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DOCKET NO. 56608

APPLICATION OF THE ESTATE OF	§	PUBLIC UTILITY COMMISSION
HENRY M. GARZA DBA CIELO AZUL	§	
RANCH AND CIELO AZUL AGUA LLC	§	OF TEXAS
FOR SALE, TRANSFER, OR MERGER	§	
OF FACILITIES AND CERTIFICATE	§	
RIGHTS IN HAYS COUNTY	§	

COMMISSION STAFF’S RECOMMENDATION ON THE TRANSACTION

On May 13, 2024, the Estate of Henry M. Garza dba Cielo Azul Ranch Public Water System and Cielo Azul Agua LLC (Cielo Azul Agua) (collectively, Applicants) filed an application for the sale, transfer, or merger of facilities and certificate rights in Hays County.

On December 12, 2024, the administrative law judge filed Order No. 7, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on approval of the sale by January 7, 2025. Therefore, this pleading is timely filed.

I. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

Staff has reviewed the application, as supplemented, and, as detailed in the attached memoranda from Jaspinder Singh of the Infrastructure Division and Fred Bednarski, III of the Rate Regulation Division, recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in TWC Chapter 13 and under 16 TAC Chapter 24. Additionally, based upon its review, Staff recommends that Cielo Azul Agua 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 Applicants 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: January 7, 2025

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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/s/ Rowan Pruitt
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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 January 7, 2025, 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: January 7, 2025

RE: Docket No. 56608 – *Application of the Estate of Henry M. Garza dba Cielo Azul Ranch and Cielo Azul Agua LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hays County*

1. Application

On May 13, 2024, Estate of Henry M Garza dba Cielo Azul Ranch (Cielo Azul Ranch) and the Cielo Azul Agua LLC (Cielo Azul Agua) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Hays 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, Cielo Azul Agua, seeks approval to acquire facilities, to transfer all of the water service area, and transfer Certificate of Convenience and Necessity (CCN) number from Cielo Azul Ranch under water CCN No. 12702.

Based on the mapping review by Dave Babicki, Infrastructure Division, the revised maps filed with Item 8 on August 8, 2024, are sufficient.

The requested area includes 11 customer connections and approximately 45 acres to transfer from Cielo Azul Ranch (CCN No. 12702) to Cielo Azul Agua to retain seller's CCN No. 12702.

The application proposes the subtraction of approximately 45 acres from Cielo Azul Ranch (CCN No. 12702) and the addition of approximately 45 acres to Cielo Azul Agua to retain seller's CCN No. 12702.

The application indicates that the total acreage being requested is approximately 44.8 acres, however, the mapping review determined the requested area is approximately 45 acres.

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 owning 25 acres partially or wholly located in the requested area.

Cielo Azul Agua provided notice consistent with 16 TAC § 24.239(e). The deadline to intervene was December 6, 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)).*

Cielo Azul Agua has the ability to provide adequate service in the requested area. Cielo Azul Ranch has a TCEQ approved public water system (PWS) registered as Cielo Azul Ranch, PWS ID No. TX1050034. Cielo Azul Ranch does not have any active violations listed in the TCEQ database. In addition, the Commission's complaint records, which date back 5 years, show no complaints against Cielo Azul Ranch. All the complaints have 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 Cielo Azul Ranch to Cielo Azul Agua. The customers are currently receiving water service from Cielo Azul Ranch's water system.

There are currently 11 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)).*

Cielo Azul Agua 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. Cielo Azul Agua will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

Cielo Azul Agua will have licensed operators to run the system operations. Class A, C, and D operators will be the responsible operators for the system.

- 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 Cielo Azul Agua 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)).***

Cielo Azul Ranch 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 Cielo Azul Ranch water system.

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 Cielo Azul Ranch for the customers being served by Cielo Azul Ranch. 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: January 7, 2025

RE: Docket No. 56608 – *Application of the Estate of Henry M. Garza dba Cielo Azul Ranch and Cielo Azul Agua LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hays County*

On May 13, 2023, the Estate of Henry M. Garza dba Cielo Azul Ranch and Cielo Azul Agua LLC (Azul Agua) filed an application for the sale, transfer, or merger of facilities and certificate rights in Hays County under the provisions of Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 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 TAC § 24.11. Azul Agua 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

Azul Agua provided an affidavit stating that its affiliate and sole owner, The Garza Management Trust of 1994 (Garza), is capable, available, and willing to cover any temporary cash shortages and operating expense shortfalls.¹

My analysis is based on the financial statements of Garza ending December 31, 2023, which demonstrates a debt service coverage ratio of 0.00, as shown in confidential attachment FB-1. Because the ratio is less than 1.00, I recommend a finding that Garza meets the leverage test specified in 16 TAC § 24.11(e)(2)(A). Therefore, I recommend a finding that—through its affiliate and sole owner—Azul Agua meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

¹ Confidential filing – affidavit and letter of guarantee, interchange item no. 16, at 2 and 3 (Oct. 15, 2024).

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; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

The affidavit provided by Azul Agua's affiliate and sole owner, Garza, demonstrates a written guarantee of coverage of temporary cash shortages from an affiliated interest. Additionally, Azul Agua projects no operating shortages, as shown in confidential attachment FB-1. Therefore, I recommend a finding that Azul Agua meets the operations test specified in 16 TAC § 24.11(e)(3).

Planned Capital Improvements and Purchase Price

An applicant proposing service to a new CCN area must provide documentation of adequate funding for the purchase of an existing system plus any improvements necessary to provide continuous and adequate service to the existing customers, as required by 16 TAC § 24.11(e)(5)(A).

Capital improvements are not required per the memorandum provided by Infrastructure Analyst, Jaspinder Singh. Therefore, I recommend a finding that Azul Agua should not be required satisfy the requirements of 16 TAC § 24.11(e)(5)(A)

Recommendation

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

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