



Control Number: 49615



Item Number: 11

Addendum StartPage: 0

DOCKET NO. 49615

**APPLICATION OF MSEC §
ENTERPRISES INC. AND MSEC §
WASTE WATER INC. FOR SALE, §
TRANSFER, OR MERGER OF §
FACILITIES AND CERTIFICATE §
RIGHTS IN MONTGOMERY COUNTY §**

PUBLIC UTILITY COMMISSION

OF TEXAS

RECEIVED
2019 SEP 19 AM 10:57
PUBLIC UTILITY COMMISSION
FILING CLERK

COMMISSION STAFF’S RECOMMENDATION ON FINAL DISPOSITION

COMES NOW the staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Recommendation on Final Disposition in response to Order No. 4. In support thereof, Staff shows the following:

I. BACKGROUND

On June 7, 2019, MSEC Waste Water Inc. (MSEC Waste) and MSEC Enterprises Inc. (MSEC Enterprises)(collectively, Applicants) filed an application for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County, Texas. Specifically, MSEC Waste seeks approval to purchase facilities and transfer MSEC Enterprises’ wastewater Certificate of Convenience and Necessity (CCN) No. 20984. The requested area includes approximately 373 total acres and 3 current customers.

On July 30, 2019, Order No. 4 was issued, establishing a deadline of September 19, 2019, for Staff to request a hearing or file a recommendation on approval of the sale. This pleading is therefore timely filed.

II. RECOMMENDATION

As supported by the attached memorandum of Debbie Reyes of the Consumer Protection Division, Staff recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Staff recommends that the proposed transaction be found to satisfy the criteria in Texas Water Code § 13.246(c) and Texas Administrative Code (TAC) §§ 24.225-24.239. If the transaction is permitted to proceed, Staff further requests that Applicants be required to file evidence that all assets have been transferred to the acquiring entity, and that the disposition

11

of any remaining deposits have been addressed as soon as possible, pursuant to 16 TAC § 24.239(n).

Staff notes that 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 the Seller until the transfer is completed and approved in accordance with the Commission rules and regulations as required by 16 TAC § 24.227(o).

III. CONCLUSION

Staff respectfully requests the entry of an order permitting the proposed transaction to proceed.

Dated: September 19, 2019

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Karen S. Hubbard
Managing Attorney



Sarah D. McDaniel
State Bar No. 24092340
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7289
(512) 936-7268 (facsimile)
sarah.mcdaniel@puc.texas.gov

**DOCKET NO. 49615
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on September 19, 2019, in accordance with 16 TAC § 22.74.



Sarah D. McDaniel

PUC Interoffice Memorandum

TO: Sarah McDaniel, Attorney
Legal Division

THRU: Heidi Graham, Director of Water Utility Engineering
Infrastructure Division

FROM: Debbie Reyes, Licensing and Compliance Analyst
Customer Protection Division

DATE: September 19, 2019

SUBJECT: **Docket No. 49615**, *Application of MSEC Enterprises Inc. and MSEC Waste Water Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County*

On June 7, 2019, MSEC Waste Water Inc.'s (Purchaser), and MSEC Enterprises Inc.'s (Seller) (collectively Applicants) filed an application for Sale, Transfer, or Merger (STM) of facilities and certificate rights in Montgomery County, Texas. Specifically, MSEC Waste Water Inc. seeks approval to purchase facilities and transfer MSEC Enterprise Inc.'s wastewater Certificate of Convenience and Necessity (CCN) No. 20984. The requested area includes approximately 373 total acres and 3 existing customers. This application is being reviewed under 16 Texas Administrative Code (TAC) §§ 24.227 and 24.239 and Texas Water Code (TWC) §§ 13.241, 13.246, and 13.301.

Notice

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. The deadline for intervention was August 19, 2019. The Commission did not receive any requests for a hearing during the 30-day comment period. The 120-day notification period concludes on November 15, 2019.

Criteria Considered

Staff reviewed the public interest factors and the financial, managerial, and technical capability of MSEC Waste Water Inc. pursuant to TWC § 13.246(c). Under this statute, the Commission shall consider the following nine criteria when amending a CCN:

TWC § 13.246(c)(1) and 16 TAC § 24.227(d)(1) require the Commission to consider the adequacy of service currently provided to the requested area.

MSEC Enterprises, Inc. and MSEC Waste Water, Inc. are wholly-owned subsidiaries of Mid-South Synergy. The existing sewer facilities, and sewer customers, are being transferred to MSEC Waste Water, Inc. There are two TCEQ wastewater permits previously held by MSEC Enterprises, Inc. that have been transferred to MSEC Waste Water, Inc. Both of the wastewater permits (WQ 14638-001 and WQ 15341-001) are associated with an approved TCEQ sewer treatment plant that it is capable of meeting the TCEQ design criteria and operation requirements. There is no further construction necessary to provide adequate service to the requested area.

TWC § 13.246(c)(2) requires the Commission to consider the need for service in the requested area.

The application seeks to transfer all the Seller's sewer CCN to the Purchaser. The Purchaser currently does not have a sewer CCN as it is a new market entrant.

TWC § 13.246(c)(3) requires the Commission to consider the effect of granting of a certificate of an amendment on the recipient and on any other retail sewer utility servicing the proximate area.

The Purchaser and the Seller have an agreement to transfer the requested area to the Purchaser. Therefore, there is no effect on any other retail water utility servicing the proximate area.

TWC §13.246(c)(4) and 16 TAC § 24.227(d)(4) requires the Commission to consider the ability of the Buyer 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.

The operations, maintenance, management, and customer services will continue to be provided by Mid-South Synergy via an operating agreement transferred from MSEC Enterprises, Inc. to MSEC Waste Water. TCEQ certified operators are currently employed to operate the sewer treatment plants in accordance with TCEQ licensing requirements. Customers will continue to receive this same level of sewer service as there will be no change in daily customer service and operations as a result of the proposed transaction. The application did not contemplate any increase in customer density or any planned developments, therefore the adequate service currently being provided is not expected to change as a result of the transaction.

TWC §13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.

MSEC Enterprises, Inc. is transferring all its wastewater utility assets to MSEC Waster Water, Inc. a new entity created by Mid-South Synergy. Both the Seller and the Purchaser are wholly-owned subsidiaries of Mid-South Synergy, a member-owned electric cooperative. There will be no changes to land uses of existing CCN boundaries.

TWC §13.246(c)(6) and 16 TAC § 24.11(e) requires the Commission to consider the financial ability of the Buyer to pay for facilities necessary to provide continuous and adequate service.

16 TAC § 24.11 establishes the criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service area. The financial tests include a leverage test and operations test.

The Purchaser meets three out of the five leverage tests; the Purchaser is only required to meet one. The Purchaser meets the first leverage test with a debt to equity ratio less than one, calculated by dividing long-term debt of zero by equity of \$4,214,682.49.¹ The Purchaser meets the second and third leverage tests by projecting a positive cash flow in the first year of operations of \$145,655.80 and unrestricted cash reserves that suffice covering two years of debt service, equal to zero.²

The Purchaser has submitted projected financial statements in its application with no cash shortages predicted, and therefore, meets the operations test. There are also sufficient unrestricted cash reserves available to cover operations and maintenance shortages in the first five years of operations.³

¹ Application at 15.

² *Id* at 18.

³ *Id* at 19.

TWC §§ 13.246(c)(7) and (9) require the Commission to consider the environmental integrity and the effect on the land to be included in the certificate.

The environmental integrity of the land will not be affected as the requested area will be managed and operated by the same highly-qualified personnel.

TWC § 13.246(c)(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers.

The customers in the requested area are currently being provided both water and sewer utility services by MSEC Enterprises, Inc. This transaction will separate the two utilities into different legal entities. The separation of the two utilities is to ease administrative and regulatory burdens for the three existing sewer customers. MSEC Waste Water, Inc. will continue to contract with Mid-South Synergy for operational and billing services. The existing customers' rates will remain the same upon approval of the application.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer sewer CCN No. 20984 and facilities to the Purchaser is necessary for the service, accommodation, convenience and safety of the public.

Recommendation on approval of sale

Staff recommends that the Commission find that the transaction will serve the public interest and allow the Applicants to proceed with the proposed transaction. Staff also recommends that Purchaser be ordered to file documentation as evidence that all assets have been transferred from Seller and that the disposition of any remaining deposits have been addressed as soon as possible pursuant to 16 TAC § 24.109(g).