

Control Number: 43712



Item Number: 9

Addendum StartPage: 0

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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**PUBLIC UTILITY COMMISSION
OF TEXAS**

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**COMMISSION STAFF'S RESPONSE TO ORDER NO. 3
AND PROPOSED PROCEDURAL SCHEDULE**

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Response to Order No. 3 and Proposed Procedural Schedule. In support of its Response, 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 87, 2014.

On December 18, 2014, Staff filed its Status Update. In its Status Update, Staff identified certain deficiencies in Lake Livingston WSC's application and recommended that Lake Livingston WSC be given an opportunity to cure these deficiencies.

On December 19, 2014, the Administrative Law Judge entered Order No. 3, which found Lake Livingston WSC's application not administrative complete. Order No. 3 gave Lake Livingston WSC an opportunity to cure the deficiencies identified by Staff. Lake Livingston WSC was given the opportunity to cure these deficiencies by February 2, 2015. Staff was required to comment on the cured deficiencies within ten (10) working days of receipt. This Response is timely filed.

On January 30, 2015, Lake Livingston WSC filed a CD that contained mapping data of the proposed service area.

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

¹ TEX. WATER CODE § 13.301(a)-(b).

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], § 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

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

³ *Id.*

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).

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 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

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

⁹ P.U.C. SUBST. R. 24.106(b)(2)

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).

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

III. Administrative Completeness and Proposed Procedural Schedule

Staff has reviewed the additional materials submitted by Lake Livingston WSC, and Staff recommends that the Commission find Lake Livingston WSC’s application is administratively complete. To assist in the processing of Lake Livingston WSC’s application, Staff requests that the Commission enter the following procedural schedule:

Event	Deadline
Deadline to file affidavits evidencing proof of notice	February 27, 2015
Deadline to (45 days from February 13, 2015 administrative completeness date)	March 30, 2015

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.*

Deadline to file comments on Lake Livingston WSC's application (30 days from proof of notice deadline)	March 30, 2015
Deadline for Staff to request for a referral to the State Office of Administrative Hearings (if necessary) or if there is no request for referral, deadline to file Staff's recommendation	April 13, 2015
Deadline to file a response to Staff's recommendation, or deadline for parties to file a joint proposed notice of approval that includes findings of fact, conclusions of law, and ordering paragraphs	April 27, 2015
End of the 120-day period (120 days from February 13, 2015 recommended administrative completeness date pursuant to P.U.C. SUBST. R. 24.109(a)).	June 12, 2015

IV. Conclusion

Staff recommends that Lake Livingston WSC's application be deemed administratively complete for a review on the merits. Staff requests that the Administrative Law Judge issue an order that contains Staff's proposed procedural schedule.

Date: February 13, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division

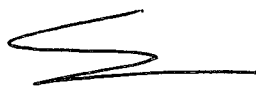


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CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on February 13, 2015 in accordance with P.U.C. Procedural Rule 22.74.

A handwritten signature in black ink, appearing to be 'Sam Chang', written over a horizontal line.

Sam Chang