

Control Number: 43356



Item Number: 9

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APPLICATION OF WIEDENFELD
WATER WORKS, INCORPORATED TO
AMEND A CERTIFICATE OF
CONVENIENCE AND NECESSITY IN
KERR COUNTY (37858-C) §
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PUBLIC UTILITY COMMISSION
OF TEXAS
2014 DEC 11 PM 2:01
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COMMISSION STAFF'S RESPONSE TO ORDER NO. 3 AND
REQUEST FOR A PROCEDURAL SCHEDULE

Commission Staff (Staff) of the Public Utility Commission of Texas (Commission) files this Status Update in response to Order No. 2. In support of its Status Update, Staff states the following:

I. Background

On February 28, 2014, Wiedenfeld Water Works, Incorporated (Wiedenfeld Water) filed with the Texas Commission on Environmental Quality (TCEQ) an application to amend its certificate of convenience and necessity (CCN No. 12052) for a water system located in Kerr County, Texas.

On June 5, 2014, TCEQ sent Wiedenfeld Water a notice of deficiency regarding the application. TCEQ stated that Wiedenfeld Water needed to provide the following documents in order for the application to be accepted for filing:

- a. A general location map that outlines the service area with enough detail to locate the service area within Kerr County, Texas;
- b. A map showing showing the service area by metes and bounds, projectable digital data, verifiable landmarks, or a recorded plat map with metes and bounds;
- c. A written description of the service area;
- d. A map that shows facilities for the production, transmission, and distribution of service;
- e. A map that shows any facilities, customers, or area that is currently being served outside of Wiedenfeld Water's certificated area; and
- f. A completed and notarized oath.

On July 25, 2014, Wiedenfeld Water submitted the requested documents to the TCEQ. Among the documents submitted by Wiedenfeld Water was a compact disc that contained electronic mapping data.

On September 1, 2014, the processing of Wiedenfeld Water's application was transferred to the Commission.

On September 30, 2014, the Administrative Law Judge entered Order No. 2, which requires Staff to file a status update regarding Wiedenfeld Water's application by October 24, 2014.

On October 24, 2014, Staff filed its Status Update regarding Wiedenfeld Water's application. In its Status Update, Staff determined that there was a material deficiency in Wiedenfeld Water's application. Staff was unable to read the electronic mapping data that was on the compact disc submitted by Wiedenfeld Water. Because of this deficiency, Staff determined that Wiedenfeld Water's application was not administratively complete. Staff recommended that Wiedenfeld Water be given an opportunity to cure the electronic mapping data deficiency identified by Staff.

On October 28, 2014, the Administrative Law Judge entered Order No. 3. Order No. 3 established December 1, 2014 as the deadline for Wiedenfeld Water to amend its application by curing the deficiency identified by Staff. Staff was also required to file comments regarding administrative completeness and a proposed procedural schedule within ten (10) days of Wiedenfeld Water amending its application.

On December 1, 2014, Wiedenfeld Water amended its application by submitting two compact discs that contained readable electronic mapping data. Staff subsequently began another review of Wiedenfeld Water's application.

II. Statutory and Substantive Rule Requirements

The Texas Water Code details the requirements for amending a certificate of convenience and necessity. In determining whether to amend a certificate of convenience and necessity, the Commission "shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service."¹ With respect to water utility service, the Commission must ensure that the applicant:

- (1) is capable of providing drinking water that meets the requirements of Chapter 341, Health and Safety Code, and requirements of this code; and

¹ TEX. WATER CODE § 13.241(a).

- (2) has access to an adequate supply of water.²

The factors listed in the Water Code that are to be considered by the Commission are:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;
- (3) the effect of the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service, including meeting the standards of the commission, taking into consideration the current and projected density and land use of the area;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service and the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity;
- (8) the probable improvement of service or lowering of cost to consumers in that area resulting from the granting of the certificate or amendment; and
- (9) the effect on the land to be included in the certificated area.³

The Commission's substantive rules have substantially similar requirements.⁴

With regards to the required notice for an amendment to a certificate of convenience and necessity, an applicant must provide notice to the following:

- a. Any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the proposed service area.
- b. Any city with an extraterritorial jurisdiction which overlaps the proposed service area.
- c. Landowners with more than twenty-five (25) acres and any affected parties in the proposed service area.⁵

² TEX. WATER CODE § 13.241(b)(1)-(2).

³ TEX. WATER CODE § 13.246(c).

⁴ See P.U.C. SUBST. R. 24.102(a)(1)-(2), (d).

⁵ P.U.C. SUBST. R. 24.106(b)(2)

Additionally, the applicant must “publish notice in a newspaper having general circulation in the county or counties where a CCN is being requested, once each week for two consecutive weeks beginning with the week after the proposed notice is approved by the commission.”⁶ Once notice is provided and published, the applicant must file an affidavit regarding such notice within thirty (30) days of the provision or publication of such notice.⁷

III. Administrative Completeness

Staff has reviewed Wiedenfeld Water’s amended application and determined that the application is administratively complete. Given Staff’s determination of administrative completeness, Staff recommends the Commission enter an order requiring Wiedenfeld Water to send the form notice attached to this Response to the following:

- a. Any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the proposed service area.
- b. Any city with an extraterritorial jurisdiction which overlaps the proposed service area.
- c. Landowners with more than twenty-five (25) acres and any affected parties in the proposed service area.
- d. **Guadalupe-Blanco River Authority (3422000) and Cow Creek GCD (2404600).**

Wiedenfeld Water will be required to submit an affidavit within thirty (30) days of the provision of notice. With regards to the publication of notice, Staff recommends that the Commission enter an order requiring Wiedenfeld Water publish the attached form publication notice once each week for two (2) consecutive weeks in a newspaper of general circulation in Kerr County. Wiedenfeld Water will be required to submit a publisher’s affidavit within thirty (30) days of the last date in which the notice was published. Staff’s determination regarding administrative completeness is further detailed in the memorandum of Leila Guerrero, Regulatory Accountant/Auditor in the Water Utilities Division.

⁶ P.U.C. SUBST. R. 24.106(c)

⁷ P.U.C. SUBST. R. 24.106(b)(6), (c)

IV. Proposed Procedural Schedule

In order to process the review of Wiedenfeld Water's application, Staff proposes the following procedural schedule:

<u>Event</u>	<u>Date</u>
Deadline for Wiedenfeld Water to provide and publish notice of its application.	January 5, 2015
Deadline for Wiedenfeld Water to submit affidavit regarding provision of notice	February 4, 2015, or thirty (30) days from the date that notice was provided, whichever occurs sooner
Deadline for Wiedenfeld Water to submit publisher affidavit	February 4, 2015, or thirty (30) days from the date that notice was last published, whichever occurs sooner
Deadline for intervention; deadline for intervenors to request a hearing on the merits.	Within thirty (30) days of mailing or publication of notice, whichever occurs later
Deadline for Staff to request a hearing or to file a recommendation on final disposition.	April 6, 2015
Deadline for Wiedenfeld Water to request a hearing or respond to Staff's recommendation on final disposition; or if no disputed issues exist, deadline for parties to file proposed findings of fact, conclusions of law, and ordering paragraphs.	April 20, 2015

V. Conclusion

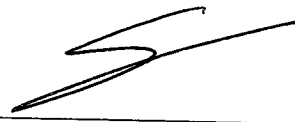
Staff has determined that Wiedenfeld Water's application is now administratively complete for a review on the merits. Staff requests that the Administrative Law Judge issue an order consistent with Staff's recommendation and that contains Staff's proposed procedural schedule.

Date: December 11, 2014

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division




Sam Chang
State Bar No. 24078333
Attorney, Legal Division

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DOCKET NO. 43356
CERTIFICATE OF SERVICE

I certify that a copy of this document was served his document was served on all parties of record on December 11, 2014 in accordance with P.U.C. Procedural Rule 22.74.


Sam Chang

PUC Interoffice Memorandum

To: Sam Chang, Attorney
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: Leila Guerrero, Regulatory Accountant/Auditor
Water Utilities Division

Date: December 10, 2014

Subject: Docket No. 43356, Application of Wiedenfeld Water Works, Incorporated to amend its Certificate of Convenience and Necessity (CCN) in Kerr County (Application Nos. 37858-C)

On February 28, 2014, the Wiedenfeld Water Works, Incorporated (Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ) to amend CCN No. 12052 in Kerr County, 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 291.102 - 291.107. 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, §§24.102 - 24.107.

On June 5, 2014, a notice of deficiency (NOD) letter was sent by TCEQ to the Applicant due to insufficient mapping requirements. On July 2, 2014, the TCEQ received a response to the NOD letter from the Applicant; however, the digital data submitted was still deficient and did not meet the PUC's mapping requirements. Therefore, the application was not accepted for filing and the Applicant was required to rectify the mapping issues.

On December 1, 2014, staff received the maps in CD submitted by the Applicant and was reviewed by staff.

Based on staff's review of the information in the application and the new mapping information, I recommend that the application be deemed sufficient for filing. I further recommend the following:

- 1) 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 service area;
 - b) any city with an extraterritorial jurisdiction which overlaps the proposed service area;
 - c) landowners with more than 25 acres and any affected parties in the proposed CCN 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
 - d) notice to the public which must be published once each week for two (2) consecutive weeks in a newspaper of general circulation in Kerr County;

- 2) The Applicant include copy of a map showing the proposed service area with the individual notices to neighboring utilities, other affected parties and each landowner. It is the Applicant's burden to provide an accurate map delineating the proposed 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/>.
- 3) The Applicant must notify **Guadalupe-Blanco River Authority (3422000)** and **Cow Creek GCD (2404600)** in addition to the neighboring entities listed in the application.
- 4) The Applicant be ordered to return within 30 days of the Commission order, a copy of the actual notice sent with attached signed affidavit that the notice was given.

Notice to Neighboring Systems, Landowners and Cities

**NOTICE OF APPLICATION FOR CERTIFICATE OF
CONVENIENCE AND NECESSITY (CCN) TO PROVIDE WATER
UTILITY SERVICE IN KERR COUNTY, TEXAS**

To: _____ Date Notice Mailed: _____, 2014
(Neighboring System, Landowner or City)

(Address)

(City State Zip)

Wiedenfeld Water Works, Incorporated has filed an application to amend CCN No. 12052 with the Public Utility Commission of Texas to provide water utility service in Kerr County.

The proposed service area is located approximately 2.0 miles southwest of downtown Comfort, Texas, and is generally bounded on the north by Schladoer Rd.; on the east by Hermann Sons Rd.; on the west by Dorado Road; and on the south by US HWY 27.

See enclosed map of the proposed service area.

The total area being requested includes approximately 311 acres and 107 current customers.

The proposed amendment affects customers and/or areas located in the following zip code: 78013.

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 of Texas
Water Utilities Division
P. O. Box 13326
Austin, TX 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 Commission 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 of Texas
Water Utilities Division
P. O. Box 13326
Austin, TX 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 1-512-936-7221.

Notice for Publication

**NOTICE OF APPLICATION FOR CERTIFICATE OF
CONVENIENCE AND NECESSITY (CCN) TO PROVIDE WATER
UTILITY SERVICE IN KERR COUNTY, TEXAS**

Wiedenfeld Water Works, Incorporated has filed an application to amend CCN No. 12052 with the Public Utility Commission of Texas to provide water utility service in Kerr County.

The proposed service area is located approximately 2.0 miles southwest of downtown Comfort, Texas, and is generally bounded on the north by Schladoer Rd.; on the east by Hermann Sons Rd.; on the west by Dorado Road; and on the south by US HWY 27.

The total area being requested includes approximately 311 acres and 107 current customers.

The proposed amendment affects customers and/or areas located in the following zip code: 78013.

A copy of the proposed service area map is available at: Wiedenfeld Water Works, Incorporated, 133 CP River Rd E, P.O. Box 418, Center Point, Texas 78010, PH No. 830-634-2321.

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.

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