



## **Filing Receipt**

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**Item Number - 28**

**DOCKET NO. 56385**

<b>APPLICATION OF NEW WATER</b>	<b>§</b>	<b>PUBLIC UTILITY COMMISSION</b>
<b>SYSTEMS, INC. AND DERBY ING LLC</b>	<b>§</b>	
<b>FOR SALE, TRANSFER, OR MERGER</b>	<b>§</b>	<b>OF TEXAS</b>
<b>OF FACILITIES AND CERTIFICATE</b>	<b>§</b>	
<b>RIGHTS AND TO OBTAIN A WATER</b>	<b>§</b>	
<b>CERTIFICATE OF CONVENIENCE</b>	<b>§</b>	
<b>AND NECESSITY IN FRIO COUNTY</b>	<b>§</b>	

**ORDER NO. 8**  
**APPROVING SALE AND TRANSACTION TO PROCEED**

This order addresses the application of New Water Systems, Inc and Derby ING LLC for approval of the sale, transfer, or merger of facilities and certificate rights in Frio County. The applicants seek approval of the following: (a) the sale and transfer to New Water of all facilities and service area held by Derby ING under certificate of convenience necessity (CCN) number 12931; (b) the issuance of a new CCN number to New Water to include all facilities and service area previously held by Derby ING under CCN number 12931; and (c) the cancellation of Derby's CCN number 12931. The administrative law judge (ALJ) approves the transaction between New Water and Derby and authorizes it to be completed.

**I. Findings of Fact**

The Commission makes the following findings of fact.

**Applicant**

1. New Water is a Texas corporation registered with the Texas secretary of state under filing number 804796824.
2. New Water does not have a water CCN.
3. New Water operates several public water systems in Texas registered with the Texas Commission on Environmental Quality (TCEQ) under identification numbers TX1330178, Fall Branch Estates; TX0150156, Oak Hill Acres Mobile Home Subdivision; TX0030007, Pleasure Point HOA; TX1011459, Sellers Estates Mobile Home Comm; TX1330177, Solar Village HOA; TX1650077, South Midland County Water Systems; and TX 1650084,

Warren Road Subdivision Water Supply. New Water also currently operates Derby ING's public water system under identification number TX0820016.

4. Derby ING was a limited liability company formerly registered with the Texas secretary of state under filing number 801919372. Derby ING forfeited its existence on January 29, 2016.
5. Derby ING operated, maintained, and controlled facilities for providing water utility service in Frio County under CCN number 12931.
6. Derby ING owns a public water system in Frio County registered with the Texas Commission on Environmental Quality (TCEQ) under public water system identification number TX0820016.

**Application**

7. On March 19, 2024, New Water and Derby filed the application at issue in this proceeding.
8. New Water filed supplemental information on March 27 and April 4, 10, and 12, 2024.
9. In the application, as supplemented, New Water and Derby seek approval of the following:
  - a. the sale and transfer to New Water of all facilities and service area held by Derby ING under CCN number 12931;
  - b. the issuance of a new CCN to New Water to include the facilities previously held by and certificated service area previously served by Derby; and
  - c. the cancellation of Derby's CCN number 12931.
10. The requested area to be transferred is approximately 8.2 miles south of downtown Pearsall, Texas, and is generally bounded on the north by a line approximately 600 feet north of County Road 3424; on the east by a line approximately 1,000 feet east of County Road 3420; on the south by a line approximately 850 feet south of Farm to Market Road 1853; and on the west by a line approximately 320 feet west of County Road 4415.
11. The requested area includes approximately 315 acres and 42 current customers.
12. In Order No. 2 filed on April 25, 2024, the ALJ found the application, as supplemented, administratively complete.

**Notice**

13. On April 25, 2024, New Water filed the affidavit of Christopher Martin, chief operations officer of New Water, attesting that notice was provided to all customers, neighboring utilities, affected persons, landowners, political subdivisions, and other persons as indicated in Commission Staff's recommendation on April 18, 2024.
14. On June 28, 2024, New Water filed the affidavit of Mr. Martin indicating that there are no landowners owning tracts of land over 25 acres wholly or partially inside the requested CCN area.
15. In Order No. 5 filed on July 10, 2024, the ALJ found the notice sufficient.

**Evidentiary Record**

16. In Order No. 6 filed on August 16, 2024, the ALJ admitted the following evidence into the record:
  - a. the application of New Water and Derby ING filed on March 19, 2024;
  - b. applicants' supplement to the application filed on March 27, 2024;
  - c. applicants' supplement to the application filed on April 12, 2024;
  - d. New Water's revised mapping filed on April 4, 2024;
  - e. New Water's revised mapping filed on April 10, 2024;
  - f. Commission Staff's recommendation on administrative completeness, notice, proposed procedural schedule, and request to restyle docket filed on April 18, 2024;
  - g. New Water's affidavit and customer list for notice to customers filed on April 25, 2024;
  - h. New Water's proof of mailing, notice and affidavit to parties and landowners filed on June 28, 2024;
  - i. Commission Staff's supplemental recommendation on sufficiency of notice and proposed procedural schedule filed on July 2, 2024;
  - j. Commission Staff final recommendation on the transaction filed on July 12, 2024;
  - k. Commission Staff's clarification filed on July 17, 2024; and

1. the parties' joint motion to admit evidence, proposed order approving the sale and transfer to proceed, and request to restyle the docket filed on August 8, 2024.

**Purchaser's Compliance History**

17. The Commission's complaint records, which cover the last five years, show one formal complaint against New Water that is being reviewed by Commission Staff.
18. New Water has active violations in the TCEQ database and is in the process of resolving the violations.
19. New Water does not have a history of continuing mismanagement or misuse of revenues as a utility service provider.
20. New Water demonstrated a compliance history that is adequate for approval of the proposed transaction.

**Adequacy of Existing Service**

21. There are currently 42 existing customer connections in the requested area that are being served by New Texas through Derby ING's public water system number TX0820016 and such service has been continuous and adequate.
22. 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.
23. The last TCEQ compliance investigation of the Derby ING water system was on August 11, 2022.
24. No capital improvements are necessary for New Water to continue providing continuous and adequate water service to the requested area.
25. There is no evidence in the record that Derby ING has failed to comply with any Commission or TCEQ order.

**Need for Additional Service**

26. There are 42 existing customer connections in the requested area that are receiving service and have an ongoing need for service.
27. This application is to transfer only existing facilities, customers, and service area.

28. There is no evidence of specific requests for additional service within the requested area.

**Effect of Approving the Transaction and Granting the CCN**

29. 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.
30. New Water and Derby ING are the only utilities affected by this sale and transfer.
31. All retail utilities in the proximate area were provided notice of the application, and no protests or adverse comments were filed.
32. There will be no adverse effect on landowners in the requested area because the area is currently certificated.
33. There will be no effect on any retail public utility providing service in the proximate area.

**Ability to Serve: Managerial and Technical**

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

**Feasibility of Obtaining Service from an Adjacent Retail Public Utility**

37. Derby ING 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.

**Regionalization or Consolidation**

40. It will not be necessary for New Water to construct a physically separate public water system to serve the requested area.

41. 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.

**Ability to Service: Financial Ability and Stability**

42. New Water has a debt-to-equity ratio that is less than one, satisfying the leverage test.
43. 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.
44. There are no capital improvements necessary to provide continuous and adequate service to the requested area, therefore a capital improvements plan is not necessary.
45. New Water demonstrated the financial capability and stability to pay for the facilities necessary to provide continuous and adequate service to the requested area.

**Financial Assurance**

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

**Environmental Integrity and Effect on the Land**

47. There will be no effect on environmental integrity or the land as the requested area will continue to be served with existing facilities.

**Improvement of Service or Lowering Costs to Consumers**

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

**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.

2. After consideration of the factors in TWC § 13.246(c) and 16 TAC § 24.227(e), 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. Derby ING and New Water demonstrated that the sale and transfer of Derby ING's facilities and service area to New Water and the issuance of a new CCN number 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.

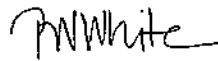
1. The transaction between Derby ING and New Water in this proceeding is approved and may be completed.
2. As soon as possible after the effective date of the transaction, but not later than 30 days after the effective date, Derby ING and New Water must file proof that the transaction has been completed and customer deposits, if any, have been addressed.
3. Derby ING and New Water 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 Derby ING and New Water must reapply for approval.
5. CCN number 12931, and associated facilities and service area, will continue to be held by Derby ING 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 on the 16th day of August 2024.**

**PUBLIC UTILITY COMMISSION OF TEXAS**



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**REBECCA NASH WHITE**

**ADMINISTRATIVE LAW JUDGE**