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| APPLICATION OF SKYLINE DRIVE | § | PUBLIC UTILITY COMMISSION |
| LANDOWNERS ASSOCIATION WATER | § | |
| SYSTEM AND JOHNSON COUNTY | § | OF TEXAS |
| 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 | § | |

COMMISSION STAFF'S RECOMMENDATION ON THE TRANSACTION

I. INTRODUCTION

On August 1, 2022, Skyline Drive Landowners Association Water System (SDLA) and Johnson County Special Utility District (Johnson County SUD) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger (STM) of facilities and certificate rights in Johnson County. Specifically, Johnson County SUD, Certificate of Convenience and Necessity (CCN) No. 10081, seeks approval to acquire facilities and to transfer all of the water service area from SDLA under water CCN No. 12479. On December 19, 2022, the Applicants filed an amended application, in which Johnson County SUD also seeks approval to amend its CCN for uncertificated service area separate from the area to be transferred in the STM.

On April 12, 2023, the administrative law judge (ALJ) filed Order No. 6, establishing a deadline of April 17, 2023 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on approval of the sale and the CCN amendment. Therefore, this pleading is timely filed.

II. RECOMMENDATION TO ALLOW THE TRANSACTION TO PROCEED

Staff has reviewed the application and, as detailed in the attached memoranda of Jolie Mathis of the Commission's Infrastructure Division and Fred Bednarski of the Commission's Rate Regulation Division, recommends that the proposed transaction satisfies the relevant statutory and regulatory criteria, including those factors identified in Texas Water Code Chapter 13 and 16 Texas Administrative Code (TAC) Chapter 24. Additionally, based upon its review, Staff recommends that Johnson County SUD has demonstrated that it possesses the financial, technical, and

managerial capacity to provide continuous and adequate service to the area subject to the proposed transaction. Therefore, Staff recommends that the transaction will serve the public interest and should be allowed to proceed without a public hearing. If the transaction is permitted to proceed, Staff further requests that the Applicants be required to file evidence that all assets have been transferred to the acquiring entity and that the disposition of any remaining deposits have been addressed as soon as possible, as required by 16 TAC § 24.239(*l*).

Staff notes that the approval of the sale expires 180 days from the date of the Commission's written approval of the sale. If the sale is not consummated within that period, and unless the Applicants request and receive an extension from the Commission, the approval is void, and the Applicants must re-apply for the approval of the sale, as required by 16 TAC § 24.239(*m*).

III. CONCLUSION

Staff respectfully requests the entry of an order allowing the proposed transaction to proceed.

Dated: April 17, 2023

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Kelsey Daugherty
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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 April 17, 2023, in accordance with the Order Suspending Rules, issued in Project No. 50664.

/s/ Kelsey Daugherty
Kelsey Daugherty

Public Utility Commission of Texas

Memorandum

TO: Kelsey Daugherty, Attorney
Legal Division

FROM: Jolie Mathis, Utility Engineering Specialist
Infrastructure Division

DATE: April 17, 2023

RE: Docket No. 53922 – *Application of Skyline Drive Landowners Association 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*

1. Application

Johnson County Special Utility District (Johnson County SUD) and the Skyline Drive Landowners Association Water System (SDLA) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger (STM) of facilities and certificate rights in Johnson County, Texas, under Texas Water Code (TWC) § 13.301 and 16 Texas Administrative Code (TAC) § 24.239. On December 19, 2022, the Applicants filed an amended application, in which Johnson County SUD also seeks approval to amend its certificate of convenience and necessity (CCN) for uncertificated area separate from the area to be transferred in the STM.

Specifically, Johnson County SUD, CCN No. 10081, seeks approval to acquire facilities and to transfer all of the water service area from SDLA under water CCN No. 12479. Additionally, as detailed above, Johnson County SUD also seeks approval to amend its CCN to add uncertificated area.

Based on the mapping review by Hank Journeay, Infrastructure Division:

- The requested area includes 34 customer connections and approximately 88.5 acres, comprised of:
26.8 acres of uncertificated area; and
61.7 acres of transferred area from CCN No. 12479.
- The application proposes the subtraction of approximately 61.7 acres from CCN No. 12479 and the addition of approximately 88.5 acres to CCN No. 10081.

2. Notice

Johnson County SUD provided notice consistent with 16 TAC § 24.239(c). The deadline to intervene was March 13, 2023; there were no motions to intervene, protests, or opt-out requests received.

3. Factors Considered

Under TWC §§ 13.241, 13.246, and 13.301 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)).*

SDLA has a Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as Skyline Drive Landowners ASSN Water System, PWS ID No. 1260060. The last TCEQ compliance investigation of SDLA's water system was on October 22, 2020. SDLA has violations listed in the TCEQ database, that have since been resolved. The Commission's complaint records, which date back to 2017, show no complaints against SDLA.

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 34 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)).*

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

There will be no effect on landowners as the area being transferred from SDLA is currently certificated and the uncertificated area being added to Johnson County SUD's CCN contains portions of some of the existing customers' land that was mistakenly not included within SDLA's CCN.

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)).*

TCEQ rule, 30 TAC § 290.46, Minimum Acceptable Operating Practices for Public Drinking Water Systems, requires the operation of a public water system by trained and licensed personnel. The production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the TCEQ executive director. The licensed operator of a public water system may be an employee, contractor, or volunteer. Johnson County SUD will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

Johnson County SUD will have licensed operators to run the system operations. Class A, B, and C operators will be the responsible operators for the system.

Johnson County SUD has the ability to provide adequate service in the requested area. Johnson County SUD has a TCEQ approved PWS registered as Johnson County SUD, PWS ID No. 1260018. Johnson County SUD does not have any active violations listed in the TCEQ database. In addition, the Commission's complaint records, which date back to 2017, show 30 complaints against Johnson County SUD. All the complaints have been reviewed and closed by the Commission's Customer Protection Division.

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 Johnson County SUD to serve the requested area. Regionalization or consolidation with another retail public utility is not economically feasible.

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)).*

SDLA 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 *An application for a certificate of public convenience and necessity or for an amendment to a certificate must contain: a capital improvements plan, including a budget and estimated timeline for construction of all facilities necessary to provide full service to the entire proposed service area (TWC § 13.244(d)(3)).*

Johnson County SUD is proposing to make improvements to Skyline Drive Landowners ASSN Water System. The proposed capital improvements are expected to exceed \$100,000, therefore the need for firm capital commitment under 16 TAC § 24.11(e)(5) is required.

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

- 3.8. *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 memo.

- 3.9. *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 memo.

- 3.10. *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 be minimally affected as facilities are constructed to provide service to the requested area.

- 3.11. *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)).*

The customers' rates will be higher than the current rates charged by SDLA. Reliability and quality of water service is expected to improve under Johnson County SUD's management.

4. Recommendation

Based on the above information, the Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. 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. Additionally, I recommend that Johnson County SUD is capable of providing continuous and adequate service and that approving the application to amend its water CCN No. 10081 is necessary for the service, accommodation, convenience, and safety of the public. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Kelsey Daugherty
Legal Division

FROM: Fred Bednarski III
Rate Regulation Division

DATE: April 17, 2023

RE: Docket No. 53922 – *Application of Skyline Drive Landowners Association 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*

On August 1, 2022, Skyline Drive Landowners Association (Skyline Drive LA), CCN No. 12479 and Johnson County Special Utility District (JCSUD), CCN No. 10081, filed an application for the sale and transfer of facilities and certificate rights in Johnson County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239 and to amend its CCN No. 12479 in Johnson County under Subchapter G of Texas Water Code Chapter 13.

An owner or operator of a retail public utility must have the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and requested utility service areas, as established by 16 Texas Administrative Code (TAC) § 24.11. JCSUD must demonstrate that it meets one of the five leverage tests under 16 TAC § 24.11(e)(2) as well as the operations test under 16 TAC § 24.11(e)(3).

Leverage Test

My analysis is based on financial statements ending December 31, 2021. These financial statements contain an unqualified auditor's opinion from George, Morgan & Sneed P.C., stating that the financial statements present fairly, in all material respects, the financial position of JCSUD as of December 31, 2021.

Based upon my review of JCSUD's financial statements, I calculate the debt-to-equity ratio to be 0.032. The debt-to-equity ratio is based on long-term debt of \$33,507,754 divided by

equity of \$103,392,220.¹ Because the ratio is less than one, I recommend a finding that JCSUD meets the leverage test specified in 16 TAC § 24.11(e)(2)(A).

Operations Test

An owner or operator must demonstrate sufficient available cash to cover projected cash shortages for operations and maintenance expense during the first five years of operations, as required by 16 TAC § 24.11(e)(3).

JCSUD's financial statements² and 2022 budget³ indicate that there are no projected shortages to cover. Therefore, I recommend a finding that JCSUD meets the operations test specified in 16 TAC § 24.11(e)(3).

Capital Improvement Plan

Capital improvements required to serve Skyline Drive LA are projected to cost \$150,000. JCSUD's board of directors (Directors) approved the capital improvements during their January 18, 2022 meeting. The Directors also approved to fund the improvements through JCSUD's 2023 capital improvements budget per resolution no. 2023-01.⁴ JCSUD's audited financial statements contain a cash and cash equivalents balance of \$18,043,642.⁵ Therefore, I recommend a finding that JCSUD meets the requirements specified in 16 TAC § 24.11(e)(5)(A).

Recommendation

Because JCSUD meets the financial tests, I do not recommend that the Commission require additional financial assurance.

Consequently, I recommend a finding that JCSUD demonstrates the financial and managerial capability needed to provide continuous and adequate service to the area subject to this application. My conclusions are based on information provided by JCSUD before the date of this memorandum and may not reflect any changes in JCSUD's status after this review.

¹ Application at pdf 145 (Aug. 1, 2022).

² *Id.* at pdf 146 and 149.

³ Amended Application at pdf 228 (Dec. 19, 2022).

⁴ Affidavit of notice to customers publisher's affidavit newspaper tear sheets JCSUD board agenda/minutes JCSUD resolution committing funds and approving schedule of improvements at pdf 13, 18, 19, 22, 23, and 24 (Feb. 22, 2023).

⁵ Application at pdf 149 (Aug. 1, 2022).