



Control Number: 44656



Item Number: 7

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DOCKET NO. 44656

RECEIVED

APPLICATION OF NI AMERICA
TEXAS, LLC AND NI PACOLET
MILLIKEN UTILITIES, LLC FOR
SALE, TRANSFER, OR MERGER OF
FACILITIES AND CERTIFICATE
RIGHTS IN JOHNSON AND WISE
COUNTIES

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PUBLIC UTILITY COMMISSION

2016 MAY 15 PM 2:47
PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S RESPONSE TO ORDER NO. 1

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. Specifically, Ni America seeks approval to sell facilities and transfer its Certificate of Convenience and Necessity (CCN) No. 11922 to Ni Pacolet. 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 April 24, 2015, the Administrative Law Judge (ALJ) issued Order No. 1 requiring Staff to file a recommendation regarding the administrative completeness of the application, whether additional notice may be required, and propose a schedule for processing by May 15, 2015. Therefore, this response is timely filed.

II. Comments on Administrative Completeness

As detailed in the attached memorandum (Attachment A) of Jose Castillo, in the Commission's Water Utilities Division, Staff has reviewed the Application and recommends that the Application be found administratively incomplete pursuant to 16 TAC §§ 24.106, 24.109, and 24.112.

Staff identified deficiencies in the Application, mapping requirements, and proposed notice submitted by the Applicants. Specifically, Staff notes the Applicants failed to provide all of the information requested in the application form as required by 16 TAC § 24.109, including

not completing pages 12 thru 15 of the application and not providing audited historical financial information for the Applicants. Additionally, Staff requests the Applicants provide documentation of the affiliation between Ni Pacolet and Pacolet Milliken Enterprises mentioned in Attachment 5 of the Application. Staff also requests an office address for Ni Pacolet that complies with 16 TAC § 24.81(d) concerning the utility having a local office.

Further, Staff seeks clarification on whether any additional property from another CCN application in a pending docket before the Commission will be included in this Application. Staff needs this clarification in order to review the provided maps to determine whether the maps meet the mapping standards as required by 16 TAC 24.106.

Staff also reviewed the proposed notice provided by the Applicants and recommends that notice be found administratively incomplete pursuant to 16 TAC § 24.112. Specifically, 16 TAC § 24.112(c) requires Applicants to mail notice to cities and neighboring retail public utilities providing the same utility service within two miles of the requested service area boundaries. Staff recommends the list provided by the Applicants be found incomplete. Additionally, the Applicants should not mail or publish the provided proposed notice until their maps and 2-mile list of entities have been reviewed and approved by Staff.

Pursuant to 16 TAC § 24.8(a), the application is not considered filed until the Commission determines that the application, mapping requirements, and proposed notice are administratively complete. Staff has identified deficiencies in the Application and, therefore, recommends that the Application be deemed administratively incomplete pursuant to 16 TAC §§ 24.106, 24.109, and 24.112.

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 § 13.301 and 16 TAC § 24.106, 24.109, and 24.112.

III. Staff's Response to Motion to have Application Considered as Purchase and Transfer of Voting Stock in Another Utility

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 under TWC § 13.302 and 16 TAC § 24.111. Applicants' motion appears to seek to amend the Application by requesting a different form of relief. However, Staff believes the deficiencies identified in the Application pursuant to TWC § 13.301 and 16 TAC § 24.106, 24.109, and

24.112 also apply to the Application pursuant to TWC § 13.302 and 16 TAC § 24.111, if the motion is granted. TWC § 13.302 and 16 TAC § 24.111 requires an applicant to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area. The Applicants failed to provide historical audited financial information and Staff seeks clarification on whether any additional property from another CCN application in a pending docket before the Commission will be included in this Application. Further, the Applicants have not provided the date upon which the transaction is to occur. Therefore, Staff recommends that the Applicants be given until June 1, 2015 to cure the deficiencies identified in Attachment A. Staff proposes a deadline of June 29, 2015 for Staff to file additional comments regarding administrative completeness, along with a proposed procedural schedule if deemed administratively complete.

IV. Conclusion

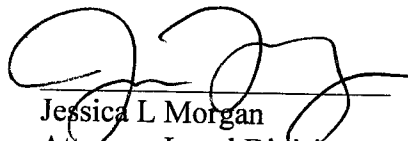
Staff respectfully requests that the ALJ issue an order consistent with this Response.

Dated: May 15, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Karen S. Hubbard
Managing Attorney
Legal Division

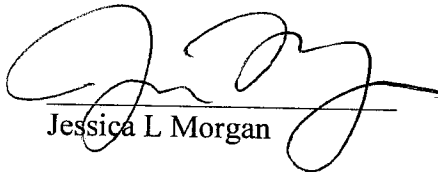


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this May 15, 2015 in accordance with 16 TAC § 22.74.



Jessica L Morgan

Attachment A

PUC Interoffice Memorandum

To: Jessica Morgan, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: Debbie Reyes, Program Specialist
Jose Castillo, Engineer
Mary Burt, GIS Specialist
Water Utilities Division

Date: 05/13/2015

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

On April 17, 2015, Ni America Texas, LLC (Ni America) and Ni Pacolet Milliken Utilities, LLC (Ni Pacolet) filed an application for the Sale, Transfer, or Merger of a Retail Public Utility (STM) with the Public Utility Commission (Commission). The application seeks approval for Ni America seeking approval to sell facilities and transfer its water Certificate of Convenience and Necessity (CCN) No. 11922 to Ni Pacolet in Johnson and Wise Counties. The application was filed pursuant to the criteria in Texas Water Code § 13.301, and 16 Tex. Admin. Code (TAC) §§ 24.106, 24.109, and 24.112 (TAC). The application is being reviewed for administrative completeness pursuant to 16 TAC § 24.8(a).

Based on an administrative review of the application, I recommend the application be found not administratively complete for filing. Specifically, I have identified several deficiencies including missing information, mapping requirements, and proposed notice. In order to continue to processing this application, I recommend Ni America and Ni Pacolet provide the following information:

1. Please provide audited historical financial statements for Ni America and Ni Pacolet
2. Please complete pages 12 thru 15 (Part D) of the application.
3. Ni Pacolet, on page 3 of the application, lists its office address in South Carolina. Pursuant to 16 TAC § 24.81(d) concerning a utility's local office: The business location must be located:

- (A) in each county where utility service is provided; or
- (B) not more than 20 miles from any residential customer if there is no location to receive payments in that county.

Please provide an office address for Ni Pacolet that complies with this requirement.

4. Please provide documentation of the affiliation between Ni Pacolet and Pacolet Milliken Enterprises (PME) as mentioned in application Attachment 5, page 43.
5. Ni America and Ni Pacolet state this is a complete transfer of CCN 11922. However, one proposed CCN area is missing from this transfer application. The missing portion in this application is a pending CCN amendment in Docket No. 43177,¹ where Ni America is seeking an additional area in Wise County in Docket No. 43177; however, Docket 43177 has not yet been approved by the Commission. Please clarify if Ni America and Ni Pacolet will be requesting to transfer the proposed area requested in Docket No. 43117 as well as the area already requested in this application.
6. Ni America and Ni Pacolet provided an incomplete list of entities who must receive notice within a 2-mile boundary of the proposed water service area pursuant to 16 TAC § 24.112(c).

Please note, it is the responsibility of the applicants 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.

Ni America and Ni Pacolet shall not issue notice to any party until the Applicant's proposed notice, and list of 2-mile entities, is approved by the Commission.

¹ *Application of Brazos Valley Septic & Water, Inc. and Nerro Supply, LLC for Sale, Transfer, or Merger of Facilities and to Amend a Certificate of Convenience and Necessity in Brazos, Burleson, and Robertson Counties, Docket No. 43117 (pending).*