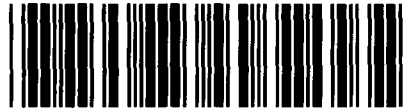


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**DOCKET NO. 48350**  
**SOAH DOCKET NO. 473-19-2463.WS**

2019 FEB 12 AM 9:04

**APPLICATION OF THE CITY OF** §  
**DAYTON FOR CERTIFICATES OF** §  
**CONVENIENCE AND NECESSITY** §  
**IN LIBERTY AND HARRIS** §  
**COUNTIES** §

**PUBLIC UTILITY COMMISSION**  
**OF TEXAS**

**COMMISSION STAFF'S LIST OF ISSUES**

**COMES NOW** the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this List of Issues and would show the following:

**I. BACKGROUND**

On May 8, 2018, the City of Dayton (Dayton or Applicant) filed an application to obtain water and sewer Certificates of Convenience and Necessity in Liberty and Harris Counties, pursuant to Texas Water Code (TWC) §§ 13.242 to 13.250 and 16 Texas Administrative Code (TAC) §§ 24.225 to 24.259. Dayton's original requested water and sewer service area included approximately 80,045 acres with 1080 current customers. On December 20, 2018, Dayton filed supplemental mapping information that modified the requested area by limiting the request to the currently served area, the majority of which is within the city limits. Dayton accounted for the filed opt out requests in the revised area. The requested area is now approximately 15,752 acres.<sup>1</sup>

On February 5, 2019, Commission Advising and Docket Management issued an Order of Referral, referring this docket to the State Office of Administrative Hearings and required Dayton to file a list of issues to be addressed in the preliminary order by February 12, 2019. Staff and any other interested parties were also allowed to file a list of issues by February 12, 2019. Therefore, this pleading is timely filed.

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<sup>1</sup> Staff's Recommendation on Sufficiency of Supplemental Mapping at 4 (February 4, 2019).

## II. STAFF'S LIST OF ISSUES

Staff, referencing TWC §§ 13.241, 13.2451, 13.246 and 16.343, 16 TAC § 24 Subchapter G, and the list of issues in a prior CCN docket,<sup>2</sup> has identified the following issues that should be considered by the Commission in this proceeding:

1. Has the applicant given notice consistent with TWC § 13.246 and 16 TAC § 24.235?
2. Does the applicant's proposed water service area or sewer service area overlap with the certificated service areas of other entities? If so, what specific areas will overlap? Has the applicant received appropriate consent to provide water service within the entities' service boundaries?
3. What modifications, if any, must be made to the applicant's proposed water and sewer service area to reflect land removed from the proposed water service area or water service area because of a qualified landowner's election to exclude some or all of the landowner's property under TWC § 13.246(h) and 16 TAC § 24.227(h)?
4. Does the applicant possess the financial, managerial, and technical capability to provide continuous and adequate water service? TWC § 13.241(a) and 16 TAC 24.227(a).
5. Is the applicant capable of providing drinking water that meets the requirements of the Texas Commission on Environmental Quality (TCEQ), the TWC, and the Texas Health and Safety Code? TWC § 13.241(b); 16 TAC § 24.227(a)(1).
6. Would the proposed water service area require construction of a physically separate water system? If so, has Dayton proven that regionalization or consolidation with a retail public utility for water service is not economically feasible? TWC § 13.214(d) and 16 TAC § 24.227 (b).
7. Does the applicant possess the financial, managerial, and technical capability to provide continuous and adequate sewer service? TWC § 13.241(a) and 16 TAC § 24.227(a).
8. Does the applicant possess a TCEQ-approved system that is capable of meeting TCEQ's design criteria for sewer treatment plants, TCEQ rules and the TWC? TWC § 13.241(c) and 16 TAC § 24.227(a)(2)(A).

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<sup>2</sup> Staff notes that this List of Issues is similar to the List of Issues in the *Application of City of Hutto to Amend a Sewer Certificate of Convenience and Necessity in Williamson County*, Docket No. 47795, Preliminary Order (March 29, 2018), with modifications relating to water service.

9. Does the applicant have access to sewer treatment or capacity, or both, or a long-term contract for purchased sewer treatment or capacity, or both, with an entity whose system meets the requirements of 16 TAC § 24.227(a)(2)(A)? TWC § 13.241(b)(2) and 16 TAC § 24.227(a)(2)(B).
10. Would the requested sewer service area require construction of a physically separate sewer system? If so, has the applicant proven that regionalization or consolidation with a retail public utility for sewer service is not economically feasible? TWC § 13.241(d) and 16 TAC § 24.227(b).
11. Are the requested water and sewer certificates of convenience and necessity necessary for the service, accommodation, convenience, or safety of the public? TWC § 13.246(b) and 16 TAC § 24.227(c).
12. Does the balance of factors under TWC § 13.246(c) and 16 TAC § 24.227(d) weigh in favor of granting the requested water and sewer certificates of convenience and necessity?
  - a. Are the proposed water and sewer service areas currently receiving adequate service? TWC § 13.246(c)(1) and 16 TAC § 24.227 (d)(1).
  - b. Do the proposed water and sewer service areas need additional service? TWC § 23.246(c)(2) and 16 TAC § 24.227(d)(2).
    - i. Have any landowners, prospective landowners, tenants, or residents requested service?
    - ii. Are there economic needs for additional service?
    - iii. Are there environmental needs for additional service?
    - iv. Are there written applications or requests for service?
    - v. Are there reports or market studies demonstrating existing or anticipated growth in the area?
  - c. What is the effect, under TWC § 13.246(c)(3) and 16 TAC § 24.227(d)(3), of granting the water and sewer certificates of convenience and necessity on:
    - i. The applicant,
    - ii. landowners in the proposed water service area, and
    - iii. any retail public utility that provides the same service and that is already serving any area within two miles of the boundary of the requested area?

- d. Does the applicant have the ability to provide adequate water and sewer service, including meeting the standards of the TCEQ, taking into consideration the current and projected density and land use of the proposed service area? TWC § 13.246(c)(4) and 16 TAC 24.227(d)(4).
  - e. What is the feasibility of obtaining water or sewer service from an adjacent retail public utility? TWC § 13.246(c)(5) and 16 TAC 24.227(d)(5).
  - f. Is the applicant financially able to pay for the facilities necessary to provide continuous and adequate water and sewer service? TWC § 13.246(c)(6) and 16 TAC 24.227(d)(6).
  - g. Is the applicant financially stable including, if applicable, its debt-to-equity ratio? TWC § 13.246(c)(6) and 16 TAC 24.227(d)(6).
  - h. How would environmental integrity be affected, if at all, by granting the requested water and sewer certificates of convenience and necessity? TWC § 13.246(c)(7) and 16 TAC 24.227(d)(7).
  - i. Is it probable that water and sewer service would be improved or costs to consumers in that service area would be lowered by granting the requested certificates of convenience and necessity? TWC § 13.246(c)(8) and 16 TAC 24.227(d)(8).
  - j. How would the land in the proposed service area be affected, if at all, by granting the requested water certificate of convenience and necessity? TWC § 13.246(c)(9) and 16 TAC 24.227(d)(9).
13. Should the Commission require the applicant, pursuant to TWC § 13.246(d) and 16 TAC § 24.227(e), to provide a bond or other financial assurance to ensure that continuous and adequate water service are provided?
14. If applicable, what were the applicant's efforts to:
- a. Extend water or sewer service to any economically distressed area, within the meaning of TWC § 15.001, located within the applicant's certificated service area; and
  - b. enforce rules adopted under TWC § 16.343, regarding minimum standards for safe and sanitary water supply? TWC § 13.246(e).

**III. ISSUES NOT TO BE ADDRESSED**

Staff has not identified any issues not to be addressed.

**IV. THRESHOLD LEGAL AND POLICY ISSUES**

Staff has not identified any threshold legal and policy issues to be addressed.

**V. CONCLUSION**

Staff respectfully requests that the Commission adopt a preliminary order with the above issues to be addressed.

Dated: February 12, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF  
TEXAS LEGAL DIVISION**

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**CERTIFICATE OF SERVICE**

I certify that a copy of this document will be served on all parties of record on February 12, 2019 in accordance with 16 TAC § 22.74.

  
Sarah D. McDaniel