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DOCKET NO. 54718

APPLICATION OF STAFF WATER	§	PUBLIC UTILITY COMMISSION
SUPPLY CORPORATION AND CITY	§	
OF CARBON FOR SALE, TRANSFER,	§	OF TEXAS
OR MERGER OF FACILITIES AND	§	
CERTIFICATE RIGHTS IN EASTLAND	§	
COUNTY	§	

**JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED ORDER APPROVING
THE SALE AND ALLOWING TRANSFER TO PROCEED**

On March 7, 2023, Staff Water Supply Corporation (Staff WSC) and City of Carbon (Carbon) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Eastland County under the provisions of Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Carbon supplemented the application on April 25, 2023, May 5, 2023, and July 28, 2023.

On October 24, 2023, the administrative law judge (ALJ) filed Order No. 6, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) and the Applicants (collectively, Parties) to file a joint motion to admit evidence and proposed order approving the sale and allowing the transaction to proceed by November 6, 2023. Therefore, this pleading is timely filed.

I. JOINT MOTION TO ADMIT EVIDENCE

The Parties respectfully request that the following documents be admitted into evidence in this proceeding:

1. Application of Staff WSC and Carbon for Sale, Transfer, or Merger of Facilities and Certificate Rights in Eastland County, filed March 7, 2023 (AIS Item No. 1);
2. Carbon's Response to Notice, filed on April 25, 2023 (AIS Item No. 5);
3. Area Maps, filed on May 5, 2023 (AIS Item No. 6);
4. Staff's Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule, filed on June 5, 2023 (AIS Item No. 7);
5. Response to Staff Recommendations for Public Notice, filed June 29, 2023 (AIS Item No. 9);

6. Response to Order No. 4 with documents for 25+acre landowners, filed July 28, 2023 (AIS Item No. 12);
7. Staff's Recommendation on Sufficiency of Notice, filed August 14, 2023 (AIS Item No. 13); and
8. Staff's recommendation on the approval of the sale, filed on September 25, 2023 (AIS Item No. 15).

II. JOINT PROPOSED ORDER APPROVING THE SALE AND ALLOWING TRANSFER TO PROCEED

The Parties move for the adoption of the attached Proposed Order Approving the Sale and Allowing the Transfer to Proceed.

III. CONCLUSION

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the attached Proposed Order Approving the Sale and Allowing the Transfer to Proceed be adopted.

Date: November 6, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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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 November 6, 2023 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ David Berlin
David Berlin

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OF CARBON FOR SALE, TRANSFER,	§	OF TEXAS
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CERTIFICATE RIGHTS IN EASTLAND	§	
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PROPOSED ORDER APPROVING THE SALE AND ALLOWING TRANSFER TO PROCEED

This Order addresses the application of Staff Water Supply Corporation (Staff WSC) and City of Carbon (Carbon) (collectively, Applicants) for approval of the sale, transfer, or merger of facilities and certificate rights in Eastland County. Specifically, Carbon seeks approval to acquire facilities, to transfer a portion of the water service area from Staff WSC under water CCN No. 11155, and to obtain a new CCN number, CCN No. 13311. The administrative law judge (ALJ) approves the transaction between Staff WSC and Carbon and the transaction may be completed as proposed.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. Carbon is a Texas general law municipality which operates, maintains, and controls facilities that provide water service in Eastland County.
2. Carbon owns and operates a public water system that is registered with the Texas Commission on Environmental Quality (TCEQ) as City of Carbon, public water systems (PWS) ID No. 0670015.
3. Staff WSC is a non-profit water supply corporation operating under Texas Water Code (TWC) Chapter 67 and operates, maintains, and controls facilities that provide water service under CCN number 11155 in Eastland County.
4. Staff WSC has two TCEQ approved PWS registered as Staff WSC Flatwood Area, PWS ID No. 0670030, and Staff WSC Kokomo Area, PWS ID No. 0670031.

Application

5. On March 7, 2023, the Applicants filed the application at issue in this proceeding.
6. On April 25, 2023, and May 5, 2023, Carbon filed supplemental information.

7. In the application, Carbon seeks approval to acquire facilities, to transfer a portion of the water service area from Staff WSC under water CCN No. 11155, and to obtain a new CCN number, CCN No. 13311.
8. The application indicates that the total acreage being requested is approximately 1,109.9 acres, however, the mapping review determined the requested area is approximately 1,190.8 acres.
9. The requested area includes 90 customer connections.
10. In Order No. 3 filed on June 7, 2023, the ALJ found the application, as supplemented, administratively complete.

Notice

11. On June 29, 2023, Carbon filed an affidavit of Sylvia Gosnell, Carbon's City Secretary, attesting that mailed notice was given to current customers, neighboring utilities, and affected parties on June 9, 2023.
12. The June 29, 2023, affidavit filed by Carbon also attested that notice was published in a newspaper having general circulation once each week for two consecutive weeks in the county where the requested area is located on June 15, 2023, and June 22, 2023.
13. On July 28, 2023, Carbon filed an affidavit of Corey Hull, Carbon's Mayor, attesting that notice was given to all landowners with land over 25 acres wholly or partly inside the requested area.
14. In Order No. 5, filed on August 15, 2023, the ALJ found the notice, as supplemented, sufficient.

Evidentiary Record

15. In Order No. 7 filed on [____], the ALJ admitted the following evidence into the record of this proceeding:
 - a. Application of Staff WSC and Carbon for Sale, Transfer, or Merger of Facilities and Certificate Rights in Eastland County, filed March 7, 2023;
 - b. Carbon's Response to Notice, filed on April 25, 2023;
 - c. Area Maps, filed on May 5, 2023;
 - d. Staff's Recommendation on Administrative Completeness and Notice and Proposed Procedural Schedule, filed on June 5, 2023;
 - e. Response to Staff Recommendations for Public Notice, filed June 29, 2023;

- f. Response to Order No. 4 with documents for 25+acre landowners, filed July 28, 2023;
- g. Staff's Recommendation on Sufficiency of Notice, filed August 14, 2023; and
- h. Staff's recommendation on the approval of the sale, filed on September 25, 2023.

Carbon's Compliance History

- 16. Carbon has resolved all violations and has agreed orders with the TCEQ to address issues that were under enforcement action.
- 17. Carbon does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
- 18. Carbon has demonstrated a compliance history that is adequate for approval of the transaction to proceed.

Adequacy of Existing Service

- 19. There are currently 90 existing customers in the requested area that are receiving service from Staff WSC and have an ongoing need for service.
- 20. The last TCEQ compliance investigation of Staff WSC was on October 23, 2020.
- 21. Staff WSC has violations listed in the TCEQ database that have since been resolved.
- 22. The Commission's complaint records, which date back 5 years, show one complaint against Staff WSC.
- 23. All the complaints have been reviewed and closed by the Commission's Customer Protection Division.
- 24. There is no evidence Staff WSC has failed to comply with any Commission or TCEQ order.

Need for Additional Service

- 25. There is a continuing need for service because Staff WSC currently serves 90 customer connections in the requested area.
- 26. This application is to transfer only existing facilities, customers, and a portion of the water service area.
- 27. There is no evidence of specific requests for additional service within the requested area.

Effect of Approving the Transaction

28. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and none filed a protest or motion to intervene.
29. There is no evidence that approval of the transaction will have any adverse effect on any other retail public utility providing service in the proximate area.
30. Staff WSC is the only utility affected by this transfer.
31. There will be no adverse effect on landowners in the requested area because the requested area is already certificated.
32. Approving the sale and transfer to proceed will obligate Carbon to provide continuous and adequate water service to current and future customers in the requested area.

Ability to Serve: Managerial and Technical

33. Carbon will employ or contract with a TCEQ-licensed operator who will be responsible for the operation of the public water system being transferred.
34. Carbon has the managerial and technical capability to provide continuous and adequate service to the requested area.
35. Carbon is proposing to make improvements to the Staff WSC's water system.

Ability to Serve: Financial Ability and Stability

36. Carbon's financial statements ending on June 30, 2022, contain an unqualified auditor's opinion from Cameron L. Gulley, Certified Public Accountant, stating that the financial statements present fairly, in all material respects, the financial position of Carbon as of June 30, 2022.
37. Based on the financial statements, Carbon has a debt-to-equity ratio of less than one, satisfying the leverage test.
38. Carbon's financial statements show that there are no projected shortages to cover.
39. Carbon has cash reserves and obtained a loan from the Texas Water Development Board to pay for the capital improvements required to provide continuous and adequate water service to the certificated area being transferred as well as the purchase price.
40. Carbon has demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

Financial Assurance

41. There is no need to require Carbon to provide a bond or other financial assurance to ensure continuous and adequate service to the requested area.

Feasibility of Obtaining: Service from Adjacent Retail Public Utility

42. Staff WSC is currently serving customers and such service has been continuous.
43. 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.
44. It is not feasible to obtain service from an adjacent retail public utility.

Regionalization or Consolidation

45. It will not be necessary for Carbon to construct a physically separate water system to serve the requested area.
46. Because the requested area will not require construction of a physically separate water system, consideration of regionalization or consolidation with an adjacent retail public utility is not required.

Environmental Integrity and Effect on the Land

47. Carbon is proposing to make improvements to the Staff WSC's water system.
48. The environmental integrity of the land will be minimally affected as facilities are constructed to provide service to the requested area.

Improvement in Service or Lowering Cost to Consumers

49. The customers' rates will not change from the current rates for the Staff WSC.
50. Reliability and quality of water services is expected to improve under Carbon's management.

Informal Disposition

51. More than 15 days have passed since the completion of notice provided in this docket.
52. No person filed a protest or motion to intervene.
53. Staff WSC, Carbon, and Commission Staff are the only parties to this proceeding.
54. No party requested a hearing, and no hearing is needed.
55. Commission Staff recommended approval of the sale.
56. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with TWC §§ 13.246 and 13.301(a)(2), and 16 Texas Administrative Code (TAC) § 24.239(e).
2. After consideration of the factors in TWC § 13.246(c), Carbon demonstrated that it is capable of rendering continuous and adequate service to every customer within the requested area, as required by TWC § 13.251.
3. Carbon demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service in the requested area, as required by TWC § 13.241(a) and 13.301(b).
4. The applicants demonstrated that the sale and transfer of all of Staff WSC's facilities and a portion of the water service area under CCN number 11155 to Carbon's new CCN number 13311, will serve the public interest and is necessary for the continued service, accommodation, convenience, or safety of the public, as required by TWC § 13.246(b) and 13.301(d) and (e).

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The transaction between the Applicants in this proceeding is approved and may be completed as proposed.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, the applicants must file proof that the transaction has been completed and customer deposits, if any, have been addressed.
3. The Applicants have 180 days from the date of this Order to complete the transaction.
4. Under 16 TAC § 24.239(m), if the transaction is not completed within this 180-day period and no extension has been granted, this approval is void and the applicants will have to reapply for approval.
5. The Applicants are advised that the facilities and service area subject to the transaction will remain under water CCN number 11155 and will be held by Staff WSC until the

final order or notice of approval is issued in this matter, in accordance with Commission rules.

6. In an effort to finalize this case as soon as possible, the Applicants must continue to file monthly updates regarding the status of the closing and submit documents evidencing that the transaction was completed.
7. Within 15 days following the filing of the Applicants' proof that the transaction has been completed and customer deposits, if any, have been addressed, Commission Staff must file a recommendation regarding the sufficiency of the documents and propose a schedule for continued processing of this docket.

Signed at Austin, Texas the __ day of November 2023.

PUBLIC UTILITY COMMISSION OF TEXAS

JEFFREY J. HUHN
ADMINISTRATIVE LAW JUDGE