



Control Number: 49230



Item Number: 34

Addendum StartPage: 0



DOCKET NO. 49230

APPLICATION OF TIMERLANE §
WATER SYSTEM, INC. AND SIMPLY §
AQUATICS, INC. FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN SABINE COUNTY §
§

PUBLIC UTILITY COMMISSION
OF TEXAS

COMMISSION STAFF’S RECOMMENDATION ON THE SUFFICIENCY OF CLOSING DOCUMENTS

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Recommendation on the Sufficiency of Closing Documents. In support thereof, Staff shows the following:

I. BACKGROUND

On February 15, 2019, Simply Aquatics, Inc. and the Timberlane Water System, Inc. (collectively, Applicants) filed an application for sale, transfer, or merger of facilities and certificate rights in Sabine County, Texas. Specifically, the Applicants seek to transfer Timberlane’s facilities and service area under water Certificate of Convenience and Necessity (CCN) Number 12336 to Simply Aquatics.

On August 4, 2020, the Commission Administrative Law Judge issued Order No. 15 requiring Commission Staff to file recommendation on the closing documents filed on July 13, 2020 by August 13, 2020. Therefore, this pleading is timely filed.

II. SUFFICIENCY OF CLOSING DOCUMENTS

Staff has reviewed the Applicants closing documents filed by the Applicants on July 13, 2020. Based on its review, Staff has determined that the Applicants’ filing does not meet the requirements of 16 Texas Administrative Code (TAC) § 24.239(a) and (k) - (n). Specifically, the proposed transaction was completed before the ALJ approved the transaction to proceed, and the effective date of the transaction does not meet the requirements of 16 TAC § 24.239(a). Under this section, notice must be given at least 120 days before the effective date of the transaction. The last date the Applicants mailed the required notice, as stated in the Applicants’ affidavit of

notice, was December 5, 2019.¹ Therefore, the earliest day that the proposed transaction can be effective is April 3, 2020.² The closing documents list November 2, 2018 as the effective date of the transaction.³ Furthermore, 16 TAC § 24.239(n) states that “within 30 days after the actual effective date of the transaction, the transferee and the transferor shall file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed.” The closing documents were filed on July 13, 2020. Thirty days from the actual effective date of April 20, 2020 is May 20, 2020. Therefore, the closing documents were filed more than 30 days after the effective date of the transaction and do not comply with 16 TAC § 24.239(n).

III. PROPOSED PROCEDURAL SCHEDULE

In accordance with Staff’s deficiency recommendation, Staff does not propose a procedural schedule for further processing of the docket at this time. Staff intends to propose a procedural schedule alongside a subsequent recommendation for closing document sufficiency.

IV. CONCLUSION

For the reasons stated above, Staff respectfully recommends that the closing documents be found deficient at this time and that the Applicants be ordered to file a supplement addressing the identified deficiencies.

¹ Supplemental Information at bates 3-17 (Dec. 20, 2019).

² One hundred and twenty days after December 5, 2019 is April 3, 2020.

³ STM and Customer Deposit Records at bates 2, 3, and 12 (July 13, 2020).

**PUBLIC UTILITY COMMISSION OF
TEXAS LEGAL DIVISION**

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DOCKET NO. 49230

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on August 13, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Rashmin J. Asher
Rashmin J. Asher