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DOCKET NO. 48350

**APPLICATION OF THE CITY OF
DAYTON FOR CERTIFICATES OF
CONVENIENCE AND NECESSITY IN
HARRIS COUNTY**

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**PUBLIC UTILITY COMMISSION

OF TEXAS**

COMMISSION STAFF'S SECOND AMENDED FINAL RECOMMENDATION

On May 8, 2018, the City of Dayton (Dayton) filed an application to obtain water and sewer certificates of convenience and necessity (CCN) in Liberty and Harris Counties under Texas Water Code (TWC) §§ 13.242 through 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 through 24.259.

On May 19, 2021, the administrative law judge (ALJ) filed Order No. 21, establishing a deadline of July 16, 2021 for the Staff (Staff) of the Public Utility Commission of Texas (Commission) to file a final recommendation on the application. In Staff's timely filed initial recommendation, the attached memo stated in error that Dayton was requesting an area located in Harris County, and Staff requested that the docket be restyled to reflect that location. The requested area is actually located in Liberty County. The memo attached to this pleading reflects the correct county¹, and Staff requests that the docket be restyled accordingly.

I. FINAL RECOMMENDATION

After review, and as supported by the attached revised memorandum of Patricia Garcia of the Commission's Infrastructure Division, Staff recommends approval of the application. Staff's review indicates that Dayton meets the applicable technical, managerial, and financial requirements of Chapter 13 of the Texas Water Code and Title 16, Chapter 24 of the Texas Administrative Code and, therefore, is capable of providing continuous and adequate service.

Additionally, Staff's review suggests that approval of the application is necessary for the service, accommodation, convenience, and safety of the public. On or before July 23, 2021, the parties will jointly file proposed findings of fact and conclusions of law.

¹ The maps and certificates filed with Staff's July 15, 2021 Final Recommendation correctly referenced Liberty County only. However, Staff has attached them to this pleading as well for convenience.

II. REQUEST TO RESTYLE THE DOCKET

As indicated in Ms. Garcia's memorandum, the revised requested area no longer includes service are in Harris County. Therefore, Staff requests that this docket be restyled as *Application of the City of Dayton for Certificates of Convenience and Necessity in Liberty County*.

III. CONCLUSION

For the reasons discussed above, Staff respectfully requests that Dayton's application be approved and that the docket be restyled.

Dated: July 21, 2021

Respectfully submitted,

PUBLIC UTILITY COMMISSION OF TEXAS LEGAL DIVISION

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/s/ Merritt Lander
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DOCKET NO. 48350

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record on July 21, 2021 in accordance with the Order Suspending Rules filed in Project No. 50664.

/s/ Merritt Lander _____
Merritt Lander

Public Utility Commission of Texas

Memorandum

TO: Merritt Lander, Attorney
Legal Division

FROM: Patricia Garcia, Senior Engineering Specialist
Infrastructure Division

DATE: July 21, 2021

RE: Docket No. 48350 – *Application of the City of Dayton for Certificates of Convenience and Necessity in Harris County*

1. Application

The City of Dayton (Dayton) filed with the Public Utility Commission of Texas (Commission) an application to obtain water and sewer certificates of convenience and necessity (CCN) in Liberty and Harris Counties, Texas under Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.237.

Dayton's application requested a CCN amendment of approximately 80,045 acres and 1,080 connections receiving water and sewer service. After a reduction to the requested areas due to overlaps and Staff requests, the total acreage being requested is approximately 14,885.5 acres with 1,080 connections receiving water and sewer service. The revised requested areas are located completely within Dayton's corporate boundaries in Liberty County. The revised areas do not extend into Harris County.

The application proposes to approve water and sewer service areas of approximately 14,885.5 acres and to grant CCN Nos. 13297 and 21124 to Dayton if this docket is approved.

2. Notice

The deadline to intervene was August 20, 2018. Dayton received thirty-three landowner opt-out requests during the intervention period. On April 5, 2021, Dayton filed revised mapping and digital data to accurately remove parcels associated with landowner opt-out requests and remove gaps between and overlaps with existing CCNs. Dayton also provided documentation to explain discrepancies between the acreage included in the landowner opt-out requests and the acreage data that Dayton obtained from various county appraisal districts.

3. Factors Considered

Under TWC §§ 13.241 and 13.246, and 16 TAC §§ 24.11(e) and 24.227, the Commission is required to consider certain factors when granting or amending a water or sewer CCN. Therefore, the following factors were considered.

3.1. *Consideration of the adequacy of service currently provided to the requested area and system compliance (TWC § 13.246(c)(1); 16 TAC § 24.227(a) and (e)(1)).*

Dayton has a Texas Commission on Environmental Quality (TCEQ) approved public water systems (PWS) registered as City of Dayton, PWS ID No. 1460002 and wastewater treatment plant (WWTP) registered as City of Dayton, Wastewater Discharge Permit No. WQ 10564-004. Dayton does not have any violations listed in the TCEQ database. No additional construction is necessary for Dayton to serve the requested area. Since Dayton is a new utility, there are no complaints on file at the Commission.

3.2. *Consideration of the need for additional service in the requested area (TWC § 13.246(c)(2); 16 TAC § 24.227(e)(2)).*

There is a need for service as there are 1,080 existing water and sewer customer connections and approximately 116 future customers in 3 subdivisions that are being built in the requested areas.

3.3. *Consideration of the effect of granting an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any other retail public utility of the same kind already servicing the proximate area (TWC §§ 13.241(b) and 13.246(c)(3), 16 TAC § 24.227(e)(3)).*

Dayton will be the certificated entity for the requested area and will be required to provide adequate and continuous service to the requested area.

The landowners in the area will have a water and sewer provider available when they need to request water and sewer service.

There will be no effect on any retail public utility servicing the proximate area. All retail public utilities in the proximate area were provided notice of the CCN amendment requested in this application. All public utilities that were granted intervention subsequently withdrew. In addition, because the requested area was revised to include only area that is within Dayton's city limits, no other utility could obtain the right to serve the area without Dayton's consent.

3.4. *Consideration of the managerial and technical ability of the applicant to provide adequate service (TWC § 13.246(c)(4); 16 TAC § 24.227(a) and (e)(4)).*

Dayton has a TCEQ approved PWS registered as City of Dayton, PWS ID No. 1460002 and WWTP registered as City of Dayton, Wastewater Discharge Permit No. WQ 10564-004. Dayton does not have any violations listed in the TCEQ database. No additional construction is necessary for Dayton to serve the requested area. Since Dayton is a newly certificated utility, there are no complaints on file at the Commission.

- 3.5. ***The applicants' demonstration that regionalization or consolidation with another retail public utility is not economically feasible when construction of a physically separate water or sewer system is required to provide service to the requested area. (TWC § 13.241(d); 16 TAC § 24.227(b)).***

Dayton serves approximately 1,080 connections in the requested areas and does not need to construct a separate water or wastewater system. Therefore, concerns of regionalization or consolidation do not apply.

- 3.6. ***Consideration of the feasibility of obtaining service from an adjacent retail public utility (TWC § 13.246(c)(5); 16 TAC § 24.227(e)(5)).***

Dayton is currently serving customers in the requested area, has facilities in the requested area to serve any future customers, and has sufficient capacity. Therefore, it is not feasible to obtain service from an adjacent retail public utility. Because the requested area was revised to include only area that is within Dayton's city limits, no other utility could obtain the right to serve the area without Dayton's consent.

- 3.7. ***Consideration of the financial ability of the applicant to pay for facilities necessary to provide continuous and adequate service (TWC § 13.246(c)(6); 16 TAC §§ 24.227(a) and (e)(6), 24.11(e)).***

Leila Guerrero, Financial Analyst in the Rate Regulation Division, provided the following.

Pursuant to Texas Water Code (TWC) § 13.246(c)(6), the Commission is required to consider the financial ability of an applicant to pay for facilities necessary to provide continuous and adequate service and the financial stability of the applicant. The criteria and tests are listed in 16 TAC § 24.11, including leverage tests and an operations test.

Leverage Test

Based on the comprehensive annual report (CAFR) for 2016 and 2017, and the budgets for Fiscal Years (FY) 2018 – 2022, filed with the application, Dayton meets two out of the five leverage tests. Dayton meets the leverage test with a debt to equity ratio of 0.87, which is less than 1.0, and has sufficient unrestricted cash available as a cushion for three years debt service; however, only two years is required.

Operations Test

Dayton meets the operations test. The owner or operator must demonstrate sufficient cash is available to cover any projected operations and maintenance shortages in the first five years of operations.

Based on Dayton's financial projections for FY 2018 – 2023, financial data for FY 2008 – 2016, and the CAFR for Fiscal Year ended September 30, 2017, Dayton has demonstrated that there are no shortages to cover.

- 3.8. ***Requirement of the applicant to provide a bond or other financial assurance in a form and amount specified by the Commission to ensure that continuous and adequate utility service is provided (TWC §§ 13.246(d); 16 TAC § 24.227(f)).***

Ms. Guerrero provided the following.

As explained in the discussion of TWC § 13.246(c)(6) and 16 TAC §§ 24.227(a), (e)(6), and 24.11(e), Dayton meets the financial tests. Therefore, no additional financial assurance is needed.

3.9. *Consideration of the environmental integrity and the effect on the land to be included in the certificated area (TWC § 13.246(c)(7) and (9); and 16 TAC § 24.227(e)(7) and (9)).*

The environmental integrity of the land will be minimally affected as distribution and collection lines are installed to provide service to the requested areas.

3.10. *Consideration of the probable improvement in service or lowering of cost to consumers (TWC § 13.246(c)(8); 16 TAC § 24.227(e)(8)).*

Dayton will continue to provide water and sewer service to the existing customers in the area with no change to the cost to customers.

4. Recommendation

Based on the mapping review by Tracy Montes, Infrastructure Division, the financial and managerial review by Leila Guerrero, Rate Regulation Division, and my technical and managerial review I recommend that:

- Dayton meets all of the statutory requirements of TWC Chapter 13 and the Commission's Chapter 24 rules and regulations and is capable of providing continuous and adequate service, and
- Approving this application to obtain water CCN No. 13297 and sewer CCN No. 21124 is necessary for the service, accommodation, convenience, and safety of the public.

Dayton consented to the attached maps and certificates on July 8, 2021.



Public Utility Commission of Texas

By These Presents Be It Known To All That

City of Dayton

having obtained certification to provide water 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 Dayton is entitled to this

Certificate of Convenience and Necessity No. 13297

to provide continuous and adequate water utility service to that service area or those service areas in Liberty County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48350 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 Dayton 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.



Public Utility Commission of Texas

By These Presents Be It Known To All That

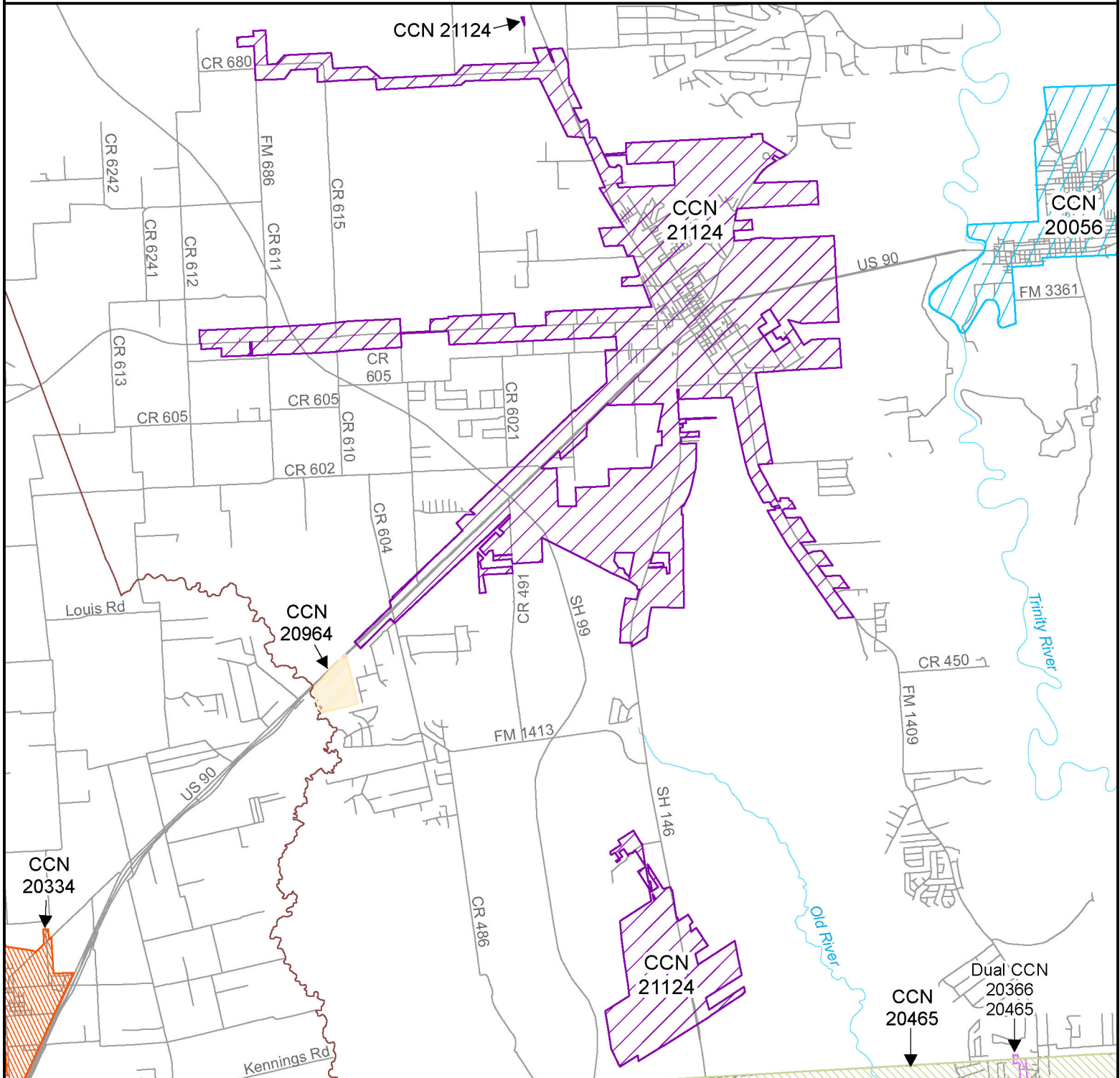
City of Dayton

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 Dayton is entitled to this


Certificate of Convenience and Necessity No. 21124


to provide continuous and adequate sewer utility service to that service area or those service areas in Liberty County as by final Order or Orders duly entered by this Commission, which Order or Orders resulting from Docket No. 48350 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 Dayton 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.

City of Dayton
Sewer CCN No. 21124
PUC Docket No. 48350
Obtained New CCN in Liberty County



Sewer CCN

 21124 - City of Dayton

 20334 - Crosby MUD

 20056 - City of Liberty

 20366 - Nerro Supply LLC

 20465 - Gulf Coast Waste Disposal Authority

 20964 - South Central Water Company



Public Utility Commission of Texas
1701 N. Congress Ave
Austin, TX 78701

Map by: Komal Patel
Date created: June 16, 2021
Project Name: 48350CityofDaytonSewer.mxd

City of Dayton
Water CCN No. 13297
PUC Docket No. 48350
Obtained New CCN in Liberty County

Water CCN

- 13297 - City of Dayton
- 13203 - Aqua Texas Inc
- 12388 - Woodland Hills Water LLC
- 12892 - T & W Water Service Company
- 13260 - Undine Texas LLC
- 10144 - City of Liberty
- 10980 - Ames Minglewood WSC
- 12559 - Northpark WSC
- 12423 - Hunters Cove Section 1 WSC
- N0003 - Wildwood Subdivision
- 12449 - Woodcreek Water Corp of Liberty County
- 12252 - Nerro Supply Inc
- 11984 - Krebs Utilities Inc
- 12042 - East Houston Utilities Inc
- 13061 - South Central Water Company
- 12671 - Utilities Investment Company Inc
- 10861 - Crosby MUD

