



Control Number: 46782



Item Number: 31

Addendum StartPage: 0

**PUC DOCKET NO. 46782**  
**SOAH DOCKET NO. 473-17-4909.WS**

RECEIVED

2017 AUG 01 PM 4:53

**APPLICATION OF KAMIRA  
PROPERTY OWNERS ASSOCIATION,  
INC. D/B/A KAMIRA WATER SYSTEM  
TO AMEND A CERTIFICATE OF  
CONVENIENCE AND NECESSITY IN  
KERR COUNTY**

**§ PUBLIC UTILITY COMMISSION  
§  
§ OF TEXAS  
§  
§  
§**

**PRELIMINARY ORDER ON THRESHOLD ISSUES**

On January 19, 2017, Wilmer Carroll filed, in his role as the manager of the Kamira Water System of the Kamira Property Owners Association, Inc., (hereinafter, referred to as the applicant or Kamira) an application under Texas Water Code (TWC) §§ 13.244 and 13.246 to remove a portion of Kamira's certificated water service area from certificate of convenience and necessity (CCN) number 12176. Kamira's water service area is located in Kerr and Gillespie counties, approximately nine miles northwest of downtown Kerrville.<sup>1</sup>

Kamira currently owns and operates two water wells and other facilities used to serve two subdivisions: the Box S and Kamira subdivisions. The applicant requests that Kamira's CCN be amended so that the Box S subdivision, located east of Ranch Road 783, would remain in Kamira's certificated service area, and the Kamira subdivision located west of Ranch Road 783 would be removed from Kamira's certificated service area.<sup>2</sup> The applicant states that the requested removal would result in two separate, self-supporting water systems, each with its own water well.<sup>3</sup> The applicant states that Kamira's current service area contains 34 active connections, and if the application is granted, its amended service area would include 20 active connections.<sup>4</sup> It is proposed that the Kamira subdivision that would be removed from Kamira's CCN would be served by a new, non-public, non-profit corporation named Bracero Water Supply Corporation that the

---

<sup>1</sup> Kamira's Supplement to Its Application at 2 (Mar. 23, 2017).

<sup>2</sup> Kamira's Application at Appendices 1, 2, 5, and 5A (Jan. 19, 2017).

<sup>3</sup> Kamira's Application at 7.

<sup>4</sup> *Id.*

31

applicant asserts would be exempt from the requirement to hold a CCN.<sup>5</sup> The applicant states that if the requested CCN amendment is granted, Bracero will focus on removing itself from the regulatory oversight of the Commission, as well as the Texas Commission on Environmental Quality (TCEQ), and the federal Environmental Protection Agency.<sup>6</sup>

Individuals associated with two properties within Kamira's current service area have expressed concerns with the proposal.<sup>7</sup> And on June 14, 2017, James F. Weathersbee and Cindy L. Dix filed a request for a hearing. Thereafter, the Commission referred this matter to the State Office of Administrative Hearings (SOAH). Kamira was directed, and Commission Staff and other interested persons were allowed, to file a list of issues to be addressed in this proceeding and also identify any issues not to be addressed and any threshold legal or policy issues that should be addressed by July 11, 2017.<sup>8</sup> Commission Staff and Mr. Weathersbee with Ms. Dix timely filed proposed lists of issues. The applicant filed a list of issues on July 17.

On July 20, 2017, an order was filed requesting briefing on four threshold issues that are discussed below. Commission Staff timely filed a brief on August 17. The applicant filed a brief on August 21.

### **I. Threshold Legal and Policy Determinations**

The applicant and Commission Staff filed briefs addressing the following threshold legal and policy issues. The following statements of position were reached in consideration of arguments of the parties. Accordingly, pursuant to the Administrative Procedure Act<sup>9</sup> § 2001.058(c), the Commission states its position on the following threshold issues:

---

<sup>5</sup> *Id.*

<sup>6</sup> Kamira's List of Issues (July 17, 2017).

<sup>7</sup> Letter Regarding Motion to Intervene and Request for Hearing of James Weatherbee and Cindy Dix (June 14, 2017); Letter Regarding Motion to Intervene of Gary Johnson (July 17, 2017).

<sup>8</sup> Order of Referral at 1 (June 26, 2017).

<sup>9</sup> Administrative Procedure Act, Tex. Government Code Ann. §§ 2001.001-.902 (West 2016 & Supp. 2016) (APA).

**1. Does Kamira's proposed transaction implicate the requirements of subchapter H. of [chapter 13 of] the Texas [Water] Code, regarding a sale, acquisition, lease, or rental of a water system owned by an entity that is required to hold a CCN?**

Generally, subchapter H of chapter 13 of the Texas Water Code addresses certain transactions involving a water or sewer utility. Germane to this proceeding, TWC § 13.301 requires a utility or water supply corporation like Kamira to file a written application with the Commission, as well as give public notice, no later than 120 days before a proposed sale, acquisition, lease, or rental of a water system owned by an entity that is required to hold a CCN.<sup>10</sup> Kamira is an entity that is required to hold a CCN.<sup>11</sup> The transaction proposed in this proceeding would require the transfer of a portion of Kamira's water system,<sup>12</sup> in addition to the proposal to amend Kamira's service area and extinguish Kamira's legal obligation to serve customers in the portion of the service area that is proposed to be removed. Therefore, the Commission concludes that TWC § 13.301 applies to the transaction proposed in this proceeding and Kamira and Bracero must demonstrate satisfaction of the requirements of TWC § 13.301 and the Commission rule adopted thereunder, 16 Texas Administrative Code (TAC) § 24.109.

To date, the applicant has not filed a sufficient, completed form for an application for a sale, transfer, or merger under TWC § 13.301 and 16 TAC § 24.109. Therefore the application is deficient.

The Commission requests that this matter be returned from SOAH to the Commission for appropriate processing until an application is deemed sufficient.

---

<sup>10</sup> TWC § 13.301(a).

<sup>11</sup> See TWC § 13.242.

<sup>12</sup> See Kamira's Application at Appendix 2 stating that the proposed transaction would result in two, separate water systems each with its own well and service connections.

2. Does Kamira's proposed transaction implicate TWC § 13.250, regarding the provision of continuous and adequate service, as well as discontinuance, reduction, or impairment of service?
3. Does Kamira's proposed transaction implicate TWC § 13.253, regarding actions the Commission may take to address the provision of continuous and adequate service?

Given that the application is deficient, the Commission declines to determine at this time whether the proposed transaction implicates TWC §§ 13.250 and 13.253.

4. If the answer to any of these issues is yes, must Kamira supplement its application?

Because the application is deficient, Kamira must supplement its application, including filing a completed form for an application for a sale, transfer, or merger under TWC § 13.301 and 16 TAC § 24.109.

The Commission notes that Kamira's application currently does not include any information showing that this application was duly authorized by the Kamira Property Owners Association, a corporation. Given that filings in this matter indicate there is a dispute among members of the corporation regarding the propriety of the proposed transaction, such information may be necessary.

Given the Commission's request that this matter be returned from SOAH, the Commission declines, at this time, to identify issues that must be addressed.

## **II. Effect of Preliminary Order**

The Commission's discussion and conclusions in this order regarding threshold legal and policy issues should be considered dispositive of those matters. Questions, if any, regarding threshold legal and policy issues may be certified to the Commission for clarification if the presiding officer determines that such clarification is necessary. As to all other issues, this order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this order before the presiding officer at hearing. The presiding officer, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this order when circumstances dictate that it is reasonable to do so. Any ruling by the presiding officer that deviates from this order may be appealed to the Commission. The Commission will not address whether

this order should be modified except upon its own motion or the appeal of a presiding officer's order. Furthermore, this order is not subject to motions for rehearing or reconsideration.

Signed at Austin, Texas the 31<sup>st</sup> day of August 2017.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
**KENNETH W. ANDERSON, JR., COMMISSIONER**

  
**BRANDY MARTY MARQUEZ, COMMISSIONER**

W2013  
q:\cadm\orders\prelim\46000\46782 po.docx