



Control Number: 44656



Item Number: 11

Addendum StartPage: 0

APPLICATION OF NI PACOLET
MILLIKEN UTILITIES, LLC TO
PURCHASE AND TRANSFER THE
STOCK OF NI AMERICA TEXAS,
LLC

§
§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

COMMISSION STAFF'S RESPONSE TO ORDER NO. 2

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Response to Order No. 1.

I. Background

On April 17, 2015, Ni America Texas, LLC (Ni America) and Ni Pacolet Milliken Utilities, LLC (Ni Pacolet) (collectively, Applicants) filed an Application for the Sale, Transfer, or Merger of a Retail Public Utility (Application) pursuant to Tex. Water Code Ann. § 13.301 (TWC) and 16 Tex. Admin. Code §§ 24.106, 24.109, and 24.112. On May 14, 2015, the Applicants filed a motion to have the Application reviewed as an application for the approval of the purchase and transfer of voting stock in another utility pursuant to TWC § 13.302 and 16 TAC § 24.111.

On May 15, 2015, Staff filed a recommendation indicating the Application was not administratively complete. On May 19, 2015, the Administrative Law Judge (ALJ) issued Order No. 2 granting the motion to consider the application as a purchase and transfer of stock and requiring the Applicants to cure the deficiencies identified by Staff. On June 1, 2015, the Applicants filed an Amendment to the Stock Transfer Application. Order No. 2 required Staff to file a supplemental recommendation regarding the administrative completeness of the application along with a proposed procedural schedule by June 29, 2015. Therefore, this response is timely filed.

II. Comments on Administrative Completeness

As detailed in the attached memorandum of Debbie Reyes, in the Commission's Water Utilities Division, Staff has reviewed the Application and recommends that the Application be found administratively incomplete pursuant to TWC § 13.302 and 16 TAC § 24.111.

Staff identified deficiencies in the financial information provided by the Applicants. Pursuant to TWC § 13.302(b) and 16 TAC § 24.111(b), the purchaser of the utility needs to

demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested areas. Specifically, Staff notes the Applicants failed to provide historical financial information for Ni Pacolet. In order to review the adequate financial capability of Ni Pacolet to provide continuous and adequate service, Staff requires financial information from Ni Pacolet. Staff requests the Applicants provide historical financial statements for Ni Pacolet. If financial statements are unavailable, Ni Pacolet should provide the financial statements for Ni Pacolet's parent company or the officers of Ni Pacolet listed in response to Question 9, page 4 of the STM application.

Staff also requests Ni Pacolet be required to provide sufficient information to document how Ni Pacolet plans to fund the purchase of Ni America's stock to demonstrate Ni Pacolet can pay acquisition cost of the utility stock and provide continuous and adequate service. If Ni Pacolet is using loans to acquire the stock, Ni Pacolet should be required to provide documentation of the loan agreement, including the terms and the lending agreement.

Pursuant to 16 TAC § 24.8(a), the application is not considered filed until the Commission determines that the application is administratively complete. Staff has identified deficiencies in the Amendment to the Stock Transfer and, therefore, recommends that the Application be deemed administratively incomplete pursuant to TWC § 13.302 and 16 TAC § 24.111.

Due to the deficiencies in the Application, Staff does not recommend a procedural schedule for the evaluation of the merits of the Application pursuant to TWC § 13.302 and 16 TAC § 24.111.

III. Proposed Procedural Schedule

Staff recommends that the Applicants be given until July 30, 2015 to cure the deficiencies identified by Staff. Staff proposes a deadline of August 27, 2015 for Staff to file additional comments regarding administrative completeness, along with a proposed procedural schedule if deemed administratively complete.

IV. Conclusion

Staff respectfully requests that the ALJ issue an order consistent with this Response.

Dated: June 29, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Karen S. Hubbard
Managing Attorney
Legal Division

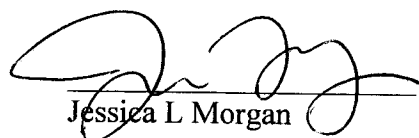


Jessica L Morgan
Attorney-Legal Division
State Bar No. 24079023
(512) 936-7229
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

DOCKET NO. 44656

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this June 29, 2015 in accordance with 16 TAC § 22.74.



Jessica L Morgan

PUC Interoffice Memorandum

To: Jessica Morgan, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: Debbie Reyes, Program Specialist
Komal Petal, GIS Specialist
Water Utilities Division

Date: NEED DATE

Subject: **Docket No. 44656**, *Application of Ni America Texas, LLC and Ni Pacolet Milliken Utilities, LLC for a Stock Transfer of Certificate Rights in Johnson and Wise Counties*

On April 17, 2015, Ni America Texas, LLC (Ni America or Seller) and Ni Pacolet Milliken Utilities, LLC (Ni Pacolet or Purchaser) (collectively called "Applicants") filed an application with the Commission for the Sale, Transfer, or Merger (STM) of water Certificate of Convenience and Necessity (CCN) No. 11922 held by Ni America to Ni Pacolet in Johnson and Wise Counties. The proposed transaction sought approval for Ni Pacolet to purchase equity interest in CCN No. 11922 from Ni America. The application was filed pursuant to the criteria in Tex. Water Code § 13.301 (TWC), and 16 Tex. Admin. Code §§ 24.106, 24.109, and 24.112 (TAC). Subsequent to this filing, on May 14, 2015, the Applicants filed a motion in Docket No. 44656 requesting that the application be considered for approval of the purchase and transfer of voting stock only and not as a STM of the facilities and assets. The motion asked that the application be considered under TWC §13.302 and 16 TAC §24.111.

On May 19, 2015, in Order No. 2, the Applicants were asked to file updated information concerning deficiencies identified with the application. On June 1, 2015, the Applicants filed Amendment to Stock Transfer Application Pursuant to Order No. 2 providing additional information to respond to the deficiencies identified by Staff. Based upon review of the information in the application and the amendment, I recommend the application be deemed administratively incomplete due to the deficiencies listed below. In order to continue with processing of this application, Staff recommends the Applicants provide the follow information

- In order to determine the financial capability of the purchaser, the Purchaser should provide historical financial statements for Ni America and Ni Pacolet. If historical financial statements are unavailable, the Applicants should provide financial statements for the officers of the Purchaser listed in Question 9, page 4 of the STM application.
- The Purchaser should provide sufficient information to document how the Purchaser will be able to pay the purchase price of \$7,875,000 for the utility stock for a utility with a netbook value of \$2,053,124. If the Purchaser is using loans to acquire the stock, then the Purchaser should provide documentation of the loan agreement, including the terms and

the lending agreement (interest rate and length of payment terms). The Purchaser must be able to demonstrate that it can pay the cost of the acquisition plus provide sufficient financial backing for the utility to be able to provide continuous and adequate service for at least the first five years of operations should the stock purchase be approved.