



Control Number: 47744



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**DOCKET NO. 47744**

<b>APPLICATION OF SHADY SHORES DEVELOPMENT D/B/A SHADY SHORES WATER SYSTEM AND DIANA SPECIAL UTILITY DISTRICT FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN MARION COUNTY</b>	<b>§ § § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION OF TEXAS</b>
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**COMMISSION STAFF'S RECOMMENDATION ON FINAL DISPOSITION**

**COMES NOW** the Staff of the Public Utility Commission of Texas (Staff), representing the public interest, and files this Commission Staff's Recommendation on Final Disposition and would show the following:

**I. BACKGROUND**

On October 31, 2017, Shady Shores Development d/b/a Shady Shores Water System (Shady Shores WS) and Diana Special Utility District (Diana SUD), (collectively, Applicants) filed an application for sale, transfer, or merger of facilities and certificate rights in Marion County, Texas. Specifically, Diana SUD seeks to acquire all of the water system assets and service area of Shady Shores WS held under water Certificate of Convenience and Necessity (CCN) No. 11173.

On February 20, 2018, the administrative law judge (ALJ) issued Order No. 4, deeming notice sufficient, and requiring Staff to file a final recommendation on the application by April 6, 2018. Therefore, this pleading is timely filed.

**II. RECOMMENDATION ON FINAL DISPOSITION**

As detailed in the attached memorandum from Sean Scaff in the Commission's Water Utility Regulation Division, Staff has reviewed the application and recommends that it be approved.

**III. CONCLUSION**

Staff respectfully requests that the ALJ issue an order consistent with the above recommendation.

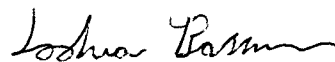
Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF  
TEXAS LEGAL DIVISION**

Margaret Uhlig Pemberton  
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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on April 6, 2018 in accordance with 16 TAC § 22.74.



Joshua Adam Barron

**PUC Interoffice Memorandum**

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**To:** Joshua Barron, Attorney  
Legal Division

**Thru:** Tammy Benter, Director  
Heidi Graham, Manager  
Water Utilities Regulation Division

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

**Date:** April 3, 2018

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**Subject:** **Docket No. 47744:** *Application of Shady Shores Development d/b/a Shady Shores Water System and Diana Special Utility District for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Marion County*

On October 31, 2017, Shady Shores Development d/b/a Shady Shores Water System (Shady Shores) and Diana Special Utility District (Diana SUD) (collectively called “Applicants”) filed a STM application with the Commission for Diana SUD to purchase the facilities and transfer customers and service area of water Convenience and Necessity (CCN) 11173 from Shady Shores in Marion County. As a result of the proposed transactions, Diana SUD will obtain Shady Shores’ water CCN, and Shady Shores’ CCN will be cancelled. The application was filed pursuant to the criteria in the Texas Water Code (TWC) §§ 13.241, 13.246 and 13.301, and 16 Texas Administrative Code (TAC) §§ 24.102-107 and 24.109.

Pursuant to TWC § 13.301(e) and 16 TAC § 24.109(e), prior to the expiration of the 120-day notification period, the Commission shall either approve the sale administratively or require a public hearing to determine if the transactions will serve the public interest. The 120-day notification period concluded on June 5, 2018. Staff does not recommend a referral to hearing because the proposed transaction will serve the public interest. Furthermore, Staff recommends that Diana SUD meets the requirements to purchase the facilities and to transfer the CCN and customers. A detailed review is provided below.

**TWC § 13.246(c)(1) and 16 TAC § 24.102(d)(1)**

In considering whether to amend a certificate, the Commission shall consider the adequacy of service currently provided to the requested area. The requested area is currently served by a TCEQ approved public water system (PWS), Shady Shores Water System (ID No. 1580014). There are existing violations related to capacity at the water system. However, Diana SUD has a larger system, customer base and operational staff that are aware of the issues and are capable of resolving them. Diana SUD is served by TCEQ approved public water system (PWS), Diana SUD (ID No. 2300006) and has no drinking water violations.

**TWC § 13.246(c)(2) and 16 TAC § 24.102(d)(2)**

In considering whether to amend a certificate, the Commission shall consider the need for additional service in the proposed area. This application is for the transfer of existing facilities, customers and service area. No new requests for service have been received, and Diana SUD did

not request to add additional uncertificated area. Therefore, the need for additional service in the requested area was not evaluated.

**TWC § 13.246(c)(3) and 16 TAC § 24.102(d)(3)**

In considering whether to amend a certificate, the Commission shall consider the effect of granting an amendment on the Applicant, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area. The effect of the proposed transactions is that the Shady Shores' water CCN service area and customers will transfer to Diana SUD. In turn, Shady Shores' CCN service area will be cancelled. The facilities, and the existing customers of the Shady Shores' in the certificated areas will be transferred to the Diana SUD. Granting the certificate amendment meets the expectations of Shady Shores, which has entered into an agreement with Diana SUD to transfer their facilities and certificate rights.

**TWC § 13.246(c)(4) and 16 TAC § 24.102(d)(4)**

In considering whether to amend a certificate, the Commission shall 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. Diana SUD has the financial capability through customer collections to make any necessary repairs and improvements to the public water system, as needed, to keep them in full compliance with all TCEQ and Commission regulations. Additionally, for the operation of the purchased systems, Diana SUD has three "Class C" operators on staff to address any issues as they arise.

**TWC § 13.246(c)(5) and 16 TAC § 24.102(d)(5)**

In considering whether to grant or amend a certificate, the Commission shall consider the feasibility of obtaining service from an adjacent retail public utility. The requested area will be provided water and sewer utility service from the existing infrastructure. The two entities share an interconnect and service is expected to improve by changing operation and management over to Diana SUD therefore, the feasibility of obtaining service from an adjacent retail public utility was not evaluated.

**TWC § 13.246(c)(6) and 16 TAC § 24.102(d)(6)**

In considering whether to grant or amend a certificate, the Commission shall consider the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio. Staff recommends that Diana SUD demonstrates adequate financial and managerial capability to provide service to the requested area.

**Financial Test**

16 TAC § 24.11 includes a leverage test and an operations test.

Based on the calculations below Diana SUD has a debt to equity ratio of 0.24. Therefore, Diana SUD meets the leverage test with a debt to equity ratio of less than one.

- a. 2016 Net Position = \$4,224,033
- b. 2016 Long-Term Notes Payable = \$1,000,000
- c. 2016 Debt to Equity Ratio =  $\$1,000,000 / \$4,224,033 = 0.24$

The owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations. Diana SUD has not submitted projections in its application; however, based on Diana SUD's 2016 CAFR Statement of Revenues, Expenses, and Changes in Fund Net Position, Diana SUD had \$23,503 in operating income. Thus, there are no shortages to cover. Diana SUD meets the operations test.

**TWC § 13.246(c)(7) and 16 TAC § 24.102(d)(7)**

In considering whether to grant or amend a certificate, the Commission shall consider the environmental integrity of the proposed area resulting from the granting of the certificate or amendment. Because the area will be served with existing infrastructure, the transfer should have minimal effect on the environmental integrity of the requested area.

**TWC § 13.246(c)(8) and 16 TAC § 24.102(d)(8)**

In considering whether to grant or amend a certificate, the Commission shall consider the probable improvement in service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment. After the approval of the application, the current customers will begin to pay the rates set by Diana SUD. The service should improve as Diana SUD has the capabilities and staff to address Shady Shores' capacity issues.

**TWC § 13.246(c)(9) and 16 TAC § 24.102(d)(9)**

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In considering whether to grant or amend a certificate, the Commission shall consider the effect on the land to be included in the certificated area. The requested area is already being served. Therefore, the effect on the land in the requested area was not evaluated.

**Final Recommendation**

Staff has considered Diana SUD's ability to provide continuous and adequate service pursuant to the CCN criteria outlined in TAC § 24.102(d). Pursuant to 16 TAC § 24.109(f), Staff recommends the following:

1. The application be approved;
2. The Commission find that the transactions will serve the public interest and allow the Applicants to proceed with the proposed transactions; and
3. The Applicants be ordered to file documentation as evidence that all assets have been transferred to the acquiring entity, and that the disposition of any remaining deposits have been addressed as soon as possible pursuant to 16 TAC § 24.109(f).

The approval of the sale expires 180 days from the date of the Commission's written approval of the sale. If the sale is not consummated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void and the Applicants must re-apply for the approval of the sale. In addition, the CCN will remain in the name of Shady Shores Water System until the transfer is completed and approved in accordance with the Commission rules and regulations as required by 16 TAC § 24.109(o).