



Control Number: 44490



Item Number: 32

Addendum StartPage: 0

DOCKET NO. 44490

APPLICATION OF FOUNDERS §
RESERVE COMMUNITY §
ASSOCIATION, INC. FOR WATER §
AND SEWER CERTIFICATES OF §
CONVENIENCE AND NECESSITY §
IN MONTGOMERY COUNTY §

PUBLIC UTILITY COMMISSION
2016 FEB 24 PM 1:13
PUBLIC UTILITY COMMISSION
FILING CLERK
TEXAS

COMMISSION STAFF'S RECOMMENDATION FOR DENIAL

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this Commission Staff's Recommendation for Denial. In support thereof, Staff shows the following:

I. BACKGROUND

On February 26, 2015, Founders Reserve Community Association, Inc. (Founders or Applicant) filed with the Commission an application (Application) to obtain new water and sewer certificates of convenience and necessity in Montgomery County, Texas.

Order No. 11 instructed Staff to file a recommendation or an additional procedural schedule no later than February 24, 2016. Therefore, this pleading is timely filed.

II. RECOMMENDATION

As explained in the memorandum of Leila Guerrero of the Water Utilities Division (Attachment A), Staff recommends that the Application is unable to satisfy the financial, managerial, or technical requirements for obtaining a CCN. Among other deficiencies, the Applicant does not possess appropriate permits from the Texas Commission on Environmental Quality. After speaking with the Applicant, Staff does not think the Applicant will be able to cure these deficiencies in a timely manner. The Applicant did however represent to Staff that it would like 30 days to attempt to cure the noted deficiencies or potentially withdraw and refile the Application. Therefore, Staff recommends that the Application be denied if it is not cured or withdrawn by March 25, 2016.

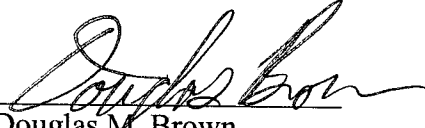
III. CONCLUSION

Staff respectfully requests the entry of an order consistent with the above recommendation.

Respectfully Submitted,


Margaret Uhlig Pemberton
Division Director
Legal Division

Stephen Mack
Managing Attorney
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DOCKET NO. 44490 CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on February 24, 2016 in accordance with 16 Tex. Admin. Code § 22.74.


Douglas M. Brown

ATTACHMENT A

Public Utility Commission of Texas

Memorandum

TO: Douglas Brown, Attorney
Legal Division

THRU: Tammy Benter, Director
Lisa Fuentes, Work Leader
Water Utility Regulation

FROM: Leila Guerrero, Regulatory Accountant/Auditor
Water Utility Regulation

DATE: February 22, 2016

SUBJECT: **Docket No. 44490**, *Application of Founders Reserve Community Association, Inc., for Water and Sewer Certificate of Convenience and Necessity in Montgomery County*

On February 26, 2015, Founders Reserve Community Association, Inc., (“Applicant” or “Founders”) filed with the Public Utility Commission of Texas (Commission) an application to obtain water and sewer Certificate of Convenience and Necessity (CCN) in Montgomery County, Texas. The application is being reviewed under the Tex. Water Code Ann. § 13.246(a), 13.246(b) and 13.246(c) (TWC) and 16 Tex. Admin. Code §§24.102 - 24.107 (TAC).

On June 29, 2015, the application was deemed administratively complete and sufficient for filing. Proper public notice was published on July 9 and 16, 2015, respectively, in the *Houston Chronicle* which is generally circulated in Montgomery County, as required by 16 TAC § 24.106(c). On July 21, July 24, and October 7, 2015, notice was provided to neighboring systems, landowners, cities and affected parties in Montgomery County, as required by 16 TAC §§ 24.106(b)(2) and (3). The Applicant filed proof of notice with the Commission on August 5 and October 7, 2015, pursuant to 16 TAC § 24.106(b)(6) and (c). Since the most recent date of public notice was October 7, 2015, the comment period ended November 6, 2015, pursuant to 16 TAC § 24.107(b). The Commission did not receive any protests, requests for hearing, or opt-out requests regarding this application.

Staff requested additional information regarding the application on various dates. Based on Staff’s review of the information in the application and the Applicant’s response to Staff’s requests for additional information, Staff opines that the Applicant did not demonstrate adequate financial, managerial, and technical capability to provide service to the area subject to this application. TWC §13.246(c) requires the Commission to consider nine criteria, as listed below, when granting or amending a CCN, as follows:

- *TWC §13.246(c)(1) requires the Commission to consider the adequacy of service currently provided to the requested area.* In the application, the Applicant states that there are people already living in the proposed area and that they are currently receiving service from the Applicant; however, the Applicant does not possess an approved public water system (PWS) or a water quality (WQ) discharge permit from the Texas Commission on Environmental Quality (TCEQ). In addition, the Applicant does not have plans and specifications or an application for the WQ permit on file for review and approval with the TCEQ. Furthermore, while the Applicant states that they are currently providing service to the area through a contract with The Woodland Joint Powers Agency (WJPA), a review of a copy of the contract reveals that the Applicant is not a party to the contract. Therefore, the service currently provided in the requested area is inadequate.
- *TWC §13.246(c)(2) requires the Commission to consider the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service.* The Applicant is allegedly operating in the proposed area without a CCN and purchases water and sewer treatment through a contract with WJPA. However, as previously stated, the Applicant is not a party to the contract. The fact that there are people living in the area and that they are already receiving some type of water and/or sewer service demonstrates that there is a need for service in the requested area.
- *TWC §13.246(c)(3) requires the Commission to consider the effect of the granting of a certificate or of an amendment on the recipient, on the landowners in the area, and on any other retail water utility servicing the proximate area.* Granting a CCN to the Applicant would ensure that the landowners in the area had an authorized retail water and sewer provider. However, in this case, the Applicant does not have an approved PWS or a WQ permit approved by TCEQ. In addition, the Applicant has not submitted plans and specifications or an application for a WQ discharge permit for consideration and approval with the TCEQ. While the Applicant alleges he is already serving the requested area through a contract with WJPA, a review of a copy of the contract reveals that the Applicant is not a party to the contract. Granting a CCN to an entity without proper regulatory approval of its facilities and/or proper contract for purchased water and sewer treatment and disposal would not be in the public interest and would not ensure the health and safety of the public.
- *TWC §13.246(c)(4) requires the Commission to consider the ability of the applicant to provide adequate service.* As previously stated, the Applicant does not have an approved PWS or a WQ permit approved by TCEQ. In addition, the Applicant has not submitted plans and specifications or an application for a WQ discharge permit for consideration and approval with the TCEQ. Without proper regulatory approval of the facilities and systems necessary to provide retail water and sewer service or a proper contract for purchased water and sewer treatment disposal, the Applicant has not demonstrated its ability to provide adequate service in the area.
- *TWC §13.246(c)(5) requires the Commission to consider the feasibility of obtaining service from an adjacent retail public utility.* The Applicant alleges it currently provides retail water and sewer utility service to customers in the proposed area. The Applicant did not

seek service for the area from an adjacent retail public utility since the area is allegedly already receiving service. Therefore, the Applicant neglected to provide information in response to this criterion.

- *TWC §13.246(c)(6) requires the Commission to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service. The Applicant has not provided sufficient financial data or information to demonstrate the financial capability to ensure that reserve funds for debt payment and repairs and maintenance are built up and maintained. In addition, without knowing what the costs the Applicant will bear for getting approved plans and specifications and a WQ discharge permit from the TCEQ (including design/plan preparation, submittal and approval), the Commission is unable to determine the financial capability of the Applicant.*
- *TWC §§13.246(7) and (9) requires the Commission to consider the environmental integrity and the effect on the land to be included in the CCN. While the Applicant alleges it is currently serving the area, the Applicant does not have an approved PWS or a WQ permit from the TCEQ. In addition, the Applicant does not have plans and specifications or an application for a WQ discharge permit on file for review and approval by the TCEQ. Furthermore, while the Applicant states that they are currently providing service to the area through a contract with WJPA, a review of a copy of the contract reveals that the Applicant is not a party to the contract. Therefore, the service currently provided in the requested area is inadequate. Because additional construction and/or land disturbance may be needed to install adequate and approved water and sewer facilities to meet state and federal standards, there is a potential for a temporary negative effect on the land and for a disruption in the integrity of the environment during construction.*
- *TWC § 13.246(8) requires the Commission to consider the probable improvement in service or lowering of cost to consumers. If water and sewer CCNs were issued to the Applicant for the requested area, the customers would have an authorized retail water and sewer provider. The fact that there would be retail service available under the protection of a CCN is an improvement over unauthorized service or no service. However, in this case, the Applicant does not have an approved PWS or a WQ discharge permit. Furthermore, while the Applicant alleges it is already serving the area through a contract with WJPA, the Applicant is not a party to the contract. Therefore, there would not be an improvement in service if the Applicant was granted water and sewer CCNs.*

With respect to the Applicant's financial and managerial capability as required by 16 TAC § 24.102(a), the Applicant did not demonstrate adequate financial and managerial capability to serve the requested area. The Applicant provided a Balance Sheet as of December 31, 2013, and an Income Statement for the year ended December 31, 2013, with the application. The balance sheet shows total cash of \$67,272.74 and receivables of \$32,780.00 or a total assets of \$100,052.74; current liabilities shows unearned assessments of \$31,050.00 and uncollected assessments of \$32,780.00 or total liabilities of \$63,830; capital account shows fund balance of \$34,863.83 and increase(decrease) summary of \$1,358.91 or a total capital of \$36,222.74. Total liabilities and capital shows a total of \$100,052.74. The income statement for the year ended December 31, 2013, shows a total association income of \$50,864.89, total association expenses of \$49,505.98

and a net income of \$1,358.91. Based on the application, the Applicant claims it has been operating and providing water and sewer utility service for the requested area since January 2010; however, the information in the application and supplemental finals confirms that the Applicant does not have a water or sewer CCN and does not have any water and sewer facilities.

As of June 30, 2015, Founders reported total assets of \$73,175.14, total liabilities of \$31,585.22 and total equity of \$41,589.92. Analysis of financial and managerial capabilities shows that the Applicant was not able to demonstrate that it can fund capital expenses, repairs and maintenance, and other operations costs.

The Applicant possesses the technical capability to provide continuous and adequate service pursuant to 16 TAC §24.102. Specifically, the Applicant does not have a TCEQ approved PWS or a TCEQ approved WQ discharge permit and the Applicant has not applied for either one. The Applicant does not employ water or sewer certified operators and has not entered into a contract with anyone for contract operation services. In addition, while the Applicant alleges it is already serving the area through a contract with WJPA, the Applicant is not a party to the contract. Hence, the Applicant does not possess the technical capability to provide continuous and adequate service.

The Applicant did not meet all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations for obtaining a CCN, and is incapable of providing continuous and adequate service, as detailed above. Therefore, Staff recommends disapproval of the application.