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DOCKET NO. 43355

**APPLICATION OF BEAR SPRINGS
WATER CO., INC. AND BEAR SPRINGS
TRAILS WATER SUPPLY
CORPORATION, INC. FOR SALE,
TRANSFER, OR MERGER OF
FACILITIES AND CERTIFICATES OF
CONVENIENCE AND NECESSITY IN
BANDERA COUNTY (37912-C)**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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**COMMISSION STAFF'S SECOND RESPONSE TO ORDER NO. 4, AND
RECOMMENDATION ON SUFFICIENCY OF APPLICATION AND NOTICE**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to Order No. 4.

I. BACKGROUND

On May 9, 2014, Bear Springs Water Co., Inc. and Bear Springs Trails Water Supply Corporation, Inc. (Applicant) filed an application for the sale, transfer, or merger of facilities and certificates of convenience and necessity in Bandera Count pursuant to TEX. WATER CODE §§ 13.246(c), 13.254, 13.301 and 30 TEX. ADMIN. CODE §§ 291.109 and 291.112 (now 16 TEX. ADMIN. CODE §§ 24.109 AND 24.112).

On October 1, 2014, the Administrative Law Judge (ALJ) issued Order No. 2, which requires Staff to file comments on the status of the application by October 22, 2014. Staff recommended the ALJ find the application deficient and administratively incomplete. On October 24, 2014, the ALJ issued Order No. 3 deeming the application deficient and administratively incomplete; ordered that Applicant cure deficiencies and file a proposed text of notice; and ordered Staff to file a supplemental recommendation on administrative completeness. In response to Order No. 3, Staff filed a recommendation to find the notice and application deficient and included specific information required to be corrected in the proposed notice. The ALJ issued Order No. 4, finding the application deficient, and requiring the Applicant to provide corrected notice comporting with the Staff's recommendation. On December 19, 2014, Applicant filed a pleading and disagreed with the findings of the ALJ and the Staff's recommendation for provision of notice and provided additional information for the consideration of the parties. In response to Applicant's filing and Staff's request, the ALJ issued PUC Order No. 5, extending the deadline to January 30, 2015, for Staff to complete the

administrative review of the application and file a recommendation on administrative completeness and notice to customers, and propose a procedural schedule, if necessary. This pleading is timely filed.

II. RESPONSE

Staff has consulted with a representative of Bear Springs Water Co., Inc. and discussed each of the issues in dispute as indicated by Applicant's December 19, 2014, filing.¹ In that filing, Applicants disagreed with Staff's proposed description of the area subject to this transaction, including the acreage of the area.² Applicants agreed to provide notice to all the entities noted by Staff; however Applicants were unable to find an address for River Oaks.

In response to issues raised by Applicants, Staff modified the required notice description of the area subject to this transaction. The modified description and other outstanding notice requirements are described in the attached memorandum of George Gogonas, Water Utility.

Applicants are in agreement with Staff's recommendations, including the provision of published notice. Although Staff and Applicants have resolved all outstanding issues, Staff's memorandum recommends finding the Application deficient until Applicants have formally replied with the proposed notice that complies with Staff's recommendations. As described in Commission rules,³ notice or the application may be deemed insufficient for filing until the proposed notice is approved. Once the Commission receives adequate proposed notice addressing the deficiencies described in the attached memorandum, Staff will be able proceed with a substantive review of the application. Therefore, Staff recommends that the application be deemed deficient.

III. PROCEDURAL SCHEDULE AND CONTINUED PROCESSING OF THE APPLICATION

With respect to processing this application moving forward, the Commission's substantive rules state:

¹ See Applicants' Response to Notice, P.U.C. Docket No. 43355, December 19, 2014.

² *Id.* at 1.

³ P.U.C. SUBST. R. 24.8 states "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."

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.⁴

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.⁵

Therefore, Staff recommends that the Applicant be ordered to submit a proposed notice comporting with the recommendations in the attached memorandum. If complete, Staff will then provide a supplemental recommendation that the notice materials and application are sufficient and provide a proposed procedural schedule.

Staff requests that the Applicant be directed to file these materials by February 13, 2015, and Staff proposes to file a supplemental recommendation on sufficiency of the application and notice by February 27, 2015.

IV. CONCLUSION


Staff recommends this application be deemed administratively incomplete as described in attached memorandum. Staff recommends that an order be issued directing the Applicant to submit the identified supplemental notice materials including the corrected notices and the list of parties required to receive the notice. Staff requests that the Applicant be directed to file these materials by February 13, 2015, and Staff proposes to file a supplemental recommendation on sufficiency of the application and notice by February 27, 2015.

⁴ P.U.C. SUBST. R. 24.109(a).

⁵ P.U.C. SUBST. R. 24.109(a)(1)-(3).

Respectfully Submitted,
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DATED: January 30, 2015

DOCKET NO. 43355
CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 30, 2015, in accordance with P.U.C. Procedural Rule 22.74.


Christina Mann

PUC Interoffice Memorandum

To: Chrissy Mann, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: George Gogonas, Utility Rates Analyst/Auditor
Tracy Harbour, GIS Specialist
Water Utilities Division

Date: January 30, 2015

Subject: Docket No. 43355, Application of Bear Springs Water Co., Inc. for Sale, Transfer or Merger of Facilities and Certificate of Convenience and Necessity in Bandera County.

Bear Springs Water Co., Inc. (Applicant) has filed an application to acquire water facilities from CCN No. 12963, held by Bear Springs Trails Water Supply Corporation in Bandera County, pursuant to the criteria in Texas Water Code 13.301, 13.246 and Title 16 Texas Administrative Code, Sections 24.106, 24.109, and 24.112.

Staff recommends that the Applicant be ordered to provide notice of the application to current customers and neighboring utilities by addressing the following matters:

1. The Applicant must notify Cow Creek Groundwater Conservation District (GCD) (Dist. No. 2404600), Guadalupe-Blanco River Authority (Dist. No. 3422000), Headwaters GCD (Dist. No. 4421005), River Oaks (N0069), and Upper Guadalupe River Authority (Dist. No. 812000) in addition to the neighboring entities listed in the application.
2. Provide revised PUC notice documents describing the general location of the proposed water service area subject to this transaction as follows: "is located approximately .8 miles North of downtown Pipe Creek, Texas, and is generally bounded
 - a. on the north by Hidden Valley Road;
 - b. on the south by the intersection of SH 16 and Bear Springs Road;
 - c. on the west by Dry Hollow Creek."
 - d. Update the total acreage to 305 acres.
3. Because the Application will result in the amendment CCN 12963 through a change in ownership, Staff recommends publication of notice as required by 16 TAC § 24.106 (c).

4. Please note, it is the responsibility of the applicant to provide correct notice of the application to the following:
 - a. any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two miles of your proposed service area, and
 - b. any city with an extraterritorial jurisdiction which overlaps the proposed service area, and any customers transferred, or other affected parties in your requested area.
 - c. notice to the public which must be published once each week for two consecutive weeks in a newspaper of general circulation in Bandera County.

The Applicant should include copy of a map showing the proposed water service area with the individual notices to neighboring utilities, other affected parties and each landowner. It is the Applicant's burden to provide an accurate map delineating the proposed area with each individual notice. Information related to districts including addresses can be obtained by the Applicant from the TCEQ web site located at <http://www14.tceq.texas.gov/iwud/>.