 and the addition of approximately 434 acres to CCN No. 12671. The application proposes the subtraction of 162 acres from CCN No. 20886 and the addition of 162 acres to CCN No. 20765.

## **2. Notice**

Utilities Investment provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was November 30, 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)).***

Rosehill Utilities has several Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) registered as Cedar Creek Ranch Subdivision, PWS ID No. 2370084, Pine Grove Estates Water System, PWS ID No. 2370068, Hammond Mound Water System, PWS ID No. 2370074, and a wastewater treatment plant (WWTP) registered as Hammond Mound Utilities WWTP, Wastewater Discharge Permit No. WQ0013984001. The last TCEQ compliance investigation of the Rosehill Utilities water systems was on October 24, 2018, November 9, 2018, and June 10, 2021, respectively. The last TCEQ compliance investigation for the Hammond Mound Utilities WWTP was on May 25, 2021. Rosehill Utilities does not have any violations listed in the TCEQ database. The Commission's complaint records, which date back to 2017, show 0 complaints against Rosehill Utilities.

### **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 Rosehill Utilities to Utilities Investment. The customers are currently receiving water and sewer service from Rosehill Utilities' water and sewer systems.

### **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)).***

Utilities Investment 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. Utilities Investment 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. Utilities Investment will have qualified TCEQ licensed operators licensed in wastewater treatment to run the acquired systems.

Utilities Investment will have licensed operators to run the system operations. Class B and C operators will be the responsible operator for the system.

Utilities Investment has the ability to provide adequate service in the requested area. Utilities Investment has several TCEQ approved public water systems and wastewater treatment plants. Utilities Investment has 14 violations listed in the TCEQ database which have been addressed in the application. In addition, the Commission's complaint records, which date back to 2017, show 13 complaints against Utilities Investment.

**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 Utilities Investment 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)).***

Rosehill Utilities 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 Rosehill Utilities. Reliability and quality of water service is expected to improve under Utilities Investment'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 Rosehill Utilities for the customers being served by Rosehill Utilities. I further recommend that a public hearing is not necessary.



# *Public Utility Commission of Texas*

---

## **Memorandum**

**TO:** Forrest Smith  
Legal Division

**FROM:** Fred Bednarski III  
Rate Regulation Division

**DATE:** February 14, 2023

**RE:** Docket No. 54159 – *Application of Rosehill Utilities, Inc. and Utilities Investment Co., Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Waller County*

---

On September 28, 2022, Rosehill Utilities, Inc. (Rosehill) and Utilities Investment Co. Inc. (UIC) filed an application for the sale and transfer of facilities and certificate rights in Waller 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. UIC 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 UIC's financial statements ending November 30, 2021. UIC's financial statements demonstrate a debt-to-equity ratio of 0.08 provided in confidential attachment FB-1. Because the ratio is less than one, I recommend a finding UIC 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).

UIC's and Rosehill's financial statements provided in confidential attachment FB-1 include operating income and cash flow information that indicate UIC will have sufficient cash to cover projected shortages. No capital improvements are needed to provide continuous and adequate service to the requested area. Therefore, I recommend a finding that UIC meets the operations test specified in 16 TAC § 24.11(e)(3).

***Recommendation***

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

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