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Public Utility Commission of Texas

July 12, 2023

Re: Docket No. 53920 - *Application of Texas Water Utilities, LP and Creek Water Utility LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights Marion County*

Dear Parties,

This letter is to notify you that Commission Staff is filing the attached request for clarification or alternatively for expedited certification of issues in Docket No. 54205,¹ which concerns issues that are tangentially related to the issue in the Appeal of Interim Order No. 21 in this proceeding.

Respectfully submitted,

/s/ Scott Miles

Scott Miles

Attorney, Legal Division

Public Utility Commission of Texas

¹ *Application of TFT Utilities, LLC and The Falls Municipal Utility District for Sale, Transfer, or Merger of Facilities and to Obtain Water and Sewer Certificates of Convenience and Necessity in Colorado County, Docket No. 54205 (pending).*

DOCKET NO. 54205

APPLICATION OF TFT UTILITIES, LLC AND THE FALLS MUNICIPAL UTILITY DISTRICT FOR SALE, TRANSFER, OR MERGER OF FACILITIES AND TO OBTAIN WATER AND SEWER CERTIFICATES OF CONVENIENCE AND NECESSITY IN COLORADO COUNTY	§ § § § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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**COMMISSION STAFF’S REQUEST FOR CLARIFICATION OR ALTERNATIVELY
FOR EXPEDITED CERTIFICATION OF ISSUES**

On October 13, 2022, TFT Utilities, LLC (TFT Utilities) and The Falls Municipal Utility District (The Falls MUD) (collectively, the Applicants) filed an application for approval of the sale, transfer, or merger (STM) of facilities and customers and for TFT Utilities to obtain new certificates of convenience and necessity (CCN) in Colorado County.

On June 5, 2023, the administrative law judge (ALJ) filed Order No. 7, requiring the Applicants to provide clarification on notice and directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation on the sufficiency of the Applicants’ supplemental proof of notice by June 29, 2023. On June 30, 2023, the ALJ granted Staff an extension until July 21, 2023 to file its recommendation. In order for Staff to adequately consider the Applicants’ supplemental proof of notice and make an appropriate recommendation, Staff respectfully files this request for clarification or alternatively for expedited certification of issues.

**I. REQUEST FOR CLARIFICATION OR ALTERNATIVELY FOR EXPEDITED
CERTIFICATION OF ISSUES**

Staff respectfully requests clarification on what evidence is needed for the Applicants to sufficiently supplement their proof of notice regarding notice that was provided to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified. Through informal discussions between the Applicants and Staff, the Applicants filed an additional response to Order No. 7 on July 6, 2023, to include an affidavit that notice was mailed to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the area proposed to be certified, as well as a map that shows the parcel ownership information for

these specific landowners from the Colorado County appraisal district. However, Staff is uncertain whether such information is sufficient based on the language of orders filed thus far on this issue. Notably, since the issuance of Commissioner Jackson's memorandum in Docket No. 51646,¹ the orders filed in applicable² dockets thus far have, in addition to requiring an affidavit, required applicants to (1) file evidence showing which tracts of land in the requested area are at least 25 acres and who owns those tracts,³ (2) provide a copy of applicable appraisal district maps overlaid with the requested area, a list of the landowners with properties wholly or partially in the requested area, and the acreage owned by each listed owner,⁴ or (3) file an affidavit without the requirement of any additional evidence.⁵ Further, to the extent that applicants determine that there are no landowners with a tract of land that is at least 25 acres and is wholly or partially included in the requested area, some orders have required applicants to file an affidavit confirming the same, such as Order No. 7 in this proceeding, while others have not.⁶

For the first and third types of orders listed above, Staff respectfully requests clarification as to whether the second type of order should be followed in each applicable case for purposes of Staff's review, including cases in which applicants determine that there are no landowners with a

¹ *Application of Waters of Vista Ranch Water Supply Corporation and Aqua Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Fayette County*, Docket No. 51646, Commissioner Jackson Memorandum (May 10, 2023).

² Staff notes that the applicability of Commissioner Jackson's memorandum to a certain type of application has been appealed. See *Application of Texas Water Utilities, LP and Creek Water Utility LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Marion County*, Docket No. 53920, Texas Water Utilities, L.P.'s Appeal of Interim Order No. 21 (Jun. 15, 2023) (regarding applicability of Commissioner Jackson's memorandum for straight STM applications that do not include the additional requests to amend the transferee's CCN area with uncertificated area) and Commission Advising Memorandum (Jun. 26, 2023) (indicating the Commission will hear the Appeal of Interim Order No. 21).

³ *Application of MSEC Enterprises, Inc. to Amend its Certificate of Convenience and Necessity in Montgomery County*, Docket No. 53825, Order No. 8 Requiring Clarification on Notice (May 18, 2023).

⁴ Docket No. 53825, Corrected Order No. 8 Requiring Clarification on Notice and Recommendation (May 19, 2023) (providing more detail as to what is necessary for the supplemental notice).

⁵ *Application of SJWTX, Inc. and KT Water Development, Ltd for Sale, Transfer, or Merger of Facilities and Certificate Rights in Comal County*, Docket No. 54530, Order No. 8 Requiring Clarification on Notice and Supplemental Recommendation (Jun. 1, 2023).

⁶ Docket No. 53825, Corrected Order No. 8 Requiring Clarification on Notice and Recommendation; see also *Application of Skyline Drive Landowners Association Water System and Johnson County Special Utility District for Sale, Transfer or Merger of Facilities and to Amend Johnson County Special Utility District's Water Certificate of Convenience and Necessity in Johnson County*, Docket No. 53922, Order No. 8 - Making a Determination to Hold a Hearing and Requiring Supplemental Information, Recommendation from Commission Staff, and Motion to Admit the Additional Information (Jun. 5, 2023).

tract of land that is at least 25 acres and is wholly or partially included in the requested area. Further, if the intent for all cases is to follow the language in the second type of order, such as Order No. 7 in this proceeding, Staff respectfully requests clarification as to whether the list of the landowners with properties wholly or partially in the requested area and the acreage owned by each listed owner is limited to just landowners with tracts of land that are at least 25 acres and wholly or partially included in the requested area, or if applicants should be required to provide a list of all landowners with properties wholly or partially in the requested area, as well as acreage amounts for each landowner.

Based on the plain language of Order No. 7, which does not include any sort of limitation, Staff believes it should be the latter, but respectfully defers to the ALJ or Commission on this issue. If the intent is to only require applicants to include the landowners and acreage amounts for those with at least 25 acres only, Staff notes there is potential for applicants to unintentionally fail to provide notice to certain landowners that would otherwise qualify as owners of a tract of land that is at least 25 acres under the Commission's definition of a tract of land and interpretation of what a 25-acre tract of land is for purposes of notice under Texas Water Code (TWC) § 13.246(a-1). Specifically, under 16 TAC § 24.3(37), a tract of land is "[a]n area of land that has common ownership and is not severed by other land under different ownership, whether owned by government entities or private parties; such other land includes roads and railroads."⁷ Further, "[a] tract of land may be acquired through multiple deeds or shown in separate surveys."⁸ And for notice under TWC § 13.246(a-1), the Commission has interpreted that "whether a tract is 25 acres will be determined by whether it has common ownership and is not severed by other land under different ownership, not whether it is a 25-acre single deeded tract as shown on the tax appraisal rolls."⁹

While Staff could include a reference to the Commission's definition and interpretation of a tract of land for purposes of notice under TWC § 13.246(a-1) in its recommendations on proposed notice to inform applicants to follow the Commission's definition and interpretation of a tract of land, applicants should be required to sufficiently prove that notice was fully provided in

⁷ 16 TAC § 24.3(37).

⁸ *Id.*

⁹ *PUC Rulemaking Proceeding to Amend Chapter 24 for Non-Rate Related Water/Sewer Rules*, Project No. 45111, Order Adopting Amendments at bates page 28 of 122 (Dec. 5, 2016).

compliance with TWC § 13.246(a-1). As such, Staff recommends, if the language in Order No. 7 is to be followed, that, ideally, in addition to an affidavit and a copy of applicable appraisal district maps overlaid with the requested area, a list of *all* landowners with properties wholly or partially in the requested area, as well as acreage amounts for each landowner, would be necessary to clearly identify which landowners own at least 25 acres and have received notice, if any.

However, given the extra cost, time, and varying complexities¹⁰ associated with developing a map with appraisal district maps overlaid with the requested area, as well as the likelihood that smaller utilities may be disadvantaged in adequately responding to this issue when compared to larger utilities, Staff would not be opposed to the affidavit being the sole piece of evidence necessary to prove that either notice was provided to such landowners or that no such landowners exist. Importantly, if an affidavit attesting to the latter is sufficient,¹¹ Staff does not understand why an affidavit attesting to the former would be insufficient without the supplemental map and list of landowners and acreage amounts, if the intent is to prove compliance with TWC § 13.246(a-1).

As such, Staff respectfully requests that the ALJ provide clarification as to what evidence is required, or alternatively, certify this issue to the Commission. To the extent the ALJ chooses to certify the issue to the Commission, Staff respectfully requests the certification be expedited for consideration at the open meeting scheduled for July 20, 2023 to coincide with the discussion of the Appeal of Interim Order No. 21 in Docket No. 53920.¹²

¹⁰ See *Application of Utilities Investment Company, Inc. to Amend its Certificates of Convenience and Necessity in Liberty County*, Docket No. 53682, Motion to Admit Evidence - answering Order No. 12 - affidavit of mailed notice to landowners and appraisal district parcel map overlayed with requested area (Jun. 6, 2023) (for an example of a simple map) and *Application of Crystal Systems Texas, LLC and Undine Texas, LLC For Sale, Transfer, or Merger of Facilities and Certificate Rights in Smith County*, Docket No. 53765, Applicant's Response to Order No. 14 Making a Determination to Hold a Hearing, Requiring Supplemental Information and Recommendations from Commission Staff, and Establishing Deadlines with Exhibit B – Landowner Notice Affidavit (Jun. 26, 2023) (for an example of a more complicated map).

¹¹ *Application of Quadvest, LP to Amend its Water Certificate of Convenience and Necessity in Montgomery County*, Docket No. 51923, Order No. 34 - Finding Notice, as Supplemented, Sufficient and Soliciting Motion to Admit Supplemental Evidence (Jul. 6, 2023).

¹² Docket No. 53920, Texas Water Utilities, L.P.'s Appeal of Interim Order No. 21 (regarding applicability of Commissioner Jackson's memorandum for straight STM applications that do not include the additional requests to amend the transferee's CCN area with uncertificated area) and Commission Advising Memorandum (indicating the Commission will hear the Appeal of Interim Order No. 21).

Further, in consideration of the pending discussion of the appeal in Docket No. 53920, Staff requests clarification or certification to the Commission on the following issues, in addition to the issue identified above:

- 1) To the extent an STM application is seeking to also amend the transferee's CCN with uncertificated area in addition to transferring the transferor's certificated area(s), should the 25 acre landowner analysis only cover the uncertificated area that is part of the requested area and not cover the certificated area being transferred?
- 2) To the extent a landowner is either an affiliate of an applicant or a person that requested service from the applicant, should an applicant be required to provide notice of the application to that landowner, even if said landowner owns a tract of land that is 25 acres or more and is wholly or partially included in the area proposed to be certified?

Lastly, due to the volume of cases affected by these issues, Staff respectfully requests that further orders requiring supplemental recommendations by Staff include staggered deadlines from order to order so that Staff—primarily Staff's mapping experts—can efficiently work with the varying applicants until clarification is provided on these issues.

II. CONCLUSION

For the reasons detailed above, Staff respectfully requests the entry of an order providing clarification or certifying the issues to the Commission.

Dated: July 12, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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DOCKET NO. 54205

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 July 12, 2023 in accordance with the Second Order Suspending Rules, issued in Project No. 50664.

/s/ Scott Miles
Scott Miles