

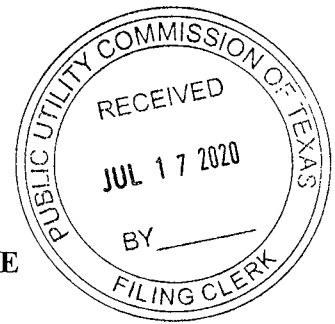


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PUC DOCKET NO. 50927

PETITION BY THE CITY OF
MESQUITE AND TALTY SPECIAL
UTILITY DISTRICT FOR
APPROVAL OF SERVICE AREA
CONTRACT UNDER TEXAS
WATER CODE § 13.248 AND TO
AMEND CERTIFICATES OF
CONVENIENCE AND NECESSITY
IN KAUFMAN COUNTY

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BEFORE THE

PUBLIC UTILITY COMMISSION

OF TEXAS

**THE CITY OF MESQUITE'S RESPONSE TO THE COMMISSION STAFF'S
RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS, AND
PROPOSED PROCEDURAL SCHEDULE**

COMES NOW, the City of Mesquite (City) and files this Response to the Commission Staff's (Staff) Recommendation on Administrative Completeness, and Proposed Procedural Schedule. Contrary to the Staff's position, the City and Talty Special Utility District (Talty) are not required to file an application under Texas Water Code § 13.301 in order to transfer facilities.

Texas Water Code § 13.301 only applies to transactions involving a "utility" or a "water supply or sewer service corporations" and does not apply to transactions between two political subdivisions. Specifically, Section 13.301(a) states that:

"A utility or a water supply or sewer service corporation, on or before the 120th day before the effective date of a sale, acquisition, lease, or rental of a water or sewer system owned by an entity that is required by law to possess a certificate of public convenience and necessity or the effective date of a sale or acquisition of or merger or consolidation with such an entity, shall: (1) file a written application with the utility commission; and (2) unless public notice is waived by the utility commission for good cause shown, give public notice of the action."

(Emphasis added). A “utility” is defined 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 . . .*.” A “water supply or sewer service corporation” means a nonprofit corporation organized under Chapter 67 of Texas Water Code. Neither the City of Mesquite nor Talty Special Utility District are a utility or a water supply or sewer service corporation. The City of Mesquite is a municipal corporation and political subdivision and Talty is a special utility district and political subdivision operating under Chapter 65 of the Texas Water Code.¹ By the clear terms of Section 13.301, the transaction between the City and Talty to transfer facilities is not subject to the jurisdiction of the Texas Public Utility Commission (PUC) under Section 13.301. Moreover, neither entity is required to have a certificate of convenience and necessity. *See* Tex. Water Code § 13.242.

The Staff references 16 Texas Administrative Code (TAC) § 24.253 as authority that a sale, transfer, merger application is required because Section 24.253 states that Section 13.248 does not negate the provisions of Section 13.301 to obtain a new CCN and document the transfer of assets and facilities between retail public utilities. This provision, however, does not extend the requirements of Section 13.301 to entities that are not subject to that section. It simply means that retail public utilities that are subject to Section 13.301 cannot use Section 13.248 to avoid complying with Section 13.301.

An agency can adopt only rules that are authorized by and consistent with statutory authority. *Railroad Com’n of Texas v. Lone Star Gas Co.*, 844 S.W.2d 679, 684 (Tex. 1992). And, an agency may not impose additional burdens, conditions, or restrictions in excess of the statutory

¹ Talty Water Supply Corporation was converted to a special utility district by the October 7, 2015 Texas Commission on Environmental Quality Order Granting a Request for Conversion to and Creation of Talty Special Utility District of Kaufman County and Appointing Temporary Directors. The confirmation election results were confirmed by the Talty Special Utility District at its May 16, 2016 meeting.

provision. *Texas Alcoholic Beverage Com'n v. Sanchez*, 96 S.W.3d 483, 487 (Tex.App. – Austin, 2002, no pet.). To interpret 16 TAC § 24.253 as extending the requirements of Texas Water Code § 13.301 to entities that are clearly not subject to Section 13.301 would be inconsistent with statutory authority and would impose burdens on the parties contrary to that authority. While the PUC has authority over the transfer of service area and customers pursuant to Texas Water Code § 13.248, it does not have authority to regulate the transfer of facilities between political subdivisions. Thus, the City of Mesquite and Talty Special Utility District are not required to submit a sale, transfer, merger application pursuant Section 13.301 with the PUC in order to transfer facilities.

The City respectfully requests that the Administrative Law Judge determine that a sale, transfer, merger application is not required in this matter, and order the Staff to consider the administrative completeness of the Petition as it was submitted on June 18, 2020.

Respectfully Submitted,

Emily W. Rogers
State Bar No. 24002863
erogers@bickerstaff.com

Bickerstaff Heath Delgado Acosta LLP
3711 S. MoPac Expressway
Building One, Suite 300
Austin, TX 78746
Telephone: (512) 472-8021
Facsimile: (512) 320-5638

By: Emily W. Rogers
Emily W. Rogers
Attorney for the City of Mesquite

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on the PUC Staff, Justin Adkins at Justin.Adkins@puc.texas.gov and Talty SUD at Corey Trail at ctrail@taltysud.com via email on July 17, 2020, in accordance with the requirements of 16 Tex. Admin. Code § 22.74 and PUC Order No 1 in Docket No. 50664.



Emily W. Rogers