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Filing Date - 2024-08-08 01:10:15 PM

Control Number - 56385

Item Number - 25

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	§	

**JOINT MOTION TO ADMIT EVIDENCE, PROPOSED ORDER
APPROVING SALE AND TRANSFER TO PROCEED, AND REQUEST TO RESYTTLE
THE DOCKET**

New Water Systems, Inc (New Water) and Derby ING LLC (Derby) (collectively, Applicants), together with the Staff (Staff) of the Public Utility Commission of Texas (Commission) (collectively, Parties), file this Joint Motion to Admit Evidence and Proposed Order Approving Sale and Transfer to Proceed.

On March 19, 2024, Applicants filed an application for the sale, transfer, or merger of facilities and certificate rights in Frio County under the provision of Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. On July 10, 2024, the administrative law judge (ALJ) filed Order No. 5, directing the parties to file a joint motion to admit evidence and proposed order approving the sale and allowing the transaction to proceed by August 8, 2024. Therefore, this pleading is timely filed.

I. JOINT MOTION TO ADMIT EVIDENCE

Parties move to admit the following evidence into the record of this proceeding:

- a) The application of New Water and Derby, filed on March 19, 2024 (Interchange Item No. 1);
- b) Applicants' supplements to the application, filed on March 27 and April 12, 2024 (Interchange Item Nos. 3 and 6);
- c) New Water revised mapping, filed on April 4 and 10, 2024 (Interchange Item Nos. 4 and 5);
- d) Staff's recommendation on administrative completeness, notice, proposed procedural schedule, and request to restyle docket, filed on April 18, 2024 (Interchange Item No. 7);
- e) New Water's Affidavit and Customer List for Notice to Customers, filed on April 25, 2024 (Interchange Item No. 12);

- f) New Water's Proof of Mailing, Notice and Affidavit to Parties and Landowners, filed on June 28, 2024 (Interchange Item No. 20);
- g) Staff's supplemental recommendation on sufficiency of notice and proposed procedural schedule, filed on July 2, 2024 (Interchange Item No. 21);
- h) Staff final recommendation on the transaction, filed on July 12, 2024 (Interchange Item No. 23);
- i) Staff's Clarification, filed on July 17, 2024 (Interchange Item No. 24); and
- j) The Parties' joint motion to admit evidence, proposed order approving the sale and allowing the transaction to process, and request to restyle the docket, filed on July 8, 2024 (Interchange Item No. 25).

II. JOINT PROPOSED ORDER

The attached Joint Proposed Order Approving Sale and Transfer to Proceed would grant Applicants' application for the sale, transfer, or merger of facilities and certificate rights in Frio County.

III. REQUEST TO RESTYLE THE DOCKET

Staff respectfully recommends that the docket be restyled as *Application of New Water Systems, Inc. and Debry INC LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights and to Obtain a Water Certificate of Convenience and Necessity in Frio County*. Specifically, based on the application, New Water is seeking to acquire Debry's facilities and certificate rights, as well as obtain a water CCN for the same area.

IV. CONCLUSION

Parties respectfully request that the Commission grant the Joint Motion to Admit Evidence, restyle the docket as proposed above, and adopt the attached Joint Proposed Order Approving Sale and Transfer to Proceed.

Dated: August 8, 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 August 8, 2024, in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Rowan Pruitt
Rowan Pruitt

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 AND TO OBTAIN A WATER	§	
CERTIFICATE OF CONVENIENCE	§	
AND NECESSITY IN FRIO COUNTY	§	

JOINT MOTION PROPOSED ORDER APPROVING SALE AND TRANSFER TO PROCEED

This order addressed the application of New Water Systems, Inc (New Water) and Derby ING LLC (Derby) (Collectively, Applicants) for approval of the sale, transfer, or merger of facilities and certificate rights in Frio County. The applicants seek approval to sell and transfer all of Derby's facilities and service area under water Certificate of Convenience Necessity (CCN) number 12931 to New Water, to cancel Derby's CCN number 12931, to issue a new water CCN number to New Water to include the facilities and service area previously included in Derby ING's CCN number 12931. The administrative law judge (ALJ) approves the transaction between New Water and Derby, and the transaction may be completed as proposed.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. New Water is a domestic corporation registered with the Texas Secretary of State on November 4, 2022, under filing number 804796824.
2. New Water does not have a water CCN.
3. Derby ING is a limited liability company and retail public utility that operates, maintains, and controls facilities for providing water utility service in Frio County under CCN number 12931.
4. Derby ING owns a public water system (PWS) in Frio County registered with the Texas Commission on Environmental Quality (TCEQ) under PWS identification number TX0820016 (Derby ING).

Application

5. On March 19, 2024, New Water and Derby filed an application for approval of the sale, transfer, or merger of facilities and CCN rights in Frio County.
6. New Water filed supplemental information on March 27 and April 4, 10, and 12, 2024.
7. In its application, New Water and Derby seek approval of the following transaction:
 - a. The sale and transfer of all of Derby's facilities and certificated service area under CCN number 12931 to New Water;
 - b. The cancellation of Derby's CCN number 12931;
 - c. The issuance of a water CCN to New Water to include the facilities previously held by and certificated service area previously served by Derby.
8. The requested area to be transferred is approximately 8.2 miles south of downtown Pearsall, Texas, and is generally bounded on the north by approximately 600 feet north of County Road 3424; on the east by approximately 1,000 feet east of County Road 3420; on the south by approximately 850 feet south of Farm to Market Road 1853; and on the west by approximately 320 feet west of County Road 4415.
9. The requested area includes 42 customer connections and approximately 315 acres transferred from Derby (CCN No. 12931) to New Water under a new CCN number.
10. In Order No. 2, issued on April 25, 2024, the ALJ found the application administratively complete.

Notice

11. On April 25, 2024, New Water filed its proof of notice, including signed affidavits, attesting that notice was provided to all customers, neighboring utilities, affected parties, landowners, political subdivisions, and other persons identified on April 18, 2024.
12. On June 28, 2024, New Water filed an affidavit indicating that there are no landowners owning tracts of land over 25 acres wholly or partially inside the requested CCN area.
13. In Order No. 5, issued on July 10, 2024, the ALJ found the notice sufficient.

Evidentiary Record

14. In Order No. ___ filed on _____, 2024, the ALJ admitted the following evidence into the record:
 - a. The application of New Water and Derby, filed on March 19, 2024

- b. Applicants' supplements to the application, filed on March 27 and April 12, 2024;
- c. New Water revised mapping, filed on April 4 and 10, 2024;
- d. Staff's recommendation on administrative completeness, notice, proposed procedural schedule, and request to restyle docket, filed on April 18, 2024;
- e. New Water's Affidavit and Customer List for Notice to Customers, filed on April 25, 2024;
- f. New Water's Proof of Mailing, Notice and Affidavit to Parties and Landowners, filed on June 28, 2024;
- g. Staff's recommendation on sufficiency of notice and proposed procedural schedule, filed on July 2, 2024;
- h. Staff final recommendation on the transaction, filed on July 12, 2024;
- i. Staff's Clarification, filed on July 17, 2024; and
- j. The Parties' joint motion to admit evidence, proposed order approving the sale and allowing the transaction to process, and request to restyle the docket, filed on July 8, 2024.

Purchaser's Compliance History

- 15. The Commission's complaint records, which cover the last five years, show one formal complaint against New Water that is being reviewed by Staff.
- 16. New Water has active violations in the TCEQ database that are being addressed.

Adequacy of Existing Service

- 17. There are currently 42 existing customers in the requested area that are being served and such service has been continuous and adequate.
- 18. The Commission's complaint records, which cover the last five years, show one informal complaint against Derby ING. The complaint has been reviewed and closed by the Commission's Consumer Protection Division.
- 19. The last TCEQ compliance investigation of the Derby ING water system was on August 11, 2022. No violations were reported.
- 20. No capital improvements are necessary for New Water to continue providing continuous and adequate water service to the requested area.

Need for Additional Service

21. There are 42 existing customers in the requested area that are receiving service and have an ongoing need for service.
22. This is an application to transfer only existing facilities, customers, and service area.
23. There is no evidence of specific requests for additional service within the requested area.

Effect of Approving the Transaction

24. New Water will be the certificated entity for the requested area and will be required to provide continuous and adequate service to current and future customers in the requested area.
25. Landowners will be able to obtain water service from New Water after approval of the transaction.
26. There will be no adverse effect on landowners in the requested area because the area is currently certificated to Derby.
27. All retail utilities in the proximate area were provided notice of the application, and no protests or adverse comments were filed.
28. There will be no effect on any retail public utility providing service in the proximate area.

Ability to Serve: Managerial and Technical

29. New Water operates several TCEQ-registered public water systems in Texas.
30. New Water employs or contracts with TCEQ-licensed operators who will be responsible for the operation of the public water system being transferred.
31. New Water has the technical and managerial capability to provide continuous and adequate service to the requested area.

Ability to Service: Financial Ability and Stability

32. New Water has a debt-to-equity ratio that is less than one, satisfying the leverage test.
33. New Water has demonstrated it has sufficient cash available on hand to cover any projected operations and maintenance shortages during the first five years of operations following approval of the transaction, satisfying the operations test.
34. There are no capital improvements necessary to provide continuous and adequate service to the requested area, therefore a capital improvements plan is not necessary.

35. New Water has demonstrated the financial capability and stability to provide continuous and adequate service to the requested area.

Financial Assurance

36. There is no need to require New Water to provide a bond or other financial assurance to ensure continuous and adequate service.

Feasibility of Obtaining Service from an Adjacent Retail Public Utility

37. Derby is currently serving customers throughout the requested area and such service has been continuous and adequate.
38. Obtaining service from an adequate retail public utility would likely increase costs to customers because new facilities would need to be constructed; at a minimum, an interconnection would need to be installed to connect a neighboring retail public utility.
39. It is not feasible to obtain service from an adjacent retail public utility.

Environmental Integrity and Effect on the Land

40. The environmental integrity of the land will be affected as no additional construction is needed to provide service to the area.

Improvement of Service or Lowering Costs to Consumers

41. New Water will continue to provide water service to Derby's existing customers in the requested area.
42. Reliability and quality of water service is expected to improve under New Water's management.
43. The customers' rates will not change from the current rates from Derby.

Regionalization or Consolidation

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

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. Notice of the application was provided in compliance with Texas Water Code (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), New Water 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. New Water 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. New Water and Derby have demonstrated that the sale and transfer of Derby's facilities and service area to New Water 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 New Water and Derby in this proceeding is approved and may be completed.
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 must reapply for approval.
5. CCN number 12931 and associated facilities and service area, will continue to be held by Derby 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 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 August, 2024.

PUBLIC UTILITY COMMISSION OF TEXAS

KATIE MOORE MARX

ADMINISTRATIVE LAW JUDGE