



Control Number: 45942



Item Number: 21

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RECEIVED

APPLICATION OF SWEA GARDENS §  
 ESTATE UTILITY, INC. AND §  
 MUNICIPAL OPERATIONS, LLC FOR §  
 SALE, TRANSFER OR MERGER OF §  
 FACILITIES AND CERTIFICATE §  
 RIGHTS IN HARRIS COUNTY §

PUBLIC UTILITY COMMISSION

 2017 JAN 26 PM 1:52  
 PUBLIC UTILITY COMMISSION  
 OF TEXAS FILING CLERK

### COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

COMES NOW the Commission Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Order No. 7, Commission Staff's Recommendation on the Transaction. Staff recommends that the transaction be approved to proceed. In support thereof, Staff shows the following:

#### I. BACKGROUND

On May 9, 2016, Swea Gardens Estate Utility, Inc. (Swea Gardens) and Municipal Operations, LLC (Municipal Operations) (collectively, Applicants) filed an application with the Public Utility Commission of Texas (Commission) for sale, transfer, or merger (STM) of facilities and certificate rights in Harris County. Municipal Operations seeks to purchase facilities and transfer water Certificate of Convenience and Necessity (CCN) No. 11872 from Swea Gardens.

On December 12, 2016, the Commission administrative law judge (ALJ) issued Order No. 7, deeming the Applicants' notice sufficient. Order No. 7 also established a procedural schedule requiring Staff to request a hearing or file a recommendation regarding approval of the sale to proceed by January 27, 2017. Therefore, this pleading is timely filed.

#### II. RECOMMENDATION TO APPROVE THE SALE TO PROCEED

As detailed in the attached memorandum of Emily Sears of the Commission's Water Utilities Division, Staff recommends that the Applicants be approved to proceed with the sale and transfer of facilities and certificate rights for water CCN No. 11872 from Swea Gardens to Municipal Operations. Staff has reviewed the criteria of TWC §§ 13.246 and 13.301 and 16 TAC §§ 24.109 and 24.112 and determined that the Applicants meet the requirements necessary to transfer the water CCN.

Pursuant to TWC § 13.301(e) and 16 TAC § 24.109(e), the Commission is required to notify all known parties to the transaction whether the Commission will hold a hearing to

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determine if the transaction will serve the public interest. Staff has determined that the application meets the pertinent requirements and is in the public interest; therefore, Staff does not request a hearing.

After the Commission ALJ issues an order affirming or denying Staff's recommendation that the Applicants should be approved to move forward with the STM transaction, Staff will then coordinate with the Applicants and propose additional dates for the processing of this docket. Such dates will include deadlines for signed sales documents to be submitted by the Applicants, submittal of Staff's recommendation on final disposition, and submittal of a joint proposed notice of approval addressing the water CCN sale and transfer.

### **III. CONCLUSION**

For the reasons stated above, Staff respectfully recommends that the STM transaction between Swea Gardens and Municipal Operations, LLC be approved to proceed.

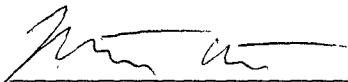
Dated: January 26, 2017

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

Margaret Uhlig Pemberton  
Division Director

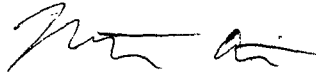
Katherine Lengieza Gross  
Managing Attorney



Matthew A. Arth  
State Bar No. 24090806  
1701 N. Congress Avenue  
P.O. Box 13326  
Austin, Texas 78711-3326  
(512) 936-7021  
(512) 936-7268 (facsimile)  
Matthew.Arth@puc.texas.gov

**P.U.C. DOCKET NO. 45942**  
**CERTIFICATE OF SERVICE**

I, Matthew Arth, staff attorney for the Public Utility Commission of Texas, certify that a copy of this document was served on all parties of record on January 26, 2017, in accordance with the requirements of 16 Tex. Admin. Code § 22.74.

A handwritten signature in black ink, appearing to read 'Matthew A. Arth', is written over a horizontal line.

Matthew A. Arth

# *Public Utility Commission of Texas*

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## **Memorandum**

**To:** Matthew Arth, Attorney  
Legal Division

**Though:** Tammy Benter, Director  
Water Utilities Division

**From:** Emily Sears, Financial Analyst  
Engineering Specialist  
Water Utilities Division

**Date:** January 23, 2017

**Subject:** **Docket No. 45942;** *Application of Swea Gardens Estate Utility, Inc. and Municipal Operations, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

### **Background**

On May 9, 2016, Municipal Operations, LLC (Municipal Operations or Purchaser) filed an application to purchase facilities and transfer Certificate of Convenience and Necessity (CCN) No. 11872 of Swea Gardens Estate Utility, Inc. (Swea Gardens or Seller) (collectively, Applicants), in Harris County, Texas. The Application was filed pursuant to Sections 13.251 and 13.301 of the Tex. Water Code (TWC), and Title 16, Chapter 24 of the Tex. Admin. Code (TAC).

Pursuant to TWC § 13.301(e), before the expiration of the 120-day notification period, the Commission is required to notify all known parties to the transaction whether the Commission will hold a hearing to determine if the transaction will serve the public interest. For this case, we do not recommend that a hearing be held based on our review of the information in the application and the criteria listed below. Staff believes that the Purchaser demonstrates adequate financial, managerial, and technical capability to provide service in the area subject to this application.

For water utility service, the Commission shall ensure that the applicant has a Texas Commission on Environmental Quality (TCEQ) approved system that is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341 and TCEQ rules, and has access to an adequate supply of water. Both the Seller and the Purchaser have TCEQ approved public water supplies that meet the requirements of TWC § 13.241(b).

TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. As a result of this application, the Seller will transfer its water CCN No. 11872 to the Purchaser. Therefore, the following criteria were considered:

- 1) **TWC § 13.246(c)(1) refers to the adequacy of service currently provided to the requested area.**  
The Seller currently provides adequate service to the requested area. No additional construction is necessary. The existing water system purchases 100% of its water from the City of Houston.
- 2) **TWC § 13.246(c)(2) refers to the need for service in the requested area.**  
The fact that there are existing customers in the requested area demonstrates the need for service.
- 3) **TWC § 13.246(c)(3) refers to the effect of granting a certificate on the recipient and on any other retail water utility servicing the proximate area.**  
As a result of the transaction, the Seller's water CCN No. 11872 will be transferred to the Purchaser. The Purchaser will then purchase 100% of its water supply from the City of Houston for this system.
- 4) **TWC § 13.246(c)(4) refers to the ability of the applicant to provide adequate service.**  
The Purchaser will be purchasing 100% of its water supply, and no repairs or improvements are necessary. The Purchaser also has supplied an irrevocable standby letter of credit. The last rate increase was in June of 2015. The Purchasers have one operator with a "Class A" license and two operators with "Class B" licenses. The Purchaser has no unresolved violations.
- 5) **TWC § 13.246(c)(5) refers to the feasibility of obtaining service from an adjacent retail public utility.**  
The Seller is currently serving customers within its CCN and no additional service is needed. Therefore, it is not necessary to consider the feasibility of obtaining service from another entity.
- 6) **TWC § 13.246(c)(6) refers to the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant.**  
The Purchaser does not have any financial history. Therefore, the Purchaser has filed an irrevocable letter of credit in the amount equal to the losses it projects over the first five years of operations. This satisfies 16 TAC § 24.11(d).
- 7) **TWC § 13.246(c)(7) refers to the environmental integrity.**  
In this case, there will be no impact on the environment, as no improvements are needed and the system is currently in place.
- 8) **TWC § 13.246(c)(8) refers to the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate.**  
The Purchaser anticipates that the quality of utility service will be more reliable. The rates will remain unchanged.
- 9) **TWC § 13.246(c)(9) refers to the effect on the land to be included in the certificated area.**  
In this case, there will be no impact on the land as no improvements are needed and the system is currently in place.

Purchaser meets all of the statutory requirements of TWC § 13.246(c). Approving this application and transferring the Seller's water service area, assets, and customers currently under CCN No. 11872 is necessary for the service, accommodation, convenience, and safety of the public.

The Purchaser is capable of providing continuous and adequate service. Therefore, Staff recommends that the Commission allow the Applicants to proceed with the proposed transaction. Staff further recommends that the proposed transaction be completed and that the Applicants send documentation as evidence that all assets have been transferred to the acquiring entity and that the disposition of any remaining deposits has been addressed as soon as possible. Pursuant to 16 TAC § 24.112(e), the approval of the sale expires one year from the date of the Commission's written approval of the sale. If the sale has not been consummated within that period and unless the Applicants have requested and received an extension from the Commission, the approval is void and the Applicants must re-apply for the approval of the sale. In addition, I recommend the Applicants be informed that the CCN will remain in the name of the Seller until the transfer is complete and approved in accordance with the PUC rules and regulations.