



Control Number: 44028



Item Number: 21

Addendum StartPage: 0

DOCKET NO. 44028

APPLICATION OF THE CITY OF THREE RIVERS TO AMEND A CERTIFICATE OF CONVENIENCE AND NECESSITY IN LIVE OAK COUNTY (37900-C)	§ § § § §	PUBLIC UTILITY COMMISSION OF TEXAS 2015 JUL 21 PM 1:23 FILING CLERK
---	-----------------------	--

**COMMISSION STAFF'S RESPONSE TO ORDER NO. 5 – SUPPLEMENTAL
RECOMMENDATION ON ADMINISTRATIVE COMPLETENESS OF THE
APPLICATION**

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this Response to Order No. 5 – Supplemental Recommendation on Administrative Completeness of the Application and would show the following:

I. BACKGROUND

On April 25, 2014, the City of Three Rivers filed with the Texas Commission on Environmental Quality (TCEQ) an application to amend a water certificate of convenience and necessity in Live Oak County. Subsequently, on June 24, 2014, the Water Supply Division of TCEQ filed a notice of deficiency regarding this application. Effective September 1, 2014, functions relating to the economic regulation of water and sewer utilities transferred from the TCEQ to the Commission.¹ On January 6, 2015 the administrative law judge (ALJ) issued Order No. 2 requiring Commission Staff to file an update on the status of this proceeding and propose a procedural schedule, if necessary, by February 10, 2015. On February 10, 2015, Commission Staff filed comments on the applications deeming the application not administratively complete because it contained material deficiencies. Order No. 5, issued on June 18, 2015, found the application to be administratively incomplete and deficient and directed Applicant to amend its application to cure the noted deficiencies by July 1, 2015. Order No. 5 also directed Commission Staff to file a supplemental recommendation regarding administrative completeness of the amended application and notice along with a proposed procedural schedule by July 21, 2015. Therefore, this pleading is timely filed.

¹ See House Bill (HB) 1600 and Senate Bill (SB) 567, the 83rd Legislature.

II. STAFF'S RECOMMENDATION ON NOTICE AND THE APPLICATION

On June 30, 2015, the City of Three Rivers filed its response to Order No. 4 and Order No. 5 and attached copies of the General Location Map, the Service area map, and the Requests for water services map. As detailed in the attached memorandum of Mary Lupo of the Commission's Water Utilities Division, Staff has reviewed the application and the May 5, 2015, May 26, 2015, and June 30, 2015 supplements and recommend that the application be deemed sufficient and should be accepted for filing. Staff has attached the notice that the Applicant must provide in accordance with Title 16, TEX. ADMIN. CODE (16 TAC) § 24.106. Staff further requests that the notice be attached to the ALJ's order and recommends that the Applicant be directed to provide the approved notice to any districts, groundwater conservation districts, counties, utilities, cities, cities with an extraterritorial jurisdiction within two (2) miles of the proposed service area, any city with an extraterritorial jurisdiction which overlaps the proposed service area, and any customers transferred, or other affected parties in the proposed CCN area, pursuant to 16 TAC § 24.106(b). The Applicant should include a copy of a map showing the proposed service area with the individual notices to neighboring utilities, other affected parties, and each landowner, pursuant to 16 TAC § 24.106(a)(2). Additionally, Staff recommends that the Applicant publish the approved notice once each week for two consecutive weeks in a newspaper of general circulation in Live Oak County pursuant to 16 TAC § 24.106(c).

Staff further recommends the Applicant file a copy of the actual notice sent with attached and signed affidavits supporting the notice by August 25, 2015.

III. PROPOSED PROCEDURAL SCHEDULE

In support of the recommendation stated above, Staff proposes the following procedural schedule:

<u>Event</u>	<u>Date</u>
Deadline for Applicant to file affidavits of proof of notice.	August 25, 2015
Deadline for intervention; deadline for intervenors to request a hearing on the merits.	Within 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 or recommend an additional procedural schedule	October 13, 2015
Deadline for Applicant to request a hearing or respond to Staff's recommendation on final	October 28, 2015

disposition; or if no disputed issues exist, deadline for parties to file proposed findings of fact, conclusions of law, and ordering paragraphs.	
---	--

Staff notes that customers have the ability to opt out of a CCN request. In the event customers wish to opt out of the CCN, additional procedures may be needed before Staff may make a recommendation. Therefore, Staff's proposed procedural schedule allows Staff the opportunity to either file a recommendation after the customer comment period or recommend an additional procedural schedule.

IV. CONCLUSION

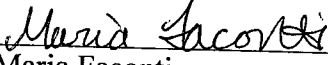
Staff respectfully requests that the ALJ issue an order consistent with Staff's recommendations in this response.

Dated: July 21, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director-Legal Division

Shelah J. Cisneros
Managing Attorney-Legal Division



Maria Faconti
Attorney-Legal Division
State Bar No. 24078487
(512) 936-7235
(512) 936-7268 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

DOCKET NO. 44028
CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on the 21st of July, 2015, in accordance with 16 TAC § 22.74.

Maria Faconti
Maria Faconti

PUC Interoffice Memorandum

mg

To: Maria Faconti
Legal Division

Thru: Tammy Benter, Director
Water Utilities Division

From: Mary Lupo, Utility Rates Analyst/Auditor
Tracy Harbour, GIS Specialist
Water Utilities Division

Date: July 21, 2015

Subject: Docket No. 44028; *Application of the City of Three Rivers to Amend a Certificate of Convenience and Necessity in Live Oak County (37900-C)*

On April 25, 2014, the City of Three Rivers (Applicant) filed an application with the Texas Commission on Environmental Quality (TCEQ) to amend water Certificate of Convenience and Necessity (CCN) No. 12642, in Live Oak County. The application was filed under the criteria in the Texas Water Code, Chapter 13, and the TCEQ's rules outlined in Title 30 of the Texas Administrative Code (TAC), §§ 291.102 - 291.107. On September 1, 2014, the rates and CCN programs for water and sewer utilities were transferred from the TCEQ to the Public Utility Commission of Texas (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, specifically §§ 24.102 - 24.107.

Order No. 5 requested that staff provide a recommendation regarding administrative completeness of this application by July 21, 2015. Staff's review of the above referenced application and the February 25, 2015, May 5, 2015, May 26, 2015, and June 30, 2015 supplemental filings, found that the information provided is deemed sufficient for filing. Staff further recommends 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) notice to the public which must be published once each week for two (2) consecutive weeks in a newspaper of general circulation in Live Oak County;
- 2) The Applicant be ordered to include copy of a map showing the proposed service area with the individual notices to neighboring entities, 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; and
- 3) Notify the entities shown below :
 - Live Oak County
 - Live Oak Underground Water Conservation District (5443600)
 - Nueces River Authority (6125000)

- Three Rivers Water District (7781000)

- 4) The Applicant be ordered to return by August 25, 2015, a copy of the actual notice sent, the map that was sent with the individual notice, and the attached signed affidavit that the notice was given.

It is recommended that the Applicant use the attached notice and affidavits to meet these requirements.

Notice for Publication

NOTICE OF APPLICATION TO AMEND A CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) TO PROVIDE WATER UTILITY SERVICE IN LIVE OAK COUNTY, TEXAS

City of Three Rivers filed an application with the Public Utility Commission of Texas to Amend Certificate of Convenience and Necessity No. 12462 for the provision of water utility service in Live Oak County.

The proposed utility service area is located approximately **3.5 miles southwest** of downtown **Three Rivers**, Texas, and is **generally** bounded on the north **by Choke Canyon Reservoir**; on the east by **FM 1545**; on the south by **Nueces River**; and on the west by **FM 1545**.

The total area being requested includes approximately **3396** acres and **37** current customers.

A copy of the proposed service area map is available at: City of Three Rivers, City Hall, 105 N. Harborth Ave., Three Rivers, TX 78071

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
Central Records
1701 N. Congress, 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, 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
Central Records
1701 N. Congress, 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 to Neighboring Systems, Landowners and Cities

NOTICE OF APPLICATION TO AMEND CERTIFICATE OF CONVENIENCE AND NECESSITY (CCN) NO. 12462 TO PROVIDE WATER UTILITY SERVICE IN LIVE OAK COUNTY, TEXAS

To: _____
(Neighboring System, Landowner or City)

(Address)

(City State Zip)

Date Notice Mailed: _____, 2015

City of Three Rivers filed an application with the Public Utility Commission of Texas to amend Certificate of Convenience and Necessity No. 12462 for the provision of water utility service in Live Oak County.

The proposed utility service area is located approximately **3.5** miles **southwest** of downtown **Three Rivers**, Texas, and is **generally** bounded on the north **by Choke Canyon Reservoir**; on the east by **FM 1545**; on the south by **Nueces River**; and on the west by **FM 1545**.

See enclosed map of the proposed service area.

The total area being requested includes approximately **3396** acres and **37** current customers.

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
Central Records
1701 N. Congress, 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 exclude the tract 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
Central Records
1701 N. Congress, 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.

PUBLIC UTILITY COMMISSION



AFFIDAVIT OF NOTICE TO NEIGHBORING UTILITIES, LANDOWNERS AND AFFECTED PARTIES
DOCKET NO. _____

STATE OF TEXAS
COUNTY OF _____

_____ has provided individual notice to the following entities and landowners:

DATE

OATH

I, _____, being duly sworn, file this form as

_____ (indicate relationship to applicant, that is, owner, member of partnership, title of officer of corporation, or other authorized representative of applicant); that in such capacity, I am qualified and authorized to file and verify such form, am personally familiar with the notices given with this application, and have complied with all notice requirements in the application and application acceptance letter; and that all such statements made and matters set for therein are true and correct.

Applicant's Authorized Representative

If the applicant to this form is any person other than the sole owner, partner, officer of the applicant, or its' attorney, a properly verified Power of Attorney must be enclosed.

Subscribed and sworn to before me this _____ day of _____, 20____, 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 _____

PUBLIC UTILITY COMMISSION



PUBLISHER'S AFFIDAVIT
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

_____ of the _____
(TITLE) (NAME OF NEWSPAPER)

that said newspaper is regularly published in _____
(COUNTY/COUNTIES)

and generally circulated in _____, Texas;
(COUNTY/COUNTIES)

and that the attached notice was published in said newspaper on the following dates, to wit:

(DATES)

(SIGNATURE OF NEWSPAPER REPRESENTATIVE)

Subscribed and sworn to before me this _____ day of _____, 20____
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 _____