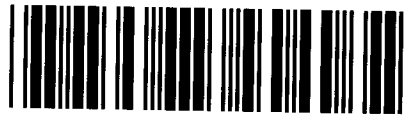


Control Number: 43074



Item Number: 6

Addendum StartPage: 0

APPLICATION OF J&S WATER §
COMPANY, LLC AND UTILITIES §
INVESTMENT COMPANY, INC. FOR §
SALE, TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN HARRIS COUNTY §

PUBLIC UTILITY COMMISSION
OF TEXAS

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COMMISSION STAFF’S RESPONSE TO ORDER NO. 2

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 2. In support of its Response to Order No. 2, Staff states the following:

I. Background

On September 9, 2014, J&S Water Company, LLC (J&S Water) filed an application regarding the sale and transfer of certificates of convenience and necessity (CCN Nos. 12085 and 20658) and certain facilities in Harris County, Texas. J&S Water is the seller, and Utilities Investment Company, Inc. (Utilities Investment) is the purchaser. The proposed effective date of the transaction is February 1, 2015.

On September 12, 2014, the Administrative Law Judge entered Order No. 2, which requires Staff to file comments on the sufficiency of J&S Water’s application and proposed notice and to submit an agreed-upon proposed procedural schedule by September 22, 2014. Staff’s Response to Order No. 2 is timely filed.

II. Statutory and Substantive Rule Requirements

The Texas Water Code details the requirements for the sale of a water system. The relevant portions of the Texas Water Code state:

(a) A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system that is required by law to possess a certificate of public convenience and necessity or the effective date of a merger or consolidation with such a utility or water supply or sewer service corporation, shall:

- (1) file a written application with the utility commission; and
- (2) unless public notice is waived by the utility commission for good cause shown, give public notice of the action.

6

(b) The utility commission may require that the person purchasing or acquiring the water or sewer system demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

...

(d) The utility commission shall, with or without a public hearing, investigate the sale, acquisition, lease, or rental to determine whether the transaction will serve the public interest.

...

(f) Unless the utility commission holds a public hearing, the sale, acquisition, lease, or rental may be completed as proposed:

- (1) at the end of the 120-day period; or
- (2) at any time after the utility commission notifies the utility or water supply or sewer service corporation that a hearing will not be held.¹

The Commission's substantive rules detail similar requirements for the sale of a water system.² The purchaser of the water system "must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person."³ In the event that the sale of a water system includes the sale of a certificate of convenience and necessity (CCN), the Commission's substantive rules state that a CCN may not be sold "unless the commission has determined that the purchaser . . . is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under the TWC, § 13.246(c)."⁴ The factors listed in the Water Code that are to be considered by the Commission are:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting

¹ TEX. WATER CODE § 13.301.

² See generally P.U.C. SUBST. R. 24.109.

³ *Id.*

⁴ P.U.C. SUBST. R. 24.112(b).

the standards of the commission, taking into consideration the current and projected density and land use of the area;

- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity;
- (8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.⁵

III. Staff's Comments on the Sufficiency of the Application

Staff has reviewed J&S Water's application and determined that there are two material deficiencies.

First, J&S Water has not submitted supporting documents to demonstrate that Utilities Investment has and will have the financial capability to provide continuous and adequate service, as required by P.U.C. SUBST. R. 24.109(a). The application states that Utilities Investment's financial capability is supported by the cash flow generated from its current operations.⁶ In support of this statement, Utilities Investment's financial statements for the 2012 year are included in J&S Water's application. Because these statements are more than two years old, these financial statements are insufficient to demonstrate current financial capability. Staff recommends that J&S Water be permitted to cure this deficiency by amending the application with current financial statements, including financial statements for the 2013 year and the first two quarters for the 2014 year.

Second, J&S Water has not included in its application the proposed tariff for the affected service area. J&S Water states that there will be no change with respect to the rates currently being charged by J&S Water.⁷ Staff needs to review both J&S Water's current tariff for the

⁵ TEX. WATER CODE § 13.246(c).

⁶ *Application of J&S Water Company, LLC and Utilities Investment Company, Inc. for the Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*, Docket No. 43074, Application, Response to Question 11.C (Sept. 9, 2014).

⁷ *Application of J&S Water Company, LLC and Utilities Investment Company, Inc. for the Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*, Docket No. 43074, Application, Response to Question 14 (Sept. 9, 2014).

affected service area and Utilities Investment's proposed tariff for the affected service area in order to verify that Utilities Investment will not be changing rates or assessing impermissible charges to ratepayers. Staff recommends that J&S Water be permitted to cure this deficiency by amending the application with J&S Water's current tariff for the affected service area and Utilities Investment's proposed tariff for the affected service area.

IV. Administrative Completeness and Proposed Notice

A. Administrative Completeness

With respect to procedure, the Commission's substantive rules state:

On or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission and give public notice of the action.⁸

The 120-day period begins on the later of: (i) the filing of a sale, transfer, merger application; (ii) if mailed notice is required, the date that the applicant mailed notice; or (iii) if newspaper notice is required, the last date of publication of the notice.⁹ Notice of an application for the sale of a water system must be sent "on the form required by the commission and the comment period will not be less than 30 days."¹⁰

Sale, transfer, merger applications "shall be reviewed for administrative completeness within ten working days of receipt of the application."¹¹ An application is not considered filed with the Commission until "a determination of administrative completeness is made."¹² "If the commission determines that material deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are

⁸ P.U.C. SUBST. R. 24.109(a).

⁹ P.U.C. SUBST. R. 24.109(a)(1)-(3).

¹⁰ *Id.*

¹¹ P.U.C. SUBST. R. 24.8(a).

¹² *Id.*

corrected.”¹³

Given the deficiencies in J&S Water’s application identified by Staff, Staff has determined that J&S Water’s application is not administratively complete. Thus, it is Staff’s position that J&S Water’s application is not considered filed with the Commission and the 120-day period prescribed in the Commission’s substantive rules has yet to start.¹⁴

Staff recommends that J&S Water be given thirty (30) days to amend their application in order to cure the deficiencies identified by Staff. Staff will then review this amended application for administrative completeness. In the event that Staff determines that J&S Water’s amended application is administratively complete, Staff will propose a procedural schedule, with the deadlines in the proposed procedural schedule being consistent with the 120-day period prescribed in the Commission’s substantive rules.

B. Form of J&S Water’s Proposed Notice

Staff has reviewed the form of the proposed notice submitted by J&S Water. The proposed notice is the form notice used by the Texas Commission on Environmental Quality. Subject to Staff’s recommendation that J&S Water be permitted to amend its application to cure the deficiencies identified by Staff, Staff recommends that J&S Water use the form notice used by the Commission. This form notice is available on the Commission’s website.¹⁵

V. Conclusion

Staff has determined that J&S Water’s application is not administratively complete due to certain deficiencies in the application. Staff recommends that J&S Water be given thirty (30) days to amend its application in order to cure the deficiencies identified by Staff. Staff will then review this amended application for administrative completeness. In the event that Staff determines that J&S Water’s amended application is administratively complete, Staff will propose a procedural schedule.

¹³ *Id.*

¹⁴ P.U.C. SUBST. R. 24.8(a); 24.109(a)(1)-(3).

¹⁵ <http://www.puc.texas.gov/industry/water/Forms/Forms.aspx>.

Staff requests that the Administrative Law Judge issue an order consistent with this Response to Order No. 2.

Date: September 22, 2014

Respectfully Submitted,

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DOCKET NO. 43074

CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on September 22, 2014 in accordance with P.U.C. Procedural Rule 22.74.



Sam Chang