

Control Number: 43368



Item Number: 8

Addendum StartPage: 0

PUC DOCKET NO. 43368

**APPLICATION OF CURTIS J. SHUPAK §
AND HDU SERVICES, LLC FOR SALE, § PUBLIC UTILITY COMMISSION OF
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN § TEXAS
BURLESON COUNTY §
§
§**

COMMISSION STAFF'S STATUS UPDATE AND RECOMMENDATION

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Status Update and Recommendation. In support of its Request, Staff states the following:

I. BACKGROUND AND STATUS UPDATE

On June 23, 2014, HDU Services, LLC (Applicant) filed with the Texas Commission on Environmental Quality (TCEQ) an Application for Sale, Transfer, or Merger of a Retail Public Utility pursuant to TEX. WATER CODE ANN. §§ 13.246(c), 13.254, 13.301 and 30 TEX. ADMIN. CODE § 291.109¹. The application addressed the proposed transfer of service area Certificate of Convenience and Necessity (CCN) No. 12254 and facilities in Burleson County, Texas from Curtis J. Shupak to the Applicant. According to the application, the Applicant will retain CCN No. 12254. No one contested to the Applicants' Application; therefore no public hearing was required.

On September 29, 2014, Order No. 2 Requiring Comments on Status was issued requiring Staff to file an update on the status of the proceeding, to file a recommendation on the need for a hearing or on final disposition of the application, or to propose a procedural schedule by October 21, 2014. This Response is timely filed.

¹ Currently P.U.C. SUBST. R. 24.109.

8

II. SUFFICIENCY OF THE APPLICATION

Staff has reviewed the City's application for sufficiency and, based on the attached memoranda of Leila Guerrero of the Commission's Water Utility Division, Staff recommends the application be deemed deficient. To cure the application's deficiencies, the Applicant, pursuant to P.U.C. SUBST. R. 24.105(a), should do the following:

1. Provide a general location map delineating the proposed service area with enough detail to accurately locate the proposed area within the county.
2. Provide a map showing only the proposed area by: a metes and bounds survey certified by a licensed state or registered professional land surveyor; or projectable digital data with metadata, with proposed areas clearly labelled in a single record, and a data disk labeled with the City's name.
3. Provide separate and additional maps of the proposed area(s) to show the following:
 - a. all facilities, illustrating separately facilities for production, transmission, and distribution of the applicant's service(s); and
 - b. any facilities, customers or area currently being served outside the applicant's certificated area(s) including a map showing requests for water and/or sewer service within the proposed service area(s).

III. NOTICE REQUIREMENTS

P.U.C. SUBST. R. 24.106 provides the Commission's notice requirements for CCN applications. Specifically, Rule 24.106 requires the City in its notice to provide a map and description of the proposed service area. Since there are deficiencies regarding the maps in this application, the City should not send out notice to affected parties until these deficiencies are corrected.

IV. PROPOSED PROCEDURAL SCHEDULE

Because Staff finds that the application is deficient, Staff does not propose a procedural schedule at this time.

V. CONCLUSION

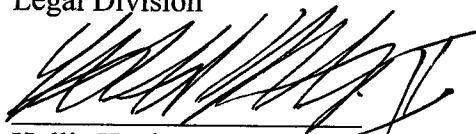
Staff recommends that the Applicant's application and notice be deemed deficient for the reasons described in attached memorandum of Leila Guerrero of the Commission's Water Utilities Division. Additionally, Staff recommends that the City be given 30 days to cure these deficiencies in its application. Staff further recommends that Applicant subsequently provide Staff with a proposed notice pursuant to P.U.C. SUBST. R. 24.106(b). If the Applicant fails to cure the deficiencies in its application Staff recommends the dismissal of the application.

DATED: October 21, 2014

Respectfully Submitted,

Joseph P. Younger
Division Director
Legal Division

Karen S. Hubbard
Managing Attorney
Legal Division

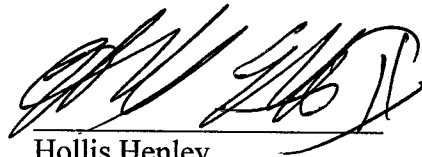


Hollis Henley
Attorney-Legal Division
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(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

PUC DOCKET NO. 43368

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 21st day of October, 2014 in accordance with P.U.C. Procedural Rule 22.74.

A handwritten signature in black ink, appearing to read "Hollis Henley", written over a horizontal line.

Hollis Henley

PUC Interoffice Memorandum

To: Hollis Henley, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: Leila Guerrero, Regulatory Accountant/Auditor
Water Utilities Division

Date: October 21, 2014

Subject: Staff Recommendation for Docket No. 43368 (Application No. 37955-S)

On June 24, 2014, the HDU Services, LLC (Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ) to purchase and transfer facilities from Certificate of Convenience and Necessity (CCN) No. 12254 held by Curtis Shupak in Burleson County, pursuant to the criteria in the Texas Water Code, Chapter 13, and the TCEQ's rules outlined in Title 30, Texas Administrative Code (TAC), Sections 291.109 and 291.112. 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 PUC's Substantive Rules in Chapter 24, §§24.109 and 24.112.

On August 5, 2014, a notice of deficiency (NOD) letter was sent by TCEQ to the applicant due to insufficient mapping requirements (please see attached NOD letter). On August 19, 2014, the TCEQ received a response to the NOD letter from the applicant, however, the map submitted was still deficient and the application cannot be accepted for filing at this time.

Based on my review of the information in the original application and the additional information provided by the Applicant through the response received August 19, 2014, by the TCEQ, I believe the following concerns regarding mapping information still exist:

- A. Applicant should provide a general location map delineating the proposed service area with enough detail to accurately locate the proposed area within the county.
- B. Applicant's map submitted with the application should show ONLY the proposed area by:
 - i. metes and bounds survey certified by a licensed state or registered professional land surveyor; or
 - ii. projectable digital data with metadata (proposed areas should be in a single record and clearly labeled). Also, a data disk labeled with the applicant's name must be provided

- C. Applicant should provide separate and additional maps of the proposed area(s) to show the following:
- i. all facilities, illustrating separately facilities for production, transmission, and distribution of the applicant's service(s); and
 - ii. any facilities, customers or area currently being served outside the applicant's certificated area(s) including a map showing requests for water and/or sewer service within the proposed service area(s).

Based on the information above, I recommend ordering the applicant to rectify the mapping issues and submit corrected mapping information for the application within 30 calendar days from the date of the PUC ALJ's order. If the applicant fails to rectify the deficiency during this time frame, I further recommend dismissal of the application.

Bryan W. Shaw, Ph D., P.E., *Chairman*
Toby Baker, *Commissioner*
Zak Covar, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*

Hollis 43368

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 5, 2014

RECEIVED
2014 SEP 25 AM 10:23
PUBLIC UTILITY COMMISSION
FILING CLERK

**BY EMAIL TO dustinlozano@hotmail.com AND
BY CERTIFIED MAIL**

Mr. Dustin Lozano
13193 Country Road 424
Somerville, Texas 77879

NOTICE OF DEFICIENCY

Re: Application from HDU Services, LLC, dba Wilderness Sound dba Yegua Water System, Certificate of Convenience and Necessity (CCN) No. 11699 to Purchase and Transfer Facilities from CCN No. 12254 held by Curtis Shupak in Burleson County; Application No. 37955-S

CN: 602212599; RN: 104026968 (Curtis Shupak)
CN: 600628978; RN: 101232775 (HDU Services, LLC)

Dear Mr. Lozano:

Your application for HDU Services, LLC, has been assigned Application No. 37955-S, but has not been accepted for filing. Please refer to the application number in future correspondence.

Additional information is necessary for your application to be accepted for filing:

Please provide four (4) copies of the following items:

- A. A general location map delineating the proposed service area with enough detail to accurately locate the proposed area within the county; and
- B. A map showing **only** the proposed area by:
 - i. Metes and bounds survey certified by a licensed state or registered professional land surveyor; or
 - ii. Projectable digital data with metadata (proposed areas should be in a single record and clearly labeled). Also a data disk labeled with the applicant's name must be provided; and
- C. A notarized oath from the seller; and

D. The seller's most recent inspection report letter. For each system deficiency listed, if any, attach a brief explanation listing the actions taken or being taken to correct the listed deficiencies, including the proposed completion dates.

Please note, on November 14, 2012, the Commission implemented a policy change to strictly enforce the requirement that CCN related applications include a complete list of entities providing the same type of retail utility service (i.e., water and/or sewer) within 2 miles of the proposed service area. See question 15 in the application. The list should include the following:

- All retail public utilities, districts, groundwater conservation districts, counties, and
- any cities whose corporate limits and/or extra-territorial jurisdiction (ETJ) are within the same two mile area of the proposed CCN area.

Below are links that will assist you in assembling the list:

<http://www.tceq.texas.gov/gis/iwudview.html>. Please note that the iWUD Viewer only provides information on entities with registered CCN numbers.

<http://www.tceq.texas.gov/groundwater/districts/html>. This link can be used for groundwater conservation districts.

Assistance in compiling your list of entities or in using the iWUD Viewer is available through the TCEQ's Financial Managerial and Technical (FMT) contract. To request assistance, please contact the Water Supply Division at utildist@tceq.texas.gov or 512/239-4691.

Processing of the above referenced application cannot proceed and notices cannot be published or mailed until we receive the requested items. These items must be completed and returned by **September 15, 2014**. Effective September 1, 2014, responsibility for regulating water and wastewater rates and CCNs will transfer to the Public Utility Commission of Texas (PUC). If responding **before September 1, 2014**, please submit your information to the TCEQ at the address shown on the letterhead. After September 1, 2014, please submit your written response to the address below:

Public Utility Commission
Water Utilities Division
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326

Mr. Dustin Lozano
Page 2
August 5, 2014

Thank you for your assistance in this matter. Please contact Ms. Christine Mester at 512/239-2788 or Ms. Lisa Fuentes at 512/239-6117 if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cari-Michel La Caille".

Cari-Michel La Caille, Assistant Director
Water Supply Division
Texas Commission on Environmental Quality

CML/CM/mmg