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DOCKET NO. 43712

APPLICATION OF LAKE §
LIVINGSTON WATER SUPPLY AND §
SEWER SERVICE CORPORATION §
AND TYLER COUNTY WATER §
SUPPLY CORPORATION FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN TYLER COUNTY (37966-S) §

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COMMISSION STAFF'S STATUS UPDATE

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

I. Background

On June 30, 2014, Lake Livingston Water Supply and Sewer Service Corporation (Lake Livingston WSC) filed an application with the Texas Commission on Environmental Quality (TCEQ). Lake Livingston WSC requested approval of the sale and transfer of a portion of its certificate of convenience and necessity (CCN No. 10147) and the accompanying water system for the Wayward Winds Estates subdivision in Tyler County, Texas. Tyler County Water Supply Corporation (Tyler County WSC) is the purchaser/transferee. As part of the application, Lake Livingston WSC and Tyler County WSC also request an amendment to Tyler County WSC's CCN No. 11528 to reflect the sale and transfer of Lake Livingston WSC's CCN No. 10147 and water system for the Wayward Winds Estates subdivision. Lake Livingston WSC did not list a proposed effective date for the sale and transfer transaction.

On August 5, 2014, TCEQ sent Lake Livingston WSC a Notice of Deficiency regarding Lake Livingston WSC's application. The Notice of Deficiency requested that Lake Livingston WSC submit to the TCEQ a general location map that is detailed enough such that the proposed service area can be accurately located within Tyler County, Texas.

Effective September 1, 2014, the Commission began the economic regulation of water and sewer utilities. This proceeding, which was pending at the TCEQ, was transferred to the Commission for processing.

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On November 4, 2014, the Commission received a general location map from Lake Livingston WSC.

On November 7, 2014, the Administrative Law Judge entered Order No. 2, which requires Staff to file a status update regarding Lake Livingston WSC's application by December 17, 2014. Staff's Status Update is timely filed.

II. Applicable Statutes and Rules

A. Sale Transactions and Amendments to Certificates of Convenience and Necessity

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.

(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.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 [Texas Water Code], §

¹ TEX. WATER CODE § 13.301(a)-(b).

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

³ *Id.*

13.246(c).”⁴

With respect to the approval of the amendment of a CCN, the Texas Water Code states that the Commission “shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.”⁵ 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.⁶ 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 a CCN.

B. Notice

An applicant requesting approval of the sale and transfer of assets and accompanying CCNs must send notice “on the form required by the commission”⁷ The form notice is available on the Commission’s website.⁸ In previous sale and transfer applications, Staff has required that an applicant send notice: (1) current customers; (2) neighboring systems; (3) affected landowners; and (4) neighboring municipalities.

With respect to an application for the amendment of a certificate of convenience and necessity, an applicant must provide notice to the following: (1) any districts, groundwater conservation districts, counties, utilities, municipalities, and municipalities with an extraterritorial jurisdiction within two (2) miles of the proposed service area; (2) any municipality with an extraterritorial jurisdiction which overlaps the proposed service area; and (3) landowners that own more than twenty-five (25) acres of land, which is either wholly or partially in the proposed service area.⁹ 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

⁴ P.U.C. SUBST. R. 24.112(b). *See generally* TEX. WATER CODE § 13.246(c) (list of factors that are to be considered by the Commission).

⁵ TEX. WATER CODE § 13.241(a).

⁶ TEX. WATER CODE § 13.241(b)(1)-(2). *See generally* TEX. WATER CODE § 13.246(c) and P.U.C. SUBST. R. 24.102(a)(1)-(2), (d) for a list of factors to be considered by the Commission.

⁷ P.U.C. SUBST. R. 24.109(a).

⁸ <http://www.puc.texas.gov/industry/water/Forms/Forms.aspx>.

⁹ P.U.C. SUBST. R. 24.106(b)(2)

approved by the commission.”¹⁰ Once notice is provided and published, the applicant must file an affidavit regarding such notice within thirty (30) days of the provision or publication of such notice.¹¹

C. Administrative Completeness

With respect to procedure to process an application for the sale and transfer of assets, 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.¹²

The 120-day period begins on the later of: (1) the filing of a sale, transfer, merger application; (2) if mailed notice is required, the date that the applicant mailed notice; or (3) if newspaper notice is required, the last date of publication of the notice.¹³ 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.”¹⁴

Sale, transfer, merger applications “shall be reviewed for administrative completeness within ten working days of receipt of the application.”¹⁵ An application is not considered filed with the Commission until “a determination of administrative completeness is made.”¹⁶ “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.”¹⁷

¹⁰ P.U.C. SUBST. R. 24.106(c)

¹¹ P.U.C. SUBST. R. 24.106(b)(6), (c)

¹² P.U.C. SUBST. R. 24.109(a).

¹³ P.U.C. SUBST. R. 24.109(a)(1)-(3).

¹⁴ *Id.*

¹⁵ P.U.C. SUBST. R. 24.8(a).

¹⁶ *Id.*

¹⁷ *Id.*

III. Staff's Status Update

After a review of Lake Livingston WSC's application, Staff has identified the following deficiencies:

- a. The general location map submitted by Lake Livingston WSC on November 4, 2014 does not provide sufficient detail such that the proposed service area can be accurately located within Tyler County, Texas.
- b. Staff is unable to determine from the mapping submitted by Lake Livingston WSC whether the proposed service area overlaps with neighboring CCN areas.
- c. Lake Livingston WSC did not submit one of the following: (1) a metes and bounds survey map and a metes and bounds written description, both of which must be certified by either a licensed state land surveyor or a registered professional land surveyor or (2) digital data for the proposed service area that is to be transferred.
- d. Lake Livingston WSC did not submit separate and additional maps of the proposed service area that show: (1) an illustration of facilities used for production, transmission, or distribution and (2) any facilities, customers, or service areas that are currently being served outside of Lake Livingston WSC's certificated area.
- e. Lake Livingston WSC provided an incomplete list of the following entities that are within two (2) miles of the proposed area. Lake Livingston WSC must provide a list of the following entities within two (2) miles of the proposed area: (1) districts, groundwater conservation districts, counties, and municipalities; (2) municipalities that have extraterritorial jurisdiction within two (2) miles of the proposed service area; (3) municipalities that have extraterritorial jurisdiction that overlaps the proposed service area; (4) affected landowners; (5) any customers that will be transferred as a result of the transaction; (6) landowners that own more than twenty-five (25) acres of land, which is either wholly or partially in the proposed service area; and (7) neighboring utilities.

The attached memorandum from Debbie Reyes Tamayo, Program Specialist in the Water Utility Division, further details the deficiencies in Lake Livingston WSC's application.

Given the deficiencies in Lake Livingston WSC's application identified by Staff, Staff has determined that the application is not administratively complete. Staff recommends Lake Livingston WSC be given forty-five (45) days from the date an order is entered to cure the

deficiencies identified by Staff. Once Lake Livingston WSC cures the deficiencies identified by Staff, Staff will review Lake Livingston WSC's application for administrative completeness. In the event that Staff determines Lake Livingston WSC's application is administratively complete, Staff will propose a procedural schedule.

IV. Conclusion

Lake Livingston WSC's application is not administratively complete due to certain deficiencies identified by Staff. Staff recommends that Lake Livingston WSC be given forty-five (45) days from the date an order is entered to cure the deficiencies by Staff. Staff requests that the Administrative Law Judge issue an order consistent with the recommendations in this Status Update.

Date: December 18, 2014

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on December 18, 2014, in accordance with P.U.C. PROC. R. 22.74.



Sam Chang

PUC Interoffice Memorandum

To: Sam Chang, Attorney
Legal Division

Through: Tammy Benter, Director
Water Utilities Division

From: Debbie Reyes Tamayo
Program Specialist
Water Utilities Division

Date: December 3, 2014

Subject: Docket No. 43712, Application of Tyler County WSC (11528) to transfer a portion of Lake Livingston Water Supply and Sewer Service Corporation (Wayward Winds Estates) in Tyler County (37966-S)

On July 3, 2014, Tyler County WSC (Applicant), Certificate of Convenience and Necessity (CCN) No. 11528, filed an application with the Texas Commission on Environmental Quality (TCEQ) to transfer a portion CCN No. 10147 held by Lake Livingston Water Supply and Sewer Service Corporation (Wayward Winds Estates), in Tyler 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.

Based upon PUC's review, staff recommends the applicant correct the following deficiencies:

1. We are unable to determine overlaps with neighboring CCNs until sufficient maps are received.
2. Inadequate map and mapping documents filed by the applicant: The map submitted on November 4, 2014, does not meet our mapping requirements. Since we are still unable to accurately delineate or position the location of the proposed service area being requested, this application does not meet PUC's mapping requirements.
 - As of 11/14/14, no maps have been submitted with enough detail to delineate the proposed service area with enough detail to accurately locate the proposed area within the county.
 - The applicant must submit metes and bounds written description corresponding to the metes and bounds survey map originally submitted with the application. Both the metes and bounds survey map and metes and bounds written description must be certified by a licensed state or registered

professional land surveyor. Otherwise, the applicant must submit digital data for the proposed water service area to be transferred with this application.

- Applicant must provide separate and additional maps of the proposed water service area to show the following:
 - All facilities, illustrating separately facilities for production, transmission, and distribution of the applicant's service(s); and
 - Any facilities, customers or area currently being served outside the applicant's certificated area
- 3. We are unable to evaluate notice documents until sufficient maps and mapping documents are received.
- 4. Notices to neighboring utilities are insufficient.
- 5. The applicant provided an incomplete list of entities who must receive notice within a 2-mile boundary of the proposed water service area.
- 6. Applicant should not publish notice until their maps are reviewed and approved by CCN mapping staff. Applicant must submit a 2-mile list of neighboring entities that are required to receive notice including utilities, districts, ground water conservation districts, cities and ETJ's located within a 2-mile boundary of the proposed service area.
- 7. Please note, it is the responsibility of the applicant to provide correct notice of the application to the following:
 - any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two miles of your proposed service area, and
 - any city with an extraterritorial jurisdiction which overlaps the proposed service area, and any customers transferred, or other affected parties in your requested area.

TB/DRT