



Control Number: 42897



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APPLICATION OF TURNER CREST §
VILLAGE WASTE WATER, LLC AND §
JDB TURNER CREST §
WASTEWATER, LLC FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN CALDWELL COUNTY §

2015 MAY -1 PM 1:12
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 4, STATUS UPDATE, AND
RECOMMENDATION ON SUFFICIENCY OF CLOSING DOCUMENTS**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to Order No. 4, Status Update, and Recommendation on Sufficiency of Closing Documents and would show the following:

I. BACKGROUND AND STATUS UPDATE

On February 3, 2014, JDB Turner Crest Wastewater, LLC (Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ) regarding the sale, transfer, or merger of the Turner Crest Village Waste Water, LLC (Turner Crest Village) sewer utility systems, and transfer of Certificate of Convenience and Necessity (CCN) No. 21004 in Caldwell County, Texas from Turner Crest Village to JDB Turner Crest pursuant to TEX. WATER CODE ANN. § 13.301 and Title 16, TEX. ADMIN. CODE (16 TAC) §§ 24.109 and 24.112. Effective September 1, 2014, the Commission began the economic regulation of water and sewer utilities and this case formerly pending at the TCEQ was transferred to the Commission. The Commission received the application on September 10, 2014.

On September 16, 2014, Order No. 2 was issued requiring Staff to file an update on the status of the proceeding, a recommendation on the need for a hearing or on final disposition of the application, or to propose a procedural schedule by September 29, 2014. On September 16, 2014, Staff filed its Response to Order No. 2, Status Update and Request for Extension of Deadline for Staff's Recommendation on Processing the Application. In this Response, Staff requested that the Commission Administrative Law Judge (Commission ALJ) extend the

deadline for Staff to file a recommendation on the need for a hearing or on final disposition of the application, or to propose a procedural schedule until Friday, October 3, 2014.

On October 3, 2014, Staff filed its Request for Referral to the State Office of Administrative Hearings. On October 6, 2014, Commission Advising and Docket Management issued an Order of Referral granting the referral and requiring Staff to file a list of issues to be addressed in the docket by October 22, 2014. On October 22, 2014, Staff filed its list of issues to be addressed. On October 21, 2014, the SOAH Administrative Law Judge (ALJ) issued Order No. 1 requesting that the parties confer and submit a proposed date for prehearing conference by October 29, 2014. On October 29, 2014, Staff filed a Motion to Abate the proceeding until December 29, 2014. On November 6, 2014, the SOAH ALJ issued Order No. 2 granting the abatement and requiring the parties to file a status update by December 29, 2014. On October 29, 2014, Staff filed an unopposed Motion to Abate stating that the parties were working toward resolving all issues in the proceeding and requesting that the matter be abated. Alternatively, Staff proposed that the prehearing conference be scheduled for December 10, 2014. On November 6, 2014, the SOAH ALJ issued Order No. 2 Granting the Unopposed Motion to Abate and directed Staff to file a status update by December 29, 2014. On November 14, 2014, the Commission issued a Preliminary Order adopting a list of issues for this matter. On December 19, 2014, the parties filed a Joint Status Update and Motion to Continue Abatement of the proceeding, stating that the parties had resolved all issues in the matter and were working on a draft proposed notice of approval for informal disposition of the matter pursuant to 16 TAC § 22.35(a). On December 23, 2014, the SOAH ALJ issued Order No. 3 granting the joint Motion to continue the abatement and directed Staff to file a status report by January 23, 2015.

On January 23, 2015, Staff filed its Response to SOAH Order No. 3 and Final Recommendation, in which Staff recommended that the proposed transaction be completed. Also on January 23, 2015, Staff filed a Proposed Notice of Approval, Request to Admit Evidence, and Request to Remand Proceeding to the Commission. On January 30, 2015, the SOAH ALJ issued SOAH Order No. 4 granting Staff's motion to admit evidence, remanding the matter back to the Commission, and dismissing the matter from the SOAH docket.

On February 3, 2015, the ALJ issued Order No. 3 approving the sale/transfer and ordering the Applicant to submit proof to the Commission that the transaction has been consummated within 365 days of the date of the order, or by January 23, 2016. Additionally,

Order No. 3 directed the Applicant to file monthly status reports on the transaction beginning on April 1, 2015. On March 10, 2015, the Applicant submitted documents in response to Order No. 3. On April 22, 2015, the ALJ issued Order No. 4 directing the parties to file a status update on the proceeding by May 1, 2015. Therefore, this Status Update is timely filed.

II. STAFF'S RECOMMENDATION ON SUFFICIENCY OF CLOSING DOCUMENTS

Pursuant to 16 TAC § 24.109(g), the Applicant must file with the Commission "a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final." On March 10, 2015, the Applicant submitted two special warranty deeds purporting to transfer the properties between the parties to the transaction.¹ In summarizing the warranty deeds, the Applicant indicated that

[t]he first deed transfers property to be developed, approximately 3,205.83 acres, to JDB Turner Crest, LLC, a Texas Limited Liability Corporation. The second deed transfers to JDB Turner Crest Wastewater, LLC approximately 8.24 acres, which is to be used as the wastewater treatment plant site for the proposed project.²

However, each of the warranty deeds submitted by the Applicant is signed only by the grantor of the transaction.³

It is Staff's opinion that closing documents must be signed by both parties to the transaction in order to ensure that the transaction was completed. When reviewing the filed closing documents, Staff contacted the Applicant to express its concern over the lack of both parties' signatures on the deeds. However, Staff and the Applicant have been unable to reach a consensus on whether a valid closing document must include the signatures of both parties to the transaction. Therefore, Staff recommends that the closing documents submitted by the Applicant on March 10, 2015 are not sufficient to show that the transaction has been made final. Staff further recommends that the Applicant be directed to submit closing documents signed by both parties to the transaction. Once Staff receives closing documents signed by both parties to the transaction, Staff will revise the maps to reflect the transaction and send them out to the Applicant for consent.

¹ Response to Order No. 3, PUC Docket No. 42861 (March 10, 2015).

² Response to Order No. 3, PUC Docket No. 42861 (March 10, 2015) at 1.

³ Response to Order No. 3, PUC Docket No. 42861 (March 10, 2015) at 4 and 16.

Staff notes that pursuant to 16 TAC 24.112(e) and Order No. 3 in this proceeding, the Applicant has until January 23, 2016 to submit sufficient documentation to the Commission that the transaction has been consummated.

III. CONCLUSION

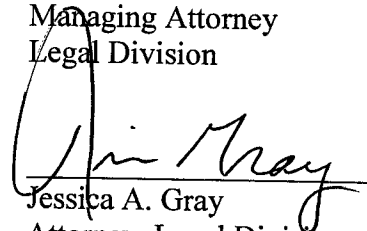
For the reasons stated above, Staff recommends that the closing documents submitted by the Applicant on March 10, 2015 are not sufficient to show that the transaction has been made final. Staff further recommends that the Applicant be directed to submit closing documents signed by both parties to the transaction.

Dated: May 1, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division

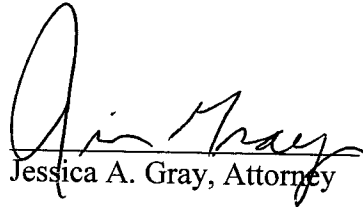


Jessica A. Gray
Attorney, Legal Division
State Bar No. 24079236
(512) 936-7228
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

P.U.C. DOCKET NO. 42897

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on May 1, 2015 in accordance with 16 TAC 22.74.


Jessica A. Gray, Attorney