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DOCKET NO. 54429

APPLICATION OF PALO DURO § PUBLIC UTILITY COMMISSION
SERVICE COMPANY, INC. AND THE §
CITY OF HUDSON OAKS FOR SALE, § OF TEXAS
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN PARKER COUNTY §

ORDER NO. 6
RESCINDING FINDING THAT NOTICE IS SUFFICIENT IN ORDER NO. 4,
REQUIRING ISSUES TO BE CLARIFIED AND ADDRESSED IN
RECOMMENDATION, AND GRANTING EXTENSION

This Order addresses Commission Staff's June 2, 2023 request for extension and recommendation on sufficiency of supplemental notice, and several matters in the application of Palo Duro Service Company, Inc. and the City of Hudson Oaks for the sale transfer or merger (STM) of facilities and certificate rights in Parker County. Hudson Oaks seeks to acquire Palo Duro's water system facilities and certificated service area held under certificate of convenience and necessity (CCN) number 12200.

Several matters must be addressed in this docket because of recent Commission actions. During the Commission's discussion of Docket No. 52391¹ at its October 6, 2022 open meeting and its discussion of Docket No. 51646² at the May 11, 2023 open meeting and the orders remanding Docket No. 52391³ and Docket No. 51646⁴ to docket management for further processing, the Commission clarified its requirements regarding three issues: (1) the requirements of 16 Texas Administrative Code (TAC) § 24.11(e)(5)(B) and what is required to demonstrate a firm capital commitment, (2) the requirements of Texas Water Code (TWC) § 13.244(d)(3) and what constitutes a capital improvement plan, and (3) 16 TAC § 24.235(b)(2) and 16 TAC § 24.239(e)(1) and the requirement to provide notice to each owner of a tract of land that is at

¹ Open Meeting at 32:38 (Oct. 6, 2022), Item No. 7 (available at https://adminmonitor.com/tx/puct/open_meeting/20221006/).

² Open Meeting at 1:22 (May 11, 2023), Item No. 2 (available at https://adminmonitor.com/tx/puct/open_meeting/202305112/).

³ *Application of Liberty County Utilities, LLC for Water and Sewer Certificates of Convenience and Necessity in Liberty County*, Docket No. 52391, Order Remanding Proceeding to Docket Management (Oct. 20, 2022).

⁴ *Application of Waters of Vista Ranch Water Supply Corporation and Aqua Water Supply Corporation for Sale, Transfer or Merger of Facilities and Certificate Rights in Fayette County*, Docket No. 51646, Order Remanding Proceeding to Docket Management (May 11, 2023).

least 25 acres and is wholly or partially included in the area proposed to be certified. The administrative law judge (ALJ) does not see these issues addressed in the application; therefore, clarification and supplemental information is required.

I. Rescinding Finding of Sufficiency of Notice

In Order No. 4 filed on April 21, 2023, the ALJ found notice sufficient.

On May 22, 2023, Hudson Oaks provided a clarification by filing a letter stating that there are no tracts of land that are at least 25 acres that are wholly or are partially within the requested area.

On June 5, 2023, Commission Staff filed a recommendation on the sufficiency of the supplemental notice. Commission Staff states that Hudson Oaks reported that there were no landowners over 25 acres. However, Order No. 7 issued on May 18, 2023 required an affidavit regarding the supplemented notice to landowners. Hudson Oaks' representative did not provide an affidavit attesting to this information.

The ALJ rescinds the finding that notice is sufficient in Order No. 4 and finds notice is incomplete and deficient.

By June 20, 2023, Hudson Oaks must supplement its notice with the required affidavit that notice has been mailed by first class mail to each owner of a tract of land that is at least 25 acres and is wholly or partially within the requested CCN area or that there are no tracts of land that are at least 25 acres and are wholly or partially within the requested area.

By June 27, 2023, Commission Staff must file a supplemental recommendation on the sufficiency of notice.

II. Requiring Clarification and Recommendation

Firm Capital Commitment

Under 16 TAC § 24.11(e)(5)(b), if an applicant is proposing to purchase an existing system and service area in which the cost to purchase the existing system plus any improvements necessary to provide continuous and adequate service to existing and projected customers exceeds \$100,000, the proposed owner or operator of such a retail public utility must provide additional

financial assurance in the form of loan approval documents or firm capital commitments affirming that all funds are available. A financial guarantee letter does not satisfy the Commission's rules.⁵

In this case, Hudson Oaks is seeking to acquire Palo Duro's water system facilities and certificated service area held under CCN number 12200. According to the application, the cost to purchase the system is \$267,067 and capital improvements will cost approximately \$18,200. The application states improvements or construction is required to meet the minimum requirements of the Texas Commission on Environmental Quality or Commission to ensure continuous and adequate service to the requested area.

In its final recommendation, the ALJ requires Commission Staff to address whether any additional financial assurance is necessary, as required by 16 TAC § 24.11(e)(5)(b).

Capital Improvement Plan

Under TWC §13.244(d)(3) and 16 TAC §24.233(a)(6), an applicant for an amendment to a CCN must contain a capital improvement plan, which must include a budget and estimated timeline for construction of all facilities necessary to provide full service to the proposed service area and must be keyed to a map showing where the facilities will be located to provide service. A pro forma budget is not a capital improvement plan under the TWC or the Commission's rules.

In this case, Hudson Oaks is acquiring an existing system and certificated service area from Palo Duro, and it appears that improved facilities will be necessary to provide continuous and adequate service to the requested service area. Therefore, an appropriate capital improvement plan is required and the ALJ does not see a capital improvement plan in the application package.

By June 20, 2023, the applicants shall provide an appropriate capital improvement plan for the planned capital improvements to the system.

In its final recommendation, Commission Staff must address the capital improvement plan.

III. Extension Request and Procedural Schedule

In its June 2, 2023 request, Commission Staff requests additional time to finalize its final recommendation on the approval of the sale.

⁵ *Application of Liberty County Utilities* at 2.

The ALJ grants the extension and enters the following procedural schedule for continued processing of this application.

Event	Date
Deadline for applicants to provide affidavit on notice and additional information addressing capital improvement plan	June 20, 2023
Deadline for Commission Staff to file a supplemental recommendation on the sufficiency of notice	June 27, 2023
Deadline for Commission Staff to request a hearing or file a recommendation on the approval of the sale	July 7, 2023
Deadline for parties to file a response to Commission Staff's recommendation on approval of the sale	July 14, 2023
Deadline for parties to file a joint motion to admit evidence and proposed order approving the sale and allowing the transaction to proceed	July 21, 2023

Signed at Austin, Texas the 6th day of June 2023.

PUBLIC UTILITY COMMISSION OF TEXAS



CHRISTINA DENMARK
ADMINISTRATIVE LAW JUDGE