



Control Number: 43183



Item Number: 14

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DOCKET NO. 43183

APPLICATION OF ENGLISH ACRES
AND DARIO V. GUERRA III FOR
SALE, TRANSFER, OR MERGER OF
FACILITIES AND CERTIFICATE
RIGHTS IN JIM WELLS COUNTY
(37889-S)

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2015 JAN 21 PM 12:01
PUBLIC UTILITY COMMISSION
FILING OFFICE
OF
TEXAS

COMMISSION STAFF'S RECOMMENDATION ON SUFFICIENCY

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Staff's Recommendation on Sufficiency and would show the following:

I. BACKGROUND

On February 28, 2014, Dario V. English dba Derby, Ing. (Derby) filed an application with the Texas Commission on Environmental Quality (TCEQ) to acquire and transfer Certificate of Convenience and Necessity (CCN) No. 12794 held by English Acres pursuant to TEX. WATER CODE ANN. § 13.301 and Title 16, TEX. ADMIN. CODE (16 TAC) §§ 24.109 and 24.112. On July 16, 2014, TCEQ issued a Notice of Deficiency requiring Derby to provide supplemental information for the application.

In Order No. 4, filed on December 11, 2014, the Commission declared that if Derby failed to respond by January 15, 2015 to the Application's deficiencies, the Application would be dismissed. Derby filed supplemental information date-stamped December 12, 2014 and December 16, 2015. The supplemental filings cured many of the deficiencies.

In Staff's Response to Order No. 4, Staff committed to filing a recommendation on sufficiency by January 21, 2015. Therefore, this pleading is timely filed.

II. RECOMMENDATION

In the attached memorandum of Debbie Reyes Tamayo of the Water Utilities Division (Attachment A), Staff notes that the Application is still deficient, but those deficiencies can be cured by making adjustments to the proposed notice. Attachment A notes additional parties that

the notice must be sent to, mapping that should be included, and specific language that should be modified. Staff also provides a notice form (Attachment B) and Affidavit of Notice form (Attachment C) that should be used by Derby.

Staff recommends that Derby be allowed to cure its notice deficiencies and refile the corrected notice. Staff proposes a deadline of February 13, 2015 for Derby to cure each of the deficiencies noted in Attachment A. Staff proposes a deadline of February 20, 2015, for Staf to file a recommendation on sufficiency. Lastly, if Derby fails to rectify the noted deficiencies, Staff intends to file a motion for dismissal.

III. CONCLUSION

Staff respectfully requests that the Administrative Law Judge issue an order reflecting this Response.

Dated: January 21, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
Legal Division

Doug Brown w/permission
Douglas M. Brown
Attorney, Legal Division
State Bar No. 24048366
(512) 936-7203
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

Steph Mack

DOCKET NO. 43183
CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on January 21, 2015 in accordance with P.U.C. Procedural Rule 22.74.

Doug Brown w/permission
Douglas M. Brown
Euphonia

Attachment A

(Subject Matter Expert's Memorandum)

PUC Interoffice Memorandum

To: Douglas Brown
Legal Division

Thru: Tammy Benter, Director
Water Utility Division

From: Debbie Reyes Tamayo
Program Specialist
Water Utility Division

Date: January 16, 2015

Subject: Docket No. 43183, Application (37864-S) of Derby Ing, to Sale, Transfer, or Merger (STM) Certificate of Convenience and Necessity (CCN) No. 12794 held by English Acres in Jim Wells County.

Derby Ing (Applicant) filed an application to STM all of CCN No.12794 held by English Acres in Jim Wells County. This application was filed pursuant to the criteria in the Texas Water Code, Chapter 13, and the TCEQ's rules outlined in Title 30, Texas Administrative Code (TAC), Sections 291.109 and 291.112. On September 1, 2014, the rates and CCN programs were transferred from the TCEQ to the Public Utility Commission (PUC). This application was part of the transfer and is now under the PUC's purview. The application is now being reviewed under the PUC's Substantive Rules in Chapter 24, §§24.109 and 24.112.

Based on review of the information in the application and the applicable laws and rules, I recommend that the application be deemed insufficient for filing. I further recommend the Applicant do the following:

1. Revise the description in the PUC notice documents to read, "on the north by CR 136; on the east by FM 1554; on the south by FM 625; and on the west by CR 137."
2. The applicant provided an incomplete list of entities who must receive notice within a 2-mile boundary of the proposed water service area. In addition to those utilities listed in the application, the Applicant should provide notice to the following entities:
 - o English Acres (12794)
 - o Brush Country Groundwater Conservation District (District ID 1730500)
 - o Jim Wells County
3. The Applicant be ordered to provide correct notice of the application to the following:
 - a) any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the proposed water service area; any city with an extraterritorial jurisdiction which overlaps the proposed water service area;

- b) landowners with more than 25 acres and any affected parties in the proposed water service area. The landowner information may be obtained from the county appraisal district tax rolls for the county or counties in which the proposed CCN lies; and
 - c) notice to the public which must be published once each week for two (2) consecutive weeks in a newspaper of general circulation in Jim Wells County.
4. Include a copy of a map showing the proposed water service area with the individual notices to neighboring utilities, other affected parties and each landowner. It is the Applicant's burden to provide accurate map delineating the proposed water service area with each individual notice. Information related to districts including addresses can be obtained by the Applicant from the TCEQ web site located at <http://www14.tceq.texas.gov/iwud/>

TB/DRT

Attachment B

(Sample Notice)

Notice to Neighboring Systems, Landowners and Affected Parties

**NOTICE OF APPLICATION FOR name of utility TO
AMEND/obtain A CERTIFICATE OF CONVENIENCE AND
NECESSITY (CCN) to PROVIDE WATER UTILITY SERVICE IN
XXXX COUNTY, TEXAS**

To: _____
(Neighboring System, Landowner or Affected Party)

Date Notice Mailed _____, 2013

(Address)

(City State Zip)

Name of utility has filed an application to obtain/amend CCN No. XXXX and to decertify a portion of CCN No. XXXXX held by name of utility with the Texas Commission on Environmental Quality to provide water utility service in XXXX County.

The proposed expanded utility service area is located approximately XX miles northeast of downtown XXXXX, TX and is **generally** bounded on the north by XXXX; on the east by XXXX; and on the west XXXX.

The proposed decertification utility service area is located approximately XX miles north of downtown XXXXX, TX and is **generally** bounded on the north by XXXX; on the east by XXXXX; on the south by XXXX; and on the west by XXXXX.

The total area being requested includes approximately XXXXX acres and XXXX current customers.

The proposed amendment affects customers and/or areas located in the following zip code: XXXX and XXXX.

See enclosed map of the proposed service area.

A request for a public hearing must be in writing. You must state (1) your name, mailing address, and daytime telephone number; (2) the applicant's name, application number or another recognizable reference to this application; (3) the statement, "I/we request a public hearing"; (4) a brief description of how you or the persons you represent, would be adversely affected by the granting of the application for a CCN; and (5) your proposed adjustment to the application or CCN which would satisfy your concerns and cause you to withdraw your request for a hearing.

Persons who wish to intervene or comment should write the:

Public Utility Commission
Water Utilities Division
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326

within thirty (30) days from the date of this publication or notice. A public hearing will be held only if a legally sufficient hearing request is received or if the Commission on its own motion requests a hearing. Only those individuals who submit a written hearing request or a written request to be notified if a hearing is set will receive notice if a hearing is scheduled.

If a public hearing is requested, the Executive Director will not issue the CCN and will forward the application to the State Office of Administrative Hearings (SOAH) for a hearing. If no settlement is reached and an evidentiary hearing is held, the SOAH will submit a recommendation to the Commission for final decision. If an evidentiary hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If you are a landowner with a tract of land at least 25 acres or more, that is partially or wholly located within the proposed area, you may request to be excluded from the proposed area (or "opt out") by providing written notice to the Commission within (30) days from the date that notice was provided by the applicant. All request to opt out of the requested service area must include a scaled, general location map and a metes and bounds description of the tract of land.

Persons who meet the requirements to opt out, and wish to request this option should file the required documents with the:

Public Utility Commission
Water Utilities Division
1701 N. Congress Avenue
P. O. Box 13326
Austin, Texas 78711-3326

A copy of the request to opt out of the proposed area must also be sent to the applicant. Staff may request additional information regarding your request.

Si desea informacion en Espanol, puede llamar al 1-888-782-8477.

Attachment C
(Sample Affidavit of Notice)

PUBLIC UTILITY COMMISSION



AFF IDAVIT OF NOTICE TO CUSTOMERS DOCKET NO. _____

STATE OF TEXAS
COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, who being by me
duly sworn, deposes and that (s)he is the _____
(TITLE)
of the _____
(NAME OF UTILITY)

that the attached notice was provided to customers and other affected parties by

(METHOD USED TO PROVIDE NOTICE)

on or about the following date, to wit: _____
(DATE)

(SIGNATURE OF UTILITY OFFICIAL)

Subscribed and sworn to before me this _____ day of _____, 2014,
to certify which witness my hand and seal of office.

Notary Public in and for the State of Texas

Print or Type Name of Notary Public

Commission Expires _____