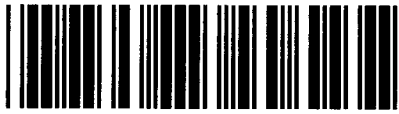




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DOCKET NO. 43177

APPLICATION NI AMERICA TEXAS,
LLC TO AMEND A CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
WISE COUNTY (37937-C)

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COMMISSION STAFF'S STATUS UPDATE

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files its Status Update in response to Order No. 2. In support of its Status Update, Staff states the following:

I. Background

On May 30, 2014, Ni America Texas, LLC (Ni America), an investor-owned utility, filed an application with the Texas Commission of Environmental Quality (TCEQ). Ni America requests an amendment to its certificate of convenience and necessity (CCN No. 11922). The service area is in Wise County, Texas.

On July 22, 2014, the TCEQ sent Ni America a Notice of Deficiency. The Notice of Deficiency required Ni America to submit a map showing the proposed service area by:

- a. A metes and bounds survey certified by a licensed state or registered professional land surveyor;
- b. Projectable digital data with meta data;
- c. Verifiable natural and man-made landmarks; or
- d. A recorded plat map with metes and bounds.

In response to the Notice of Deficiency, Ni America submitted to TCEQ projectable digital data with meta data.

Effective September 1, 2014, the Commission began the economic regulation of water and sewer utilities. Ni America's application, which was pending at the TCEQ, was transferred to the Commission for processing.

On November 4, 2014, the Administered Law Judge entered Order No. 2, which requires Staff to file a status update regarding Ni America's application by December 19, 2014. This Status Update is timely filed.

II. Applicable Statutes and Rules

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A. Amendment to a Certificate of Convenience and Necessity

The Texas Water Code details the requirements for amending a certificate of convenience and necessity (CCN). In determining whether to approve the amendment of a CCN, the Commission “shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.”¹ The Commission must ensure that the applicant is capable of providing drinking water that meets the requirements of Chapter 341 of the Health and Safety Code and has access to an adequate supply of water.² The Texas Water Code and the Commission’s substantive rules list the factors that are to be considered by the Commission in determining whether to approve the amendment of a CCN.³

B. Notice

With regards to the required notice for an amendment to a certificate of convenience and necessity, an applicant must provide notice to the following:

- a. Any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the proposed service area.
- b. Any city with an extraterritorial jurisdiction which overlaps the proposed service area.
- c. Landowners with more than twenty-five (25) acres and any affected parties in the proposed service area.⁴

Additionally, the applicant must “publish notice in a newspaper having general circulation in the county or counties where a CCN is being requested, once each week for two consecutive weeks beginning with the week after the proposed notice is approved by the commission.”⁵ Once notice is provided and published, the applicant must file an affidavit regarding such notice within

¹ TEX. WATER CODE § 13.241(a).

² TEX. WATER CODE § 13.241(b)(1)-(2).

³ TEX. WATER CODE § 13.246(c); P.U.C. SUBST. R. 24.102(a)(1)-(2), (d).

⁴ P.U.C. SUBST. R. 24.106(b)(2).

⁵ P.U.C. SUBST. R. 24.106(c).

thirty (30) days of the provision or publication of such notice.⁶

C. Administrative Completeness

In order for a CCN amendment application to be processed, the Commission's substantive rules require that the Commission make a determination of administrative completeness. The Commission's substantive rules state:

Notice of rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and sale, assignment of, or lease of a certificate; and applications for certificates of convenience and necessity shall be reviewed for administrative completeness within ten working days of receipt of the application. A notice or an application for rate/tariff change; report of sale, acquisition, lease, rental, merger, or consolidation; and applications for certificates of convenience and necessity are not considered filed until received by the commission, accompanied by the filing fee, if any, required by statute or commission rules, and a determination of administrative completeness is made. Upon determination that the notice or application is administratively complete, the applicant shall be notified by mail of that determination. 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 corrected.

III. Staff's Recommendation on Administrative Completeness and Proposed Notice

Staff recommends that Ni America's application be found not administratively complete. Staff has identified the following deficiencies in Ni America's application:

- a. Exhibit H of Ni America's application, which is a written description of the proposed service area, is not legible.
- b. Ni America must use the Commission's form notice for CCN amendment applications.⁷

⁶ P.U.C. SUBST. R. 24.106(b)(6), (c).

⁷ The form application is available at: www.puc.texas.gov/industry/water/Forms/CCN_Application.pdf.

c. Ni America's description of the proposed service area in the proposed notice should state: "generally bounded on the north by Graham Road; on the east by Graham Road; on the south by Illinois Street; and on the west by State Highway 287."

d. The following parties must be added as entities that are within two (2) miles of the proposed service area: City of Rhome (10989) and Upper Trinity Groundwater Conservation District.

Given these deficiencies, Staff recommends Ni America be given forty-five (45) 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 Ni America'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.

V. Conclusion

Staff has determined that Ni America's application is not administratively complete due to certain deficiencies in the application. Staff recommends that Ni America be given forty-five (45) 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 Ni America's amended application is administratively complete, Staff will propose a procedural schedule.

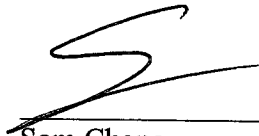
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Date: December 19, 2014

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division

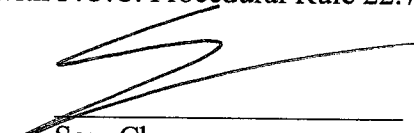


Sam Chang
State Bar No. 24078333
Attorney, Legal Division

Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7261
(512) 936-7268 (facsimile)
sam.chang@puc.texas.gov

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CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on December 19, 2014 in accordance with P.U.C. Procedural Rule 22.74.



Sam Chang