

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

November 22, 2019

IN RE:

PETITION OF SONTARA OLD
HICKORY, INC. FOR APPROVAL
OF AN ASSET PURCHASE AGREEMENT
AND FOR THE ISSUANCE OF A
CERTIFICATE OF CONVENIENCE
AND NECESSITY

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DOCKET NO.
19-00071

ORDER APPROVING ASSET PURCHASE AGREEMENT AND
GRANTING CERTIFICATE OF CONVENIENCE AND NECESSITY

This matter came before Chair Robin L. Morrison, Commissioner Herbert H. Hilliard, and Commissioner John Hie of the Tennessee Public Utility Commission, (“TPUC” or “Commission”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on October 14, 2019, for consideration of the *Expedited Petition of Sontara Old Hickory, Inc. for Approval of An Asset Purchase Agreement and for the Issuance of a Certificate of Public Convenience and Necessity* (“*Petition*”) filed by Sontara Old Hickory, Inc. (“Sontara,” “Company,” or “Petitioner”) on August 13, 2019. In its *Petition*, Sontara requests the Commission’s approval of a Purchase and Sale Agreement (“*Agreement*”) which would transfer a water and wastewater treatment system owned and operated by E.I. du Pont de Nemours and Company (“DuPont”) to Sontara. In addition, the Company requests that the Commission issue to Sontara a Certificate of Public Convenience and Necessity (“CCN”) to operate the water and wastewater system in Old Hickory, Tennessee.

BACKGROUND AND PETITION

Sontara, formerly known as Jacob Holm Opco Inc., is a corporation organized under the laws of the State of Delaware with a principal place of business located at 326 Swinging Bridge

Road, Old Hickory, Tennessee 37138.¹ In its *Petition*, which includes several exhibits, including the documentation indicating it is registered and in good standing with the Tennessee Secretary of State,² Sontara seeks to acquire and operate a water and wastewater system (the “System”) serving the current and former properties of DuPont³ located in Old Hickory, Tennessee.⁴ The System provides service to DuPont and to the three (3) industrial customers located on the DuPont Campus: Sontara; Fiberweb, LLC; and 3M.⁵

DuPont no longer desires to operate and maintain the System. However, Sontara, as well as the other companies located on the DuPont Campus, depend upon the availability of sustained service from the System.⁶ Sontara consumes approximately 80% of the water and wastewater services provided by the System. Therefore, Sontara entered into the Agreement with DuPont for acquisition of the System, thereby ensuring continued service to itself and the other customers of the System.⁷ Included in the transfer of the System to Sontara under the Agreement are all parcels, including easements, rights-of-way or rights granted to DuPont in furtherance of the operation of the System.⁸

The Company also seeks the issuance of a CCN for the operation and maintenance of the System to the DuPont Campus. The *Petition* alleges that Sontara possesses the requisite technical, managerial, and financial ability to own and operate the System.⁹ Sontara states that it will not only hire approximately six (6) DuPont employees that currently operate and maintain

¹ *Petition*, p. 2, Exhs. E & F (August 13, 2019).

² *Id.* at Exh. F.

³ The System was established and previously operated by DuPont for the sole purpose of servicing its own facilities. However, DuPont has sold and leased portions of the property to three (3) industrial customers: Sontara; Fiberweb, LLC; and 3M. However, the System provides no residential service and serves no other non-residential customers. The System provides service to DuPont and to the companies located on the current and former properties of DuPont (“DuPont Campus”). *Id.* at 1, 3-4.

⁴ *Id.* at 1.

⁵ *Id.* at 3-4.

⁶ *Id.*

⁷ *Id.* at 4 and Exh. I.

⁸ *Id.* at 6.

⁹ *Id.* at 7.

the System, but also currently has several employees who are certified to operate and maintain the System who have experience in the operation and maintenance of similar systems. Further, as part of Sontara's larger manufacturing operations, the Petitioner states that it has an established financial structure capable of supporting the System.¹⁰ The *Petition* states that the provisions of the Agreement require Sontara to continue to provide service to customers of the System at the currently established rates until such time as different rates may be submitted to and approved by the Commission.¹¹

In support of its *Petition*, the Company filed the testimony of Jeffrey A. Adams, Project Director for the Company. In his Pre-Filed Testimony, Mr. Adams states that upon receiving notice from DuPont that it no longer desired to operate and maintain the System, Sontara engaged DuPont in discussions concerning the continued operation and maintenance of the System. Mr. Adams testified that these discussions led to the impending acquisition of the System by Sontara.¹² In addition to providing details in support of Sontara's technical, managerial, and financial ability to operate and maintain the System, Mr. Adams testifies that Metropolitan Nashville Water Services has indicated that it does not currently provide, and does not desire or intend to provide, water or wastewater services to the DuPont Campus.¹³ Finally, Mr. Adams affirms that Sontara will comply with all the Commission's rules, regulations, and orders pertaining to the provision of water and wastewater service in Tennessee.¹⁴

The Consumer Advocate Unit in the Financial Division of the Tennessee Attorney General's Office ("Consumer Advocate") filed a *Petition to Intervene* on August 22, 2019. On September 24, 2019, the Hearing Officer granted the Consumer Advocate's *Petition to Intervene*. The Hearing Officer issued a *Protective Order* on September 25, 2019 to expedite filings and

¹⁰ *Id.* at 7-8.

¹¹ *Id.* at 5.

¹² Jeffrey A. Adams, Pre-Filed Direct Testimony, p. 3 (August 13, 2019) (as Exhibit I to *Petition*).

¹³ *Id.* at 7, 9-11.

¹⁴ *Id.* at 12-13.

discovery and to facilitate the prompt resolution of the *Petition*. The Consumer Advocate submitted the Pre-Filed Testimony of its witness, David N. Dittmore, which generally supports the approval of the Agreement and issuance of a CCN to Sontara and advocates the imposition of certain conditions to the transaction.¹⁵

Mr. Adams submitted Pre-Filed Supplemental Testimony on October 2, 2019. In his supplemental testimony, Mr. Adams testifies that the Company is modifying the original proposed service area request to be limited to “only Sontara itself and the companies that will be served immediately post-closing, as set forth in the *Petition*.”¹⁶ Sontara further states that should any new potential user request service from the System, the Company would be required to seek approval of an expansion of its service area.¹⁷ Mr. Adams also reaffirmed that Sontara would abide by all Commission rules, regulations, and orders and would submit an annual report to the Commission.¹⁸

The parties submitted a joint letter to the Commission indicating that, as indicated by the parties’ respective Pre-Filed Testimony, there are no contested issues on the merits of the *Petition*, and that the *Petition* should be granted in a manner consistent with that reflected in the Pre-Filed Testimony of the parties. The letter also set out the parties’ agreement as to procedural matters concerning the conduct of the Hearing on the *Petition*.¹⁹

THE HEARING

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on October 14, 2019, as noticed by the Commission on October 4, 2019. Participating in the Hearing were:

¹⁵ David N. Dittmore, Pre-Filed Direct Testimony (October 2, 2019).

¹⁶ Jeffrey A. Adams, Pre-Filed Supplemental Testimony, p. 2 (October 2, 2019).

¹⁷ *Id.*

¹⁸ *Id.* at 3.

¹⁹ Letter to Chairperson Morrison from Mr. Melvin J. Malone, Esq. (Butler Snow LLP) (October 2, 2019).

Sontara Old Hickory, Inc. – Melvin J. Malone, Esq., Butler Show LLP, The Pinnacle at Symphony Place, 150 3rd Avenue South, Suite 1600, Nashville, Tennessee 37201.

Consumer Advocate – Daniel P. Whitaker III, Esq., Office of the Tennessee Attorney General, P.O. Box 20207, Nashville, TN 37202.

During the Hearing the parties affirmed that there are no contested issues and confirmed agreement on the Hearing procedure. Jeffrey A. Adams, Project Director, presented testimony on behalf of Sontara and adopted both his Pre-Filed Direct Testimony and his Pre-Filed Supplemental Testimony. He offered no corrections or amendments to any of his Pre-Filed Testimony. Mr. Adams was subject to questions from the voting panel of Commissioners. The Consumer Advocate's witness, David N. Dittmore, was also available for questions. Members of the public were given an opportunity to offer comments, at which time, no comments were submitted.

STANDARD FOR COMMISSION APPROVAL

With regard to the Company's request to approve the Agreement transferring the System from DuPont to Sontara, Commission approval is required pursuant to Tenn. Code Ann. § 65-4-113, which states, in relevant part:

(a) No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the commission, to any individual, partnership, corporation or other entity without first obtaining the approval of the commission.

(b) Upon petition for approval of the transfer of authority to provide utility services, the commission shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The commission shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.²⁰

²⁰ Tenn. Code Ann. § 65-4-113(a)-(b) (Supp. 2019).

When considering Sontara's request for the issuance of a CCN, the Company is required to request and obtain a CCN from the Commission prior to commencement of operation of a utility facility or service, as set forth in Tenn. Code Ann. § 65-4-201(a), which states:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.²¹

Additionally, in order to obtain a CCN to provide wastewater service, TPUC Rule 1220-04-13-.17 (1) provides:

Any public wastewater utility requesting a Certificate of Public Convenience and Necessity ("CCN") in accordance with Tenn. Code Ann. §§ 65-4-201, et seq., shall file an application that complies with Rule 1220-01-01-.03 and this rule. Each applicant shall demonstrate to the Commission that it possesses sufficient managerial, financial, and technical capabilities to provide the wastewater services for which it has applied. Each application shall demonstrate that there exists a public need for wastewater service and include the required financial security consistent with Tenn. Code Ann. § 65-4-201, and these rules.²²

FINDINGS AND CONCLUSIONS

In its *Petition*, Sontara has asked the Commission to approve the Purchase and Sale Agreement between Sontara and DuPont which would transfer the authority to own, operate, and maintain the System from DuPont to Sontara. The Commission reviews such proposed transfers of

²¹ Tenn. Code Ann. § 65-4-109 (Supp. 2019).

²² Tenn. Comp. R. & Regs. 1220-04-13-.04(1)(b).

control or ownership by examining the technical, managerial, and financial qualifications post-transaction to assess if the entity is capable of providing services and to determine whether the transaction is in the public interest.

Similarly, in considering whether to grant Sontara's request for issuance of a CCN, the Commission considers the managerial, financial, and technical ability of the Company seeking the CCN and determines whether there exists public need for the service(s) to be provided. In addition, the Commission is required to direct the posting of sufficient financial security with regard to a public utility providing wastewater service.

Based on a review and consideration of the pleadings, the Pre-Filed Direct and Supplement Testimony submitted by the parties, and the entire administrative record the voting panel of the Commission found as follows:

The panel concluded that Sontara possesses the requisite managerial and technical ability to operate and maintain the System, as demonstrated by the Company taking the steps necessary to retain the current operators of the System by hiring said personnel as its employees, as well as showing that it has other employees who are properly certified and have experience operating and maintaining similar systems. Further, Sontara provided proof of its financial condition and adopted the rates currently charged to the customers of the system, which ensure recovery of costs of operation and maintenance of the System. Based upon this proof, the panel concluded that Sontara possesses the requisite financial ability to operate and maintain the System.

The panel found that Metropolitan Nashville Water Services is not able to provide the applied for services to the DuPont Campus. In addition, Sontara and the other industrial companies operating on the DuPont Campus, depend upon the provision of the water and wastewater services that the System has provided to them under the ownership and operation of DuPont. Therefore, the panel concluded that there exists a public need for the water and wastewater services to be provided by the

System.

Finally, the panel found that Sontara filed a bond on September 30, 2019 for \$300,000, which is sufficient financial security in compliance with Commission Rule 1220-04-13-.07. The Company also agreed to comply with Commission rules, regulations, and orders as well as those of the Tennessee Department of Environment and Conservation ("TDEC").

Accordingly, in light of the entire record, the panel voted unanimously to approve the transfer of ownership of the System and to issue the CCN requested, contingent upon the filing of the following documents in this Docket:

1. The deed and/or easements for all the land and entitlement to ownership rights to the water system and wastewater system simultaneously with the closing of the purchase of the system;
2. A final signed copy of the Asset Purchase and Sale Agreement;
3. A final copy of any permits issued by the TDEC within fifteen (15) days of issuance;
4. A tariff identifying the specific customers being served this CCN; and,
5. Any further signed copies of contracts between Sontara and its customers.

In addition, the panel directed Sontara to file any modifications or extensions of contracts with existing customers with the Commission for approval. The panel also directed the Company to maintain its books and records in compliance with the NARUC Uniform System of Accounts.

IT IS THEREFORE ORDERED THAT:

1. The *Expedited Petition of Sontara Old Hickory, Inc. for Approval of An Asset Purchase Agreement and for the Issuance of a Certificate of Public Convenience and Necessity* is approved contingent upon Sontara Old Hickory, Inc. filing the following in this docket:

- a) The deed and/or easements for all the land and entitlement to ownership rights to the water system and wastewater system simultaneously with the closing of the purchase of the system;

- b) A final signed copy of the Asset Purchase and Sale Agreement;
- c) A final copy of any permits issued by the Tennessee Department of Environment and Conservation within fifteen (15) days of issuance;
- d) A tariff identifying the specific customers being served this Certificate of Convenience and Necessity; and,
- e) Any further signed copies of contracts between Sontara Old Hickory, Inc. and its customers.

3. Sontara Old Hickory, Inc. shall file and obtain Commission approval on any modification and/or extension of contracts with existing customers.

4. Sontara Old Hickory, Inc. shall maintain its books and records in compliance with the National Association of Regulatory Utility Commissioners' Uniform System of Accounts.

5. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen (15) days from the date of this Order.

6. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

Chair Robin L. Morrison, Commissioner Herbert H. Hilliard, and Commissioner John Hie concur. None dissent.

ATTEST:



Earl R. Taylor, Executive Director