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DOCKET NO. 46501

RECEIVED

APPLICATION OF ORBIT SYSTEMS §
INC. TO AMEND A CERTIFICATE §
OF CONVENIENCE AND NECESSITY §
IN BRAZORIA COUNTY §

2018 FEB -6 AM 11:20
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

STAFF'S FINAL RECOMMENDATION

COMES NOW the Staff of the Public Utility Commission of Texas (Staff), representing the public interest and files this response to Order No. 8 and would show the following:

I. Background

On February 1, 2018, the Administrative Law Judge (ALJ) issued Order No. 8 requiring Staff to file a final recommendation within five working days of Orbit Systems, Inc. (Orbit) filing its signed consent. Orbit filed its signed consent on February 5, 2018. Therefore, this recommendation is timely filed.

II. Recommendation

Staff has reviewed the application, together with the supplemental information provided by Orbit, and recommends that this application be approved. Attached is a memorandum from Greg Charles of the Water Utility Regulation Division supporting this recommendation.

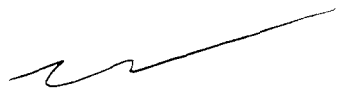
Dated: February 6, 2018

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
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**DOCKET NO. 46501
CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on February 6, 2018, in accordance with 16 TAC § 22.74.



Landon J. Lill

PUC Interoffice Memorandum

To: Landon Lill, Attorney
Legal Division

Thru: Heidi Graham, Manager
Lisa Fuentes, Manager
Water Utilities Division

From: Greg Charles, Engineer
Water Utility Regulation Division

Date: February 5, 2018

Subject: **Docket No. 46501:** *Application of Orbit Systems, Inc. To Amend a Certificate of Convenience and Necessity in Brazoria County*

On November 1, 2016, Orbit Systems, Inc. (Applicant), filed an application to amend its water Certificate of Convenience and Necessity (CCN) No. 11982 in Brazoria County, Texas. The Applicant is seeking to amend water CCN service area containing approximately 70 acres and 0 current customers. The application is being reviewed under Texas Water Code §§ 13.242-.250 (TWC) and 16 Tex. Admin Code §§ 24.101-.107 (TAC).

The comment period ended January 20, 2017, and no protest or request to opt out were received. On April 4, 2017, the Applicant requested the application be abated because the Texas Commission on Environmental Quality (TCEQ) was reviewing plans and specifications for the Willowbreeze Farm Subdivision public water system (PWS), PWS # 0200744. On September 12, 2017 the Applicant filed a TCEQ letter of approval for the water system. The abatement on the application was lifted on January 3, 2018.

Criteria Considered

TWC § 13.246(c) requires the Commission to consider nine criteria when granting or amending a CCN. Therefore, the following criteria were considered:

TWC § 13.246(c)(1) requires the commission to consider the adequacy of service currently provided to the requested area. The Applicant does not provide service to the requested area because there are no customers in the requested area. The Applicant plans to construct and operate a water plant and distribution system to serve the requested area.

TWC § 13.246(c)(2) requires the commission to consider the need for service in the requested area. A landowner is developing the requested area, which will consist of 98 residential lots. Therefore, there is a need for service.

TWC § 13.246(c)(3) requires the commission to consider the effect of granting an amendment on the recipient and on any other retail public utility servicing the proximate area. There will be no effect, since it is not economically feasible for the requested area to tie into a nearby system due to separation by an existing canal.

TWC § 13.246(c)(4) requires the commission to consider the ability of the Applicant to provide adequate service. The Applicant currently operates thirty six TCEQ approved public water systems. A review of TCEQ's Central Registry shows that none of the systems currently

have drinking water violations. The Applicant's water systems currently serve approximately 2,164 connections, and are proposed to serve an additional 98 connections for a total of 2,262 connections. They are required to retain two operators with a minimum of a Class C operator's licenses. The Applicant currently has one Class A operator and 3 Class C licenses.

TWC § 13.246(c)(5) requires the commission to consider the feasibility of obtaining service from an adjacent retail public utility. The Applicant has provided correspondence to show that it is not economically feasible for other nearby utility systems to provide service, due to separation by a canal.

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. Based on the review of the application and information provided, the Applicant has demonstrated adequate financial and managerial capabilities to provide service to the requested area.

TWC § 13.246(c)(6) requires the PUC to consider the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant. 16 TAC § 24.11 establishes criteria to demonstrate that an owner or operator of a retail public utility has the financial resources to operate and manage the utility and to provide continuous and adequate service to the current and proposed utility service area. 16 TAC § 24.11(e) lists the financial tests.

- 1) 16 TAC § 24.11(e)(2) refers to the leverage test. Of the four leverage tests, at least one must be met. The following two leverage tests were met by Orbit:
 - a. 16 TAC § 24.11(e)(2)(A) states that the owner or operator must have a debt to equity ratio of one or less than one, using long term debt and equity or net assets. The Applicant has met this requirement using the latest six year's historical financial statements and projected five year's financial statements which reflected ratios between 0.226 and 0.975 for nine of those eleven years.
 - b. 16 TAC § 24.11(e)(2)(B) states the owner or operator must have a debt service coverage ratio of more than 1.25 using annual net operating income before depreciation and non-cash expenses divided by annual combined long term (LT) debt payments. The Applicant has met this requirement using the latest six year's historical financial statements and projected five year's financial statements which reflected ratios between 6.74 and 16.17 for seven of those eleven years.
- 2) 16 TAC § 24.11(e)(3) refers to the operations test. This states that the owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years (2016 – 2020) of operations. Sufficient cash has been projected for the next five years of operations projected operations and maintenance shortages. Therefore, Orbit Systems, Inc. meets both the leverage and operations test.

TWC §§ 13.246(7) and (9) require the commission to consider the environmental integrity and the effect on the land to be included in the certificate. The land owner is planning a residential development in the requested area consisting of 98 homes. The Applicant plans to construct and operate a water plant to serve the requested area.

TWC § 13.246(8) requires the commission to consider the probable improvement in service or lowering of cost to consumers. The Applicant is currently providing adequate service to the

customers in the requested area. There will be no change in the cost or level of service for the proposed area.

The Applicant meets all of the statutory requirements of Texas Water Code Chapter 13 and the Commission's Chapter 24 rules and regulations. Approval of this application will result the amendment of the Applicant's CCN 11982 in Brazoria County. The Applicant is capable of providing continuous and adequate service. Staff recommends approval of the application. The Applicant consented to the attached map and certificate on February 1, 2018.

Based on the above information, Staff recommends the Commission issue an order approving the application and provide the attached map and certificate to the Applicant. Staff also recommends the Applicant file a copy of each CCN map along with a written description of the CCN service area in the counties clerk's office pursuant to TWC § 13.257 (r) and (s).