



Control Number: 43071



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DOCKET NO. 43071

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**APPLICATION OF DIANA SPECIAL
UTILITY DISTRICT TO AMEND ITS
CERTIFICATE OF CONVENIENCE
AND NECESSITY AND TO CANCEL
BLUEGREEN SOUTHWEST ONE LP'S
CERTIFICATE IN HARRISON COUNTY
(37886-S)**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

COMMISSION STAFF'S RESPONSE TO ORDER NO. 2

COMES NOW the Staff ("Staff") of the Public Utility Commission of Texas ("Commission"), representing the public interest and files this Response to Order No. 2 and would show the following:

I. BACKGROUND

On April 7, 2014, Diana Special Utility District ("Diana") filed an application with the Texas Commission on Environmental Quality ("TCEQ") to amend a Certificate of Convenience and Necessity ("CCN") in Harrison County.

On June 20, 2014, TCEQ notified Diana that its application had been accepted for filing and instructing Diana to provide notice of the application. On July 21, 2014, Diana filed with the TCEQ affidavits attesting to the provision of notice.

On November 4, 2014, Order No. 2 was entered requiring Staff to file an update regarding the status of the application by December 15, 2014. This pleading is timely filed.

II. STATUS UPDATE

Pursuant to P.U.C. SUBST. R. 24.106(b) and (c), Diana is required to provide notice of its application and to provide the Commission with proof of the provision of notice. Pursuant to P.U.C. SUBST. R. 24.107, the Commission may act on an application to amend a CCN after the expiration of a 30-day "protest period following mailed or published notice."

As indicated in the attached memorandum of Elisabeth English, Water Utilities Division, when providing notice, Diana failed to provide proof of having provided notice to Harrison County. Staff recommends that Diana be directed to provide notice to Harrison County. Staff further recommends that the presiding officer permit an additional 30 days for the Commission to receive protests following the correction of Diana's provision of notice.

Due to the defect in Diana's provision of notice, Staff is unable to propose a procedural schedule at this time. Staff recommends that it be permitted to propose a procedural schedule after Diana has cured the deficiency in its provision of notice.

III. CONCLUSION

Staff respectfully requests the entry of an order consistent with the above discussion.

Date: December 15, 2014

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

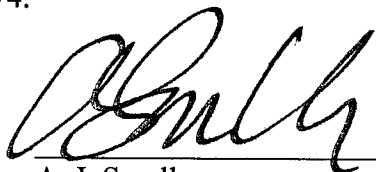
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DOCKET NO. 43071
CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 15, 2014 in accordance with P.U.C. PROC. R. 22.74.



A. J. Smullen

Public Utility Commission of Texas

Memorandum

TO: AJ Smullen, Attorney
Legal Division

FROM: Elisabeth English, Engineering Specialist
Water Utilities Division

THRU: Tammy Benter, Director
Water Utilities Division

DATE: December 11, 2014

RE: STATUS OF DOCKET NO. 43071; *Application of Diana Special Utility District to Amend Water Certificate of Convenience and Necessity (CCN) No. 10425 and to Cancel CCN No. 12989 Held by Bluegreen Southwest One LP in Harrison County (37886-S)*

Diana Special Utility District (Applicant) applied to amend water CCN No. 10425 in Harrison County, Texas pursuant to the criteria in the Texas Water Code, Chapter 13, and the TCEQ's rules outlined in Title 30, Texas Administrative Code (TAC), §§291.101 – 291.107. On September 1, 2014, the rates and CCN programs were transferred from the TCEQ to the Public Utility Commission (PUC). This application was part of the transfer and is now under the PUC's purview. The application is now being reviewed under the P.U.C. SUBST. R 24.102.

The application was received April 7, 2014 and accepted for filing on June 24, 2014.

The applicant submitted affidavits of notice to the Texas Commission on Environmental Quality (TCEQ) on July 21, 2014.

The comment period for protests ended August 9, 2014.

In providing notice as required by P.U.C. SUBST. R. 24.106, the Applicant failed to provide proof of having provided notice to Harrison County. Therefore, I recommend that the applicant be directed to provide notice to Harrison County and that the presiding officer allow for a 30 day comment period to transpire once proper notice is provided to the affected county.