

Control Number: 45552



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APPLICATION OF OLD TAMINA WATER SUPPLY CORPORATION TO	§ §	PUBLIC UTILITY AM!!: 20
AMEND ITS WATER CERTIFICATE	§	COMMISSION
OF CONVENIENCE AND NECESSITY	§	OF TEXAS
FOR DUAL CERTIFICATION WITH	§	
THE CITY OF SHENANDOAH IN	§	
MONTGOMERY COUNTY (37615-C)	§	

OLD TAMINA WATER SUPPLY CORPORATION'S RESPONSE TO COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION QUESTION NOS. STAFF 1-1 THROUGH STAFF 1-3

NOW COMES Old Tamina Water Supply Corporation ("OTWSC") and hereby files this

Response to Commission Staff's First Request for Information.

RESPONSES TO REQUESTS FOR INFORMATION

Staff 1-1 What has the utility done to address the active TCEQ violations related to exceeding the 85% capacity rule?

Response: Old Tamina Water Supply Corporation is not aware of any active TCEQ violations related to exceeding the 85% capacity rule. According to the TCEQ's letter dated July 25, 2011, regarding the Comprehensive Compliance Investigation performed on June 14, 2011, the alleged violation had been resolved prior to the investigation. A copy of the July 25, 2011, TCEQ letter is attached as "Exhibit 1."

Provided by: James E. Leveston, Sr.

Staff 1-2 How will the utility provide adequate water service to the newly proposed customers, when the utility is already exceeding the TCEQ's 85% capacity rule?

Response: According to the TCEQ's letter dated July 25, 2011, regarding the Comprehensive Compliance Investigation performed on June 14, 2011, Old Tamina Water Supply Corporation resolved the alleged violation of the 85% capacity rule. Also, Old Tamina Water Supply Corporation has executed a

50

new purchase water agreement that allows for adequate supply to satisfy the rule.

Provided by: James E. Leveston, Sr.

Staff 1-3 Provide the purchase water agreement with Chateau Woods MUD allowing for the

proposed customer increase.

Response: The purchase water agreement with Chateau Woods MUD is attached as

"Exhibit 2."

Provided by: James E. Leveston, Sr.

DOCKET NO. 45552

APPLICATION OF OLD TAMINA	§	
WATER SUPPLY CORPORATION TO	§	PUBLIC UTILITY
AMEND ITS WATER CERTIFICATE	§	COMMISSION
OF CONVENIENCE AND NECESSITY	§	OF TEXAS
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THE CITY OF SHENANDOAH IN	§	
MONTGOMERY COUNTY (37615-C)	§	

AFFIDAVIT OF JAMES E. LEVESTON, SR.

On this day, James E. Leveston, Sr. appeared before me, the undersigned notary public, and after I administered an oath to him, upon his oath, he said:

- 1. My name is James E. Leveston, Sr., I am more than 21 years of age, and capable of making this Affidavit. The matters contained herein are true and correct and are within my personal knowledge.
 - 2. I am of sound mind and I am fully competent to make this Affidavit.
 - 3. I am the President of Old Tamina Water Supply Corporation.
- 4. The Responses listed below are presented under oath, as true and correct and within my personal knowledge:

Staff 1-1 through Staff 1-3.

5. I do, however, reserve the right to amend, supplement or modify the above responses, based on additional information.

AFFIANT SAYS NOTHING FURTHER

James E. Leveston, Sr., Affiant

IN THE COUNTY OF MONTGOMERY, STATE OF TEXAS:

SUBSCRIBED AND SWORN TO BEFORE ME on the 9th day of March, 2018,

by James E. Leveston, Sr.

otary Public State of Texas

Respectfully submitted,

OLD TAMINA WATER SUPPLY CORPORATION

RAMOND W. HOWARD, P.C. 1303 Turtle Creek Dr. Missouri City, TX 77489 Tel. (281) 437-5900 Fax. (281) 416-9517

Richard W. Howard

State Bar No. 24099848

Ramond W. Howard

Texas Bar No. 10076800

Email: ramond.howard@rwhpc-law.com

Attorneys for

Old Tamina Water Supply Corporation

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document will be served on all parties of record in this proceeding on March 8, 2018 in accordance with 16 TAC § 22.74.

Richard W. Howard

EXHIBIT 1

Bryan W. Shaw, Ph.D., Chairman Buddy Garcia, Commissioner Carlos Rubinstein, Commissioner Mark R. Vickery, P.G., Executive Director



PWS! 700110 100

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

July 25, 2011

Protecting Texas by Reducing and Preventing Pollution

Mr. James Leveston. President Old Tamina WSC **19521 Simons** Conroe, Texas 77385

INFORMATION COPY FOR R12 FILE ROOM

Re:

Comprehensive Compliance Investigation at:

Old Tamina WSC, 400 Rhodes Ln., Tamina, Montgomery County, Texas

TCEO ID No.1700110, Investigation No.942185

Dear Mr. Leveston:

On June 14, 2011, Ms. Elisabeth Boyd of the Texas Commission on Environmental Quality (TCEQ) Houston Region Office conducted an investigation of the above-referenced facility to evaluate compliance with the applicable requirements for public water supply systems. No violations are being alleged as a result of the investigation; however, please see the attached Additional Issue. During the investigation, the investigator resolved apparent instances of noncompliance noted during the previous investigation dated July 29, 2008. Information has been provided which appears to indicate that these outstanding problems have been corrected. No further response from you is necessary concerning this investigation

The TCEQ appreciates your assistance in this matter and your compliance efforts to ensure protection of the State's environment. If you or members of your staff have any questions regarding these matters, please feel free to contact Ms. Elisabeth Boyd in the Houston Region Office at (713)767-3650.

Sincerely

Leticia De Leon, Team Leader

Public Water Supply Houston Region Office

LD/EB/ra

cc: Montgomery County Environmental Health Services

Enclosure: Summary of Investigation Findings

OLD TAMINA WATER SUPPLY CORPORATION

Investigation # 942185

400 RHODES ROAD

CONROE, MONTGOMERY COUNTY, TX 77385

Additional ID(s): 1700110

Investigation Date: 06/14/2011

Track No: 347378

30 TAC Chapter 290.45(f)(4)

Alleged Violation:

Investigation: 705260 Comment Date: 10/20/2008

Purchased Water

Failure to meet this Agency's "Minimum Water System Capacity Requirements." This requirement include:

a minimum of 0.6 gallons per minute per connection based on the maximum authorized daily purchase rate specified in the contract plus the actual production capacity of the system.

At the time of the investigation the entity provided a purchased production of 0.15 gpm/conn, based on 159 connections.

This is calculated by the following: 23.15 GPM / 159 conn= 0.15 gpm/conn
The entity is short 0.45 gpm/conn and 72.25 gallons per minute of purchased production
0.6 gpm/conn required - 0.15 gpm/conn provided = 0.45 gpm/conn short
95.4 gpm required - 23.15 gpm provided = 72.25 gpm

As per the purchase water contract, the entity is provided 1,000,000 gallons per month which is equivalent to 33,333.33 gallons per day which is equivalent to 23.15 gallons per minute.

Your water system must be modified to meet this requirement to assure an adequate supply of water at all times.

Please be advised that public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, or distribution facilities. Public water systems shall submit plans and specifications for the proposed changes upon request.

The water system may request an exception to this requirement by writing to TCEQ, Water Supply Division, Public Drinking Water Section, Utility Technical Review & Oversight, MC 155, P.O. Box 13087, Austin, TX 78711-3087; phone: (512) 239-4798.

Investigation: 942185 Comment Date: 7/20/2011

Failure to provided a minimum of 0.6 gallons per minute per connection based on the maximum authorized daily purchase rate specified in the contract plus the actual production capacity of the system.

Recommended Corrective Action: Submit a compliance plan, engineering report or certification OR a copy of a letter requesting an exception in addition to a compliance plan for final compliance, OR a copy of a letter granting an exception OR an amended purchased water contract to verify compliance.

Resolution: At the time of the inspection, conducted on 06/14/2011, the system had obtained a

memo, an amendment to the original contract, stating that the supplier would supply all necessary capacity.

Track No: 347389

30 TAC Chapter 290.46(m)(1)(B)

Alleged Violation:

Investigation: 705260 Comment Date: 10/14/2008

Design and Construction of Pressure Tanks

Failure to inspect the pressure tank annually, to determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and that the tank remains in a watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.

The results of these inspections must be recorded and maintained for at least five years, per §290.46(f)(3)(D)(ii). The records must be available for review by Commission staff during annual sanitary surveys of the system.

At the time of the investigation no interior or exterior pressure tank inspection report was provided for the 2,500 gallon pressure tank.

Investigation: 942185 Comment Date: 7/20/2011

Failure to provide a pressure tank inspection report showing that 2,500 gallon pressure tank had been inspected internally and externally.

Recommended Corrective Action: Submit a copy of the pressure tank inspection form showing that the 2,500 gallon pressure tank has been inspected internally and externally to verify compliance.

Resolution: At the time of the inspection, conducted on 06/14/2011, the operator was able to provide a tank inspection report that showed the pressure tank had been inspected both internally and externally.

Track No: 347390

30 TAC Chapter 290.46(m)(1)(A)

Alleged Violation:

Investigation: 705260 Comment Date: 10/14/2008

Design and Construction of Storage Tanks

Failure to inspect the ground storage tank at least annually, to determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gaskets provide adequate protection against insects, rodents, and other vermin, and that the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces and that the tank remains in a watertight condition.

The results of these inspections must be recorded and maintained for at least five years, per §290.46(f)(3)(D)(ii). The records must be available for review by Commission staff during annual sanitary surveys of the system.

At the time of the investigation no ground storage tank inspection report was provided.

Investigation: 942185

Comment Date: 7/20/2011

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OLD TAMINA WATER SUPPLY CORPORATION

Failure to provide ground storage tank inspection report showing that ground storage tank have been inspected internally and externally.

Recommended Corrective Action: Submit a copy of the ground storage tank inspection form showing that the tank has been inspected internally and externally to verify compliance.

Resolution: At the time of the inspection, conducted on 06/14/2011, the operator was able to provide a tank inspection report showing that the ground storage tank was inspected internally and externally.

Track No: 347391

30 TAC Chapter 290.46(t)

Alleged Violation:

Investigation: 705260

Comment Date: 10/14/2008

Operating Practices for Public Water Systems

Failure to post a legible sign at each of its production, treatment, and storage facilities by each community system. The sign must be located in plain view of the public and must provide the name of the regulated entity and an emergency telephone number where a responsible official can be contacted.

At the time of the investigation no ownership sign was located at the well site.

Investigation: 942185

Comment Date: 7/20/2011

Failure to post an ownership sign at the well site.

Recommended Corrective Action: Submit a photo, invoice, or work order showing that an ownership sign has been erected at the well site to verify compliance.

Resolution: At the time of the inspection, conducted on 06/14/2011, the water plant had an ownership sign located an the entrance.

Track No: 347392

30 TAC Chapter 290.46(m)(4)

Alleged Violation:

Investigation: 705260

Comment Date: 10/14/2008

Water Leakage

Failure to maintain all related appurtenances in a watertight condition. In this connection, the leaking packing glands located on the #2 service pump must be repaired or replaced as necessary.

Investigation: 942185

Comment Date: 7/20/2011

Failure to repair or replace the leaking packing glands located on the #2 service pump.

Recommended Corrective Action: Submit a photo, invoice, or work order showing that the leaking packing glands located on the #2 service pump have been repaired or replaced to verify compliance. Resolution: At the time of the inspection, conducted on 06/14/2011, the #2 service pump had been

replaced with a new pump of equal gpm.

Track No: 347393

30 TAC Chapter 290.46(m)

Alleged Violation:

Investigation #942185

Investigation: 705260 Comment Date: 10/14/2008

Operating Practices for Public Water Systems

Failure to properly maintain the regulated entity by not cutting the vegetation located on the fence surrounding the well site.

Investigation: 942185 Comment Date: 7/20/2011

Failure to properly maintain the regulated entity by not cutting the vegetation located on the fence surrounding the well site.

Recommended Corrective Action: Submit a photo, invoice, work order, or receipt showing the vegetation has been cut to verify compliance.

Resolution: At the time of the inspection, conducted on 06/14/2011, the vegetation located around the fenceline was maintained and the fence was visible at all points.

Description Item 7

Additional Comments

Failure, by a retail public utility that possesses a certificate of public convenience and necessity that has reached 85% of its capacity as compared to the most restrictive criteria of the commissions minimum capacity requirements in Chapter 290 T.A.C., to submit to the executive director a planning report that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area.

Specifically, it is noted on this investigation that your pressure tank has reached 93.5 % of its capacity. This was based on 159 connections.

EXHIBIT 2

STATE OF TEXAS

COUNTY OF MONTGOMERY

WATER SUPPLY AGREEMENT

RECITALS

WHEREAS, the District has supplied water to Tamina WSC for several years; and

WHEREAS, Tamina WSC desires to continue purchasing water from the District at the rates and under the terms set out below in this Agreement; and

WHEREAS, the District desires to continue supplying water to Tamina WSC at the rates and under the terms set out below in this Agreement; and

WHEREAS, the District has entered into a <u>GRP Participation Agreement</u> with Porter Special Utility District ("Porter SUD") by which the District pays a monthly Groundwater Reduction Planning Fee ("GRP Fee") to the Porter SUD as a participant in Porter SUD's GRP, which fee is passed through to the District's customers; and

WHEREAS, in addition to the pass-through of the GRP rate charged to the District by the Porter SUD and as provided in the District's Rate Order, the District charges an additional ten percent (10%) surcharge over and above such GRP pumpage fees, rates and charges to recover the additional costs to the District of the GRP fees, rates and charges; and these rates and surcharge automatically increase consistent with the increase in the fees, rates and charges assessed to the District by the GRP Rate Order of the Porter SUD; and

WHEREAS, the District also pays a monthly "Water Use Fee" to the Lonestar Groundwater Conservation District ("LSGCD") pursuant to the LSGCD regulations, which fee is also passed on to the District's customers; and

WHEREAS, Tamina WSC is authorized pursuant to Section 67.010, Texas Water Code, as amended, and the District is authorized pursuant to Section 49.213(c)(1), Texas Water Code, as amended, to enter into this Agreement for the purchase and sale of water;

AGREEMENT

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual promises, obligations and benefits hereinafter set forth in this Agreement, Tamina WSC and the District agree as follows:

SUPPLY OF WATER TO TAMINA WSC

Section 1.01 <u>Water Service to Tamina WSC</u>. The Parties agree that the District will supply water to Tamina WSC through a tap and master meter under the terms and conditions set out in this Agreement and the District's Rate Order. The Parties further agree that the District's water capacity is limited and this Agreement may be amended or terminated if the Tamina WSC arranges to serve a new high-demand customer without the District's written approval.

Section 1.02 <u>Term of the Agreement</u>. This Agreement shall be for a term of four (4) years beginning on its Effective Date above and ending on July 31, 2021.

Section 1.03 <u>Early Termination of Agreement</u>. Subject to the applicable state and federal regulations, the Parties agree that Tamina WSC may terminate this Agreement earlier by giving written notice to the District at least ninety (90) days before the date of early termination.

WATER RATES AND FEES

Section 2.01 <u>Water Rates.</u> The wholesale water rates paid by Tamina WSC not including the Porter SUD GRP Fee and the LSGCD Water Use Fee shall be as follows:

a) Effective Date through July 31, 2019:

\$1.76 per 1,000 gallons for the first 1,000 gallons used

\$2.01 per 1,000 gallons for the next 1,100 to 99,000 gallons used

\$2.51 per 1,000 gallons for the next 100,000 to 699,000 gallons used

\$2.76 per 1,000 gallons for the next 700,000 gallons or more used

b) August 1, 2019 through July 31, 2020:

A flat fee of \$2.50 per 1,000 gallons used

c) August 1, 2020 through July 31, 2021:

A flat fee of \$2.75 per 1,000 gallons used

Section 2.02 <u>Porter SUD GRP Fee</u>. Tamina WSC shall also pay the District a pass-through fee for the monthly GRP Fee paid by the District to Porter SUD, plus the ten percent (10%) surcharge. The current GRP Fee is \$1.75 per 1,000 gallons used. This fee may be changed based upon any amendment to the GRP Fee charged to the District by Porter SUD.

Section 2.03. <u>LSGCD Water Use Fee</u>. Tamina WSC shall also pay the District a pass-through fee for the monthly Water Use Fee paid by the District to the Lone Star Groundwater Conservation District. The current Water Use Fee is \$0.075 per 1,000 gallons used. This fee may be changed based upon any amendment to the Water Use Fee charged to the District by LSGCD.

Section 2.04 <u>Billing and Payment</u>. On or about the first (1st) day of each month, the District shall invoice Tamina WSC for water taken pursuant to this Agreement during the preceding month, which invoice shall state the quantity supplied for the billing period and the price to be paid. Payment shall be due and payable within twenty (20) days after such bill is deposited in the United States mail, properly stamped and addressed. In the event Tamina WSC fails to make such payment within the said 20-day period, then the District will add a late charge not to exceed ten percent (10%) of the late payment and give written notice of such delinquency, and if all amounts due and unpaid are not paid within thirty (30) days of delivery of such notice, then District shall be authorized to institute suit for collection thereof and collect any amounts due and unpaid, together with interest thereon at an annual percentage rate not to exceed ten percent (10%), and reasonable attorneys' fees incurred in the collection thereof.

For billing purposes, the mailing address of the District shall be as follows:

Chateau Woods Municipal Utility District 27351 Blueberry Hill Drive, Suite 36 Conroe, Texas 77385-8969 Section 2.05 Operating Expense and Covenants as to Rules. The sums to be paid under the terms of the Agreement are declared by the Parties to be an essential cost of operating and maintaining the District's waterworks system.

TERM AND GENERAL PROVISIONS

Section 3.01 Force Majeure. If the District should be prevented, wholly or in part, from furnishing water to Tamina WSC under this Agreement by reason of any force majeure, including without limitation, acts of God, unavoidable accident, acts of the public enemy, strikes, droughts, riots, floods, fires, government restraint or regulations, breaks in its pipelines, power failure, or for any other cause beyond the District's control, then the obligation of the District to deliver water to Tamina WSC shall be suspended during the continuance of such force majeure. No damages shall be recoverable by Tamina WSC because of the temporary suspension of delivery of water due to any force majeure. If service is interrupted by any act or omission of a third party, the Parties reserve the right to sue in its name, or in the name of the other Party, to collect all damages and costs of all emergency actions required, and this force majeure clause shall not be available to a third party as a defense.

Section 3.02 <u>Approvals by Parties</u>. Whenever this Agreement requires or permits approval or consent to be hereafter given by either Party, such approval or consent shall be effective without regard to whether such approval or consent is given before or after the time required herein unless specifically stated otherwise herein. Such approval or consent shall be evidenced by minute entry approved by the Board of Directors of the Party or by correspondence executed by a person, firm or entity authorized to communicate on behalf of said Party.

Section 3.03 <u>Special Conditions</u>. This Agreement and the District's obligation to deliver water to Tamina WSC as provided herein shall be subject to all present and future laws, orders, rules and regulations of the United States of America, the State of Texas, and any regulatory body having jurisdiction over the subject matter hereof. The Parties agree to cooperate to obtain compliance therewith.

a) In the event that either Party is required by any regulatory authority to pay any fee, service charge, penalty or fine, including but not limited to fees charged by the Porter SUD or the Lone Star Groundwater Conservation District, solely on account of, or as a condition to, providing service pursuant to this Agreement, said fee, service charge, penalty or fine may be billed to the other Party as an expense of

providing service pursuant hereto in addition to all amounts due pursuant to Sections 2.01 through 2.03 of this Agreement.

b) It is further provided that when receiving water pursuant to this Agreement and supplying such water to its own residents and other water users, the receiving Party, Tamina WSC, acts in the capacity of owner and operator of a "public water system," as that term is used in the federal Safe Drinking Water Act. Tamina WSC, as the receiving Party, is solely responsible for complying with all governmental rules, regulations and laws relating to the protection of the health and welfare of its users including, but not limited to, keeping all necessary records and performing all necessary testing, monitoring, treatment and pressurization of the water and water distribution system, and the supplying Party shall have no responsibility with respect thereto; provided, however, that the District, as the supplying Party, shall provide to the receiving Party the information required for preparation of the receiving Party's Consumer Confidence Report, as required by applicable regulations in a timely manner.

Section 3.04 <u>No Additional Waiver Implied</u>. No waiver or waivers of any breach or default by either Party hereto of any term, covenant, condition or liability hereunder of performance by the other Party of any duty or obligation hereunder shall be deemed a waiver thereof in the future, nor shall any such waiver or waivers be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, character or description, under any circumstances.

Section 3.05 <u>Water Analysis</u>. Either Party may require the other Party to obtain a bacteriological water analysis on a sample of water taken from its water distribution system and shall submit the results of said analysis to the other Party. The requesting Party shall reimburse the other Party for all charges incurred in obtaining such sample and water analysis.

Section 3.06 Addresses and Notices. Unless otherwise provided in this Agreement, any notice herein provided or permitted to be given, made or accepted by either Party must be in writing and may be given by depositing the same in the United States mail postpaid, or by delivering the same to the address given below. Notice deposited in the mail in the manner described above shall be conclusively deemed to be effective from and after the expiration of three (3) days after it is so deposited. Notice given in any other manner shall be effective only if and when received. For the purposes of notice, the addresses of the Parties shall be as follows:

Chateau Woods Municipal Utility District 10224 Fairview Drive Conroe, Texas 77385

Old Tamina Water Supply Corporation P. O. Box 7402 The Woodlands, Texas 77387-7402

The Parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify as its address any other address in the State of Texas by at least fifteen (15) days' written notice to the other Party.

Section 3.07 <u>Modification</u>. This Agreement shall be subject to change or modification at any time, but only with the mutual written consent of the Parties hereto.

Section 3.08 <u>Assignability</u>. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, but this Agreement shall not be assignable by either Party.

Section 3.09 <u>Parties in Interest</u>. This Agreement is for the sole and exclusive benefit of Tamina WSC and Chateau Woods Municipal Utility District and shall not be construed to confer any benefit or right upon any other third party or entity.

Section 3.10 <u>Books and Records</u>. Tamina WSC and the District each agree to preserve, to the extent required by law, all books, records, billings, charts and other records relating to the performance of each such Party under the provisions of this Agreement. The Parties shall each have the right at all reasonable business hours to examine the records of the other to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to any provision of this Agreement.

Section 3.11 <u>Provisions Severable</u>. The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part of this Agreement to the other persons or circumstances shall not be affected thereby.

IN WITNESS WHEREOF, this Agreement has been executed in multiple counterparts, each of equal dignity, as of the date and year first above written.

AGREED TO AND ACCEPTED BY:

CHATEAU WOODS MUNICIPAL UTILITY DISTRICT

By

Ken Smit

President, Board of Directors

Secretary Pools of Contract

OLD TAMINA WATER SUPPLY CORPORATION

James E. Leveston, Sr.

President, Board of Directors

ATTEST:

ATTEST:

Secretary, Board of Directors