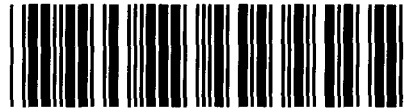




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DOCKET NO. 50569

**APPLICATION OF MSEC WASTE
WATER, INC. FOR AUTHORITY TO
CHANGE RATES**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

**COMMISSION STAFF’S SUPPLEMENTAL RECOMMENDATION ON
ADMINISTRATIVE COMPLETENESS OF THE APPLICATION AND NOTICE**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Supplemental Recommendation on Administrative Completeness of the Application and Notice. In support thereof, Staff shows the following:

I. BACKGROUND

On March 9, 2020, MSEC Waste Water, Inc. (MSEC WW or the Applicant) filed as a Class D utility using a Class C rate change application for its sewer customers. MSEC WW holds sewer certificate of convenience and necessity (CCN) number 20984 with a total of 10 active connections.

On April 15, 2020, Staff filed its Recommendation on Administrative Completeness of the Application and Notice, recommending that MSEC WW’s application and notice be found deficient and administratively incomplete. On April 16, 2020, the administrative law judge (ALJ) issued Order No. 3, finding the application incomplete and deficient, directing MSEC WW to supplement its application to cure the deficiencies by May 6, 2020, and directing Staff to file a supplemental recommendation regarding administrative completeness by May 27, 2020.

On May 6, MSEC WW provided supplemental information to the application. On May 26, Staff filed a request for extension. On May 27, the ALJ issued Order No. 4, directing Staff to file a supplemental recommendation on the application and notice by June 10, 2020. Therefore, this pleading is timely filed.

**II. SUPPLEMENTAL RECOMMENDATION ON ADMINISTRATIVE
COMPLETENESS**

Staff has reviewed the application and supplemental information filed by MSEC WW, and, as detailed in the attached memorandum of Debi Loockerman, Rate Regulation Division, recommends that MSEC WW’s application and notice be found deficient and administratively

incomplete. Specifically, Staff recommends that the Commission dismiss the application, or in the alternative, order MSEC WW to provide all the information required for a Class B utility base rate case. Staff makes this recommendation based in part on the Commissioners' discussions during the July 18, 2019, open meeting on Docket No. 47976, *Application of Liberty Utilities (Silverleaf Water) LLC for Authority to Change Water and Sewer Rates*. The Commissioners expressed concerns at the open meeting about the facts of the docket¹, and subsequently required Liberty Silverleaf to answer the following questions, which Staff believes are applicable to MSEC WW in this docket:²

1. What entity or combination of entities constitutes the utility in this docket under Texas Water Code (TWC) § 13.002(23)?
 - a. Which entity or entities own the assets used by Liberty Silverleaf in providing utility service?
 - b. Are there employees solely dedicated to Liberty Silverleaf's day-to-day operations?
 - c. Which entity or entities employ the individuals who perform Liberty Silverleaf's day-to-day operations?
 - d. Which entity or entities direct the employees who perform Liberty Silverleaf's day-to-day operations?
 - e. Which entity or entities direct the day-to-day operations of Liberty Silverleaf?
 - f. Which entity or entities make decisions for Liberty Silverleaf regarding investments, loans, and other business activities?
 - g. If a combination of entities constitutes the utility, how should the Commission deal with the entities that are part of the utility but are not included as parties in this docket? Should these entities be joined in this proceeding under 16 Texas Administrative Code (TAC) § 22.104(a) as necessary parties?

Consistent with the Commissioners' discussions and questions in Docket No. 47976, Staff recommends that the Commission continue to find the application deficient and administratively incomplete, and further recommends the Commission either dismiss the application, order MSEC

¹ "Who is the utility?" Open Meeting Tr. at 14:9-10 (July 18, 2019); "Liberty Silverleaf doesn't have any employees. Right?" Open Meeting Tr. at 15:20-25 (July 18, 2019).

² *Application of Liberty Utilities (Silverleaf Water) LLC for Authority to Change Water and Sewer Rates*, Docket No. 47976, Order Requiring Responses to Issues (Aug. 8, 2019).

WW to provide all the information required for a base rate case for a Class B utility, or alternatively, require MSEC WW to answer the above-listed questions in this docket as Staff believes they are applicable here. Staff also recommends that the effective date of the requested rate change be suspended pursuant to Texas Water Code Annotated § 13.1871(e) and 16 Texas Administrative Code (TAC) § 24.33(b)(1). Finally, Staff recommends that if and when the application is deemed administratively complete, MSEC WW be required to provide notice to customers reflecting the new effective date.

III. PROPOSED PROCEDURAL SCHEDULE

Staff proposes the following procedural schedule:

Event	Date
Deadline for MSEC WW to amend its application and provide all the information required for a base rate case for a Class B utility OR for MSEC WW to answer the above-referenced questions from Docket No. 47976	July 1, 2020
Deadline for Staff's supplemental recommendation on administrative completeness and notice	July 22, 2020

IV. CONCLUSION

Staff respectfully requests that the ALJ continue to find the application administratively incomplete, and further recommends the ALJ either dismiss the application, or order MSEC WW to provide all the information required for a base rate case for a Class B utility, or alternatively, require MSEC WW to answer the above-listed questions in this docket as Staff believes they are applicable here. Staff also recommends the ALJ adopt the above proposed procedural schedule, and order that the effective date of rates be suspended until the application and notice is determined to be administratively complete.

Dated: June 10, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 50569

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 June 10, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Taylor P. Denison
Taylor P. Denison

Public Utility Commission of Texas

Memorandum

TO: Taylor Denison, Attorney
Legal Division

FROM: Debi Loockerman
Rate Regulation Division

DATE: June 10, 2020

SUBJECT: **Docket No. 50569:** *Application of MSEC Waste Water, Inc. for Authority to Change Rates*

On March 9, 2020, MSEC Waste Water, Inc. (MSEC or Applicant) filed an application with the Public Utility Commission of Texas (Commission) for a rate/tariff change under Certificate of Convenience and Necessity (CCN) No. 20984, for wastewater, in Montgomery County. An administrative review of the application and notice has been made pursuant to Texas Water Code (TWC) §§ 13.1872(c)(2) and 13.1871 and 16 Texas Administrative Code (TAC) §§ 24.25 through 24.33.

This memo provides Staff's sufficiency recommendation based on the supplemental filing by MSEC on May 6, 2020. It is also based on the history of MSEC's filings at the Commission, as discussed later in this memo.

MSEC Waste Water, Inc. is a wholly-owned subsidiary of Mid-South Electric Cooperative, Inc. d/b/a Mid-South Synergy (Mid-South Synergy). Mid-South Synergy also owns MSEC Enterprises,¹ providing water utility service to 5,486² water connections in Texas. Therefore, the affiliated entities are considered a Class B utility under the definition in TWC § 13.002(4-b). However, MSEC, providing wastewater service to 3 commercial customers with 10 active connections, filed as a Class D utility using a Class C rate change application. MSEC Waste Water, Inc. serves no residential connections, one 1" commercial connection, one 1½" commercial connection, five 2" standard commercial connections, one 3" non-standard commercial connection, one 8" commercial connection, and one 10" commercial connection. Staff believes that affected connections served include Montgomery Independent School

¹ *Petition of MSEC Enterprises, Inc. for Good Cause Extension to Rate Filing Requirement in Docket No. 44740, Docket No. 49200, Petition for Additional Good Cause Extension to Rate Filing Requirement (Jan. 13, 2020).*

² *MSEC Enterprises Inc. 2018 Annual Report* at 8, Project No. 48918 (June 20, 2019).

District (MISD), Mid-South Synergy, and Honea Baptist Church.³

In Docket No. 44740, *Application of MSEC Enterprises, Inc. to Amend a Certificate of Convenience and Necessity in Montgomery County*, MSEC Enterprises, Inc. requested to amend its sewer CCN No. 20984 to include area intended to serve MISD. MSEC Enterprises, Inc. and MISD intended for MSEC Enterprises, Inc. to provide both water and sewer service to MSID.⁴ The amendment was approved by the Commission on September 7, 2017.⁵

On February 28, 2020, the Commission approved the transfer of all of its wastewater facilities and certificate rights from MSEC Enterprises, Inc. to MSEC Waste Water, Inc in Docket No. 49615.⁶ That application stated “MSEC Enterprises, Inc. is transferring all of its wastewater utility assets to MSCE Waste Water, Inc., a new entity created by Mid-South Synergy. Both Transferor and Transferee are wholly-owned subsidiaries of Mid-South Synergy, a member-owned electric cooperative. There will be no changes to land use or existing CCN boundaries. This application is to transfer the assets only; the operating agreement with MSEC Waste Water, which is anticipated to be the same as the existing operating agreement with MSEC Enterprises.”⁷

The application in Docket No. 49615 also stated:

- “MSEC Enterprises, Inc., currently provides both water and sewer utility services. 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 very few sewer customers, and will be seamless to the sewer customers. MSEC Waste Water will continue to contract with Mid-South Synergy for operational and billing services; the individuals providing these services to the sewer customers will not change as a result of this transfer. The transfer will be effected by an inter-company accounting entry.”⁸
- “The transfer will be seamless to the waterwater customers and have no effect on MSEC Enterprises’ water customers.”⁹
- “MSEC Enterprises currently uses employees of Mid-South Synergy to perform all services related to water and sewer utilities. These same employees will continue to be used by MSEC Waste Water. Transferee is a new corporate entity, created by Mid-South Synergy on April 18, 2019. However, as described in response to Question #16, the same management, operational, and customer service individuals that have been

³ *Application of MSEC Waste Water, Inc. for Authority to Change Rates*, Docket No. 50569, MSEC Waste Water, Inc.’s Response to Order No. 3 and Supplement to Application at 3 (May 6, 2020).

⁴ *Application of MSEC Enterprises, Inc. to Amend a Certificate of Convenience and Necessity in Montgomery County*, Docket No. 44740, Application at 8 (May 18, 2015).

⁵ *Id.* Notice of Approval (Sept. 7, 2017).

⁶ *Application of MSEC Enterprises, Inc. and MSEC Waste Water, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County*, Docket No. 49615, Notice of Approval (Feb. 28, 2020).

⁷ *Id.* Application at 7 (June 7, 2019).

⁸ *Id.*

⁹ *Id.* at 8.

providing sewer service under the auspices of MSEC Enterprises, will continue to perform the same services for MSEC Waste Water.”¹⁰

- With regard to the public interest, the application stated, “The public interest will be well-served by this transaction. Currently there are 5,000+ water customers and 3 sewer customers served by MSEC Enterprises, Inc. The same highly-qualified individuals will continue to manage and operate the sewer system, and the continued ownership of the utility by a member-owned electric cooperative will ensure that customer rates are reasonable. The classification of the sewer utility as a Class C utility will reduce regulatory burdens on the sewer customers.”¹¹

Notice in Docket No. 49615 contained the following statement: “This transaction will have the following effect on the current customers rates and services: All of the customers will be charged the same rates they were charged before the transaction.”¹² Although the application included one statement referencing the class change, there was no reference in the notice to customers that the applicant intended to change the designation of the utility from a Class B to a Class C (currently Class D). The Notice of Approval did not address a class change.¹³

Staff believes that the approval of Docket No. 49615 did not effectively change the classification of a portion of a Class B utility into a Class C utility, which then was changed by legislation to a Class D utility. The determination will be made in the current case.

Staff believes that the three customers at the time that Docket No. 49615 was processed received no notice that the “regulatory burden” reduction meant that MSEC Waste Water, Inc. could apply for four Class D increases with no opportunity for protest by the customers. Additionally, MSEC Enterprises, Inc. currently provides water service as a Class B utility to the customers affected by the wastewater rate increase proposed in Docket No. 50569. Therefore, the affiliated entities would be charging water as a Class B utility to the same customers receiving sewer from a Class D utility. MISD could protest its water rate increases, however, when MSEC Waste Water, Inc. filed a Class D rate adjustment increase, MISD would be unable to protest.

In this case, Staff recommends that the Commission find that it is not in the public interest to allow affiliates to form a new corporation for the purpose of changing utility class designations in order to take advantage of reduced reporting requirements, including the Class D annual adjustment. Staff does not believe this was the purpose of the legislation that created the Class D rate adjustment increase. Staff’s position is that the intent was to increase the viability and financial capability of utilities with less than 500 connections in Texas, rather than reduce the regulatory burden of an affiliate of a much larger Class B utility. Furthermore, Staff is concerned that a school district may wish to participate in rate proceedings, and that the

¹⁰ *Id.*

¹¹ *Id.*

¹² *Application of MSEC Enterprises, Inc. and MSEC Waste Water, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Montgomery County*, Docket No. 49615, MSEC Enterprises, Inc.’s Affidavit of Notice (July 18, 2019).

¹³ *Id.* Notice of Approval (Feb. 28, 2020).

reclassification of an affiliated entity may remove that right for four years of increases. Finally, Staff is particularly concerned when the operational and billing services for MSEC Waste Water appear to be provided by Mid-South Synergy employees, and MSEC Waste Water's management, operational, and customer service personnel appear to be MSEC Enterprise's employees.

Therefore, Staff continues to recommend that the Commission dismiss the application, or order the Applicant to provide all the information required for a base rate case for a Class B utility.

