



STATE OF DELAWARE


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MEMORANDUM

TO: The Chairman and Members of the Commission

FROM: Lisa B. Driggins, Public Utilities Analyst 

DATE: December 18, 2019

SUBJECT: IN THE MATTER OF THE APPLICATION OF SANDY RIDGE ENTERPRISES, INC., WASTEWATER UTILITIES, INC., AND DIAMOND STATE SUSTAINABILITY CORPORATION FOR THE APPROVAL OF A REAL ESTATE AND ASSET PURCHASE AND SALE AGREEMENT FOR THE SANDY RIDGE WASTEWATER SYSTEM PURSUANT TO 26 DEL. C. §215
(FILED NOVEMBER 15, 2019) - DOCKET NO. 19-0754

Application:

On November 15, 2019, Sandy Ridge Enterprises, Inc. ("Sandy Ridge Enterprises"), Wastewater Utilities, Inc. ("Wastewater Utilities," together with Sandy Ridge Enterprises, "Owners") and Diamond State Sustainability Corporation ("Diamond State," together with Owners, "Applicants") filed an application ("Application") seeking the Delaware Public Service Commission's ("Commission") approval to participate in a transaction whereby Diamond State will acquire from Owners assets and regulatory authorizations along with the rights to provide wastewater service to all Owner's existing customers.

On December 18, 2019, DSSC filed additional required information in response to requests from the Delaware Public Advocate ("DPA") and Commission Staff ("Staff").

Applicants:

Sandy Ridge Enterprises, Inc.

Sandy Ridge Enterprises is the fee simple title holder of certain lands situated near Laurel in Sussex County, Delaware, such lands being described on a plat entitled "Record Plat for Sandy

Ridge" and recorded among the Plat Records of Sussex County and the State of Delaware, in Plat Book 57, Page 298 (the "Plan") which includes a parcel known as "Wastewater Disposal Area," Sussex County tax map parcel number 3-32-2.00-187.00. Within the Wastewater Disposal Area and elsewhere within the Plan, is a community on-site wastewater treatment and disposal system (the "Wastewater System") which provides wastewater service to the rural, 81-lot residential community in Sussex County known as Sandy Ridge (the "Community") governed internally by the Sandy Ridge Homeowners Association. Sandy Ridge owns the Wastewater System, but Wastewater Utilities operates and maintains it.

Wastewater Utilities, Inc.

Wastewater Utilities is a Delaware corporation providing wastewater service to the Community pursuant to rates last established by the Commission in Order No. 6822, dated January 24, 2006, in PSC Docket No. 04-489WW. Wastewater Utilities is the holder of a Commission-approved CPCN and a permit issued by the Delaware Department of Natural Resources and Environmental Control ("Permit") authorizing Wastewater Utilities to provide wastewater treatment services to the residents of the Community. Sandy Ridge Enterprises and Wastewater Utilities are no longer in a position to continue the operation of the Wastewater System.

Diamond State Sustainability Corporation

Diamond State is a Delaware Corporation providing wastewater service to customers pursuant to PSC Docket No. 17-0414, Order No. 9163. In addition, Diamond State is a Delaware non-stock, not-for-profit corporation, organized, in part, for the purpose of providing wastewater services to rural Delaware communities. Diamond State is dedicated to sustaining natural resources and environmental infrastructure within the State of Delaware. Diamond State's primary role is to provide affordable water and wastewater utility services to low income and under-resourced communities, primarily, although not exclusively, in rural portions of Kent and Sussex Counties. Diamond State also intends to engage in the redevelopment of brownfield or other polluted properties, develop renewable energy resources, and engage in other environmentally sustainable ventures. Diamond State's goal is not to compete with services provided by private companies, local municipal and county governments, and state regulatory authorities, but rather to provide services where these institutions are unavailable or unwilling to do so. In furtherance of its mission, Diamond State will take possession and ownership of rural community wastewater systems, particularly, but not necessarily, those that are failing and/or in need of repair, and upgrade and manage these systems for and on behalf of these communities. Diamond State will charge fees to community members in order to defray its costs; however, no part of the earnings of Diamond State will inure to any private individual or entity. Diamond State is a responsible management entity as defined by the United States Environmental Protection Agency for onsite and clustered wastewater management systems.

Diamond State was determined to be tax exempt under section 501(c)(3) of the Internal Revenue Code on August 25, 2017 and has received over \$40,000.00 in funding to date from the Delaware Community Foundation and USDA Rural Development.

Transaction:

Pursuant to a Real Estate and Asset Purchase Agreement and Sale Agreement (“Asset Purchase Agreement”) dated July 15, 2019, Owners have agreed to transfer all of their assets (including the aforesaid CPCN) as more particularly described in Section 16(a) through (d) of the Asset Purchase Agreement (the "Acquired Assets"). The Acquired Assets, among other things, include the Wastewater Disposal Area, the Wastewater System and associated licenses and permits relating to the operation of the waste water utility.

Public Interest:

The Applicants assert that the public interest will be served and that the agreement is in accordance with law and is for a proper purpose. According to the Applicants, there will be no change in the services offered to Owners’ customers. In addition, landowners of record of each parcel included in the Proposed Service area were notified. The Transaction will be transparent to customers and will not disrupt service or cause customer confusion or inconvenience. Finally, customers will continue to receive wastewater services at the current rate. Staff believes this acquisition is in the public interest.

Staff’s Recommendation:

Applications seeking an asset transfer approval lie within the provisions of 26 *Del. C.* § 215 because the companies are public utilities. In addition, the Applicants have represented that the transaction is in accordance with law, for a proper purpose, and is consistent with the public interest. Staff will also acquire verification from the Applicants that the proposed Transaction has been completed.