



Control Number: 47398



Item Number: 50

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RECEIVED

APPLICATION OF HORSESHOE §
BAY WATER UTILITY FOR WATER §
AND SEWER CERTIFICATES OF §
CONVENIENCE AND NECESSITY IN §
LLANO AND BURNET COUNTIES §

PUBLIC UTILITY COMMISSION
MAY 02 10 10 AM 2019
PUBLIC UTILITY COMMISSION
OF TEXAS
FILING CLERK

**AMENDED JOINT MOTION TO ADMIT EVIDENCE AND
PROPOSED NOTICE OF APPROVAL**

COMES NOW the City of Horseshoe Bay together with the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest, (collectively, the Parties), and files this Amended Joint Motion to Admit Evidence and Proposed Notice of Approval. In support thereof, the Parties show the following:

I. BACKGROUND

On July 12, 2017, Horseshoe Bay Water Utility filed an application to obtain a new water certificate of convenience and necessity (CCN) and a new sewer CCN in Llano County and Burnet County. The application was filed pursuant to Texas Water Code (TWC) §§ 13.242-.250 and 16 Tex. Admin. Code (TAC) §§ 24.225-.237 (previously 16 TAC §§ 24.101-.107). On November 8, 2017, the applicant amended its application to revise its requested service area. Additionally, on December 22, 2017, the applicant further supplemented its application by requesting cancellation of Deerhaven Inc.'s water CCN No. 10467.

On April 16, 2019, Horseshoe Bay Water Utility filed a correction, amending the legal entity name in the application to the City of Horseshoe Bay (Horseshoe Bay), a name under which the applicant has conducted all business since March 1, 2006. Horseshoe Bay, a home rule municipality, seeks to obtain a water CCN and a sewer CCN for the service area within its corporate boundaries, as per its amended application, filed on November 8, 2017. The requested area is approximately 10,435 acres and has 3,457 current customers.

On October 30, 2018, the Parties filed a Joint Motion to Admit Evidence and Proposed Order. On January 3, 2019, the Commission administrative law judge (ALJ) issued Order No. 14, granting the Joint Motion to Admit Evidence. Thereafter, on March 6, 2019, ALJ issued Order No. 15, rescinding Order No. 14 and requiring the parties to provide an amended motion to admit evidence, a revised proposed notice of approval, and a clarification statement identifying the

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correct CCN the applicant requested be cancelled. On March 28, 2019, Staff filed a response, recommending that the applicant file additional documentation to accurately establish the proper entity to the application. Staff also requested an extension and proposed an amended procedural schedule in order to assess the additional applicant information, fully address the ALJ's clarification question, and to file both the required amended motion to admit evidence and revised proposed notice of approval.

On March 28, 2019, the Commission ALJ issued Order No. 16, granting Staff's request for an extension and adopting the amended procedural schedule. On April 16, 2019, Horseshoe Bay filed additional information to address the proper entity serving as applicant to the present application. On April 22, 2019, Horseshoe Bay filed a consent form indicating approval of the revised final CCN maps and certificates provided by Staff, each updated with the correct entity name. On May 6, 2019, the entity material earlier submitted on April 16, 2019, was refiled to include previously missing supporting documentation.

On May 9, 2019, Staff filed an amended recommendation on final disposition, recommending approval of the application and submitting final CCN maps and certificates.

Order No. 16 also established a deadline of May 24, 2019, for the parties to file an amended motion to admit evidence and revised proposed notice of approval. Therefore, this pleading is timely filed.

II. AMENDED JOINT MOTION TO ADMIT EVIDENCE

The parties request the entry of the following items into the record of this proceeding:

1. Application of Horseshoe Bay Water Utility to Obtain a Water and Sewer Certificate of Convenience and Necessity in Llano and Burnet Counties, filed on July 12, 2017 (AIS Item No. 1);
2. Applicant's supplement to its application, including GIS digital files and PDF files of the proposed water and sewer CCN areas, filed on November 8, 2017 (AIS Item No. 11);
3. Applicant's supplement to its application, requesting cancellation of Deerhaven Inc.'s CCN, filed on December 22, 2017 (AIS Item No. 12);
4. Applicant's affidavits and proof of notice, filed on April 25, 2018 (AIS Item No. 20);

5. Applicant's supplemental affidavit and proof of notice, filed June 14, 2018 (AIS Item No. 24);
6. Applicant's consent form for maps and certificates, filed on August 15, 2018 (AIS Item No. 27);
7. Staff's Final Recommendation and supporting documentation, filed August 28, 2018 (AIS Item No. 28);
8. Staff's proof of notice, directed to Deerhaven, Inc., filed October 30, 2018 (AIS Item No. 39);
9. Staff's Response to Order No. 15, Request for Extension, and Proposed Amended Procedural Schedule, filed on March 28, 2019 (AIS Item No. 44);
10. Applicant's response to Order No. 16, requiring ownership clarification, filed on April 16, 2019 (AIS Item Nos. 46);
11. Applicant's consent form for revised maps and revised certificates, filed on April 22, 2019 (AIS Item No. 47);
12. Applicant's response to Order No. 16, requiring ownership clarification, and supporting documentation, filed on May 6, 2019 (AIS Item No. 48); and
13. Staff's Amended Recommendation on Final Disposition and supporting documentation, including final maps and certificates, filed on May 9, 2019 (AIS Item No. 49).

III. AMENDED JOINT PROPOSED NOTICE OF APPROVAL

The Parties have agreed on the attached Amended Joint Proposed Notice of Approval, which would grant Horseshoe Bay's application to obtain water CCN No. 13271, and sewer CCN No. 21111, in Burnet and Llano Counties. In addition, the Amended Joint Proposed Notice of Approval would revoke Deerhaven Inc.'s water CCN No. 10467.

IV. CONCLUSION

The Parties respectfully request that the items listed above be admitted into the record of this proceeding as evidence and that the findings of fact, conclusions of law, and ordering paragraphs from the attached Amended Joint Proposed Notice of Approval be adopted.

Dated: May 22, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

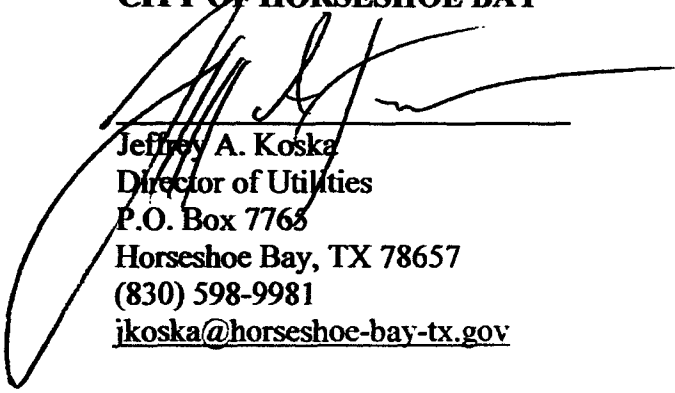
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DOCKET NO. 47398

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on May 22, 2019, in accordance with 16 TAC § 22.74.



Richard Nemer

PUC DOCKET NO. 47398

APPLICATION OF HORSESHOE	§	PUBLIC UTILITY COMMISSION
BAY WATER UTILITY FOR WATER	§	
AND SEWER CERTIFICATES OF	§	OF TEXAS
CONVENIENCE AND NECESSITY IN	§	
LLANO AND BURNET COUNTIES	§	

AMENDED JOINT PROPOSED NOTICE OF APPROVAL

This Notice addresses the application of the City of Horseshoe Bay (Horseshoe Bay) to obtain a new water certificate of convenience and necessity (CCN) and new sewer CCN and cancel Deerhaven Inc.'s water CCN in Llano and Burnet Counties. The Commission approves the application and issues to Horseshoe Bay water CCN No. 13271 and sewer CCN No. 21111. Additionally, the Commission approves the revocation of Deerhaven Inc.'s water CCN No. 10467.

The Commission adopts the following findings of fact and conclusions of law:

I. FINDINGS OF FACT

Applicant

1. Horseshoe Bay is a home rule municipal corporation that owns and operates its water and sewer system.
2. Horseshoe Bay does not currently have an approved water CCN or sewer CCN. It will continue to provide water service under new CCN No. 13271 and sewer service under new CCN No. 21111.
3. Horseshoe Bay currently operates under Texas Commission on Environmental Quality (TCEQ) permitted public water system ID No. 1500015 and Wastewater Discharge Permit No. WQ-11217-001.

Application

4. On July 12, 2017, Horseshoe Bay Water Utility filed an application to obtain a new water CCN and a new sewer CCN in Llano and Burnet Counties.
5. On November 8, 2017, the applicant amended its application, specifically to provide updated GIS digital files and PDF files of the proposed water and sewer CCN areas. The amendment reflected applicant's intention to revise its request for service area only

within its corporate boundaries.

6. On December 22, 2017, the applicant supplemented its application, specifically to request cancellation of Deerhaven Inc.'s water CCN No. 10467.
7. In Order No. 6, issued on March 5, 2018, the administrative law judge (ALJ) found the application administratively complete.
8. On August 28, 2019, Commission Staff filed its recommendation for approval of the application.
9. On April 16, 2019 and May 6, 2019, in response to Order No. 16, the applicant clarified that the legal name under which it conducts business is as the City of Horseshoe Bay.
10. On May 9, 2019, Commission Staff filed its amended recommendation for approval of the application.

Notice

11. Notice of the application appeared in the July 28, 2017 issue of the *Texas Register*.
12. On April 25, 2018, the applicant filed an affidavit of Jeffrey A. Koska, Director of Utilities for Horseshoe Bay, attesting that notice was mailed to neighboring utilities, counties, cities, and affected parties.
13. On April 25, 2018, the applicant also filed a publisher's affidavit attesting to the publication of notice in *The Highlander*, a newspaper of general circulation in Llano and Burnet Counties, on March 30, 2018 and April 6, 2018.
14. On June 14, 2018, the applicant filed a second affidavit of Jeffrey A. Koska, Director of Utilities for Horseshoe Bay, attesting that notice was mailed to Burnet County WCID 1, an entity that Commission Staff identified as failing to initially receive notice.
15. In Order No. 8 issued June 22, 2018, the ALJ found the notice sufficient.
16. On October 30, 2018, Commission Staff mailed notice to Deerhaven, Inc., of its pending revocation by certified mail to both Deerhaven, Inc.'s, last known address and to the last person listed as Deerhaven Inc.'s registered agent on the Texas Secretary of State Website.

Evidentiary Record

17. On October 30, 2018, Commission Staff and the applicant filed a joint proposed motion to admit evidence and joint proposed order.
18. In Order No. 14 issued on January 3, 2019, the ALJ admitted evidence into the record of this proceeding.

19. In Order No. 15 issued on March 6, 2019, the ALJ rescinded Order No. 14 and required Commission Staff and the applicant to amend the motion to admit evidence filed on October 30, 2018.
20. On May 22, 2019, Commission Staff and Horseshoe Bay filed an amended joint proposed motion to admit evidence and amended joint proposed notice of approval.
21. In Order No. 17 issued on _____, 2019, the ALJ admitted the following evidence into the record of this proceeding: (a) Application of Horseshoe Bay Water Utility to Obtain a Water and Sewer Certificate of Convenience and Necessity in Llano and Burnet Counties, filed on July 12, 2017; (b) applicant's supplement to its application, including GIS digital files and PDF files of the proposed water and sewer CCN areas, filed on November 8, 2017; (c) applicant's supplement to its application, requesting cancellation of Deerhaven Inc.'s CCN, filed on December 22, 2017; (d) applicant's affidavits and proof of notice, filed on April 25, 2018; (e) applicant's supplemental affidavit and proof of notice, filed June 14, 2018; (f) applicant's consent form for maps and certificates, filed on August 15, 2018; (g) Staff's Final Recommendation and supporting documentation, filed August 28, 2018; (h) Staff's proof of notice, directed to Deerhaven, Inc., filed October 30, 2018; (i) Staff's Response to Order No. 15, Request for Extension, and Proposed Amended Procedural Schedule, filed on March 28, 2019; (j) applicant's response to Order No. 16, requiring ownership clarification filed on April 16, 2019; (k) applicant's consent form for revised maps and revised certificates, filed on April 22, 2019; (l) applicant's response to Order No. 16, requiring ownership clarification, and supporting documentation, filed on May 6, 2019; and (m) Staff's Amended Recommendation on Final Disposition and supporting documentation, including final maps and certificates, filed on May 9, 2019.

Adequacy of Existing Service – TWC § 13.246(c)(1), 16 TAC § 24.227(d)(1)

22. Horseshoe Bay has a public water system registered with the TCEQ under PWS Identification No. 1500015 and it is currently in operation in the proposed service area.
23. Horseshoe Bay has five TCEQ-licensed operators responsible for the operation of the PWS.
24. Horseshoe Bay has a wastewater treatment plant (WWTP) associated with a permit issued by the TCEQ, Wastewater Discharge Permit No. WQ-11217-001. The WWTP is currently in operation in the proposed service area.

25. Horseshoe Bay has five TCEQ-licensed operators responsible for the operation of the WWTP.

Need for Additional Service – TWC § 13.246(c)(2), 16 TAC § 24.227(d)(2)

26. Horseshoe Bay currently owns and operates existing water and sewer systems, filling a service need for 3,457 existing customers in the proposed service area.

Effect of Granting the Amendment – TWC § 13.246(c)(3), 16 TAC § 24.227(d)(3)

27. Horseshoe Bay is a municipality and the requested area is located within its municipal boundaries.

28. There will be no effect on any other retail public utilities servicing the area, as the current provider of water and sewer service will not change.

Ability to Serve: Managerial and Technical – TWC § 13.246(c)(4), 13.241(a), 16 TAC §§ 24.227(a), 24.227(d)(4)

29. Horseshoe Bay's PWS consists of two surface water treatment plants, which treat raw water from Lake LBJ to produce water that meets TCEQ drinking water quality standards.

30. The two surface water treatment plants are capable of producing up to five million gallons of water, meeting the TCEQ minimum capacity requirements for the expected service demand for the 3,457 existing customers located in the requested service area.

31. The wastewater discharge permit will remain active through December 21, 2026.

32. Horseshoe Bay does not have any violations in the TCEQ database for either its PWS or WWTP.

33. No additional construction will be required to provide water or sewer utility service to the requested service area.

34. Horseshoe Bay personnel responsible for the production of treated water and the treatment of wastewater possess the appropriate licensing.

Service from Other Utilities – TWC § 13.246(c)(5), 16 TAC § 24.227(d)(5)

35. Horseshoe Bay is providing retail public utility service to customers in the requested service area using existing infrastructure located within its corporate boundaries.

36. It is not feasible to obtain service from an adjacent retail public utility.

Ability to Serve: Financial Ability and Stability – TWC § 13.246(c)(6), 13.241(a), 16 TAC §§ 24.227(a), 24.227(d)(6), 24.11(e)

- 37. As of September 14, 2016, Horseshoe Bay has an AA+ credit rating from *Standard and Poor's Financial Services LLC*. This constitutes an investment-grade credit rating.
- 38. Horseshoe Bay has a debt to equity ratio of less than one.
- 39. Horseshoe Bay's financial statements do not reflect any cash shortages.
- 40. Horseshoe Bay's financial statements demonstrate that it has sufficient cash available to cover any projected operations and maintenance shortage.

Environmental Integrity – TWC § 13.246(c)(7), 16 TAC § 24.227(d)(7)

- 41. The requested service area will be served via existing water and sewer infrastructure.
- 42. Since no additional construction is needed to service the requested area, the environmental integrity of the land should not be further effected.

Effect on Land – TWC § 13.246(c)(9), 16 TAC § 24.227(d)(9)

- 43. Since the requested area will be serviced via existing water and sewer infrastructure, the issuance of a water and sewer CCN should have no effect on the land.

Improvement in Service or Lowering of Cost – TWC § 13.246(c)(8), 16 TAC § 24.227(d)(8)

- 44. Horseshoe Bay will continue to provide service to the existing customers in the requested area.
- 45. Horseshoe Bay did not indicate that there would be any expected reduction of costs.

Revocation of Deerhaven Inc.'s Water CCN No. 10467

- 46. Deerhaven Inc.'s currently holds water CCN No. 10467.
- 47. On January 9, 1989, Deerhaven Inc. forfeited its status as a Texas corporation.
- 48. Deerhaven Inc. does not possess an active public water system to provide water service to the area located within its water CCN No. 10467.
- 49. Deerhaven Inc. was replaced by Deerhaven Water Control and Improvement District (Deerhaven WCID) in 2010.
- 50. Deerhaven WCID currently holds water CCN No. 13180.
- 51. Deerhaven WCID's water CCN service area abuts Horseshoe Bay's requested service area and will remain unchanged following the decertification of Deerhaven Inc.'s inactive water CCN.

Maps and Certificates

52. On August 8, 2018, Commission Staff emailed its proposed final maps and certificates to the applicant.
53. On August 15, 2018, the applicant filed its consent form concurring with the proposed final maps and certificates prepared by Commission Staff.
54. On April 17, 2019, Commission Staff emailed its revised proposed final maps and certificates to the applicant, reflecting the applicant's proper legal name.
55. On April 22, 2019, the applicant filed a consent form concurring with the revised proposed final maps and certificates prepared by Commission Staff, reflecting the applicant's proper legal name.
56. On May 9, 2019, Commission Staff filed the proposed maps and certificates as an attachment to its Amended Recommendation on Final Disposition.

Informal Disposition

57. Commission Staff and Horseshoe Bay are the only parties to this proceeding.
58. More than 15 days has passed since completion of the notice provided in this docket.
59. No protests, requests for hearing, or opt-outs were filed.
60. Commission Staff recommended approval of the application.
61. The decision is not adverse to any party.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction and authority over this docket pursuant to Texas Water Code (TWC) §§ 13.241, 13.244, and 13.246.
2. Horseshoe Bay is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(59).
3. Notice of the application was provided in compliance with TWC § 13.246 and 16 TAC § 24.235.
4. Notice to Deerhaven, Inc. of its pending revocation was provided in compliance with 16 TAC § 22.183.
5. The application meets the requirements set forth in TWC §§ 13.241, 13.244 and 13.246, and 16 TAC § 24.227.

6. Horseshoe Bay has demonstrated adequate financial, managerial and technical capability for providing continuous and adequate sewer service to the requested area and its existing service area as required by TWC § 13.241(a) and 16 TAC § 24.227.
7. The issuance of new water CCN No. 13271 and new sewer CCN No. 21111 is necessary for the service, accommodation, convenience, and safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(c).
8. Deerhaven Inc.'s water CCN No. 10467 may be revoked as it is incapable of providing continuous and adequate service in its certificated area pursuant to TWC § 13.254(a) and 16 TAC § 24.245(i).
9. Under TWC § 13.257(r) and 16 TAC § 24.235(f), Horseshoe Bay is required to record a certified copy of the approved certificates and maps, along with a boundary description of the service area in the real property records of Llano and Burnet Counties and to submit evidence of the recording to the Commission.
10. The requirements for informal disposition pursuant to 16 TAC § 22.35 have been met in this proceeding.

III. ORDERING PARAGRAPHS

In accordance with these findings of fact and conclusions of law, the Commission issues the following orders.

1. The Commission approves the application and issues to Horseshoe Bay new water CCN No. 13271 and new sewer CCN No. 21111, and revokes Deerhaven Inc.'s water CCN No. 10467 as described in the Notice.
2. The Commission approves the certificates and maps attached to this notice.
3. Horseshoe Bay shall serve every customer and applicant for water service within the area certified under CCN No. 13271 and sewer service within the area certified under CCN No. 21111, and such service shall be continuous and adequate.
4. Horseshoe Bay shall comply with the recording requirements in TWC § 13.257(r) and (s) for the area in Llano and Burnet Counties affected by this application and submit to the Commission evidence of the recording no later than 31 days after receipt of this Notice.
5. The Commission denies all other motions and any other requests for general or specific relief, if not expressly granted.

Signed at Austin, Texas the ____ day of _____, 2019.

PUBLIC UTILITY COMMISSION OF TEXAS

ADMINISTRATIVE LAW JUDGE