



Control Number: 46198.



Item Number: 11

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RECEIVED

APPLICATION OF SWWC UTILITIES, §
INC. DBA DIAMOND WATER COMPANY §
AND SWWC UTILITIES, INC. DBA §
WATER SERVICES, INC. FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN BANDERA, COMAL, AND §
GILLESPIE COUNTIES §

PUBLIC UTILITY COMMISSION
2016 OCT 21 PM 4:47
OF TEXAS PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF'S RECOMMENDATION THAT TRANSACTION BE ALLOWED TO PROCEED

Comes now the staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this response to Order No. 3. In support thereof, Staff would show the following:

I. Background

On July 21, 2016, SWWC Utilities, Inc. d/b/a Diamond Water Company (Diamond Water) and SWWC Utilities, Inc. d/b/a Water Services, Inc. (Water Services) filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Bandera, Comal, and Gillespie Counties. Specifically, Water Services seeks approval to acquire all of the water system assets of Diamond Water held under water Certificate of Convenience and Necessity (CCN) No. 12865.

On September 16, 2016, the Administrative Law Judge issued Order No. 3, requiring Staff to file on or before October 26, 2016 a recommendation on approval of the sale. Therefore, this pleading is timely filed.

II. Recommendation that Proposed Transaction be Allowed to Proceed

Staff has reviewed the application and, as supported by the attached memorandum from Emily Sears and Jolie Mathis in the Commission's Water Utilities Division, recommends that Applicants be allowed to proceed with the proposed transaction. Staff has reviewed the criteria of Tex. Water Code §§ 13.246 and 13.301 (TWC) and 16 Tex. Admin. Code §§ 24.109 and 24.112 (TAC) and determined that the proposed transaction meets the relevant statutory and regulatory requirements.

III. Proposed Procedural Schedule

Staff proposes the following procedural schedule for continued processing of this docket:

Event	Deadline
Deadline for Applicants to respond to Staff's recommendation.	November 2, 2016 ¹
120-day deadline for the Commission to approve this transaction or refer the matter to a hearing.	December 27, 2016 ²
Deadline for Applicants to file closing documents and documents evidencing the disposition of deposits.	As soon as possible after the effective date of the transaction, but not later than thirty days after the effective date of the transaction.
Deadline for Staff to file a recommendation regarding the sufficiency of the transaction closing documents and a supplemental procedural schedule.	Thirty days after the closing documents are filed.
Expiration of the Commission's conditional approval.	One year from the date of Commission approval to proceed with the transaction.

If the procedural schedule proposed above is adopted, Staff will propose a supplemental procedural schedule when it files its recommendation regarding the sufficiency of the transaction closing documents.

IV. Conclusion

For the reasons stated above, Staff respectfully requests that an order be issued allowing Applicants to proceed with the transaction and that the procedural schedule proposed above be adopted for continued processing of this docket.

¹ This deadline was set by Order No. 3 (Sept. 16, 2016).

² This deadline was set by Order No. 3 (Sept. 16, 2016).

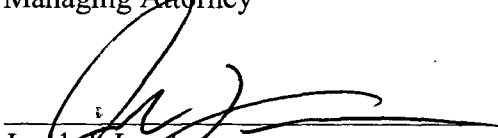
Date: October 21, 2016

Respectfully Submitted,

PUBLIC UTILITY COMMISSION OF TEXAS
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DOCKET NO. 46198

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on October 21, 2016 in accordance with 16 TAC § 22.74.



Jacob J. Lawler

Public Utility Commission of Texas

Memorandum

To: Jacob Lawler, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

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

Date: October 20, 2016

Subject: **Docket No. 46198**; *Application of SWWC Utilities, Inc. dba Diamond Water Company and SWWC Utilities, Inc. dba Water Services, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Bandera, Comal, and Gillespie Counties*

On July 21, 2016 SWWC Utilities, Inc. dba Water Services, Inc. (Purchaser) filed an application to purchase facilities and transfer and cancel all of Certificate of Convenience and Necessity (CCN) No. 12865 of SWWC Utilities, Inc. dba Diamond Water Company (Seller) (collectively, Applicants), in Bandera, Comal, and Gillespie Counties, Texas. The application was filed pursuant to 16 Texas Administrative Code §§ 24.109 and 24.112 (16 TAC) and Texas Water Code § 13.301 (TWC). Specifically SWWC Utilities, Inc., the parent company of both parties, would like to combine the CCN's to reduce the number of future filings required.

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, I do not recommend a hearing be held based on my review of the information in the application and the criteria listed below. Staff believes 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. The Seller has TCEQ approved public water supply (PWS 0100039, 0860107, 0460211, 0100042, 0460221) and the Purchaser has TCEQ approved public water supply (PWS 0150046, 0150096, 0150135, 0150235, 0150421, 0460037, 0940030, 1300005) that meets 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 cancel its water CCN No. 12865, and the

Purchaser will amend its CCN No. 11106 to include the transferred area. 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. The existing water system has access to an adequate supply of water and the water system facilities have excess capacity to serve the existing certificated area.

- 2) **TWC § 13.246(c)(2) refers to the need for service in the requested area.**

The fact 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. 12865 will be cancelled, and the Purchaser's CCN No. 11106 will be amended. Since the parent company is the same for both parties, the only noticeable change to the customers will be the name change. There will be no changes to the daily customer service, operations, or rates.

- 4) **TWC § 13.246(c)(4) refers to the ability of the applicant to provide adequate service.**

The parent of the Purchaser is the parent of the existing water utility, and will continue to provide adequate water service to its customers.

- 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.**

According to TCEQ's Central Registry, the Seller has one active violation, listed as minor, dated 8/26/2016, 30 TAC §§ 290.46(I) for failure to flush all dead-end mains at monthly intervals. The system does not currently need any improvements to meet the Texas Commission on Environmental Quality (TCEQ) or PUC standards. The Purchaser and its parent company possess the financial ability to provide continuous and adequate service, and are financially stable. The Applicant has a debt service coverage ratio (DSC) of 16.73. A ratio of more than 1.25 is preferred because this means that the utility is able to pay back its debts comfortably. The DSC is calculated using annual net operating income before depreciation and non-cash expenses divided by annual combined long term debt service (payments). There are also no projected losses in the first 5 years of operations.

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 probably 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 the same, and 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 under CCN No. 12865 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 Title 16, TAC, Section 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 has 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.