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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 MOTION TO COMPEL

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, and files this Motion to Compel. 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 June 10, 2020, Staff filed its Supplemental Recommendation on Administrative Completeness of the Application and Notice, recommending that MSEC WW’s application and notice continue to be found deficient and administratively incomplete. On June 11, 2020, the administrative law judge (ALJ) issued Order No. 5, finding the application incomplete and deficient, and directing MSEC WW to amend its application and provide all the information required for a Class B utility base rate case, or answer the questions posed by Staff in its supplemental recommendation filed on June 10, 2020. On June 29, 2020, MSEC WW filed its Response to Order No. 5, answering the questions posed by Staff.

On July 17, 2020, Staff filed its First Request for Information (RFI) to MSEC WW based on MSEC WW’s Response to Order No. 5. On August 3, 2020, MSEC WW filed objections to Staff’s First RFIs. Pursuant to 16 Texas Administrative Code (TAC) § 22.144(e), the party seeking discovery must file a motion to compel within five working days after the objection is received.¹ Therefore, this pleading is timely filed.

¹ MSEC WW filed its objections to Staff’s First RFI on August 3, 2020. Five working days from August 3, 2020 is August 10, 2020.

II. MOTION TO COMPEL

MSEC WW objected to Staff's First RFI to MSEC WW Question Nos. Staff 1-1 through Staff 1-7. Staff's RFI questions concerned the nature of MSEC WW's ownership, organizational structure, and governance, including information related to board members, executives, employees, and service agreements between MSEC WW, its affiliate MSEC Enterprises, Inc., and the parent company of both affiliates, Mid-South Electric Cooperative Association, d/b/a MidSouth Electric Co-op or Mid-South Synergy (Mid-South Synergy). The information sought in Staff's RFIs is necessary to make a determination regarding the appropriate utility classification of MSEC WW. The classification of MSEC WW as a utility is relevant for the purposes of administrative completeness because if MSEC WW is determined to be a Class B utility, Staff will recommend the application be found administratively incomplete and MSEC WW will need to file a Class B utility application with additional information to be considered administratively complete. Without the responses to Staff's First RFIs, Staff cannot assess the appropriate utility classification of MSEC WW and consequently cannot make a recommendation as to whether the application is administratively complete. Therefore, the information sought by Staff is relevant to the assessment of administrative completeness.²

Further, the nature of the questions in Staff's First RFIs concerns information first raised by MSEC WW. MSEC WW first raised the issue of MSEC WW's separate corporate structure and separate board of directors as justification for MSEC WW's classification as a Class D utility rather than as a Class B utility.³ MSEC WW conceded that the separateness of the corporate structure and of the board of directors is relevant in its Response to Order No. 5, where it went to great lengths to emphasize that MSEC WW is a separate legal entity from its parent and affiliate utilities. Staff's First RFIs are aimed at determining whether a true separation exists between the MSEC WW corporate structure and board of directors and those of MSEC Enterprises, Inc. and of Mid-South Synergy.

² "If the commission determines that any deficiencies exist in an application, statement of intent, or other requests for commission action addressed by this chapter, the application or filing may be rejected and the effective date suspended, as applicable, until the deficiencies are corrected." 16 Tex. Admin. Code § 24.8(b) (TAC).

³ MSEC Waste Water, Inc.'s Response to Order No. 3 and Supplement to Application at 3 (May 6, 2020).

MSEC WW asserts that the “Commission has previously recognized, and expressly found, that MSEC Enterprises and MSEC Waste Water are two separate retail public utilities.”⁴ MSEC WW’s basis for its claim is that the Commission approved the sale, transfer, or merger (STM) application of MSEC Enterprises, Inc. and MSEC WW in Docket No. 49615.⁵ Although the Commission did approve the STM application in Docket No. 49615 for the transfer of assets only from MSEC Enterprises, Inc. to MSEC WW, the STM application’s focus was on the financial, managerial, and technical capabilities of MSEC WW to provide continuous and adequate service to its customers. The STM application did not assess whether or not MSEC WW, MSEC Enterprises, Inc., and Mid-South Synergy are managed, governed, and operated by the same set of executives, officers, boards of directors, and employees such that they are essentially one utility. The purpose of the STM application was not to uncover the appropriate classification of MSEC WW as a utility based on the common ownership, organizational structure, governance, board members, executives, and employees of MSEC WW and its affiliates: MSEC Enterprises, Inc. and Mid-South Synergy. Staff’s First RFIs seek the additional information required for Staff to appropriately classify MSEC WW as a utility, which is necessary for the review of administrative completeness of MSEC WW’s application in this docket.

Lastly, Staff’s inquiries in its First RFIs are directed in part by the Commission’s 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*, in which the Commissioners expressed concerns about complex corporate structures and which corporate entity within that structure constituted “the utility.”⁶ While a less complex corporate structure exists in this docket, Staff believes those same concerns are applicable to the facts in this case. Staff’s First RFIs seek information necessary in determining how “separate” the corporate entities, ownership, and boards of directors of three affiliated utilities are, so that it can appropriately determine MSEC WW’s classification as either a Class D utility serving “fewer than 500 taps or connections”⁷—

⁴ MSEC Waste Water, Inc.'s Response to Order No. 5 at 2 (June 29, 2020).

⁵ See *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 (Feb. 28, 2020).

⁶ Open Meeting Tr. at 14:9-10 “Who is the utility?” (July 18, 2019); Open Meeting Tr. at 15:20-25 (July 18, 2019) “Liberty Silverleaf doesn’t have any employees. Right?”

⁷ Texas Water Code § 13.002(4-d).

and thus able to apply for four Class D increases with no opportunity for protest by customers— or as a Class B utility serving “2,300 or more taps or connections but fewer than 10,000 taps or connections.”⁸ For these reasons, Staff respectfully requests that the ALJ issue an order to compel MSEC WW to respond to Staff’s First RFIs and to abide by the requirements of 16 TAC § 22.144(c) in formatting its response.

III. CONCLUSION

Staff respectfully requests the entry of an order compelling MSEC WW to respond to Staff’s First RFIs to MSEC WW.

Dated: August 10, 2020

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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⁸ Texas Water Code § 13.002(4-b).

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

/s/ Taylor P. Denison

Taylor P. Denison