



Control Number: 47795



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DeAnn T. Walker
Chairman

Arthur C. D'Andrea
Commissioner

Shelly Botkin
Commissioner

John Paul Urban
Executive Director



Greg Abbott
Governor

Public Utility Commission of Texas

TO: DeAnn T. Walker, Chairman
Arthur C. D'Andrea, Commissioner
Shelly Botkin, Commissioner

All Parties of Record

FROM: Isaac Ta *I.T.*
Administrative Law Judge

RE: **Open Meeting of July 16, 2020**
Docket No. 47795 – Application of the City of Hutto to Amend a Sewer Certificate of Convenience and Necessity in Williamson County

DATE: June 17, 2020

Because of the COVID-19 state of disaster, the Commission has moved to a work-at-home environment and is working to maintain operations as normally as possible. However, all known challenges have not yet been overcome and the dates provided in this notice are subject to change.

Enclosed is a copy of the Proposed Order in the above-referenced docket. The Commission will consider this docket at an open meeting currently scheduled to begin at 9:30 a.m. on Thursday, July 16, 2020, at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. The parties must file any corrections or exceptions to the Proposed Order on or before Tuesday, July 7, 2020.

If there are no corrections or exceptions, no response is necessary.

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7. On March 8, 2019, Hutto amended its application to exclude additional parcels of land from the area requested in accordance with a settlement agreement with the Boehm Alliance.
8. Hutto's application, as amended, requests an area that is approximately 13,427 acres and has 2,606 potential future connections.
9. The requested area is located approximately between three and 6 1/2 miles in all directions from downtown Hutto, Texas, and is generally bounded on the north by University Boulevard and Chandler Road and State Highway 29; on the east by County Road 101 and Farm-to-Market Road 3349; on the south by US 79, County Road 138, and a line approximately one mile south of and parallel to County Road 132; and on the west by County Road 100, County Road 110, Hutto Road, and Dana Drive.

Notice

10. Notice of the application appeared in the November 27, 2017 and January 12, 2018 issues of the *Texas Register*.
11. On April 6, 2018, Hutto filed the affidavit of David E. Magana, executive director of public works and engineering, attesting that notice was mailed to neighboring utilities, counties, cities, and affected parties on March 16, 2018.
12. On April 6, 2018, Hutto filed the affidavit of Richard Stone, publisher, attesting that notice was published in the *Taylor Press*, a newspaper of general circulation in Williamson County, on March 10 and 25, 2018.
13. In Order No. 9 filed on June 16, 2020, the ALJ found the notice sufficient.

Evidentiary Record

14. On April 21, 2020, Commission Staff filed an amended joint motion to admit evidence and proposed notice of approval.
15. In Order No. 9 filed on June 16, 2020, the ALJ admitted the following evidence into the record of this proceeding: (a) Hutto's application and attachments filed on November 21, 2017; (b) Wholesale Wastewater Service Agreement between the City of Hutto and Kelly Lane Utility Company filed on December 21, 2017; (c) revised map set filed on February 7, 2018; (d) Hutto's affidavits of proof of notice filed on April 6, 2018; (e) Hutto's response

to Commission Staff's first request for information filed on April 16, 2018; (f) Hutto's amendment to the application filed on June 15, 2018; (g) State Office of Administrative Hearings mediator's final report on mediation filed on February 6, 2019; (h) Hutto's amendment to the application, including the settlement agreement, filed on March 8, 2019; (i) Hutto's response to Commission Staff's second request for information filed on September 27, 2019; (j) Hutto's response to Commission Staff's third request for information filed on October 10, 2019; (k) Hutto's first supplemental response to Commission Staff's second request for information filed on October 22, 2019; (l) Hutto's direct testimony of Samuel Ray, P.E. filed on January 23, 2020; and (m) Commission Staff's final recommendation filed on January 31, 2020.

Opt-Out Requests and Motions to Intervene

16. On January 19, 2018, Juneva Randig filed comments indicating her intent to opt out of having her property included in the proposed CCN area.
17. On January 26, 2018, Cynthia Cervenka filed comments, individually and on behalf of an estate, indicating her intent to opt out of the proposed CCN area.
18. On January 30, 2018, Isaac W. Norman filed comments indicating his intent to opt out of having his property included in the proposed CCN area and requested to intervene.
19. On January 30, 2018, Dana R. Boehm filed comments indicating her intent to opt out of having her property included in the proposed CCN area and requested a contested case hearing.
20. On January 30, 2018, Emzy Boehm filed comments indicating his intent to opt out of having his property included in the proposed CCN area and requested a hearing.
21. On January 30, 2018, Wynette Lessner filed comments indicating her intent to opt out of having her property included in the CCN area and requested a hearing.
22. On February 1, 2018, Christy Noren filed comments, individually and as trustee of an estate, indicating her intent to opt out of having her property included in the proposed CCN area.
23. On February 1, 2018, Helmer W. Dahl filed comments indicating his intent to opt out of having his property included in the proposed CCN area.

24. On February 5, 2018, Troy Boehm and Jennifer Boehm filed comments indicating their intent to opt out of having their property included in the proposed CCN area and requested a hearing.
25. On February 14, 2018, Morgan and Teresa Wendland filed comments indicating their intent to opt out of having their property included in the CCN area.
26. On February 27, 2018, the application was referred to the State Office of Administrative Hearings (SOAH).
27. On March 15, 2018, Raymond Naivar and Diane Naivar filed comments indicating their intent to opt out of having their property included in the proposed CCN area and requested a hearing.
28. On March 20, 2018, Terry Dolan filed comments indicating her intent to opt out of having her property included in the proposed CCN area and requested a hearing.
29. On March 23, 2018, Cynthia Krueger filed comments indicating her intent to opt out of having her property included in the proposed CCN area and requested a hearing.
30. On March 26, 2018, Michael and Patricia Daffin filed comments indicating their intent to opt out of having their property included in the proposed CCN area and requested a hearing.
31. On March 26, 2018, Robert and Bonnie Kaderka filed comments indicating their intent to opt out of having their property included in the proposed CCN area and requested a hearing.
32. On April 2, 2018, Robert and Donna Rinehart filed comments indicating their intent to opt out of having their property included in the proposed CCN area and requested a hearing.
33. On April 9, 2018, Charles W. and Patricia A. Gantt filed comments indicating their intent to opt out of having their property included in the proposed CCN area.
34. On April 16, 2018, Sam McFarlin filed comments indicating his intent to opt out of having his property included in the proposed CCN area.
35. On April 20, 2018, Roseline Wieland filed comments indicating their intent to opt out of having their property included in the proposed CCN area and requested a hearing.
36. On August 20, 2018, a mediation was held between Hutto and Dana R. Boehm, Emzy Boehm, Troy Boehm, Jennifer Boehm, Cynthia Krueger, Raymond Naivar, Diane Naivar,

Terry Dolan, and Wynnette Norman Lessner, individually and on behalf of Isaac W. Norman and the Norman Family (Boehm Alliance).

37. In SOAH Order No. 5 filed on August 23, 2018, the SOAH ALJ found that the opt-out requests, identified in the table below, were for land that was outside of the proposed CCN area and were, therefore, moot.

The Boehm Alliance: Dana R. Boehm, DVM, Emzy Boehm, Troy and Jennifer Boehm, Terry Dolan, Cynthia D. Krueger, Wynette Norman Lessner, Raymond and Diane Naivar, and Isaac W. Norman
Juneva Randig and Robert L. Randig
Cynthia Cervenka
Christy Noren
The John W. Noren Family Trust
Helmer Woodrow Dahl
Morgan and Teresa Wendland
Michael and Patricia Daffin
Robert and Bonnie Kaderka
Robert and Donna Rinehart
Charles W. and Patricia A. Gantt
Sam J. McFarlin
Roselind Wieland

The SOAH ALJ also denied the hearing requests and requests for intervenor status of the persons listed below.

Michael and Patricia Daffin
Robert and Bonnie Kaderka
Robert and Donna Rinehart
Roselind Wieland

38. On or about February 20, 2019, Hutto reached settlement with the Boehm Alliance.
39. On February 25, 2019, the Boehm Alliance filed a motion to withdraw the protests of its members.
40. In SOAH Order No. 9 filed on March 4, 2019, the SOAH ALJ granted the Boehm Alliance's motion to withdraw the protests of its members.

Adequacy of Existing Service—Texas Water Code (TWC) § 13.246(c)(1); 16 Texas Administrative Code (TAC) § 24.227(e)(1)

41. There is no existing sewer service in the requested area.

Need for Service—TWC § 13.246(c)(2); 16 TAC § 24.227(e)(2)

42. Hutto projected an increase in population growth in the near future.
43. Economic and environmental factors drive the need for additional sewer service in the requested area.

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

44. The areas that currently do not have sewer service will be provided with sewer service upon future growth, and Hutto assumes responsibility for infrastructure, construction, and maintenance.
45. Landowners in the requested area will benefit because they will have access to centralized water and sewer services and will not have to construct individual water wells or septic systems.
46. No protests, adverse comments, or motions to intervene were filed by any adjacent retail public utility in this docket.

47. There will be no effect on any retail public utility serving the proximate area.

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

48. Hutto currently provides sewer service to 7,998 customers.

49. Hutto provides sewer service from two TCEQ-permitted sewer systems and employs TCEQ-licensed operators.

50. Hutto does not have any unresolved violations listed in the TCEQ's database associated with its sewer's collection system and sewer treatment.

51. Hutto's existing systems have adequate capacity to provide continuous and adequate service to the proposed connections in the requested area.

52. Hutto has the ability to expand its plant and amend its permits for additional capacity and will be able to meet the projected demands in the requested area.

53. Hutto is capable of meeting the TCEQ's design criteria for sewer treatment plants and the requirements of Chapter 13 of the TWC.

54. Hutto has the managerial and technical capability to provide continuous and adequate service to the requested area.

Feasibility of Obtaining Service from Adjacent Utilities—TWC § 13.246(c)(5); 16 TAC § 24.227(e)(5)

55. Most of the requested area is within Hutto's extra territorial jurisdiction.

56. Notice of the application was provided to utilities within two miles from the outer boundary of the requested area. No protests, adverse comments, or motions to intervene were filed by an adjacent utility in this docket.

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

Regionalization or Consolidation—TWC § 13.241(d); 16 TAC § 24.227(b)

58. Because construction of a physically separate sewer system is not necessary, concerns of regionalization or consolidation are not applicable.

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

59. Hutto has a debt service coverage ratio that is greater than 1.25 and has an investment-grade credit rating from Standard & Poor's Financial Services LLC, both of which satisfy the leverage test.
60. Hutto has demonstrated it has sufficient available cash available to cover any projected operations and maintenance shortages in the first five years of operations after approval of the CCN amendment, satisfying the operations test.
61. Hutto has the financial ability and stability to provide continuous and adequate service to the requested area.

Financial Assurance—TWC § 13.246(d); 16 TAC § 24.227(e)

62. There is no need to require Hutto to provide a bond or other financial assurance to ensure continuous and adequate service.

Environmental Integrity—TWC § 13.246(c)(7); 16 TAC § 24.227(e)(7)

63. Future construction will be necessary for Hutto to serve the requested area.
64. The environmental integrity of the requested area will not be adversely impacted to such a degree that the application should not be granted.

Effect on Land—TWC § 13.246(c)(9); 16 TAC § 24.227(e)(9)

65. There will be minimal impacts to the land with future growth and development due to the excavation needed to install sewer facilities.

Improvement in Service—TWC § 13.246(c)(8), 16 TAC § 24.227(e)(8)

66. Sewer service is not currently being provided to the requested area and will become available to future customers in the area as a result of granting the CCN amendment.

Lowering of Cost—TWC § 13.246(c)(8); 16 TAC § 24.227(e)(8)

67. No lowering of cost to customers in the requested area will result from granting the CCN amendment because service is not being provided to the requested area.

Certificate and Map

68. On April 4, 2019, Commission Staff emailed its proposed final map and certificate to Hutto.

69. On April 12, 2019, Hutto filed its consent form concurring with the proposed final map and certificate.
70. On January 31, 2020, Commission Staff filed the proposed map and certificate as attachments to its final recommendation.

Informal Disposition

71. More than 15 days have passed since the completion of notice provided in this docket.
72. All opt out requests have been accommodated and all motions to intervene have been addressed or withdrawn.
73. Commission Staff and Hutto are the only remaining parties to this proceeding.
74. All requests for hearing have been denied or withdrawn and no hearing is needed.
75. Commission Staff recommended approval of the application.
76. This decision is not adverse to any party.

II. Conclusions of Law

The Commission makes the following conclusions of law.

1. The Commission has authority over this application under TWC §§ 13.041, 13.241, 13.244, 13.246, and 13.248.
2. Hutto is a retail public utility as defined in TWC § 13.002(19) and 16 TAC § 24.3(31).
3. Notice of this application complies with TWC § 13.246 and 16 TAC § 24.235.
4. The Commission processed the application in accordance with the requirements of the Administrative Procedure Act,¹ the TWC, and Commission rules.
5. The application meets the requirements set forth in TWC §§ 13.241 and 13.246 and 16 TAC § 24.25 and 24.227.
6. After consideration of the factors in TWC § 13.246(c) and 16 TAC § 24.227(e), Hutto has demonstrated adequate financial, managerial, and technical capability for providing

¹ Tex. Gov't Code §§ 2001.001–.902.

continuous and adequate service to the requested area and its current service area in Williamson County, as required by TWC § 13.241(a) and (b) and 16 TAC § 24.227.

7. Hutto has demonstrated that the amendment of its sewer CCN number 20122 will serve the public interest and is necessary for the service, accommodation, convenience, or safety of the public as required by TWC § 13.246(b) and 16 TAC § 24.227(d).
8. Under TWC §13.257(r) and (s), Hutto must record a certified copy of the approved certificate and maps, along with a boundary description of the service area, in the real property records of Williamson County within 30 days of this Order and to submit evidence of the recording to the Commission.
9. The requirements for informal disposition in 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 amends Hutto's sewer CCN number 20122 to add the requested service area as described in this Order and shown on the attached map.
2. The Commission approves the map and certificate attached to this Order.
3. Hutto must serve every customer and applicant for sewer service within the approved area under sewer CCN number 20122 who requests sewer service and meets the terms of Hutto's sewer service, and such service must be continuous and adequate.
4. Hutto must comply with the recording requirements in TWC § 13.257(r) and (s) for the areas in Williamson County affected by this application and file in this docket proof of the recording no later than 45 days after the date of this Order.
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 _____ 2020.

PUBLIC UTILITY COMMISSION OF TEXAS

DEANN T. WALKER, CHAIRMAN

ARTHUR C. D'ANDREA, COMMISSIONER

SHELLY BOTKIN, COMMISSIONER



Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Hutto

having obtained certification to provide sewer utility service for the convenience and necessity of the public, and it having been determined by this Commission that the public convenience and necessity would in fact be advanced by the provision of such service, City of Hutto is entitled to this

Certificate of Convenience and Necessity No. 20122

to provide continuous and adequate sewer utility service to that service area or those service areas in Williamson and Travis Counties as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 47795 are on file at the Commission offices in Austin, Texas; and are matters of official record available for public inspection; and be it known further that these presents do evidence the authority and the duty of the City of Hutto, to provide such utility service in accordance with the laws of this State and Rules of this Commission, subject only to any power and responsibility of this Commission to revoke or amend this Certificate in whole or in part upon a subsequent showing that the public convenience and necessity would be better served thereby.

Issued at Austin, Texas, this _____ day of _____ 2020.