



Control Number: 47744



Item Number: 29

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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 §
OF FACILITIES AND CERTIFICATE §
RIGHTS IN MARION COUNTY §**

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PUBLIC UTILITY COMMISSION
OF TEXAS
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NOTICE OF APPROVAL

This Notice addresses the application of Shady Shores Development dba Shady Shores Water System and Diana Special Utility District for the sale, transfer, or merger of facilities and certificate rights in Marion County. The Commission approves the sale of Shady Shores' water system assets and the transfer of 250 acres and 153 current customers in its water service area to Diana.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Applicants

1. Shady Shores is a domestic corporation registered with the Texas Secretary of State on November 20, 2002 under file number 800144802.
2. Shady Shores operates facilities to provide potable water service in Texas under certificate of convenience and necessity (CCN) number 11173.
3. Diana operates facilities to provide potable water service in Texas under CCN number 10425.

Application

4. On October 31, 2017, Shady Shores and Diana filed an application for the sale and transfer of Shady Shores' facilities and certificate rights to Diana in Marion County. Diana supplemented the application on December 19, 2017, and March 19, 2018.
5. The area requested for transfer includes 250 acres and 153 current customers.

6. The requested area is located 3.5 miles east of downtown Ore City, and is bounded on the north by Lake O' the Pines, on the east by Fleetwood Drive, on the south by Duesenberg Drive, and on the west by LaSalle Avenue.
7. Shady Shores' Texas Commission on Environmental Quality (TCEQ)-approved public water system (PWS), number 1580014, is not capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code and TCEQ rules due to capacity violations.
8. There are no drinking water violations at Diana's TCEQ-approved PWS, number 2300006.
9. Diana's PWS, number 2300006, is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code and TCEQ rules.
10. Diana has provided water service since 1970 and has access to an adequate supply of water.
11. Diana has a larger water system, customer base, and operational staff that are aware of Shady Shores' capacity issues and is capable of bringing the acquired system into compliance.
12. Diana is able to serve the 153 customers in the requested area.
13. Shady Shores' and Diana's water systems share an interconnection; therefore, Diana's integration of the acquired system into its overall system will enable the water quality standards to be raised.
14. Diana has the financial capability, through customer collections, to make any necessary repairs and improvements to the water system and to maintain full compliance with TCEQ regulations.
15. Diana is capable of providing a higher quality of service to customers.
16. Diana has demonstrated the capability to provide service to the requested area because it has a debt-to-equity ratio of 0.24 and sufficient utility operating income.
17. Approval of the application will not adversely impact the environmental integrity of the land included in the requested area because existing infrastructure is already in place and serving the requested area.
18. The customers of Shady Shores will be charged the equivalent rates of Diana.

19. Diana is capable of providing continuous and adequate service to the transferred area and the transaction will serve the public interest.

Notice

20. Notice of the application appeared in the November 17, 2017, issue of the *Texas Register*.
21. On February 2, 2018, Diana mailed notice of the application to current customers, neighboring utilities, and affected parties.
22. On February 5, 2018, Diana provided notice by publication in the *Longview News-Journal*, a newspaper of general circulation in Gregg County.
23. On February 13, 2018, Diana filed the affidavit of Susan Whitfield attesting that notice of the application was provided to current landowners, neighboring utilities, and other affected parties.
24. On February 13, 2018, Diana filed the affidavit of Ashley Marsh attesting to published notice in the *Longview News-Journal* on February 5, 2018.
25. In Order No. 4 issued on February 20, 2018, the administrative law judge (ALJ) found applicants' notice sufficient.

Evidence

26. On September 14, 2018, the parties filed an amended joint motion to admit evidence into the record.
27. In Order No. 8 issued on November 9, 2018, the ALJ admitted the following evidence into the record: (a) Shady Shores' and Diana's application and all attachments filed on October 31, 2017; (b) acknowledgement of publication in the *Texas Register* on November 17, 2017; (c) Diana's supplement to the application filed on December 19, 2017; (d) Commission Staff's recommendation that the application be found administratively complete filed on January 25, 2018; (e) Diana's affidavit of mailed and published notice filed on February 13, 2018; (f) Commission Staff's recommendation finding notice sufficient filed on February 16, 2018; (g) Diana's responses to Commission Staff's first request for information filed on March 19, 2018; (h) Commission Staff's recommendation that the sale be approved to proceed filed on April 6, 2018; (i) Diana and Shady Shores' bill of sale filed on June 5, 2018; (j) Shady Shores and Diana's signed

consent forms filed on July 17, 2018; (k) final map filed on September 14, 2018; and (l) amended CCN number 11173 filed on September 14, 2018.

Transaction

28. In Order No. 5 issued on April 19, 2018, the ALJ approved the transaction to proceed and ordered Diana and Shady Shores to file proof of the transaction's closing within 180 days.
29. On June 5, 2018, Diana filed a bill of sale executed by Diana and Shady Shores as proof that the transaction has been finalized.
30. In Order No. 7, issued on June 14, 2018, the ALJ found the bill of sale sufficient.

Informal Disposition

31. More than 15 days have passed since the completion of notice in this docket.
32. No person filed a protest or a motion to intervene.
33. Shady Shores, Diana, and Commission Staff are the only parties to this proceeding.
34. On April 6, 2018, Commission Staff recommended approval of the application.
35. No party requested a hearing and no hearing is necessary.
36. The decision is not adverse to any party.

II. Conclusions of Law

1. The Commission has jurisdiction over this application under Texas Water Code (TWC) §§ 13.041, 13.241, 13.246, 13.251, and 13.301.
2. Diana and Shady Shores are retail public utilities as defined in TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59).
3. Shady Shores is a class C utility as defined in TWC § 13.002(4-c) and 16 TAC § 24.3(17).
4. Diana is a political subdivision of the State of Texas organized and created under the terms and conditions of Article IVI, Section 59 of the Texas Constitution and Texas Water Code (TWC) chapter 65.
5. Diana and Shady Shores provided notice of the application as required by TWC § 13.301(a)(2).

6. The Commission processed the application in accordance with the Texas Water Code, the Administrative Procedure Act,¹ and Commission rules.
7. Commission action on this application complied with the 120-day deadline required by 16 TAC § 24.239.
8. The application meets the requirements of 16 TAC § 24.239.
9. Diana and Shady Shores have demonstrated that the sale of Shady Shores' water system assets and the transfer of Shady Shores' water service area to Diana is in the public interest in accordance with 16 TAC § 24.239(i).
10. Diana and Shady Shores completed the sale of Shady Shores' water system assets within 180 days from the date of the Commission's approval to proceed with the sale in accordance with 16 TAC § 24.239(o).
11. Diana has demonstrated that it is capable of providing drinking water that meets the requirements of chapter 341 of the Texas Health and Safety Code and TCEQ rules as required by TWC § 13.241(b)(1).
12. Diana has demonstrated that it has access to an adequate supply of water as required by TWC § 13.241(b)(2).
13. After considering the factors in TWC § 13.246(c), Diana has demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and its current service area.
14. Diana and Shady Shores have demonstrated that the amendments to CCN number 10425 and CCN number 11173, respectively, are necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b). Under TWC § 13.257(r) and (s), Diana is required to record a certified copy of the approved CCN and map, along with a boundary description of the service area, in the real property records of each county in which the service area or a portion of the service area is located, and submit to the Commission evidence of the recording.

¹ Tex. Gov't Code §§ 2001.001–.902.

15. The requirements for informal disposition in 16 TAC § 22.35 have been met in this proceeding.

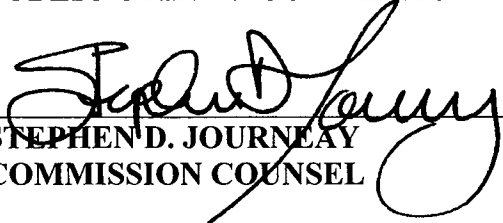
III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders:

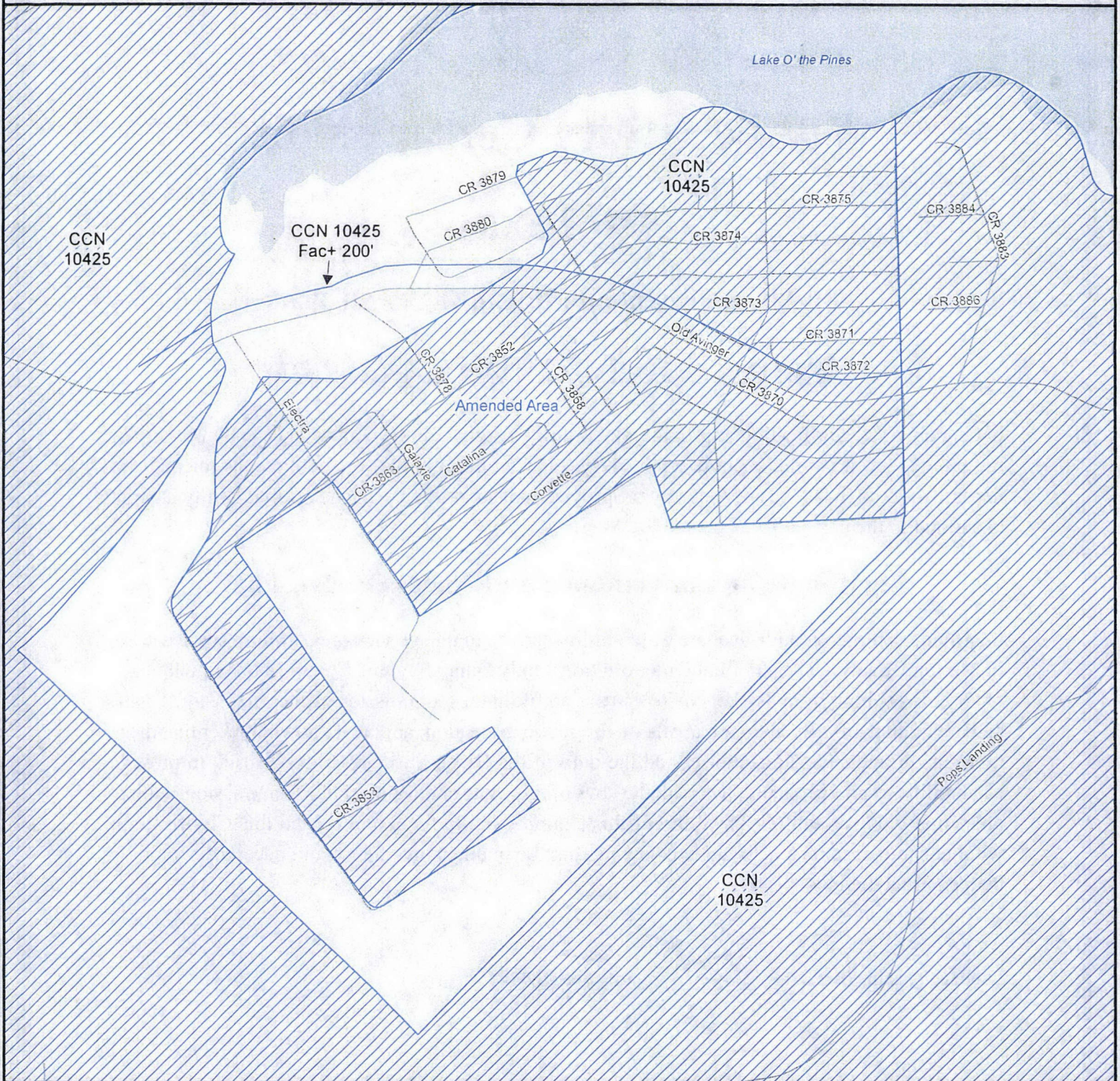
1. The Commission approves the sale of Shady Shores' water system assets and the transfer to Diana of CCN number 11173.
2. The Commission approves the certificate and map attached to this Notice.
3. Diana must serve every customer and applicant for water service within the service area under CCN number 11173 that requests water service and meets the terms of Diana's regulations to receive water service and such service shall be continuous and adequate.
4. Diana is required to comply with the recording requirements of TWC § 12.257(r) and (s) for the area in Marion County affected by the application and must submit to the Commission evidence of the recording no later than 31 days after the receipt of this Notice.
5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the 22nd day of January 2019


PUBLIC UTILITY COMMISSION OF TEXAS


STEPHEN D. JOURNEY
COMMISSION COUNSEL

Diana Special Utility District
Portion of Water CCN No. 10425
PUC Docket No. 47744
Transferred all of Shady Shores Water System, CCN No. 11173 in Marion County




Water CCN

 10425 - Diana SUD

0 500 1,000
Feet



Water CCN Facilities +200'

 10425 - Diana SUD



Public Utility Commission Of Texas

By These Presents Be It Known To All That

Diana Special Utility District

having obtained certification to provide water, utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, Diana Special Utility District is entitled to this

Certificate of Convenience and Necessity No. 11173

to provide continuous and adequate water, utility service to that service area or those service areas in Marion County(ies) as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 47744 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the Diana Special Utility District, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this 22nd day of January 2019.