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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 OBJECTIONS TO COMMISSION STAFF'S
FIRST REQUEST FOR INFORMATION**

MSEC Waste Water, Inc. (MSEC WW) files these Objections to the Staff of the Public Utility Commission of Texas' (Staff) First Request for Information to MSEC WW, and would respectfully show as follows:

I. PROCEDURAL HISTORY

Staff served its First Request for Information to MSEC WW on July 17, 2020. Counsel for MSEC WW and Staff conducted good faith negotiations that failed to resolve the issues. The parties agreed to extend the date for the filing of these objections until August 3, 2020, therefore these objections are timely filed.

II. OBJECTIONS

MSEC WW objects to the following Requests for Information:

- Staff 1-1 Please provide the names of all board members for each of the three separate boards for: Mid-South Electric Cooperative Association, d/b/a MidSouth Electric Co-op or Mid-South Synergy; MSEC Enterprises, Inc.; and MSEC Waste Water.
- Staff 1-2 Please provide the name and title of any officers, executives, or managers responsible for the day-to-day governance and operations of: Mid-South Electric Cooperative Association, d/b/a MidSouth Electric Co-op or Mid-South Synergy; MSEC Enterprises, Inc.; and MSEC Waste Water.
- Staff 1-3 For each individual listed in response to Staff 1-2, please indicate the entity that employs the individual.
- Staff 1-4 Please admit or deny that the Master Service Agreement between Mid-South Electric Cooperative Association, d/b/a MidSouth Electric Co-op or Mid-South Synergy and MSEC Enterprises, Inc. allows the parent company to exercise control over the operations, management decisions, or policies of MSEC Enterprises, Inc. directly or through an intermediary. If deny, please explain why the Master Service Agreement does not allow Mid-South Electric Cooperative

Association, d/b/a MidSouth Electric Co-op or Mid-South Synergy to exercise control over the operations, management decisions, or policies of MSEC Enterprises, Inc. directly or through an intermediary.

- Staff 1-5 Please admit or deny that the Master Service Agreement between Mid-South Electric Cooperative Association, d/b/a MidSouth Electric Co-op or Mid-South Synergy and MSEC Waste Water allows the parent company to exercise control over the operations, management decisions, or policies of MSEC Waste Water directly or through an intermediary? If deny, please explain why the Master Service Agreement does not allow Mid-South Electric Cooperative Association, d/b/a MidSouth Electric Co-op or Mid-South Synergy to exercise control over the operations, management decisions, or policies of MSEC Waste Water directly or through an intermediary.
- Staff 1-6 Please provide a detailed description of the ownership structure and ownership percentages of: Mid-South Electric Cooperative Association, d/b/a MidSouth Electric Co-op or Mid-South Synergy; MSEC Enterprises, Inc.; and MSEC Waste Water.
- Staff 1-7 Reference the Master Service Agreement filed as Attachment 2 to MSEC Waste Water's Response to Order No. 3 and Supplement to Application filed on May 6, 2020. Please admit or deny that Kerry Kelton signed the agreement on behalf of both Mid-South Electric Cooperative Association, d/b/a MidSouth Electric Co-op or Mid-South Synergy and MSEC Waste Water.

Under 16 Texas Administrative Code (TAC) § 22.141(a), parties may obtain discovery regarding any matter, not privileged or exempted . . . that is relevant to the subject matter in the proceeding.¹ Texas Rule of Evidence 401 provides that evidence is relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”² Accordingly, discovery requests must be reasonably tailored to include only matters relevant to the case.³

¹ 16 TAC § 22.141(a).

² Tex. R. Evid. 401; *In re Nat'l Lloyds Ins Co*, 532 S.W.3d 794, 808 (Tex. 2017) (orig. proceeding) (quoting Tex. R. Evid. 401); *In re Liberty County Mut. Ins. Co*, 14-19-00932-CV, 2020 WL 3716093, at *3 (Tex. App.—Houston [14th Dist.] July 7, 2020, no pet. h.); *Diamond Offshore Servs. Ltd. v. Williams*, 542 S.W.3d 539, 544 (Tex. 2018); *Martinez v Kwas*, 01-18-01085-CV, 2020 WL 2988452, at *4 (Tex. App.—Houston [1st Dist.] June 4, 2020, pet. filed).

³ *In re Liberty County Mut. Ins. Co*, 14-19-00932-CV, 2020 WL 3716093, at *3 (Tex. App.—Houston [14th Dist.] July 7, 2020, no pet. h.); *In re Am Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998) (orig. proceeding) (per curiam).

MSEC WW objects to all of these requests on the grounds that they seek information that is not relevant to the subject matter of this proceeding, nor are they reasonably calculated to lead to the discovery of relevant or admissible evidence.⁴ The subject of this proceeding is an application by MSEC WW for authority to change rates (Application).

The Application was filed on March 9, 2020, proposing sewer rates on a test year ending September 30, 2019, adjusted for known and measurable changes. As noted in the Application, MSEC WW seeks to align its rate design with the current level of expanded operations and enable MSEC WW to recover its operations and maintenance expenses and a reasonable return on investment.

Five months after filing, the Application has not yet been found to be administratively complete. The appropriate focus of an inquiry into administrative completeness is whether “any deficiencies exist in an application, statement of intent, or other requests for commission action.”⁵ None of the requests for information address MSEC WW’s Application. Instead, all of the requests for information address the legal status of MSEC WW—a status that has already been reviewed and determined by the Commission, and is not relevant to whether MSEC WW has filed a complete application.

Nor are any of these requests relevant to the actual merits of the Application. Texas Water Code (TWC) § 13.182(a) instructs the Commission to ensure that the rates charged by the utility are just and reasonable, and TWC § 13.183 requires the Commission to fix rates producing overall revenues to the utility that will permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses. Thus, the appropriate focus of the Commission in addressing the merits in this docket is on complying with those statutory directives, which is accomplished by reviewing MSEC WW’s filing and the financial and

⁴ 16 TAC § 22.141(a); TRE 401; TRCP 192.3(a).

⁵ 16 TAC § 24.8(b).

operational information contained therein. None of Staff's requests for information advance the purpose of the Commission's review of MSEC WW's rate filing package.

All of the requests for information are focused on MSEC WW's ownership, organizational structure, and governance, which have no relevance to any of the information to be reviewed in determining the administrative completeness of the Application or the justness and reasonableness of the proposed rates. MSEC WW's qualifications to own and operate a sewer utility have been decided by the Commission. Further inquiry into these matters leads nowhere and will provide no information that could possibly help the Staff determine whether the Application is administratively complete.

Staff will likely argue that the information is needed to determine the status of MSEC WW as a utility, and to determine the appropriate utility classification of MSEC WW. But, MSEC WW's status as a utility has already been finally determined by the Commission (acting on Staff's favorable recommendation), and is not subject to further review by Staff in this proceeding.

In 2019, MSEC WW and MSEC Enterprises, Inc. (MSEC Enterprises) filed an application for approval of a sale, transfer, or merger (STM) whereby sewer utility assets and sewer Certificate of Convenience and Necessity (CCN) No. 20984 were to be transferred from MSEC Enterprises to MSEC WW. In that proceeding, Docket No. 49615, the Commission approved the sale of the sewer utility assets and transfer of the CCN to MSEC WW, based upon the following findings of fact:

- "MSEC WW is a new sewer utility...."⁶
- "As a new sewer utility, MSEC Waste Water has no history of non-compliance..."⁷

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 at Finding of Fact (FoF) 5 (Feb. 28, 2020).

⁷ *Id.* at FoF 23.

- “There are three existing customers in the requested area who will continue to need service.”⁸
- “MSEC Waste Water has the managerial and technical capability to provide continuous and adequate service to the requested area.”⁹
- “MSEC Waste Water has a debt-to-equity ratio of less than one, satisfying the leverage test.”¹⁰
- “MSEC Waste Water has sufficient cash available to cover any projected operations and maintenance shortages...”¹¹
- “MSEC Waste Water has demonstrated the financial capability and stability to provide continuous and adequate water service to the requested area.”¹²
- “MSEC Enterprises has sold and transferred all of its facilities and service area under sewer CCN number 20984 to MSEC Waste Water.”¹³
- “Commission Staff recommended approval of the application.”¹⁴

Based upon these findings, the Commission concluded the following **as a matter of law**:

- “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).”¹⁵
- “... MSEC Waste Water has demonstrated adequate financial, managerial, and technical capability for providing adequate and continuous service to the requested area, as required by TWC § 13.301(b).”¹⁶
- “MSEC Enterprises and MSEC Waste Water have demonstrated that the sale of MSEC Enterprises’s sewer system and the transfer of all of the service area under sewer CCN number 20984 to MSEC Waste Water will serve the public interest

⁸ *Id.* at FoF 26.

⁹ *Id.* at FoF 31.

¹⁰ *Id.* at FoF 32.

¹¹ *Id.* at FoF 33.

¹² *Id.* at FoF 34.

¹³ *Id.* at FoF 45.

¹⁴ *Id.* at FoF 50.

¹⁵ *Id.* at Conclusion of Law (CoL) 2.

¹⁶ *Id.* at CoL 7.

and is necessary for the service, accommodation, convenience, or safety of the public, as required by TWC §§ 13.246(b), 13.301(d).”¹⁷

Staff’s continued attempts to review whether MSEC Waste Water is a utility in the face of these findings and conclusions of law inappropriately seek to relitigate matters already decided by the Commission, thereby needlessly increasing the rate case expenses to be borne by customers, and bear no relevance to whether the Application by MSEC Waste Water is administratively complete. The Commission has conclusively established that MSEC Waste Water is a utility, that it has three customers, that it owns the sewer utility facilities, and that it is qualified to hold the sewer CCN. Any further inquiry into board members, executives, employees, service agreements, ownership structures, or signatories to agreements is not relevant to the issue of whether the Application is administratively complete.

WHEREFORE, PREMISES CONSIDERED, MSEC WW requests these objections be sustained and MSEC WW be relieved of responding to these requests. MSEC WW also requests any other relief to which it may show itself justly entitled.

Respectfully submitted,

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¹⁷ *Id.* at CoL 8.

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 3, 2020, in accordance with the Order Suspending Rules, issued in Project No. 50664.



GEORGIA N. CRUMP