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

BEFORE THE PUBLIC UTILITY COMMISSION
FILING CLERK

PUBLIC UTILITY COMMISSION

OF TEXAS

JOINT MOTION TO ADMIT EVIDENCE AND PROPOSED NOTICE OF APPROVAL

COME NOW MSEC Enterprises, Inc. and MSEC Waste Water, Inc. (Applicants) together with the Staff (Staff) of the Public Utility Commission of Texas (the Commission), representing the public interest (collectively, the Parties), and file this Joint Motion to Admit Evidence and Proposed Notice of Approval. In support thereof, the Parties show the following.

I. BACKGROUND

On October 21, 2019, the Parties filed a Joint Motion to Admit Evidence, which Motion was granted by Order No. 5 issued on October 25, 2019. Subsequent to the issuance of that Order, the Administrative Law Judge (ALJ) approved the sale and transfer to proceed, found the closing documentation sufficient, and directed the Parties to jointly file a proposed Notice of Approval by February 7, 2020 (Order No. 7 issued on December 13, 2019).

II. JOINT MOTION TO ADMIT EVIDENCE

In order to complete the evidentiary record in this proceeding, the Parties jointly move to have the following additional items admitted in evidence in this proceeding:

- (a) Applicants' Bill of Sale, filed November 12, 2019;
- (b) Commission Staff's closing documents sufficiency recommendation, filed December 11, 2019;
- (c) Applicant's consent form filed on January 23, 2020; and
- (d) the attached map, certificate, and tariff.

III. JOINT PROPOSED NOTICE OF APPROVAL

The Parties move for adoption of the attached Joint Proposed Notice of Approval.

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IV. CONCLUSION

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the Commission adopt the attached Proposed Notice of Approval.

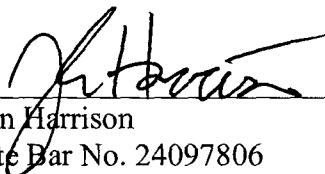
Dated: February 7, 2020

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Thomas S. Hunter
Division Director

Rachelle Nicolette Robles
Managing Attorney

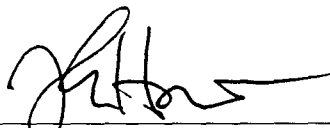


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on February 7, 2020, in accordance with 16 TAC § 22.74.



John Harrison

APPLICATION OF MSEC	§	BEFORE THE
ENTERPRISES, INC. AND MSEC	§	
WASTE WATER, INC. FOR SALE,	§	PUBLIC UTILITY COMMISSION
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN MONTGOMERY COUNTY	§	OF TEXAS

JOINT PROPOSED NOTICE OF APPROVAL

This Notice of Approval addresses the June 7, 2019, application of MSEC Enterprises, Inc. (MSEC Enterprises) and MSEC Waste Water, Inc. (MSEC Waste Water) (the applicants) for approval of a sale, transfer, or merger of facilities and certificate rights in Montgomery County. The Commission approves the transfer of all of MSEC Enterprises' facilities and service area under sewer certificate of convenience and necessity (CCN) number 20984 to MSEC Waste Water.

I. Findings of Fact

The Commission makes the following findings of fact.

Applicants

1. MSEC Enterprises is an active domestic for-profit corporation registered with the Texas secretary of state under file number 1452050-00.
2. MSEC Enterprises is a retail public utility that provides wastewater service in Texas under CCN number 20984 in Montgomery County.
3. MSEC Enterprises owns two wastewater systems in Montgomery County permitted by the Texas Commission on Environmental Quality (TCEQ) under TCEQ Water Quality (WQ) Discharge Permit Numbers WQ 14638-001 and WQ 15341-001.
4. MSEC Waste Water is an active domestic for-profit corporation registered with the Texas secretary of state on April 22, 2019, under file number 803298779.
5. MSEC Waste Water is a new wastewater utility that currently does not own any facilities.

Application

6. On June 7, 2019, applicants filed an application for the approval of the sale of all of the wastewater facilities currently owned and operated by MSEC Enterprises and transfer of the corresponding service area held under CCN number 20984 in Montgomery County from MSEC Enterprises to MSEC Waste Water.
7. MSEC Enterprises' CCN 20984 serves the Lone Star Elementary School, Keenan Elementary School, Lake Creek High School, Oak Hill Junior High School (Montgomery Independent School District), and MSEC Enterprises' offices, all in Montgomery County.
8. The requested area subject to this transaction is located approximately five miles southeast of Montgomery, Texas, and is composed of four separate parcels located along FM 2854 and Keenan Cut-Off.
9. The total area affected by the transfer comprises approximately 373 acres and three current customers in Montgomery County.
10. In Order No. 3 issued July 16, 2019, the administrative law judge (ALJ) deemed the application administratively complete.

Notice

11. On July 18, 2019, MSEC Enterprises, Inc. filed an affidavit of Troy Morris, First Vice President of MSEC Enterprises, Inc., attesting that notice was provided to all current wastewater customers of MSEC Enterprises, neighboring utilities, counties, cities, and affected parties on July 18, 2019.
12. In Order No. 4 issued July 30, 2019, the ALJ deemed the notice sufficient.

Evidentiary Record

13. On October 21, 2019, the parties filed a joint motion to admit evidence into the record.
14. In Order No. 5 issued on October 25, 2019, the ALJ admitted the following evidence into the record: (a) the Applicants' application, filed on June 7, 2019; (b) Applicants' proof of notice and supporting documentation, filed on July 18, 2019; and (c) Commission Staff's recommendation on final disposition, filed on September 19, 2019.

15. In Order No. ____, issued on February ____, 2020, the ALJ admitted the following evidence into the record: (a) Applicant's bill of sale, filed November 12, 2019; (b) Commission Staff's closing documents sufficiency recommendation, filed December 11, 2019; (c) Applicant's consent form filed on January 23, 2020; and (d) the attached map, certificate, and tariff.

Sale

16. In Order No. 6 issued on October 30, 2019, the ALJ approved the transaction to proceed and required the applicants to file proof that the transaction had closed and that customer deposits had been addressed.
17. On November 12, 2019, MSEC Waste Water filed notice that the sale had closed on November 7, 2019, along with the attached bill of sale and an affidavit of MSEC Enterprises that there were no customer deposits to be addressed.
18. In Order No. 7 issued on December 13, 2019, the ALJ found the closing documents sufficient.

System Compliance—Texas Water Code (TWC) § 13.301(e)(3)(A); 16 Texas Administrative Code (TAC) §§ 24.227(a), 24.239(j)(3)(A), (j)(5)(A)

19. MSEC Enterprises' facilities operating under WQ Discharge Permit Numbers WQ 14638-001 and WQ 15341-001 are currently in compliance with the TCEQ design criteria and operation requirements.
20. There are no reported violations of the TCEQ's rules.
21. MSEC Enterprises has not been subject to any enforcement action by the Commission, TCEQ, the Texas Health and Human Services Commission, the Office of the Attorney General, or the United States Environmental Protection Agency.

Adequacy of Existing Service—TWC § 13.246(c)(1); 16 TAC §§ 24.227(d)(1), 24.239(j)(5)(B)

22. MSEC Enterprises and MSEC Waste Water are wholly-owned subsidiaries of Mid-South Synergy. The existing sewer facilities and sewer customers are being transferred to MSEC Waste Water.
23. There is no further construction necessary to provide adequate service to the requested area.

Need for Additional Service—TWC § 13.246(c)(2); 16 TAC §§ 24.227(d)(2), 24.239(j)(5)(C)

24. The application seeks to transfer all of MSEC Enterprises' sewer CCN to MSEC Waste Water. MSEC Waste Water currently does not have a sewer CCN as it is a new market entrant.

Effect of Approving the Transaction and Granting the Amendment—TWC § 13.246(c)(3); 16 TAC §§ 24.227(d)(3), 24.239(j)(5)(D)

25. MSEC Enterprises and MSEC Waste Water are the only utilities affected by this sale and transfer.

Ability to Serve: Managerial and Technical—TWC §§ 13.241(a), 13.246(c)(4), 13.301(b), (e)(2); 16 TAC §§ 24.227(a), (d)(4), 24.239(g), (i)(5)(E)

26. The operations, maintenance, management, and customer services will continue to be provided by Mid-South Synergy via an operating agreement transferred from MSEC Enterprises to MSEC Waste Water. TCEQ certified operators are currently employed to operate the sewer treatment plants in accordance with TCEQ licensing requirements.
27. Customers will continue to receive the same level of service as there will be no change in daily customer service and operations as a result of the proposed transaction.
28. 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.

Ability to Serve: Financial Ability and Stability—TWC §§ 13.241(a), 13.246(c)(6), 13.301(b); 16 TAC §§ 24.11(e), 24.227(a), (d)(6), 24.239(g), (j)(5)(G)

29. MSEC Waste Water has a debt to equity ratio of less than one and meets the first leverage test.
30. MSEC Waste Water meets the second and third leverage tests by projecting a positive cash flow in the first year of operations and unrestricted cash reserves that suffice to cover two years of debt service, equal to zero.
31. MSEC Waste Water has demonstrated the financial capability and stability to provide continuous and adequate water service.

Financial Assurance—TWC § 13.246(d), 13.301(c); 16 TAC §§ 24.227(e), 24.239(h)

32. MSEC Waste Water's projected operating revenues are sufficient to cover the projected operations and maintenance expense for the first five years after the completion of the proposed sale and transfer.
33. There is no need to require MSEC Waste Water to provide a bond or other financial assurance to ensure continuous and adequate service.

Feasibility of Obtaining Service from Adjacent Retail Public Utility—TWC § 13.246(c)(5); 16 TAC §§ 24.227(d)(5), 24.239(j)(5)(F)

34. MSEC Enterprises is transferring all its wastewater utility assets to MSEC Waste Water, a new entity created by Mid-South Synergy. Both MSEC Enterprises and MSEC Waste Water are wholly-owned subsidiaries of Mid-South Synergy, a member-owned electric cooperative.
35. There will be no changes to land uses or existing CCN boundaries.
36. It is not feasible to obtain service from another utility other than MSEC Waste Water.

Environmental Integrity—TWC § 13.246(c)(7); 16 TAC §§ 24.227(d)(7), 24.239(j)(5)(H)

37. 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.

Effect on Land—TWC § 13.246(c)(9); 16 TAC § 24.227(d)(9)

38. 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.

Improvement of Service or Lowering Cost to Consumers—TWC § 13.246(c)(8); 16 TAC §§ 24.227(d)(8), 24.239(j)(5)(I)

39. The customers' rates will remain the same upon approval of the application.

Tariff, Certificate, and Map

40. On January 17, 2020, Commission Staff emailed to the Applicants the final proposed map, certificate, and sewer tariff related to this docket.

41. On January 23, 2020, Applicants filed their consent form concurring with the map, certificate, and revised sewer tariff.
42. The final map, certificate, and tariff were filed as an attachment to the proposed Notice of Approval.
43. MSEC Enterprises has sold and transferred all of its facilities and service area under sewer CCN number 20984 to MSEC Waste Water.
44. As a result of the transaction, MSEC Enterprises' sewer CCN number 20984 is now held by MSEC Waste Water.

Informal Disposition

45. More than 15 days have passed since the completion of notice provided in this docket.
46. No person filed a protest or motion to intervene.
47. MSEC Enterprises, MSEC Waste Water, and Commission Staff are the only parties to this proceeding.
48. No party requested a hearing and no hearing is needed.
49. Commission Staff recommended approval of the application.
50. The decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has jurisdiction over this proceeding under Texas Water Code (TWC) §§ 13.041, 13.241, 13.244, 13.246, 13.251, 13.254, and 13.301.
2. MSEC Enterprises and MSEC Waste Water are retail public utilities as defined by TWC § 13.002(19) and 16 Texas Administrative Code (TAC) § 24.3(59).
3. Public notice of the application was provided as required by TWC § 13.301(a) and 16 TAC § 24.239(a) through (c).
4. The Commission processed the application as required by the TWC, the Administrative Procedure Act, and Commission Rules.
5. MSEC Enterprises and MSEC Waste Water completed the sale within the time required by 16 TAC § 24.239(o).

6. After consideration of the factors in TWC § 13.246(c), MSEC Waste Water has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area. TWC § 13.301(b).
7. MSEC Enterprises and MSEC Waste Water have demonstrated that the sale of MSEC Enterprises' sewer system will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public. TWC §§ 13.301(d), 13.246(b).
8. A sale not completed in accordance with TWC § 13.301 is void. TWC § 13.301(h).
9. MSEC Waste Water must record a certified copy of the certificate granted and map approved by this Notice of Approval, along with a boundary description of the service area, in the real property records of Montgomery County within 31 days of receiving this Notice of Approval and submit to the Commission evidence of the recording. TWC § 13.257(r), (s).
10. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with the preceding findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves MSEC Waste Water's purchase of MSEC Enterprises' sewer system and the transfer of MSEC Enterprises' sewer service area under CCN number 20984 to MSEC Waste Water, to the extent provided in this Notice of Approval.
2. The Commission transfers sewer CCN number 20984 to MSEC Waste Water.
3. The Commission approves the map, certificate, and tariff attachment to the Joint Proposed Notice of Approval filed on February 7, 2020.
4. MSEC Waste Water must serve every customer and applicant for service within the approved area under sewer CCN number 20984 that requests sewer service and meets the terms of MSEC Waste Water's sewer service, and such service must be continuous and adequate.
5. MSEC Waste Water must comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Montgomery County affected by the application and submit to the

Commission evidence of the recording no later than 31 days after receipt of this Notice of Approval.

6. Within ten days of the date of this Notice of Approval, Commission Staff must provide a clean copy of the tariff approved by this Notice of Approval to central records to be marked Approved and filed in the Commission's tariff books.
7. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the ____ day of February, 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE