

Control Number: 44740



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APPLICATION OF MSEC §  
ENTERPRISES, INC. TO AMEND A §  
CERTIFICATE OF CONVENIENCE §  
AND NECESSITY IN MONTGOMERY §  
COUNTY

PUBLIC UTILITY COMMISSION  
OF TEXAS

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PM 2:38

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CLERK

### STAFF'S FINAL RECOMMENDATION

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this final recommendation in response to Order No. 14 and would show the following:

#### I. Background

On May 18, 2015, MSEC Enterprises, Inc. (MSEC) filed an application to amend sewer certificate of convenience and necessity (CCN) No. 20984 in Montgomery County. On July 18, 2016, the Administrative Law Judge (ALJ) issued Order No. 14 requiring Staff to file a final recommendation by August 14, 2017. Thus, this pleading is timely filed.

#### II. Recommendation

Staff has reviewed the MSEC's application, and as supported by the attached memorandum from Fred Bednarski of the Water Utility Division, Staff recommends MSEC's application be approved. Staff further recommends that MSEC be ordered to true up the proposed rates by filing a rate/tariff change application within 18 months from the date MSEC begins providing retail sewer service using its new system. Finally, Staff recommends the Applicant be ordered to file certified copies of the CCN map along with a written description of the CCN service area in the Montgomery County Clerk's office.

#### III. Conclusion

Staff requests the entry of an order consistent with the above recommendations.


Dated: August 14, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

Karen S. Hubbard  
Managing Attorney


  

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**DOCKET NO. 44740  
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on August 14, 2017, in accordance with 16 TAC § 22.74.

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Landon J. Lill

## PUC Interoffice Memorandum

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**To:** Landon Lill, Attorney  
Legal Division

**Thu:** Tammy Benter, Director  
Heidi Graham, Technical Manager  
Water Utility Regulation

**From:** Fred Bednarski, Financial Examiner  
Water Utility Regulation

**Date:** August 14, 2017

**Subject:** **Docket No. 44740**, *Application of MSEC Enterprises, Inc. to Amend a Certificate of Convenience and Necessity in Montgomery County, Texas*

On July 18, 2015, MSEC Enterprises, Inc. (Applicant or MSEC) filed an application to amend its sewer Certificate of Convenience and Necessity (CCN) No. 20984 in Montgomery County, Texas, pursuant to Tex. Water Code §§ 13.241(c) and 13.246(c) (TWC) and 16 Tex. Admin. Code §§ 24.8, 24.102-06 (TAC). MSEC seeks to amend its CCN boundary to provide sewer service to 191 total acres and 1 additional commercial connection.

The application was deemed sufficient for filing on August 19, 2015. Proper public notice of the application was provided on August 26 and September 02, 2015, in the Conroe Courier. In addition, on August 24, 2015, individual notice was provided to neighboring systems, landowners, cities and affected parties in Montgomery County. Affidavits stating that notices were published in the newspaper and provided to all affected parties were filed with the PUC on September 30, 2015. The comment period ended October 5, 2015, and no protests or requests for hearing were received.

Based on Staff's review of the application and supplemental information, MSEC has demonstrated adequate financial, managerial, and technical capability to provide service to the requested area. TWC §13.246(c) requires the Commission to consider the following criteria when granting or amending CCNs:

- TWC §13.246(c)(1) requires the commission to consider the adequacy of service currently provided to the requested area. MSEC is currently providing sewer service to 3 commercial sewer connections in its current CCN boundaries. The requested area is currently not receiving sewer service. Granting the amendment will enable MSEC to expand its certificated area and provide service to the new schools in Montgomery Independent School District (MISD).
- TWC §13.246(c)(2) requires the commission to consider the need for service in the requested area. MSEC and MISD have entered into a wastewater service agreement for the requested area. The area contains 2 tracts of land where an Elementary and Middle School are scheduled to open in August 2017 and High School in August 2018.
- TWC §13.246(c)(3) requires the commission to consider the effect of granting an amendment on the recipient and on any other retail wastewater utility servicing the proximate area. Sewer service is not being provided to the requested area. MSEC and MISD have entered into a wastewater service agreement for the requested area. Additionally, retail wastewater utilities in the area were notified of the sewer CCN amendment and no protests were received.
- TWC §13.246(c)(4) requires the commission to consider the ability of the Applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area. MSEC is requesting to add approximately 191 total acres to serve an elementary and middle school on one tract of land and a high school on

a second tract of land. On July 7, 2016, the Applicant received approval from the TCEQ to construct additional facilities that will allow them to increase their wastewater output from 30,000 gallons per day (gpd) to 130,000 gpd. TCEQ approved the new wastewater discharge permit WQ0015341001 to serve the new elementary, middle school, and high school on February 2, 2016.

Given the number of connections and projected outflow from the wastewater facility the Applicant is required to currently employ a minimum of one "Class C" waste water operator at the facility. The Applicant currently employs one "Class C" and three "Class B" wastewater operators on staff.

- TWC §13.246(c)(5) requires the commission to consider the feasibility of obtaining service from an adjacent retail public utility. MSEC is an existing sewer utility that was asked to provide wastewater service to the requested area. MSEC and MISD have additionally entered into a service agreement for the requested area. Proper notice was provided and no protests were received. Therefore, Staff recommends that it is not feasible for an adjacent retail public utility to service the requested area.
- TWC §13.246(c)(6) requires the commission to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service to the area and the applicant's financial stability. 16 TAC § 24.11(e) provides tests for determining financial ability. Staff recommends that MSEC satisfies the leverage test since MSEC meets the debt service coverage ratio set forth in 16 TAC § 24.11(e)(2)(B). The rule states the owner or operator must have a debt service coverage ratio of more than 1.25 using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt payments. Based on Staff's calculations, the applicant has a debt service coverage ratio of 1.42 which meets the debt service requirement.

Staff also recommends that MSEC satisfies the operations test set forth in 16 TAC § 24.11(e)(3), which requires that the owner or operator must demonstrate that sufficient cash is available to cover any projected operations and maintenance shortages in the first 5 years of operations. MSEC currently operates water and sewer systems with no shortages in cash or net income. MSEC submitted projections in its application for the first 5 years to serve the requested area (FY 2017 thru FY 2021). Based on MSEC Enterprises, Inc.'s projections, the Applicant will experience operating income of \$83,323. Thus, there are no operating shortages to cover.

- TWC §§13.246(7) and (9) requires the commission to consider the environmental integrity and the effect on the land to be included in MSEC's certificated service area. Staff recommends that the amendment will have a minimal effect on the environmental integrity of the land.
- TWC § 13.246(8) requires the commission to consider the probable improvement in service or lowering of cost to consumers. Currently, no customers are in the requested area.

Based on a review of the application and information provided, the Applicant has demonstrated adequate financial, managerial and technical capabilities to provide service to the requested area.

The Applicant meets all of the statutory requirements of TWC Chapter 13 and 16 TAC Chapter 24 rules and regulations. Approving this application to amend MSEC's CCN No. 20984 in Montgomery County is necessary for the service, accommodation, convenience and safety of the public. The Applicant filed consent to the attached map, tariff and certificate on August 10, 2017.