



## Filing Receipt

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**DOCKET NO. 52281**

<b>APPLICATIONS OF KENDALL WEST UTILITY, LLC, BANDERA EAST UTILITY, LP AND SJWTX, INC. FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND CERTIFICATE RIGHTS IN KENDALL, BANDERA, AND MEDINA COUNTIES</b>	<b>§ § § § § § §</b>	<b>PUBLIC UTILITY COMMISSION  OF TEXAS</b>
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**COMMISSION STAFF’S RESPONSE TO ORDER NO. 8 REQUIRING  
CLARIFICATION AND REVISED RECOMMENDATION ON THE TRANSACTIONS**

On June 28, 2021, Kendall West Utility, LLC (KWU), Bandera East Utility, LP (BEU), and SJWTX, Inc. (SJWTX) (collectively, the Applicants) filed applications for approval of the sale, transfer, or merger (STM) of facilities and certificate rights in Kendall, Bandera, and Medina Counties. The Applicants seek approval of the following: (1) for KWU to sell and transfer all of its facilities and certificated service area under Certificate of Convenience and Necessity (CCN) Nos. 13213 and 21071 to SJWTX; (2) for BEU to sell and transfer all of its facilities and certificated service area under CCN No. 13118 to SJWTX; (3) to amend SJWTX's CCN Nos. 10692 and 20877 to include the water and sewer facilities and certificated service area previously included in KWU’s CCN Nos. 13213 and 21071 and BEU’s CCN No. 13118; (4) to cancel KWU’s CCN Nos. 13213 and 21071; and (5) to cancel Bandera East's CCN No. 13118. The Applicants filed supplemental information on August 13, 2021, October 25, 2021, and December 7, 2021. Both of the STM applications are governed by a single underlying purchase and sale agreement, under which both transactions will proceed. On November 1, 2021, the Staff (Staff) of the Public Utility Commission of Texas (Commission) file a recommendation on the transactions and on November 15, 2021 the Applicants and Staff filed a Joint Motion to Admit Evidence and Proposed Order Approving Sales and Transfers to Proceed.

On December 7, 2021, the administrative law judge (ALJ) filed Order No. 8, establishing a deadline of December 17, 2021, for Staff to file a clarification regarding (1) the dates of the last Texas Commission on Environmental Quality (TCEQ) compliance investigations for all three of BEU's public water systems at issue in this proceeding and (2) the proposed finding of fact No. 39 in the proposed order, which states, "SJWTX has had violations of TCEQ standards. . . . SJWTX does not have any violations listed in the TCEQ database." Therefore, this pleading is timely filed.

## **I. RESPONSE TO ORDER NO. 8 REQUIRING CLARIFICATION**

For the first issue, the BEU STM application and the supplemental information filed on December 7, 2021 include the dates of the last TCEQ compliance investigations for all three of BEU's public water systems at issue in this proceeding. For the second issue and upon an additional review of the TCEQ records, Staff has determined that it inadvertently and incorrectly stated that SJWTX did not have any violations listed in the TCEQ database. In fact, SJWTX has had seven violations in 2021, one of which has been resolved, while all violations prior to 2021 have been resolved as well. As such, Staff files this pleading and revised memoranda from Jolie Mathis, Rate Regulation Division, to clarify the record on both issues and indicate that Staff continues to recommend for the transactions to proceed. To further account for Staff's clarification on both issues, the Applicants and Staff will file a joint motion to admit additional evidence and revised proposed order approving sales and transfers to proceed.

## **II. REVISED RECOMMENDATION TO ALLOW THE TRANSACTIONS TO PROCEED**

Staff has reviewed the applications and supplemental information and, as detailed in the attached revised memoranda from Ms. Mathis and the previously filed memoranda from Fred Bednarski III, Rate Regulation Division, continues to recommend that the proposed transactions satisfy the relevant statutory and regulatory criteria, including those factors identified in Texas Water Code Chapter 13 and 16 Texas Administrative Code Chapter 24. Additionally, based upon its review, Staff continues to recommend that SJWTX has demonstrated that it possesses the financial, technical, and managerial capability to provide continuous and adequate service to the area subject to the proposed transactions. As such, Staff continues to recommend that the transactions will serve the public interest and should be allowed to proceed without a public hearing.

## **III. CONCLUSION**

For the reasons detailed above, Staff respectfully requests the entry of an order allowing the transactions to proceed.

Date: December 9, 2021

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS  
LEGAL DIVISION**

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**DOCKET NO. 52281**

**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 December 9, 2021, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles  
Scott Miles

# ***Public Utility Commission of Texas***

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## **Memorandum**

**TO:** Scott Miles, Attorney  
Legal Division

**FROM:** Jolie Mathis, Utility Engineering Specialist  
Infrastructure Division

**DATE:** December 9, 2021

**RE:** **Docket No. 52281** - *Applications of Kendall West Utility, LLC, Bandera East Utility Company, LP and SJWTX, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Kendall, Bandera and Medina Counties*

Revised Recommendation for Kendall West Utility, LLC Application on Approval of Sale

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### **1. Application**

SJWTX, Inc. (SJWTX) and Kendall West Utility, LLC (KWU) (collectively, the Applicants) filed an application for the sale, transfer, or merger (STM) of facilities and certificate rights in Bandera and Medina Counties, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Additionally, a separate STM application was filed between SJWTX and Bandera East Utility, LP (BEU), the analysis of which is considered in a separate memorandum, except to the extent that this memorandum is required to consider both applications in a cumulative manner.

SJWTX, water and sewer Certificates of Convenience and Necessity (CCN) Nos. 10692 and 20877, seeks approval to acquire facilities and to transfer all of the water and sewer service area from KWU under water CCN No. 13213 and sewer CCN No. 21071.

The requested water area includes 1,024 customer connections and is approximately 8,429 acres, comprised of 8,429 acres of transferred area (from CCN No. 13213).

The requested sewer area includes 283 customer connections and is approximately 7,173 acres, comprised of 7,173 acres of transferred area (from CCN No. 21071).

The application proposes the transfer of approximately 8,429 acres from CCN No. 13213 to CCN No. 10692 and the transfer of approximately 7,173 acres from CCN No. 21071 to CCN No. 20877.

\*The application indicates that the total acreage being requested is approximately 8,453 acres for water transfer and approximately 7,188 acres for sewer transfer. Based on the mapping review by Gary Horton, Infrastructure Division, it was determined the requested area is approximately 8,429 acres for water transfer and approximately 7,173 acres for sewer transfer.

## **2. Notice**

SJWTX provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was September 23, 2021 and there were no motions to intervene, protests, or opt-out requests received.

## **3. Factors Considered**

Under TWC §§ 13.241 and 13.246 and 16 TAC §§ 24.11(e), 24.227 and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

### **3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(I)).***

KWU has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Kendall West Utility, PWS ID No. 1300033, and wastewater treatment plant (WWTP) registered as Tapatio Springs, Wastewater Discharge Permit No. WQ 12404-001. The last TCEQ compliance investigation of the Kendall West Utility system was on November 28, 2017. No violations or concerns were noted as a result of that investigation. The last TCEQ compliance investigation of the Tapatio Springs WWTP system was on September 1, 2020. A violation of seepage control was noted and resolved as a result of that investigation. In addition, the Commission's complaint records, which date back to 2019, show 5 complaints against KWU.

No additional construction is necessary for SJWTX to serve the requested area.

### **3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).***

There are currently 1,024 existing water customers and 283 sewer customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

### **3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).***

SJWTX will be the certificated entity for the requested area and be required to provide adequate and continuous service to the requested area.

There will be no effect on landowners as the area is currently certificated.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

**3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).***

Based on a cumulative analysis of the water and sewer systems that SJWTX currently owns in combination with the water and sewer systems that SJWTX seeks to acquire from KWU in this application as well as the water and sewer systems that SJWTX seeks to acquire from BEU in the separate STM application, SJWTX has the ability to provide adequate service.

SJWTX has several TCEQ approved PWS's registered as Rust Ranch Water Supply, PWS ID No. 0160019, CLWSC Canyon Lake Shores, PWS ID No. 0460019, Clear Water Estates, PWS ID No. 0460153, SJWTX Triple Peak Plant, PWS ID No. 0460172, SJWTX North Point Subdivision, PWS ID No. 0460235, SJWTX Glenwood Subdivision, PWS ID No. 0460246, and Deer Creek Water, PWS ID No. 2270049. SJWTX has seven violations listed in the TCEQ database for 2021, one of which has been resolved, while all violations prior to 2021 have been resolved. In addition, the Commission's complaint records, which date back 4 years, show 160 complaints against SJWTX. 113 of those complaints were due to the Winter Storm in 2021. The remaining complaints were due to billing and quality of service issues.

KWU has a TCEQ approved PWS registered as Kendall West Utility, PWS ID No. 1300033, and wastewater treatment plant (WWTP) registered as Tapatio Springs, Wastewater Discharge Permit No. WQ 12404-001. The last TCEQ compliance investigation of the Kendall West Utility system was on November 28, 2017. No violations or concerns were noted as a result of that investigation. The last TCEQ compliance investigation of the Tapatio Springs WWTP system was on September 1, 2020. A violation of seepage control was noted and resolved as a result of that investigation. In addition, the Commission's complaint records, which date back to 2019, show 5 complaints against KWU.

BEU has several TCEQ approved public water systems (PWS) registered as Bridlegate Subdivision, PWS ID No. 0100092, Latigo Ranch Subdivision, PWS ID No. 0100096, and Summit Ridge, PWS ID No. 1630048. The last TCEQ compliance investigations for the Bridlegate Subdivision PWS, the Latigo Ranch Subdivision PWS, and the Summit Ridge PWS, respectively were on October 22, 2020, April 22, 2019, and June 10, 2021. No violations or concerns were noted as a result of those investigations. In addition, the Commission's complaint records, which date back 5 years, show no complaints against BEU.

No additional construction is necessary for SJWTX to serve its existing service area or the requested areas it seeks to acquire in both STM applications.

- 3.5. ***The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).***

The construction of a physically separate system is not necessary for SJWTX to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

- 3.6 ***Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).***

SJWTX is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

- 3.7. ***Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).***

The Rate Regulation Division will be addressing this criterion in a separate memorandum.

- 3.8. ***Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).***

The Rate Regulation Division will be addressing this criterion in a separate memorandum.

- 3.9. ***Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).***

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

- 3.10. ***Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).***

SJWTX will continue to provide water and sewer service to the existing customers in the area. There will be no change in the quality or cost of service to customers.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer water and sewer facilities and all of the water and sewer service area under KWU's water and sewer CCN Nos. 13213 and 21071 to SJWTX, to cancel KWU's water and sewer CCN Nos. 13213



and 21071, and to amend SJWTX's water and sewer CCN Nos. 10692 and 20877 is necessary for the service, accommodation, convenience and safety of the public.

**4. Recommendation**

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are no deposits held by KWU for the customers being served by KWU. I further recommend that a public hearing is not necessary.

# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Scott Miles, Attorney  
Legal Division

**FROM:** Jolie Mathis, Utility Engineering Specialist  
Infrastructure Division

**DATE:** December 9, 2021

**RE:** **Docket No. 52281** - *Applications of Kendall West Utility, LLC, Bandera East Utility Company, LP and SJWTX, Inc. for Sale, Transfer, or Merger of Facilities and Certificate Rights in Kendall, Bandera and Medina Counties*

Revised Recommendation for Bandera East Utility, LP Application on Approval of Sale

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### **1. Application**

SJWTX, Inc. (SJWTX) and Bandera East Utility, LP (BEU) (collectively, the Applicants) filed an application for the sale, transfer, or merger (STM) of facilities and certificate rights in Bandera and Medina Counties, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. Additionally, a separate STM application was filed between SJWTX and Kendall West Utility, LLC (KWU), the analysis of which is considered in a separate memorandum, except to the extent that this memorandum is required to consider both applications in a cumulative manner.

SJWTX, Certificate of Convenience and Necessity (CCN) No. 10692, seeks approval to acquire facilities and to transfer all of the water service area from BEU under water CCN No. 13118.

The requested area includes 279 customer connections and is approximately 3,634 acres, comprised of 3,634 acres of transferred area (from CCN No. 13118).

The application proposes the transfer of approximately 3,634 acres from CCN No. 13118 to CCN No. 10692.

\*The application indicates that the total acreage being requested is approximately 3,650 acres. Based on the mapping review by Gary Horton, Infrastructure Division, it was determined the requested area is approximately 3,634 acres.

## 2. Notice

SJWTX provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was September 23, 2021 and there were no motions to intervene, protests, or opt-out requests received.

## 3. Factors Considered

Under TWC §§ 13.241 and 13.246 and 16 TAC §§ 24.11(e), 24.227 and 24.239, the Commission must consider certain factors when granting or amending a water or sewer CCN. These factors are addressed below.

### 3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1), 13.301(e)(3)(A); 16 TAC §§ 24.227(a) and (e)(1), 24.239(h)(3)(A), (h)(5)(A), and (h)(5)(I)).*

BEU has several Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) registered as Bridlegate Subdivision, PWS ID No. 0100092, Latigo Ranch Subdivision, PWS ID No. 0100096, and Summit Ridge, PWS ID No. 1630048. The last TCEQ compliance investigations for the Bridlegate Subdivision PWS, the Latigo Ranch Subdivision PWS, and the Summit Ridge PWS, respectively were on October 22, 2020, April 22, 2019, and June 10, 2021. No violations or concerns were noted as a result of those investigations. In addition, the Commission's complaint records, which date back 5 years, show no complaints against BEU.

No additional construction is necessary for SJWTX to serve the requested area.

### 3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC §§ 24.227(e)(2) and 24.239(h)(5)(B)).*

There are currently 279 existing customers in the requested area, therefore, there is a need for service. No additional service is needed at this time.

### 3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC § 13.246(c)(3), 16 TAC §§ 24.227(e)(3), 24.239(h)(5)(c)).*

SJWTX will be the certificated entity for the requested area and be required to provide adequate and continuous service to the requested area.

There will be no effect on landowners as the area is currently certificated.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the transaction taking place in this application and did not request to intervene.

**3.4. Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC §§ 13.241(a) and (b), 13.246(c)(4); and 13.301(b) and (e)(2); 16 TAC §§ 24.227(a) and (e)(4), and 24.239(f) and (h)(5)(D)).**

Based on a cumulative analysis of the water and sewer systems that SJWTX currently owns in combination with the water and sewer systems that SJWTX seeks to acquire from BEU in this application as well as the water and sewer systems that SJWTX seeks to acquire from KWU in the separate STM application, SJWTX has the ability to provide adequate service.

SJWTX has several TCEQ approved PWS's registered as Rust Ranch Water Supply, PWS ID No. 0160019, CLWSC Canyon Lake Shores, PWS ID No. 0460019, Clear Water Estates, PWS ID No. 0460153, SJWTX Triple Peak Plant, PWS ID No. 0460172, SJWTX North Point Subdivision, PWS ID No. 0460235, SJWTX Glenwood Subdivision, PWS ID No. 0460246, and Deer Creek Water, PWS ID No. 2270049. SJWTX has seven violations listed in the TCEQ database for 2021, one of which has been resolved, while all violations prior to 2021 have been resolved. In addition, the Commission's complaint records, which date back 4 years, show 160 complaints against SJWTX. 113 of those complaints were due to the Winter Storm of 2021. The remaining complaints were due to billing and quality of service issues.

BEU has several TCEQ approved public water systems (PWS) registered as Bridlegate Subdivision, PWS ID No. 0100092, Latigo Ranch Subdivision, PWS ID No. 0100096, and Summit Ridge, PWS ID No. 1630048. The last TCEQ compliance investigations for the Bridlegate Subdivision PWS, the Latigo Ranch Subdivision PWS, and the Summit Ridge PWS, respectively were on October 22, 2020, April 22, 2019, and June 10, 2021. No violations or concerns were noted as a result of those investigations. In addition, the Commission's complaint records, which date back 5 years, show no complaints against BEU.

KWU has a TCEQ approved PWS registered as Kendall West Utility, PWS ID No. 1300033, and wastewater treatment plant (WWTP) registered as Tapatio Springs, Wastewater Discharge Permit No. WQ 12404-001. The last TCEQ compliance investigation of the Kendall West Utility system was on November 28, 2017. No violations or concerns were noted as a result of that investigation. The last TCEQ compliance investigation of the Tapatio Springs WWTP system was on September 1, 2020. A violation of seepage control was noted and resolved as a result of that investigation. In addition, the Commission's complaint records, which date back to 2019, show 5 complaints against KWU.

No additional construction is necessary for SJWTX to serve its existing service area or the requested areas it seeks to acquire in both STM applications.

**3.5. The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).**

The construction of a physically separate system is not necessary for SJWTX to serve the requested area. Therefore, concerns of regionalization or consolidation do not apply.

3.6 *Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC §§ 24.227(e)(5) and 24.239(h)(5)(E)).*

SJWTX is currently serving customers and has sufficient capacity. Obtaining service from an adjacent retail public utility would likely increase costs to customers because new facilities will need to be constructed. At the minimum, an interconnect would need to be installed in order to connect to a neighboring retail public utility. Therefore, it is not feasible to obtain service from an adjacent retail public utility.

3.7. *Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC §§ 13.246(c)(6) and 13.301(b); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e), and 24.239(f) and (h)(5)(F)).*

The Rate Regulation Division will be addressing this criterion in a separate memorandum.

3.8. *Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d), 13.301(c); 16 TAC §§ 24.227(f), 24.239(f)).*

The Rate Regulation Division will be addressing this criterion in a separate memorandum.

3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC §§ 24.227(e)(7) and (9) and 24.239(h)(5)(G)).*

The environmental integrity of the land will not be affected as no additional construction is needed to provide service to the requested area.

3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC §§ 24.227(e)(8), 24.239(h)(5)(H)).*

SJWTX will continue to provide water service to the existing customers in the area. There will be no change in the quality or cost of service to customers.

The Applicants meet all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations. Approving this application to transfer water facilities and all of the water service area under BEU's water CCN No. 13118 to SJWTX, to cancel BEU's water CCN No. 13118, and to amend SJWTX's water CCN No. 10692 is necessary for the service, accommodation, convenience and safety of the public.

#### **4. Recommendation**

Based on the above information, I recommend that the Commission find that the transaction will serve the public interest and that the Applicants be allowed to proceed with the proposed transaction. There are no deposits held by BEU for the customers being served by BEU. I further recommend that a public hearing is not necessary.