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Filing Date - 2024-07-12 01:31:02 PM

Control Number - 56385

Item Number - 23

DOCKET NO. 56385

APPLICATION OF NEW WATER	§	PUBLIC UTILITY COMMISSION
SYSTEMS, INC. AND DERBY ING LLC	§	
FOR SALE, TRANSFER, OR MERGER	§	OF TEXAS
OF FACILITIES AND CERTIFICATE	§	
RIGHTS IN FRIO COUNTY	§	

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

On March 19, 2024, New Water Systems, Inc. (New Water) and Derby ING LLC (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate of convenience and necessity (CCN) rights in Frio County.

On July 10, 2024, the administrative law judge filed Order No. 5, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a final recommendation on the transaction by July 12, 2024. Therefore, this pleading is timely filed.

I. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

Staff has reviewed the application and supplemental information. As detailed in the attached memoranda from Jaspinder Singh of the Infrastructure Division and Fred Bednarski, III of the Rate Regulation Division, Staff recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in Texas Water Code (TWC) Chapter 13 and under 16 Texas Administrative Code (TAC) Chapter 24. Additionally, based upon its review, Staff recommends that New Water 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 proposed 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 of any remaining deposits have been addressed as soon as possible, as required by 16 TAC § 24.239(l).

Staff notes that any 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 request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for approval of the sale, as required by 16 TAC § 24.239(m).

II. CONCLUSION

For the reasons detailed above, Staff respectfully requests the entry of an order allowing the proposed transaction to proceed.

Dated: July 12, 2024

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 will be provided to all parties of record via electronic mail on July 12, 2024, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Rowan Pruitt
Rowan Pruitt

Public Utility Commission of Texas

Memorandum

TO: Rowan Pruitt, Attorney
Legal Division

FROM: Jaspinder Singh, Engineering Specialist
Infrastructure Division

DATE: July 12, 2024

RE: Docket No. 56385 – *Application of New Water Systems, Inc. and Derby ING for Sale, Transfer, or Merger of Facilities and Certificate Rights in Frio County*

1. Application

On March 19, 2024, New Water Systems, Inc. (New Water Systems) and the Derby ING LLC (Derby ING) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Frio County, Texas, under Texas Water Code (TWC) §§ 13.242 through 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 and § 24.239.

Specifically, New Water Systems is seeking to obtain a new certificate of convenience and necessity (CCN), approval to acquire facilities, and to transfer all of the water certificated service area from Derby ING under water CCN No. 12931.

Based on the mapping review by Hank Journeay, Infrastructure Division, the revised maps filed with Item 4 on April 4, 2024 are sufficient.

The requested area includes 42 customer connections and approximately 315 acres to transfer from Derby ING (CCN No. 12931) to New Water Systems and the issuance of a water CCN.

The application proposes the subtraction of approximately 315 acres from CCN No. 12931 and the addition of approximately 315 acres and the issuance of a new water CCN to New Water Systems.

2. Notice

Affidavits were provided affirming that notices were submitted to customers, cities, districts, neighboring retail public utilities, the county judge, groundwater conservation districts, and

that there are no landowners with tracts of land that are at least 25 acres and are wholly or partly located in the requested area.

New Water Systems provided notice consistent with 16 TAC § 24.239(e). The deadline to intervene was May 18, 2024; 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)).

Derby ING has a Texas Commission on Environmental Quality (TCEQ) approved public water system registered as Derby ING, PWS ID No. TX0820016. The last TCEQ compliance investigation of the Derby ING system was on August 11, 2022. Derby ING has violations listed in the TCEQ database that are being addressed. The Commission's complaint records, which date back 5 years, show one complaint against Derby ING. The complaint has been reviewed and closed by the Commission's Consumer 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 Derby ING to New Water Systems. The customers are currently receiving water service from Derby ING's water system.

There are currently 42 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)).

New Water Systems 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. New Water Systems will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

New Water Systems will have a licensed operator to run the system operations. A Class C operator will be the responsible operator for the system.

New Water Systems has the ability to provide adequate service in the requested area. New Water Systems' website ([New Water Systems, Inc. - Home](#)) lists that they operate eight water systems, Derby ING (PWS ID No. TX0820016, CCN No. 12931, CCN to be transferred in this docket), Fall Branch Estates (PWS ID No. TX1330178), Oak Hill Acres Mobile Home Subdivision (PWS ID No. TX0150156), Pleasure Point HOA (PWS ID No. TW0030007, CCN No. 11734, in receivership), Sellers Estates Mobile Home Comm (PWS ID No. TX1011459), Solar Village HOA (PWS ID No. TX1330177, CCN No. 13287), South Midland County Water Systems (PWS ID No. TX1650077, CCN No. 13223, in receivership), and Warren Road Subdivision Water Supply (PWS ID No. TX1650084, CCN No. 13001). New Water Systems has violations listed in the TCEQ database that are being addressed. In addition, the Commission's complaint records, which date back 5 years, show one formal complaint against New Water Systems, Docket No. 56731.

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 New Water Systems 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)).*

New Water systems 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)).*

There are no improvements necessary to provide continuous and adequate service to the requested area therefore a capital improvements plan is not necessary.

- 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(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.

- 3.9. *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 not be affected as no additional construction is needed 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 Derby ING. Reliability and quality of water service is expected to improve under New Water System's management.

4. Recommendation

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.

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 Derby ING for the customers being served by Derby ING. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Rowan Pruitt, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: July 12, 2024

RE: Docket No. 56385 – *Application of New Water Systems, Inc. and Derby ING LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Frio County*

On March 19, 2024, New Water Systems, Inc. (New Water) and Derby ING LLC filed an application for the sale, transfer, or merger of facilities and certificate rights in Frio 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. New Water 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 New Water's financial projected financial statements. Based upon my review of the financial statements, I calculate the debt-to-equity ratio to be 0.00. The debt-to-equity ratio is based on long-term debt of \$0.00 divided by equity of \$750,485.¹ Because the ratio is less than one, I recommend a finding that New Water 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).

¹ Application of New Water Systems, Inc. and Debry ING, interchange item no. 1, at 16 (Mar. 19, 2024).

New Water provided financial projections indicating no cash shortages to cover for the first five years of operations.² Therefore, I recommend a finding that New Water meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvements

Per the memorandum provided by Jaspinder Singh, Infrastructure Analyst, no capital improvements are required to provide continuous and adequate water service to the requested area. Therefore, I recommend a finding that New Water should not be required to provide loan approval documents or a firm capital commitment and meets the requirements specified in 16 TAC § 24.11(e)(5)(B) and if necessary, a good cause exception should be granted.

Recommendation

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

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

² *Id.* at 17.