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DOCKET NO. 54429

APPLICATION OF PALO DURO	§	PUBLIC UTILITY COMMISSION
SERVICE COMPANY DBA TRINITY	§	
RIVER ESTATES AND CITY OF	§	OF TEXAS
HUDSON OAKS FOR SALE,	§	
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN PARKER COUNTY	§	

**COMMISSION STAFF'S SUPPLEMENTAL RECOMMENDATION ON
ADMINISTRATIVE COMPLETENESS AND NOTICE**

On December 6, 2022, Palo Duro Service Company dba Trinity River Estates and the City of Hudson Oaks (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Parker County.

On June 30, 2023, 2023, the administrative law judge (ALJ) filed Order No. 9, 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 August 28, 2023. Therefore, this pleading is timely filed.

I. RECOMMENDATION

Staff has reviewed the application, as supplemented, and, as supported by the attached memoranda of Jaspinder Singh, Infrastructure Division, and of Fred Bednarski III, Rate Regulation Division, recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Under 16 Texas Administrative Code (TAC) § 24.239(i) and Texas Water Code §§ 13.246 and 13.301, Staff recommends that this 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 the Applicants be required to file evidence that all assets have been transferred to the acquiring entity and that the disposition or any remaining deposits have been addressed as soon as possible, as required by 16 TAC § 24.239(*l*).

Staff notes that the approval of the sale expires 180 days from the date of the Commission's written approval of the sale. If the sale is not consummated 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 the approval of the sale, as required by 16 TAC § 24.239(*m*).

II. CONCLUSION

Staff respectfully requests the entry of an order permitting the proposed transaction to proceed.

Dated: August 28, 2023

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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/s/ Kevin Pierce
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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 August 28, 2023 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Kevin Pierce
Kevin Pierce

Public Utility Commission of Texas

Memorandum

TO: Kevin Pierce, Attorney
Legal Division

FROM: Jaspinder Singh, Engineering Specialist
Infrastructure Division

DATE: August 28, 2023

RE: *Docket No. 54429 Application of Palo Duro Service Company, Inc. and the City of Hudson Oaks for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker County*

1. Application

Palo Duro Service Company, Inc. (Palo Duro) and the City of Hudson Oaks (COHO) (collectively Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Parker County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239.

Specifically, COHO, Certificate of Convenience and Necessity (CCN) No. 12273, seeks approval to acquire facilities and to transfer a portion of the water service area from Palo Duro under water CCN No. 12200.

Based on the mapping review by Dave Babicki, Infrastructure Division:

- The requested area includes 29 customer connections and approximately 68.5 acres, comprised of:
 - 0.1 acres of transferred area from Palo Duro (CCN No. 12200) to COHO (CCN No. 12273); and
 - 68.4 acres of decertified area from Palo Duro (CCN No. 12200), that removes dual certification with COHO (CCN No. 12273).
- The application proposes the subtraction of approximately 68.4 acres from CCN No. 12200 and the addition of approximately 0.1 acres to CCN No. 12273.
- 68.5 acres will be single certification with CCN No. 12273; and 0 acres will be dual certification with CCN No. 12200.
- The application indicates that the total acreage being requested is approximately 68 acres, however, the mapping review determined the requested area is approximately 68.5 acres.

2. Notice

COHO provided notice consistent with 16 TAC § 24.235(b)(2) and 16 TAC § 24.239(e)(1). The deadline to intervene was July 10, 2023, and 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)).*

Palo Duro has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Trinity River Estates, PWS ID No. 1840099. The last TCEQ compliance investigation of the Palo Duro's system was on August 23, 2022. Trinity River Estates has several violations listed in the TCEQ database. The Commission's complaint records, which date back 5 years, show 4 complaints against Palo Duro. 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)).*

The purpose of the transaction is to transfer Trinity River Estates to COHO. The customers are currently receiving water service from Palo Duro's water system.

There are currently 29 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)).*

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

COHO will have licensed operators to run the system operations. A Class C operator will be the responsible operator for the system.

COHO has the ability to provide adequate service in the requested area. COHO has several TCEQ approved public water systems (PWS) registered as City of Hudson Oaks, PWS ID No. 1840006, and City of Hudson Oaks Dyegard, PWS ID No. 1840126. In addition, the Commission's complaint records, which date back 5 years, show no complaints against COHO. All violations have been resolved and closed according to the TCEQ database.

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 COHO 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)).*

Palo Duro 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)).*

COHO is proposing to make improvements to the Palo Duro's water system. The proposed capital improvements are not expected to exceed \$100,000, therefore the need for firm capital commitment under 16 TAC § 24.11(e)(5) is not required.

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(h); 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 be minimally affected as facilities are constructed 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 Trinity River Estates subdivision. Reliability and quality of water service is expected to improve under COHO'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 Palo Duro for the customers being served by the Trinity River Estates subdivision. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Kevin Pierce, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: August 28, 2023

RE: Docket No. 54429 *Application of Palo Duro Service Company dba Trinity River Estates and City of Hudson Oaks, for Sale, Transfer, or Merger of Facilities and Certificate Rights in Parker County*

On December 6, 2022, Palo Duro Service Company dba Trinity River Estates (Palo Duro) CCN No. 12200 and City of Hudson Oaks (Hudson), CCN No. 12273, filed an application for the sale and transfer of facilities and certificate rights in Parker 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. Hudson 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 Hudson's financial statements ending September 30, 2021. These financial statements contain an unqualified auditor's opinion from George, Morgan & Sneed P.C., stating that the financial statements present fairly, in all material respects, the financial position of Hudson as of September 30, 2021.

Based upon my review of Hudson's financial statements, I calculate the debt service coverage ratio to be 1.93. The debt service coverage ratio is based on the sum of operating income of

\$1,491,436¹ plus interest and fiscal charges of \$300,899² plus depreciation and amortization expense of \$1,115,692³ divided by annual combined long-term debt payments of \$1,503,779.⁴ Because the ratio is greater than 1.25, I recommend a finding that Hudson meets the leverage test specified in 16 TAC § 24.11(e)(2)(B).

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).

Hudson's financial statements indicate net income of \$1,491,436 and a cash and cash equivalents balance of \$3,522,629.⁵ Additionally, Palo Duro's financial statements indicate net income of \$51,542.⁶ There are no projected shortages to cover. Therefore, I recommend a finding that Hudson meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvement Plan

Capital improvements required to serve the Trinity River Estates MHP customers are estimated to cost approximately \$26,500.⁷ Because the improvements are less than \$100,000 a firm capital commitment is not required. Although a firm capital commitment is not required Hudson reported cash and cash equivalents of \$3,522,629 and net income of \$1,491,436. Therefore, I recommend a finding that Hudson meets the requirements specified in 16 TAC § 24.11(e)(5).

Recommendation

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

Consequently, I recommend a finding that Hudson demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this

¹ Application at pdf 73 (Dec. 6, 2022)

² *Id.*

³ *Id.* at pdf 108.

⁴ *Id.* at pdf 111 and 114.

⁵ *Id.* at pdf 76 and 85.

⁶ Docket 52954 Palo Duro Service Company, Inc. 2021 Annual Report, item 182 at pdf 7 (May 24, 2022).

⁷ Application at pdf 8 and 10 (Dec. 6, 2022)

application. My conclusions are based on information provided by Hudson before the date of this memorandum and may not reflect any changes in Hudson's status after this review.