



Control Number: 50569



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**DOCKET NO. 50569**

**APPLICATION OF MSEC WASTE WATER, INC. FOR AUTHORITY TO CHANGE RATES** §  
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**BEFORE THE PUBLIC UTILITY COMMISSION OF TEXAS**

**MSEC WASTE WATER, INC.’S  
RESPONSE TO ORDER NO. 3 AND SUPPLEMENT TO APPLICATION**

COMES NOW, MSEC Waste Water, Inc. (MSEC WW or Applicant) and files this Response to Order No. 3 and Supplement to its Application, as required by Order No. 3.<sup>1</sup> This Response and Supplement is timely filed.

On April 15, 2020, the Staff of the Public Utility Commission (Staff) filed its Recommendation on Administrative Completeness of the Application and Notice, along with Staff’s Memorandum of the same date.<sup>2</sup> In its Recommendation, Staff proposed that the Applicant be required to provide additional information in order to complete its application. The Applicant disagreed that the additional information referenced by Staff was required in order to have the application deemed complete, and filed Objections to Staff’s Recommendation on April 16, 2020. Order No. 3 was filed that same day. Without waiving its Objections, Applicant provides this response to Order No. 3 and the following information to supplement its Application.

**1. An organizational chart reflecting the ownership of all affiliates.**

**Response:** An organizational chart is attached as Attachment 1, showing the parent of Applicant and other subsidiaries owned by the parent.

**2. A written description of which affiliates provide services in support of the provision of wastewater services to Applicant’s customers and the types of services provided.**

**Response:** The only affiliate that provides services to Applicant is its parent, Mid-South Electric Cooperative Association, d/b/a MidSouth Electric Co-op or Mid-South Synergy, a Texas electric

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<sup>1</sup> Order No. 3 Finding Application Incomplete and Deficient, Establishing Opportunity to Cure; and Suspending Effective Date (Apr. 16, 2020).

<sup>2</sup> Commission Staff’s Recommendation on Administrative Completeness of the Application and Notice (Apr. 15, 2020) (Staff’s Recommendation).

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cooperative association (Mid-South). MSEC WW has taken great care in establishing the parameters of its business relationship with its parent, as evidenced by the supporting documentation filed with its Application. In its Application, MSEC WW provided three documents bearing on this response: *Master Service Agreement* between Mid-South and Applicant; *Lease Agreement* between Mid-South and Applicant; and *Customer Service and Billing Service Agreement* between Mid-South and Applicant.

The *Master Service Agreement*, provided again as Attachment 2 to this Response, establishes that Mid-South will provide to Applicant the following services: administrative services, customer service and billing customer accounts, and transportation service. Additional details on these services are provided in Attachment 2.

The *Lease Agreement*, provided again as Attachment 3 to this Response, establishes that Mid-South will lease premises to the Applicant and provide to Applicant maintenance and general cleaning services as a part of the lease. Additional details on the lease and the accompanying services provided thereunder are provided in Attachment 3.

The *Customer Service and Billing Service Agreement*, provided again as Attachment 4 to this Response, establishes that Mid-South will provide to Applicant the following services: customer account set-up, meter reading, monthly billing and collection services, customer service, and a number of other similar services. Additional details on these services are provided in Attachment 4.

**3. A cost allocation manual, or a detailed description of what costs are direct billed and how costs are allocated between affiliates, if costs are allocated.**

**Response:** Applicant does not have a cost allocation manual. Direct-billed costs include: purchased power (for electricity at the MSEC WW facilities), contract work (based on number of hours each employee spends at the MSEC WW facilities), and transportation expense (based on the number of hours each vehicle is used for MSEC WW functions).

Allocated expenses include indirect expenses for vehicles such as lease payments and maintenance (based on composite of the hours of vehicle use by service function in each month),

insurance (based on the net plant balance allocation percentages), and property taxes (based on the net plant balance allocation percentages).

A table showing the accounts associated with the direct-billed/allocated costs is provided as Attachment 5. Spreadsheets illustrating the process of allocation are provided as Attachment 6.

**4. An explanation referencing the Texas Water Code and the Commission rules as to why the Applicant filed as a Class D utility.**

**Response:** Numerous provisions in the Texas Water Code (TWC) and the Commission’s rules indicate that Applicant is a Class D utility and appropriately filed its rate application as a Class D utility. In particular, the definitions provided in the TWC and the Commission’s rules all support the filing as a Class D utility. The corporate structure of MSEC WW also establishes the utility as a legal entity separate from both its parent electric cooperative and its affiliates.

**TWC § 13.002(4-d)** defines a *Class D utility* as: “a public utility that provides retail water or sewer utility service through fewer than 500 taps or connections.” (When the Application was filed on March 9, 2020, the Commission’s rules did not contain a definition for a Class D utility).<sup>3</sup>

- MSEC WW has three customers at nine locations (connections). Those three customers are: Montgomery Independent School District, Mid-South Synergy, and Honea Baptist Church.
- Therefore, MSEC WW is a Class D utility.

**TWC § 13.002(23)** defines a *public utility* as:

any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the . . . collection, transportation, treatment, or disposal of sewage or other operations of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water

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<sup>3</sup> 16 Tex. Admin. Code § 24.1(d) (TAC) (“An application received by the commission and file stamped in the commission’s Central Records office shall be processed in accordance with the rules in effect on the date that the application was received by Central Records.”).

supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.<sup>4</sup>

- MSEC WW is a Texas corporation, having been incorporated on April 18, 2019, File No. 803298779.
- MSEC WW exclusively owns facilities for the collection, transportation, treatment, and disposal of sewage. MSEC WW's application to transfer such ownership was approved by the Commission in Docket No. 49615 earlier this year.<sup>5</sup> No other entity, affiliate or otherwise, has any ownership interest in the wastewater utility facilities.
- MSEC WW is the holder of the water quality permits for the wastewater treatment plants through which sewer utility service is provided: WQ0014638001 and WQ00115341001. See Attachment 7 for documents from the Texas Commission on Environmental Quality transferring these permits to MSEC WW.
- MSEC WW holds sewer CCN No. 20984 issued by the Commission and authorizing MSEC WW to provide retail sewer utility service to the territory and to the customers included therein.
- Therefore, MSEC WW is a public utility, separately incorporated and holding all appropriate authorizations to provide retail sewer utility service.

**TAC § 24.3(76)** defines *water and sewer utility* as:

any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the . . . collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than

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<sup>4</sup> TWC § 13.002(23) (emphasis added).

<sup>5</sup> See *Application of MSEC Enterprises, Inc. and MSEC Waste Water, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County, Texas*, Docket No. 49615, Notice of Approval (Feb. 28, 2020).

equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.<sup>6</sup>

- MSEC WW is a Texas corporation, having been incorporated on April 18, 2019, File No. 803298779.
- MSEC WW owns facilities for the collection, transportation, treatment, and disposal of sewage.<sup>7</sup> No other entity, affiliate or otherwise, has any ownership interest in the wastewater utility facilities.
- MSEC WW holds sewer CCN No. 20984, issued by the Commission and authorizing MSEC WW to provide retail sewer utility service to the territory and to the customers included therein.
- MSEC WW holds the water quality permits issued by the TCEQ for the two wastewater treatment plants used to provide retail sewer utility service. See Attachment 7.
- Therefore, MSEC WW is a sewer utility, separately incorporated and holding all appropriate authorizations to provide retail sewer utility service.

**TWC § 13.002(20)** defines *retail water or sewer utility service* as: “potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.” The definition in 16 TAC § 24.3(60) is identical to the statute.

- MSEC WW provides sewer utility service to ultimate consumers for compensation.
- Therefore, MSEC WW is a provider of sewer utility service.

**TWC § 13.002(19)** defines a *retail public utility* as: “any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating.”

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<sup>6</sup> 16 TAC § 24.3(76).

<sup>7</sup> See *Application of MSEC Enterprises, Inc. and MSEC Waste Water, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County, Texas*, Docket No. 49615, Notice of Approval (Feb. 28, 2020).

maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.” The definition in 16 TAC § 24.3(59) is identical to the statute.

- MSEC WW is a corporation.
- MSEC WW operates, maintains, and controls facilities for providing sewer service for compensation.
- Therefore, MSEC WW is a retail public utility.

**TWC § 13.1872** *Class D Utilities; Rate Adjustment*, provides in subsection (c) that a Class D utility may accomplish changes in its rates in one of two ways: (1) filing an application for a 5% rate adjustment following procedures contained in subsection (e); or (2) complying with the procedures to change rates described by TWC § 13.1871. As of the date of filing of the Application with Central Records, the Commission’s rules did not address the filing of a rate change application by a Class D utility.

- MSEC WW is a new entity, therefore the procedures by which a Class D utility can obtain a 5% rate adjustment were not available to it, thus MSEC WW chose the second option, which was to file a rate application under TWC § 13.1871.<sup>8</sup>

**Additional Response:**

Staff’s Recommendation refers to the fact that an affiliate of MSEC WW—namely, MSEC Enterprises, Inc.—is a water utility with more than 5,000 connections, hence the water utility is a Class B utility. Staff’s Recommendation opines that MSEC Enterprises’ status as a Class B water utility therefore means that “the affiliated entities [i.e., MSEC WW and MSWC Enterprises] may be considered a Class B utility under the definition in TWC § 13.002(4-b).”<sup>9</sup>

MSEC WW disagrees with Staff’s interpretation of the laws and the rules. The referenced statutory definition of a Class B utility is “a public utility that provides retail water or sewer utility

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<sup>8</sup> See Statement of Intent to Change Rates for Sewer Service at 1 (Mar. 9, 2020). The intention of Mid-South to create a separate utility for sewer services was discussed with Staff, and separately with the Commissioners, prior to the filing of the application in Docket No. 49615. The desired reduction in the regulatory burden for the three sewer customers was specifically, and favorably, noted in those discussions by all the parties.

<sup>9</sup> Staff’s Recommendation at 5.

service through 2,300 or more taps or connections but fewer than 10,000 taps or connections.”<sup>10</sup> Staff’s reliance on this one definition for MSEC Enterprises disregards all of the other pertinent definitions discussed above. In particular, a “public utility” provides utility services through facilities that it owns, operates, maintains, or controls. MSEC Enterprises and MSEC WW are both public utilities; each owns, operates, maintains, and control the facilities used to provide public utility services. MSEC Enterprises owns, operates, maintains, and controls the facilities that provide water service, and it holds the water utility CCN. MSEC WW owns, operates, maintains, and controls the facilities that provide wastewater service, and it holds the sewer utility CCN. There is no common ownership of the water and sewer facilities.

MSEC WW and MSEC Enterprises share a common parent, but they are otherwise not related. They are not divisions of one entity; they are not operating as a “d/b/a” of each other or any other entity. They do not share a tariff; they do not “combine” their efforts to provide services; there is no common ownership of facilities. They have separate governing boards of directors.

There is no statute or rule that would transform a Class D sewer utility serving only three customers into a Class B sewer utility based on the sole fact that the sewer utility is an affiliate of a Class B water utility. The common parentage of MSEC WW and MSEC Enterprises does not dissolve their separate corporate identities. Nor does the fact of a common parent operate to change the fact that MSEC WW and MSEC Enterprises do not own any facilities in common, nor do they provide any of the same services. The combination of two separate utilities that separately own and operate different types of utilities into one entity for the purpose of establishing their utility classification, as recommended by Staff, has no basis in the TWC or the Commission’s rules.

In all the pertinent rules and statutes cited above, there is a noticeable absence of the words “and their affiliates” when defining any of these pertinent terms: “Class D utility,” “public utility,” “water and sewer utility,” “retail water or sewer utility service,” or “retail public utility.” This

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<sup>10</sup> TWC § 13.002(4-b).



absence is important. If the legislature or the Commission had intended to gather up all of a utility's affiliates under the umbrella definition of "utility," if they had intended to ignore corporate structures and facility ownership, and if they had intended to combine distinctly different entities, they surely would have done so by making that intention clear in the statute and the rules. However, in none of the statutory or regulatory definitions is the word "affiliate" used.<sup>11</sup>

The fiction that MSEC WW and MSEC Enterprises operate as one large entity is insupportable, and necessarily entails ignoring not one, but three, corporate structures—those of MSEC Waste Water, Inc., MSEC Enterprises, Inc., and Mid-South Electric Cooperative. None of these entities work in combination with each other—they all three provide distinct and different services: sewer, water, and electricity, respectively.

MSEC Waste Water, Inc., Applicant herein, respectfully requests that its application be deemed administratively complete and be appropriately processed as a Class D rate filing application.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE  
& TOWNSEND, P.C.**

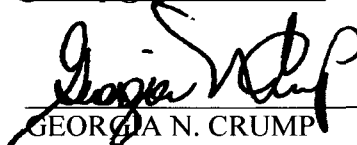
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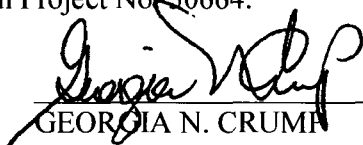
ATTORNEYS FOR MSEC WASTE WATER,  
INC.

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<sup>11</sup> TWC § 13.185(e). Indeed, if a utility and all of its affiliates are to be classified together as "the utility," then the distinction between "affiliates" and the utility that is preserved in both the TWC and the Commission's rules becomes moot, and the affiliate transaction standard for separate water and sewer utilities is not needed.

**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 May 6, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

  
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GEORGIA N. CRUM