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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 AND RESPONSE TO ORDER NO. 14

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, March 4, 2024 and July 3, 2024.

On October 4, 2024, the administrative law judge (ALJ) filed Order No. 6, directing the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a recommendation, including comments on whether the lack of compliance with status reports is grounds for voiding the approval of sale by October 25, 2024. Therefore, this pleading is timely filed.

II. RECOMMENDATION

Staff has been in communication with the Applicants regarding the closing of the transaction and notes that the statutory deadline for the Applicants to file this proof is December 1, 2024. Additionally, SP Utility timely filed a status report on July 3, 2024 on progress of closing of the transaction.

Staff recommends that the Commission rules do not provide grounds for voiding approval of the transaction due to lack of compliance with status reports. The Commission’s rules for a sale, transfer, or merger are in 16 Texas Administrative Code (TAC) § 24.239. Under 16 TAC § 24.239(j), within 30 days of the Commission’s order approving the sale, transfer, or merger to proceed, the transferee must provide a written update on the status of the transaction (the status report at issue here), and every 30 days after, until the transaction is complete. While this subsection requires the monthly filing of status reports, there is no penalty stated for lack of compliance with the requirement. By contrast, under 16 TAC § 24.239(m) states that the

Commission's approval of a sale, transfer, or merger expires 180 days following the date of the Commission order allowing the transaction to proceed and provides that if the sale has not been completed within the 180-day time period, the approval is void. This subsection explicitly includes a penalty, which is the Commission voiding the transaction completely.

A penalty that is explicitly stated in one subsection of the applicable Commission rule but omitted in another subsection in the same rule should be treated as omitted. If a penalty is to apply when a water or sewer system or retail public utility fails to timely submit monthly status reports, 16 TAC § 24.239(j) would state so in clear language as is stated in 16 TAC § 24.239(m). Therefore, Staff recommends that lack of compliance with the required monthly filing of status reports is not grounds for voiding approval of the sale here.

III. CONCLUSION

Staff respectfully requests the entry of an order consistent with these recommendations.

Dated: October 25, 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 October 25, 2024 in accordance with the Second Order Suspending Rules, filed in Project No. 50664.

/s/ Cheri Hasz

Cheri Hasz