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DOCKET NO. 55328

APPLICATION OF SP UTILITY	§	PUBLIC UTILITY COMMISSION
COMPANY, INC. AND MUNICIPAL	§	
OPERATIONS, LLC FOR SALE,	§	OF TEXAS
TRANSFER, OR MERGER OF	§	
FACILITIES AND CERTIFICATE	§	
RIGHTS IN HARRIS COUNTY	§	

COMMISSION STAFF'S RECOMMENDATION ON APPROVAL OF THE SALE

I. INTRODUCTION

On August 7, 2023, SP Utility Company, Inc. (SP Utility) and Municipal Operations, LLC (Municipal) (collectively, Applicants) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Harris County. The Applicants filed supplemental information on August 8, 2023, August 25, 2023, December 8, 2023, February 13, 2024, and March 4, 2024.

On February 21, 2024, the administrative law judge (ALJ) filed Order No. 6, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to request a hearing or file a recommendation on the approval of the sale and on the certificate of convenience and necessity amendment by March 19, 2024. Therefore, this pleading is timely filed.

II. RECOMMENDATION ON APPROVAL OF THE SALE

Staff has reviewed the application and supplemental information and as supported by the attached memoranda of James Harville, Infrastructure Division, and Fred Bednarski III, Rate Regulation Division, recommends and respectfully requests the entry of an order permitting the proposed transaction to proceed. Under 16 Texas Administrative Code (TAC) § 24.239(i) and Texas Water Code §§ 13.246 and 13.301, Staff recommends that this 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 or 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 permitting the proposed transaction to proceed.

Dated: March 19, 2024

Respectfully submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

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/s/ Cheri Hasz
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CERTIFICATE OF SERVICE

I certify that unless otherwise ordered by the presiding officer, notice of the filing of this document will be provided to all parties of record via electronic mail on March 19, 2024 in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Cheri Hasz
Cheri Hasz

Public Utility Commission of Texas

Memorandum

TO: Cheri Hasz, Attorney
Legal Division

FROM: James Harville, Infrastructure Analyst
Infrastructure Division

DATE: March 19, 2024

RE: Docket No. 55328 – *Application of SP Utility Company, Inc. and Municipal Operations, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

1. Application

SP Utility Company, Inc. (SP Utility) and the Municipal Operations, LLC (Municipal Operations) (collectively, Applicants) filed an application for sale, transfer, or merger (STM) of facilities and certificate rights in Harris County, Texas, under Texas Water Code (TWC) §§ 13.242 through 13.250 and § 13.301 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237 and § 24.239.

Specifically, SP Utility, Certificate of Convenience and Necessity (CCN) No. 12978, seeks approval to acquire facilities and to transfer all of the water service area from Municipal Operations under water CCN No. 11872.

Based on the mapping review by Hank Journeay, Infrastructure Division, the revised maps submitted with Item 4 on August 25, 2023 are sufficient.

- The requested area includes 37 customer connections and approximately 14.4 acres of transferred area from Municipal Operations (CCN No. 11872) to SP Utility (CCN No. 12978).
- The application proposes the subtraction of approximately 14.4 acres from CCN No. 11872 and the addition of approximately 14.4 acres to CCN No. 12978.

2. Notice

Affidavits were provided affirming that notices were submitted to customers, cities, districts, neighboring retail public utilities, the county judge, groundwater conservation districts, and that there are no landowners owning 25 acres partially or wholly located in the requested area.

SP Utility provided notice consistent with 16 TAC § 24.239(e). The deadline to intervene was February 11, 2024; 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)).*

Municipal Operations has one Texas Commission on Environmental Quality (TCEQ) approved public water system (PWS) registered as SWEA Gardens Estates, PWS ID No. 1010218. The last TCEQ compliance investigation of the Municipal Operations system was on July 13, 2023. Municipal Operations does not have any violations listed in the TCEQ database. The Commission's complaint records, which date back 5 years, show 3 complaints against Municipal Operations. All the complaints have been reviewed and closed by the Commission's Consumer Protection Division.

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 37 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)).*

SP Utility 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 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)).*

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. SP Utility will have qualified TCEQ licensed operators licensed in water treatment to run the acquired systems.

SP Utility will have licensed operators to run the system operations. Class B or C operators will be responsible for the system.

SP Utility has the ability to provide adequate service in the requested area. SP Utility has several TCEQ approved public water systems. To date, SP Utility does not have violations listed in the TCEQ database. In addition, the Commission's complaint records, which date back 5 years, show 55 complaints consisting of 1 open complaint against SP Utility. The remaining complaints have been reviewed and closed by the Commission's Consumer 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 SP Utility 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)).*

Municipal Operations 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)).*

There are no improvements necessary to provide continuous and adequate service to the requested area therefore a capital improvements plan is not necessary.

- 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 not be affected as no additional construction is needed 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 not change from the current rates for Municipal Operations. Reliability and quality of water service is expected to improve under SP Utility's management.

4. Recommendation

The Applicants meet all of the applicable statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules. Approving this application is in the public interest and necessary for the service, accommodation, convenience and safety of the public.

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 Municipal Operations for the customers being served by Municipal Operations in the SWEA Garden Estates subdivision. I further recommend that a public hearing is not necessary.

Public Utility Commission of Texas

Memorandum

TO: Cheri Hasz, Attorney
Legal Division

FROM: Fred Bednarski III, Financial Analyst
Rate Regulation Division

DATE: March 19, 2024

RE: Docket No. 55328 *Application of SP Utility Company, Inc. and Municipal Operations, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County*

On August 7, 2023, SP Utility Company, Inc. (SP Utility) and Municipal Operations, LLC (Municipal) filed an application for the sale and transfer of facilities and certificate rights in Harris County under the provisions of Texas Water Code § 13.301 and 16 Texas Administrative Code § 24.239.

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. SP Utility 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

SP Utility filed an affidavit stating that its affiliate, Flow Tech Utility (Flow-Tech), is capable, available, and willing to cover any temporary cash shortages.¹ My analysis is based on Flow-Tech's financial statements ending December 31, 2022. Flow-Tech's financial statements demonstrate a debt-to-equity ratio of 0.00 as shown in confidential attachment FB-1. Because the ratio is less than one, I recommend a finding that Flow-Tech meets the leverage test specified in 16 TAC § 24.11(e)(2)(A). Therefore, I recommend a finding that—through its affiliate—SP Utility meets the leverage test as specified in 16 TAC § 24.11(e)(2)(E).

¹ Requested financial information and affidavits, interchange item no. 17, at 4 (Mar. 4, 2024).

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; or an affiliated interest may provide a written guaranty of coverage of temporary cash shortages if the affiliated interest also satisfies the leverage test, as required by 16 TAC § 24.11(e)(3).

SP Utility's affiliate, Flow-Tech, provided a written guarantee to cover any temporary shortages.² Flow-Tech's financial statements as shown in confidential attachment FB-1 satisfy the leverage test and indicate Flow-Tech possesses sufficient cash reserves and generates sufficient operating income to cover projected cash shortages. Therefore, I recommend a finding that SP Utility meets the operations test specified in 16 TAC § 24.11(e)(3).

Planned Capital Improvements and Purchase Price

An applicant proposing service to a new CCN area must provide documentation of adequate funding for the purchase of an existing system plus any improvements exceeding \$100,000 necessary to provide continuous and adequate service to the existing customers per 16 TAC § 24.11(e)(5)(A).

Pursuant to the memorandum provided by James Harville, Infrastructure Analyst, there are no required capital improvements. Therefore, I recommend a finding that SP Utility should not be required to satisfy the requirements of 16 TAC § 24.11(e)(5)(A).

Recommendation

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

Consequently, I recommend a finding that SP Utility 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 SP Utility before the date of this memorandum and may not reflect any changes in SP Utility's status after this review.

² *Id.*