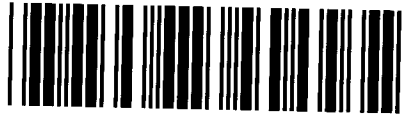


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PUBLIC UTILITY COMMISSION  
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APPLICATION OF WILDERNESS §  
SOUND AND HDU SERVICES, LLC FOR §  
SALE, TRANSFER, OR MERGER OF §  
FACILITIES AND CERTIFICATE OF §  
CONVENIENCE AND NECESSITY IN §  
BURLESON COUNTY (37990-S) §

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 3 – SUPPLEMENTAL  
RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS**

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Response to Order No. 3 – Supplemental Recommendation on Administrative Completeness.

**I. Background**

On July 20, 2014, Wilderness Sound and HDU Services, LLC filed an application with the Texas Commission on Environmental Quality (TCEQ) for the sale, transfer, or merger of the facilities and service area of Wilderness Sound, Certificate of Convenience and Necessity (CCN) No. 11699 and to obtain a CCN, pursuant to TEX. WATER CODE ANN. §§ 13.246(c), 13.254, 13.301 and 30 TEX. ADMIN. CODE Section 291.109.

On September 1, 2014, the Public Utility Commission of Texas (Commission or PUC) began the economic regulation of water and sewer utilities and this case was transferred from the TCEQ to the Commission for further review. On October 1, 2014, the Administrative Law Judge (ALJ) issued Order No. 2, which required Staff to file comments on the status of the application by October 26, 2014, including a recommendation on the application and if appropriate a proposed procedural schedule. On October 23, Commission Staff filed a recommendation stating that the application as filed was not complete. On October 27, 2014, the ALJ issued Order No. 3 – Finding Application Incomplete/Deficient; Establishing Deadlines, requiring staff to file a supplemental recommendation on administrative completeness and propose additional dates for a continued procedural schedule by December 23, 2014. On December 22, 2014, Commission Staff requested an extension to this deadline. On January 5, 2015, the ALJ granted Commission Staff's motion and issued Order No. 3 – Extending Deadline, extending the deadline for Staff to file a supplemental recommendation on administrative completeness to January 9, 2015. Therefore, this response is timely filed.

## II. Sufficiency of the Application and Notice

Based on Staff's review, Staff recommends the application be deemed materially deficient pursuant to P.U.C. SUBST. R. 24.105 and 24.109. Staff has identified multiple issues relating to mapping and notice and respectfully requests the Applicant be ordered to cure these deficiencies. P.U.C. SUBST. R. 24.8(a) provides that, if material deficiencies exist in a rate/tariff change application or notice, the application may be rejected. In addition, as described in Commission rules,<sup>1</sup> notice of the application may be deemed insufficient for filing until the proposed notice is approved. In order to cure the identified deficiencies, Staff recommends that the Applicant:

1. Provide the PUC additional maps of the proposed area to showing the following:
  - a. all facilities; illustrating separately, facilities for production, transmission, and distribution within the proposed area
  - b. any facilities, customers, or area, currently being served outside the applicant's certificated area
  - c. location of requests for water service from landowners within the proposed service area;
2. Provide individual mailed notice to Curtis Shupak (12254), Nerro Supply (12252), Somerville, Lost Pines Groundwater Conservation District (GCD) (District ID 5448660) and Post Oak Savannah GCD (District ID 7145575), Burleson, Lee and Washington counties **in addition to the neighboring entities listed in the application**;
3. Provide revised notice documents using the PUC notice forms available online. The general location language of the proposed service area should be revised as follows:
  - a. on the north by **the intersection of Overlook Loop and Houston Ave.**
  - b. on the east by Birch Creek
  - c. on the south by **the intersection of Redskins Rd. and State Park Rd. 57**
  - d. on the west by **State Park Rd. 57**;
4. Provide 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 the proposed service area;
  - b. any city with an extraterritorial jurisdiction which overlaps the proposed service area; and
  - c. any customers transferred, or other affected parties in the requested area;
5. Submit a copy of a map of the proposed service area that will be included with the individual notices that will be issued to neighboring utilities, other affected parties and

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<sup>1</sup> P.U.C. SUBST. R. 24.8 states "[i]f the commission determines that material deficiencies exist in any pleadings, statement of intent, application, 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."

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/>;

6. And, within 30 days of the Commission order, submit a copy of the actual notice issued, along with the attached signed affidavit, indicating that the notice was given.

In addition, Staff recommends that the Applicant submit to the Commission a proposed notice in the format provided at Form A of the STM application form, to include: 1) notice to current customers and affected municipalities; and 2) the Commission contact information for protests or hearing requests. Staff recommends that the Applicant be directed to not mail the proposed notice until the Commission issues an order approving the proposed notice.

Pursuant to P.U.C. SUBST. R. 24.8(a), the application is not considered filed until the Commission determines that the application and notice are both administratively complete. Staff has identified both mapping and notice deficiencies, therefore, Staff recommends that the application package be found **not administratively complete** pursuant to TEX. WATER CODE ANN. § 13.301 and Title 16, TEX. ADMIN. CODE (16 TAC) §§ 24.105. Staff recommends that the application package be rejected pursuant to P.U.C. SUBST. R. 24.8(a) until the deficiencies are cured and that the Applicant be given until Friday, February 20, 2015 to cure the identified deficiencies and submit a revised proposed notice.

### III. Proposed Procedural Schedule

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.<sup>2</sup>

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.<sup>3</sup> An application is not

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<sup>2</sup> P.U.C. SUBST. R. 24.109(a).

<sup>3</sup> P.U.C. SUBST. R. 24.109(a)(1)-(3).

considered filed until “a determination of administrative completeness is made.”<sup>4</sup>

Staff notes that the Commission has not yet made a determination of administrative completeness in this proceeding. Therefore, the 120-day clock pursuant to P.U.C. SUBST. R. 24.109(a) has not yet started. Staff recommends that the application be found not administratively complete due to the identified deficiencies. Accordingly, Staff has not proposed a procedural schedule for this application at this time. Staff recommends Applicant have until February 20, 2015 to cure the deficiencies in the application. Staff also requests that it have until March 11, 2015 to review the items submitted and make a supplemental recommendation regarding the sufficiency of the application.

#### **IV. Conclusion**

Staff recommends that the application be deemed not administratively complete due to the noted deficiencies. Therefore, Staff recommends that the Applicant be given until February 20, 2015 to amend its application in order to cure the deficiencies identified by Staff and submit a revised proposed notice. At that time, Staff further requests that it have until March 11, 2015 to supplement its recommendation regarding notice and administrative completeness of the application. In the event that Staff determines that the Applicant’s amended application and notice are administratively complete, Staff will propose a procedural schedule for processing the matter. Staff respectfully requests that the ALJ issue an order consistent with this Response.

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<sup>4</sup> *Id.*

Respectfully Submitted,  
Margaret Uhlig Pemberton  
Division Director-Legal Division

Shelah J. Cisneros  
Managing Attorney-Legal Division

Maria Faconti  
Maria Faconti  
Attorney-Legal Division  
State Bar No. 24078487  
(512) 936-7235  
(512) 936-7268 (facsimile)  
Public Utility Commission of Texas  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326

**DATED:** January 9, 2015

**DOCKET NO. 43371  
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on this the 9<sup>th</sup> of January, 2015, in accordance with P.U.C. Procedural Rule 22.74.

Maria Faconti  
Maria Faconti